

Humanising Imprisonment Conditions and Their Reflections on the Reality of Prisons in Algeria.

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Received: 02/2023

Published: 08/2023

Abstract:

The rights of prisoners constitute one of the most critical issues that have garnered substantial attention from the international community, especially in light of the evolution of punitive ideologies and contemporary penal policies. This has led to the formulation of numerous conventions and international agreements that have recognised and acknowledged the entitlement of prisoners to a variety of rights. These agreements have significantly impacted the conditions experienced by prisoners in Algerian prisons. Consequently, this study aims to shed light on the topic of humanizing imprisonment conditions and upholding prisoners' human dignity. This is considered not only a fundamental right but also a guiding principle that underpins modern penal policies. The study further explores the implications of these principles for the current state of prisons in Algeria.

Keywords: humanizing imprisonment conditions, human dignity, contemporary penal policy, prisoners, prisons.

Introduction:

A prisoner is defined as any individual who has committed a criminal act, as determined by the law, leading to their incarceration for executing the punishment issued. The punishment imposed entails a temporary suspension of their freedom. As a result, they are legally classified as prisoners. However, it is crucial to understand that this limitation of a prisoner's personal liberty should not be misconstrued as a complete negation of their entitlement to legal safeguards, consistent with their status as human beings.

Considering the prisoner as a human being, they are not immune from error, much like all humans. Built upon this premise, contemporary punitive systems have underscored the incorporation of a humane aspect during the implementation

of punishments. As a result, it is imperative to treat the prisoner with reverence for their dignity and humanity.

The thorough recognition of this truth is evident in the actions of the United Nations General Assembly. This became apparent with the issuance of the Universal Declaration of Human Rights on December 10, 1948. Additionally, a multitude of international and regional conventions and agreements highlight the significance of humanising the conditions of imprisonment and safeguarding the human dignity of prisoners. These conventions and agreements have directly shaped modern and contemporary punitive strategies in numerous nations worldwide. This influence finds its reflection in Algeria's punitive approach, which has embraced the principles of humanising imprisonment conditions.

This reality is vividly exemplified by the enactment of Law No. 05-04, which encompasses the Prison code and regulations on the social reintegration of prisoners. Within this legal framework, the Algerian legislature explicitly underscores the actual implementation of rules aimed at humanising prison conditions. This implementation is aligned with the evolving landscape of contemporary punitive policies, which prioritise efforts to rehabilitate offenders and foster positive transformation.

Hence, the focus of our research paper aims to delve into the subject of humanising imprisonment conditions, a cornerstone of contemporary penal policies, and to examine how these principles resonate within the context of Algerian prisons. Therefore, the pivotal question posed by this study is:

*** To what extent did the Algerian legislature embody the prisoner's right to human dignity, as outlined in relevant international agreements and conventions?**

To address this issue, our approach encompasses both descriptive and analytical methodologies. The descriptive aspect involves elucidating the concept of torture, elucidating its conditions, and clarifying the notion of cruelty while identifying its proscriptions within Algerian prisons. Simultaneously, our analytical approach entails a thorough examination of legal texts pertinent to these aspects within relevant international conventions and Law No. 05-04. Our study is structured into two primary axes: the first axis elucidates the prisoner's right to protection against torture, while the second axis delves into the prohibition of employing cruelty against prisoners within Algerian correctional facilities.

First Axis

The Prisoner's Right to Protection from Torture

When considering the imperative of safeguarding individuals against the potential abuses of power that could extend to torture and various forms of violence, it becomes evident that prisoners deserve heightened protection from such practises. This is particularly crucial due to their vulnerable and isolated status within prison walls, where they confront the authorities of the punitive administration.¹

Built upon this premise, international human rights agreements unequivocally dismiss any ambiguity surrounding torture. They resolutely and explicitly declare that no rationale whatsoever can legitimise it. Moreover, regional conventions have mandated the prohibition of subjecting prisoners to any manifestation of torture.

Illustratively, consider the Universal Declaration of Human Rights² issued on December 10, 1948, which commences by acknowledging the inherent humanity of every individual above all other considerations.³

Based on these grounds, international human rights conventions unequivocally reject any doubts concerning the abhorrent practise of torture. Their clear and explicit affirmations leave no room for interpretation, firmly asserting the absence of any justifications for such heinous acts. Additionally, regional conventions have underscored the imperative of safeguarding prisoners from all forms of torture.

For instance, consider the Universal Declaration of Human Rights,⁴ established on December 10, 1948. It opens by emphasising the inherent humanity of all individuals.⁵ Article 5 of this declaration further stipulates : *“No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”* Similarly, the International Covenant on Civil and Political Rights, within its 10th Article, firmly establishes that *“all persons deprived of their liberty shall be*

¹Mohamed Ali, I. (n.d). The Legal System of Prisoner Treatment in Egypt: A Comparative Study. Dar Al-Nahda Al-Arabiya Publishers.p.8

² Universal Declaration of Human Rights. (1948). Adopted by General Assembly resolution 217 (III) on December 10, 1948, emanating from the member states of the United Nations at its third session. Officially recognized by Algeria in Article 11 of the Constitution of the People's Democratic Republic of Algeria, dated September 8, 1963. Official Gazette of the People's Democratic Republic of Algeria, No. 64, dated September 10, 1963.

³Al-Najjar, M. H. (2012). Prisoners' Rights in International Conventions and Egyptian Law. Dar Al-Nahda Al-Arabia.

⁴ The Universal Declaration of Human Rights was adopted by United Nations General Assembly Resolution 217A (III) during its third session on December 10, 1948. The Declaration originated from the member states of the United Nations at its headquarters in Shabu, Paris, France. Algeria officially recognized it in Article 11 of the Constitution of the People's Democratic Republic of Algeria, dated September 8, 1963. This recognition was published in the Official Gazette of the Algerian Republic, issue number 64, dated September 10, 1963.

⁵Al-Najjar, M. H. (2012).op.cit.

treated with humanity and with respect for the inherent dignity of the human person.”

At the regional level, the Arab Charter on Human Rights¹ reinforces the prisoner's entitlement to humane treatment in Article 8, paragraph 1. It unequivocally states: “No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment”. Similarly, the African Charter on Human and Peoples' Rights,² as expressed in Article 5, affirms that: “it is your right to have your human dignity respected. It specifically forbids all forms of exploitation and degradation, which means that no one may be enslaved, “pawned” or sold into bondage or slavery.”

Therefore, international human rights conventions leave no room for doubt or uncertainty regarding the absolute prohibition of torture and ill-treatment. They firmly and unequivocally assert that there are no circumstances that can justify torture, ill-treatment, or harsh, inhuman, or degrading punishment.³

In fact, these new developments in contemporary penal policies and the evolution of punitive ideology have had a significant impact on the reality of punitive policies across numerous nations and the conditions of their prisons. Algeria, in particular, has not been immune to this influence, as it has been keen on embodying these rules and principles within its prisons in accordance with its adopted penal policy based on the social reintegration of prisoners. This is evident through the issuance of Law No. 05-04 concerning the regulation of prisons and the reintegration of prisoners.⁴ Article 2 of this law emphasises that: “All prisoners shall be treated with in a manner that preserves their human dignity and continuously works to enhance their intellectual and moral level, without discrimination based on tradition, gender, language, religion, or opinion.”

¹ Arab Charter on Human Rights. (2004). Adopted by the Council of the League of Arab States in Tunis. Algeria acceded to it through Presidential Decree No. 06-62, dated February 11, 2006. Official Gazette of the People's Democratic Republic of Algeria, No. 08, dated February 15, 2006.

² African Charter on Human and Peoples' Rights. (1981). Adopted by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) during its 18th Ordinary Session in Nairobi, Kenya, in June 1981. Algeria acceded to it through Presidential Decree No. 87-37, dated February 3, 1987. Official Gazette of the People's Democratic Republic of Algeria, No. 06, dated February 4, 1987.

³ Coyle, A. (2009). Human Rights Approach in Prison Management (F. Tazrouti, Trans.). 2nd Edition. International Centre for Prison Studies. London, UK. Page 39.

⁴ Law No. 05-04. (2005, February 6). Regulation of Prisons and Social Reintegration of prisoners. Official Gazette of the People's Democratic Republic of Algeria, No. 12, dated February 13, 2005.

It's important to highlight that the prohibition of torture, reflecting the humanisation of Algerian prisons, stands as a fundamental human right applicable to all individuals, whether they are free or incarcerated. This right cannot be denied under any circumstances. Algeria has demonstrated and continues to strive to translate this right into practical action, as evident through its daily field practises within its correctional facilities.

1. Definition of Torture:

First and foremost, we must establish a clear definition of torture. Beyond its linguistic interpretation, torture has been subject to various definitions, stemming from both legal jurisprudence and contemporary laws.

1. Linguistic Definition:

Linguistically, torture derives from the verb "adzaba," signifying to torture, and "ta'deeban," representing acts of torturing. The root verb, "adzaba," yields the active participle "mu'adhdhib," and the passive participle "mu'adhab." At its core, torture involves the deliberate infliction of physical harm.¹

2. The Legal Definitions:

In the realm of jurisprudence, there exist a multitude of definitions, each shaped by its own specialisation and perspective. Nonetheless, among the most crucial and prominent of these delineations is one that characterises torture as "An inhumane treatment encompassing both mental and physical suffering, aimed at extracting information or confessions to impose punitive measures upon the accused. The scope of torture extends beyond its particular form, extending to the gravity of the suffering, which can escalate to the point of causing severe harm, subjecting individuals to brutal exposure, or resorting to acts of violence."²

3. Legislative Definition

a. Definition of Torture within the Convention Against Torture

The initial paragraph of Article 1 within the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment defines torture as: "Any act deliberately inflicting severe pain or suffering, whether psychological or physical, upon an individual. This is executed for the purpose of securing information or admissions, administering punishment for alleged actions committed by the person or a third party, or employing intimidation or coercion, irrespective of the motive grounded in discrimination. This infliction of suffering can be orchestrated directly or through incitement, or it can be consented to or endorsed by a public official or any other individual assuming an official capacity. Notably, it excludes suffering resulting exclusively from lawful sanctions or unintended consequences."³

¹Reda, M. (2001). *Mu'jamMatn al-Lughah*. Published by Dar Maktabat al-Hayat, Beirut, Lebanon. Page 268.

²Al-Najjar, M. H. (2012). *Op.cit*, pp. 205-206.

³ See Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on December 10, 1984, entered into force on June 26, 1987. Algeria acceded to it on May 16, 1989. Official Gazette of the Algerian Republic, issue number 20, dated May 17, 1989.

The essence of the article becomes evident as it underscores the focal point of the Convention against Torture: the core of torture, encapsulating the anguish and suffering inflicted upon individuals subjected to its horrors. This encompasses both physical torment that impacts their body, organs, and senses as well as mental distress that affects their cognitive faculties. It is imperative to comprehend that the objective behind employing torture must revolve around procuring information or confessions related to incidents, irrespective of whether these were committed by the individual undergoing the ordeal or by others witnessed by them. Furthermore, this act of torture must either be executed by a specialised official or transpire in their presence, as mandated by their official responsibilities. These three conditions, articulated in the preceding section, are the prerequisites for designating an action or conduct as constituting torture, a concept that will be further elucidated subsequently.

It's equally noteworthy that the article extends its ambit beyond prison confines. It extends the prohibition of torture to encompass all official entities and authorities vested with the formal authorization to conduct investigations, spanning the realms of police, gendarmerie, and even military security forces.

b. Definition of Torture in Accordance with the Algerian Penal Code

In Article 263 bis of the Algerian Penal Code, torture is defined as follows: "Torture is constituted by any action that deliberately causes severe physical or mental pain to an individual, regardless of the motive, leading to suffering that affects either the person's body or psyche."¹

Notably, the language of this article underscores the Algerian legislature's emphasis on capturing the essence of torture—namely, the deliberate infliction of intense suffering upon an individual, irrespective of whether it targets their physical well-being or mental state.

Upon closer examination, a comparison between the definition of torture articulated in Article 1 of the Convention against Torture and the content of Article 263 bis of the Algerian Penal Code reveals a distinction. The concept of torture delineated in the Convention against Torture pertains primarily to acts carried out by official authorities within their security or judicial responsibilities. On the other hand, the scope of torture as outlined in Article 263 bis of the Algerian Penal Code is broader, encompassing scenarios where torture is perpetrated by an individual or a group against a specific individual. As a result, individuals engaged in such actions may be subject to charges of committing torture.

¹ The Algerian Penal Code Law No. 04-15, dated November 10, 2004, amended and supplemented by Decree No. 66-156, dated June 8, 1966, encompasses the penal code. It is published in the Official Gazette of the People's Democratic Republic of Algeria, issue number 71, dated November 10, 2004.

2. Criteria for Recognising an Act as Torture

In order for an act to be classified as torture, it must satisfy specific criteria, outlined as follows :

1. Degree of Severity: The act in question must reach a certain threshold of severity, causing significant bodily or mental harm. It is imperative that this harm be linked to physical or psychological suffering. Psychological pressures, due to their indistinct nature and origin, do not meet the standards for categorising an act as torture.
2. The Act Must Be Committed by a Public Official: Torture is deemed a crime within the realm of public authority, as it hinges on the utilisation of power by public officials. Their authority bestows on them the means to carry out acts of torture. It is paramount for personnel in correctional institutions to comprehend that a prisoner's conduct should never serve as a justification for torture or cruel treatment. Even in situations necessitating the use of force, it must adhere to established protocols and remain consistent with fundamental principles of prisoner treatment.¹

3. Forcing Prisoners to Confess

The crime of torture is committed against prisoners with the intention of compelling them to provide important information or punishing them for their actions. However, it is usually carried out through the imposition of disciplinary penalties characterised by cruelty and dehumanising practises.

It is essential to underline that Algerian correctional facilities have made remarkable strides in upholding the human dignity of incarcerated individuals. They have actively proscribed and condemned any form of torture inflicted by authorities, backed by the threat of legal consequences. Algeria's commitment to modern punitive strategies has led to the phased closure of antiquated penal institutions that fall short of contemporary standards. In their stead, the country has embarked on constructing novel correctional establishments that impeccably adhere to international benchmarks, ensuring the safeguarding of human rights.

It can be said that Algerian prisons today uphold human dignity and prisoner rights to a great extent, and they are completely free from any form of torture. They are subject to continuous administrative and judicial inspections. Notably, even international non-governmental organisations, including the International Committee of the Red Cross, maintain collaborative agreements with Algeria, underscoring the nation's resolute dedication to this noble cause.

¹Ghanam, M. G. (2017). Human Rights in Prisons: A Comparative Study. Dar Al-Fikr for Publishing and Distribution. Mansoura, Egypt. P. 25.

Second Axis

Prohibition of Cruelty against Prisoners

In this axis, we will delve into the critical topic of prohibiting cruelty against prisoners within correctional institutions. Additionally, we will proceed to explore the various dimensions encompassed by this prohibition.

I. Concept of Prohibition of Cruelty against Prisoners

A significant segment of legal scholars and experts concur that resorting to violence and cruelty does not lead to the rehabilitation of prisoners. Rather, such actions might further fuel their aggression, impede their receptiveness to rehabilitation and reformation initiatives, and even instil a sense of revenge within their psychological framework.

1. Definition of Cruelty

The term "cruelty" encompasses any degrading or injurious behaviour that does not meet the threshold of torture, be it physical or psychological in nature. Unlike torture, which is a narrower term, cruelty encompasses a broader range of actions. Its objective often revolves around coercing the accused into admitting guilt or providing information. Consequently, actions falling short of meeting the criteria for torture are categorised as instances of cruelty.¹

This perspective finds endorsement in a notable ruling by the European Court of Human Rights on January 18, 1978. The case pertained to individuals accused of terrorism in Northern Ireland who brought their grievances against Britain, contending that the mistreatment they endured during interrogation amounted to a form of torture. The mistreatment included prolonged periods of standing, sleep deprivation, and the withholding of food over several days. However, the court's verdict concluded that these actions did not attain the level of torture, but rather fell within the realm of inhumane and degrading treatment. This classification hinged upon factors such as the nature of the punishment, its execution methods, and the psychological and physical ramifications experienced by the prisoners.²

Further, compelling a prisoner to undress in front of prison guards is recognised as a violation of human rights. This practise is deemed inhumane and is only permissible within the context of a necessary physical search of the prisoner, particularly during their initial entry into the correctional facility. The purpose of such a search is to ensure that the individual is not attempting to introduce prohibited items that could pose a threat to their own safety, the safety of fellow inmates, or the overall security of the facility and its inhabitants, including both prisoners and staff.

¹Al-Najjar, M. H. (2012). Op.cit, pp.268

² Ibidem

It is essential to emphasise that this form of search is subject to specific conditions that are rigorously observed in practice. For instance, the search is conducted in a secluded room, away from the gaze of other inmates and even other guards. The procedure involves a thorough search from top to bottom. It is worth noting that authorised prison personnel, due to the sensitive nature of correctional institutions and the imperative to safeguard their occupants, can only perform this type of search.

In a broader context, it is crucial to differentiate between acts of torture, mistreatment, and inhumane practices, which transcend the realm of mere disciplinary actions. These acts infringe upon fundamental human rights and dignity, encompassing concerns beyond punitive measures.¹

2. The Legal Foundation of the Prohibition Principle: Restraining Cruelty

The bedrock of the prohibition principle against employing cruelty rests firmly within international agreements, conventions, comparative constitutions, and charters, all of which firmly classify it as an affront to human dignity. This stance is reaffirmed in Article 3 of the Universal Declaration of Human Rights, which unequivocally asserts that "everyone has the right to life, liberty, and security of person."

Examples of subjecting prisoners to cruelty encompass actions like immersing their heads in contaminated water, spitting in their faces, striking their heads, and delivering open-handed blows, even if these acts do not outwardly yield visible injuries.²

The cornerstone of disallowing force, cruelty, and other forms of violence finds its legal underpinning in international human rights treaties. Particularly significant is the International Covenant on Civil and Political Rights, where Article 7 expressly declares the permissibility of subjecting anyone to torture, cruel, inhuman, or degrading treatment or punishment. Similarly, Article 10, paragraph 1, of the same Covenant stipulates that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Furthermore, the Convention against Torture, in Article 6, commits each State party to forestall, within their territorial jurisdiction, any acts that amount to cruel, inhuman, or degrading treatment falling short of the threshold of torture.

The principle of prohibiting the use of cruelty is also enshrined in various comparative constitutions, including the Algerian Constitution, where its significance is highlighted in Article 39.³ An examination of this article's content

¹Ghanam, M. G. (2017).op.cit. pp. 40-41.

²Mohamed Ali, I. (n.d).op.cit.pp.24

³ Algerian Presidential Decree No. 20-442, dated December 30, 2020, pertaining to the issuance of the constitutional amendment approved in the November 1st referendum. Official Gazette of the Algerian Republic, Issue No. 82, published on December 30, 2020.

reveals the Algerian legislature's profound commitment to upholding human dignity and safeguarding the inviolability of both physical and mental sanctity. Moreover, it firmly establishes the prohibition of any form of violence, whether physical or psychological, as well as the imposition of harsh and demeaning treatment that undermines human dignity. Importantly, the law prescribes severe consequences for individuals found guilty of perpetrating such acts against their fellow human beings.

II. Dimensions of Prohibiting Cruelty in Correctional Facilities

Correctional administrations employ diverse strategies to maintain order within penitentiary institutions. These strategies are invoked in response to various scenarios, including outbreaks of disorder, altercations among inmates, or attempts at escape. However, it is vital to recognise that these methods can have serious ramifications for the physical and psychological well-being of incarcerated individuals. Therefore, correctional institutions should adhere to a principle that rejects the use of cruelty for the sake of security. This principle is anchored in the notion of upholding human dignity and safeguarding against violations, whether they are physical or psychological in nature. Additionally, these institutions must ensure that legitimate principles of crime and punishment are upheld, that cruelty is prohibited, that prisoners have the right to a just trial during disciplinary proceedings, and that adequate living conditions are provided.¹

1. The Prohibition of Cruelty for Security Rationale

Respecting the human dignity of prisoners is unequivocally paramount. Consequently, correctional personnel are unequivocally prohibited from employing cruelty or violence against inmates. This extends to situations where restraints such as chains or shackles are used to prevent escapes from correctional facilities. It is crucial to acknowledge that alternative methods exist to achieve security objectives.

The initial guideline within the United Nations' Standard Minimum Rules for the Treatment of Prisoners asserts that "all prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. It is the responsibility of the prison authorities to ensure protection against such treatment for all prisoners."

Utilising force or violence by staff members should be an exceptional measure, guided by the principle of proportionality. Legal constraints are in place to ensure that the use of force is appropriately aligned with the intended objectives and is not employed excessively.

2. Aspects of Cruelty Prohibition in Correctional Facilities

¹Khoury, O. (2007-2008). Punitive Policy in Algerian Law: A Comparative Study. (Doctoral dissertation). Faculty of Law, University of Ben Yousef Ben Khedda, Algeria.p.215.

Within correctional facilities, the administration employs various strategies to maintain order,¹ whether in response to disturbances, inmate altercations, or attempted escapes. However, these approaches can potentially jeopardise an inmate's physical well-being and mental state. Consequently, correctional institutions are obligated to avoid resorting to cruelty for security purposes. Instead, they should adhere to the principles of proportional punishment in alignment with the offence*, refraining from excessive severity when administering disciplinary actions. Moreover, inmates hold the right to a fair and equitable process during disciplinary proceedings, as well as the entitlement to appropriate living conditions.²

1) Restriction of Cruelty for Security Concerns

The unequivocal respect for the human dignity of inmates is paramount and unquestionable. Thus, it is categorically prohibited for correctional personnel to employ cruelty and violence against prisoners. This prohibition extends to situations such as restraining inmates with chains on their limbs, even if the intent is to prevent escape from the correctional institution. It is incumbent upon correctional facilities to explore alternative methods that align with humane treatment and respect.

The first principle (1) outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners unequivocally asserts that "every prisoner shall be treated with the utmost respect for their innate dignity and inherent value as human beings. Under no circumstances shall any prisoner be subjected to acts of torture, cruel treatment, inhuman punishments, or degrading conduct. It is incumbent upon the authorities to shield all prisoners from such forms of treatment and adversity. Justifications based on any circumstances must not be employed as excuses for these actions. Furthermore, the safety and security of both inmates and personnel, along with service providers and visitors, must be assured at all times."

The use of force or coercion by prison staff should be a last resort, governed by the legal principle of proportionality. The law strictly regulates the use of force by staff, ensuring that it remains commensurate with the legitimate objectives being pursued.³

¹Ghanam, M. G. (2017).op.cit.pp.44

*It's noted that the author used the term "legitimacy of crime and punishment." However, it's apparent that the accurate term is "legitimacy of offence and disciplinary sanction," as the term "legitimacy of crime and punishment" could refer to criminal law and its related supplementary legislation that encompass crimes resulting in criminal penalties, including imprisonment, detention, or fines.

² Ibid.pp.44-45

³The United Nations Standard Minimum Rules for the Treatment of Prisoners, as established under Economic and Social Council resolutions number 663 C (XXIV) dated July 31, 1957, and 2076 (LXII) dated May 1977, were recommended for adoption by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955. These rules were subsequently revised and amended by United Nations General

In a broader context, resorting to force or coercion against inmates should only occur in cases where violent resistance is met or when the safety of others is compromised, and alternative, less severe measures prove insufficient in controlling or detaining the prisoner.¹

According to Algerian legal statutes, Article 41 of the Law on the Regulation of Prisons and Social Reintegration of Detainees explicitly states that "prison staff are unequivocally prohibited from employing firearms or resorting to force against detainees, save for instances of legitimate self-defence or the mitigation of riots, rebellions, violent behaviour, escape attempts, or physical resistance to directives. This authorization is solely intended for the purpose of restoring order." Moreover, Article 42 of the same law underscores that "detainees may only be subjected to precautionary measures through judicious employment of control mechanisms or appropriate medical interventions, and this prerogative is exclusively applicable in specific circumstances:

- Manifestation of Aggression: In cases where a detainee displays aggressive behaviour or engages in severe physical violence towards others,
- Suicidal Tendencies and Self-Mutilation: If a detainee attempts suicide or engages in acts of self-mutilation.
- Mental Impairment: When a detainee's mental faculties become compromised.

In situations, two and three mentioned above, immediate notification to the medical and psychological experts of the penal institution is imperative to initiate the necessary interventions.²

From the clauses highlighted, it becomes evident that the Algerian legislature has precisely outlined the use of force, confining it to three well-defined circumstances.

2) Principle of Legitimacy Offence and Disciplinary Sanctions Non-Cruelty Approach:

The consensus within international standards advocates for the exclusion of coercive measures as disciplinary sanctions. The acknowledgment of human rights within correctional facilities has substantially reformed the methods of discipline applied therein.³

a) Principle of Legitimacy Offence and Disciplinary Sanctions:

Assembly resolution number 70/175, dated December 17, 2015, and are commonly referred to as the Nelson Mandela Rules.

¹Ibid.pp.97-98

²Coyle, A. (2009).op.cit.pp.41

³Al-Najjar, M. H. (2012). Op.cit, pp.244

The principle of legitimacy isn't confined to criminal acts and their corresponding penalties or security measures. It equally extends its ambit to encompass offences and the ensuing disciplinary sanctions. While it has acknowledged that no criminal act, penalty, or security measure is permissible without a legal foundation, international accords confer the competent administrative authority with the capacity to specify behaviours that constitute disciplinary violations, their categories, and the nature of disciplinary sanctions that may be enforced on inmates. The designated authority is entrusted with the prerogative to determine these measures or sanctions.*

The administrative purview has notably expanded to encompass the adaptation of behaviours as disciplinary infractions. This denotes a breach of the internal prison regulations. For instance, engaging in discourse with fellow inmates might be construed as a disciplinary breach if directed otherwise by a prison guard or in cases where inmates neglect their designated tasks.

Furthermore, the Algerian legislative framework emphasises punitive measures or disciplinary actions applicable to inmates contravening internal regulations. Article 83 of the Prison Organisation Law explicitly underscores that any inmate violating the prison's operational, internal, security or hygiene rules shall be subjected to disciplinary measures stipulated in the aforementioned law.¹

b) Ensuring Moderate Disciplinary Measures:

The imposition of various disciplinary sanctions on prisoners, whether through placement in a disciplinary room or issuance of warnings, establishes a benchmark for evaluating the severity of disciplinary penalties within correctional institutions. This assessment is objectively determined. Should a disciplinary measure reach a threshold that shocks human sensibilities, it is then regarded as unduly harsh. Conversely, if the measure falls short of this level, it is not deemed severe.²

Among the significant disciplinary penalties, flogging stands out. Undoubtedly, flogging carries a significant degree of humiliation for the recipient. Its character is marked by its severity and rigor, resulting in both physical and psychological harm. Similarly, solitary confinement, enacted as a precautionary measure, empowers the same authority responsible for issuing disciplinary penalties to authorise the imposition of solitary isolation.³

In this context, Rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states:

¹ Article 83 of Law No. 05-04, op.cit

*The Algerian legislator, through Law No. 05-04, which includes the Law on the Regulation of Prisons and the Social Reintegration of Detainees, uses the term "disciplinary measures" to refer to disciplinary sanctions.

²Ghanam, M. G. (2017). op.cit. pp.53

³Mohamed Ali, I. (n.d). pp.247-248

- 1 Under no circumstances shall constrain, or disciplinary penalties escalate to the point of torture or other forms of inhumane, cruel, degrading, or ill-treatment. The following practises are explicitly prohibited:
 - a. Indefinite solitary confinement.
 - b. Prolonged solitary confinement.
 - c. Confinement of a prisoner in a dark or continuously illuminated cell.
 - d. Physical punishment or reduction of the amount of food or drinking water for the prisoner.
 - e. Collective punishment.
- 2 The use of freedom-limiting devices as disciplinary punishment is strictly forbidden.
- 3 Disciplinary penalties or restrictive measures must not prevent prisoners from contacting their families. Limiting family communication is only permissible for a limited time and within the necessary parameters to maintain security and order.

It becomes evident from the language of the rule that there is an overextension in the safeguards of disciplinary isolation; potentially diluting the essence of this penalty through exaggeration. Rule 46 reinforces the obligation for prisoners subjected to the disciplinary penalty of solitary confinement to receive necessary medical care.¹

Article 85 of the Law on the Regulation of Prisons and Social Reintegration of Detainees stipulates: "Except in cases of emergency, if the disciplinary measure is isolation, it can only be implemented after consulting the medical doctor and/or psychologist of the correctional institution. The confined prisoner remains under continuous medical supervision."

The prisoner subjected to disciplinary isolation as a punitive measure is subjected to a system of solitary confinement, separated from other prisoners both day and night. The system of solitary confinement is also applied to specific categories, as per Article 46 of the Law on the Regulation of Prisons.²

Through the aforementioned provisions of the Law on the Regulation of Prisons and Social Reintegration of Detainees, the Algerian legislator has effectively mirrored and embodied the essence of various international agreements prohibiting the cruelty of disciplinary penalties, especially the United Nations Standard Minimum Rules for the Treatment of Prisoners. Algerian prisons have undergone a qualitative leap in this domain. The disciplinary measures and penalties imposed on prisoners who commit infractions are fundamentally humane.

¹United Nations Standard Minimum Rules for the Treatment of Prisoners. Rule 46.

²Article 46 of Law No. 05-04.

Even the disciplinary isolation measure is subject to a range of safeguards defined by Algerian law. This measure cannot be applied for a period exceeding 30 days.¹

Moreover, the input of the prison institution's medical doctor and psychologist is essential. In practise, it has been noted in Algerian prisons that the majority of prison directors, prior to deciding on disciplinary isolation, consult both the institution's medical doctor and psychologist to gauge their opinions. If one or both disagree with implementing disciplinary isolation, the prison directors substitute it with another disciplinary measure in accordance with the law.

It's also important to note that the Directorate General of Prison Administration and Social Reintegration, aiming to humanise the conditions of disciplinary isolation, has formed a work group comprising psychological specialists. They studied the impact of disciplinary isolation on prisoner behaviour. This study revealed that the longer the duration of isolation, the greater the emergence of introversion and aggression in the prisoner. This justifies the inclination of numerous prisoners during isolation to attempt suicide due to the difficulty of adapting to isolation. It also raises the challenge of reintegrating back into the community after the disciplinary isolation period ends.

Based on this basis, the same directorate issued a memorandum regarding the implementation of the disciplinary isolation punishment against detainees, dated April 7, 2018, in which its final paragraph stated: " ... Therefore, it is required to consider the psychological conditions of the detained individual when committing the violation and work on adapting them to the environment they live in, and link the duration of the punishment to the intended goal, not exceeding 15 days as a maximum."² Consequently, as of this date, correctional institutions have restricted the disciplinary isolation measure to a maximum of 15 days. Additionally, all necessary provisions for cell preparation, hygiene essentials, and complete meals have been ensured for the detainees.

Upon reviewing Article 86 of the Law on the Organisation of Prisons and Social Reintegration of Detainees, it is evident that the execution of the disciplinary measure, regardless of its severity, can be suspended, lifted, or postponed if the prisoner has improved their behaviour, is engaged in studying, vocational training, or due to health reasons, a family emergency, or religious or national holidays.

After examining Article 86 of the Law on the Organisation of Prisons and the Social Reintegration of Detainees, it becomes clear that the enforcement of the

¹Ibid.Article 83.

² The aforementioned memorandum issued by the General Directorate of Prison Management, limiting the maximum duration for the application of disciplinary isolation to 15 days, contradicts Article 83 of Law No. 05-04, which sets it at 30 days. Thus, we can observe that this memorandum has violated the principle of legal hierarchy.

disciplinary measure, irrespective of its severity, can be deferred, revoked, or delayed in cases where the prisoner demonstrates improved conduct, engages in educational pursuits or vocational training, or due to health circumstances, family emergencies, or religious and national holidays.

Upon practical observation, it is evident that correctional facility managers often resort, particularly during religious holidays, to lifting disciplinary measures, especially disciplinary isolation and visitation bans, as these are considered the harshest measures.

It should be noted that when a prisoner is placed in disciplinary isolation, they must be isolated from other inmates in a separate cell. However, this punishment requires a sufficient number of individual cells, a provision that is often challenging to fulfil, especially in correctional institutions inherited from the colonial era. Sometimes, a single isolated cell accommodates 5 or 6 prisoners, which is due to severe overcrowding in these facilities. They often house a much larger number of inmates than their intended capacity, for instance, the Rehabilitation and Reintegration Institution of Oran has a designed capacity for 1000 inmates but currently houses over 3500, exceeding its capacity by more than threefold.

The Judicial Record Writing¹ Department promptly refers the grievance file to the Sentencing Judge for immediate review, within a maximum period of five (5) days from the date of notification.

Practical implementation of human rights within Algerian prisons solidifies and underscores Algeria's commitment to respecting the provisions of international conventions regarding the prohibition of cruelty and force against prisoners, and the extensive prohibition of disciplinary measures. This commitment is observed to the extent that these measures have been largely rendered ineffective due to the removal of a crucial element: intimidation. This omission has negatively impacted the imposition of security, order, and discipline among prisoners.

III. The Right to a Fair Trial in Disciplinary Accountability

Although prisoners do not enjoy a fair trial as known in criminal cases when held accountable for prison violations, they do benefit from certain aspects of this trial process. Among these is the right of the prisoner to be informed of the charges

¹ The Judicial Records Department is one of the administrative departments within the correctional facility, responsible for monitoring the legal situation of the prisoner from the time of entry until their release. For further details, please refer to Article 27 of Law No. 05-04, the Law on the Organisation of Prisons and Social Reintegration of Detainees, which specifies the sections and authorities of this department as defined by the joint ministerial decision dated January 5, 2011.

attributed to them, as well as the right to present their statements through their right to defence.¹

1 The Right of the Prisoner to Be Informed of the Charges

The convicted prisoner, in the case of disciplinary accountability, does not differ from the accused in criminal trials in their right to be informed of the charges against them.² Fundamental principles of justice dictate that the prisoner is aware of their disciplinary offence to enable them to defend themselves.³ This right is highlighted in Article 41 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, emphasising the necessity of affording the prisoner the opportunity to present their defence, be informed of the charges against them, and provide sufficient time to respond to them.⁴

2 The Prisoner's Right to a Defence

A fundamental right accorded to prisoners is the right to meticulously craft their defence in response to the charges levelled against them. This entails affording them a substantial window of time to formulate their counterarguments. A crucial step in this process involves meticulously recording their statements and assertions within an official document, meticulously prepared either by the correctional facility's director or their duly authorised delegate or by one of the facility's officers vested with powers akin to those of judicial police officers. This authority extends to encompass all categories of transgressions, spanning both criminal acts committed within the confines of the institution and infractions occurring beyond its precincts, during the implementation of any prescribed punitive protocols enshrined in the present legal framework.

In practical application, it is discernible that the prisoner's utterances are meticulously captured by suitably qualified personnel, vested with the competence to execute this task. These professionals often perform this duty under the aegis of officers hailing from the re-education division.

IV. Ensuring Adequate Living Conditions for Prisoner

A pivotal aspect underscored by this entitlement pertains to the establishment of conditions within places of detention that adhere to the baseline requisites for dignified existence.⁵ This is especially salient in terms of provisioning potable water, hygienic facilities, heating amenities, and natural or contrived ventilation

¹Mohamed Ali, I. (n.d).pp.245

²Albinana I Olmos, J-L.(2004). Les droits des condamnés. In International Seminar on the Modernization of the Penitentiary System in Algeria (pp. 117). Seminar organized by the Ministry of Justice in collaboration with UNDP/UN, held at the conference hall of the Hotel Aurassi, Algiers, Algeria, on January 19-20, 2004. National Office for Educational Work.

³ Ibid.pp.247-248

⁴Rule 41 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, previous reference.

⁵Law No. 05-04, Article 171, the aforementioned reference.

mechanisms.¹ It is incumbent upon authorities to guarantee the availability of spacious and appropriate quarters, encompassing cells, halls, and even designated courtyards tailored for the habitation of prisoners. This encompasses scrupulous adherence to the prescribed minimum spatial allotments per individual inmate.²

Additionally, Rule 12 of the United Nations Standard Minimum Rules for the Treatment of Prisoners explicitly stipulates:

- 1 In instances where individual sleeping cells or rooms are present, the confinement of a solitary prisoner within each, during the nocturnal hours, is an absolute imperative. Moreover, when contextual exigencies necessitate a temporary divergence from this norm – a circumstance like transient overcrowding, for instance – it is judicious to refrain from housing more than two detainees in any single cell or room.
- 2 When cubicles are enlisted, their occupancy should be reserved for detainees who have been meticulously chosen for their adaptability to this specific environment. Consequently, these inmates should be under continuous and vigilant surveillance throughout the night, a supervision that is thoughtfully calibrated to align with the ethos of the institution.

This particular tenet addresses the diverse detention systems. Pertinently, Article 45 of the Legislation Pertaining to Prison Administration and Social Reintegration of Detainees succinctly states:

"The collective detention paradigm is to be upheld within correctional facilities, establishing an environment where detainees cohabit collectively. Additionally, the option of the individual detention schema during nocturnal hours remains permissible, provided that the spatial arrangement permits it and is harmonious with the psychological dispositions of the detained individual. This approach serves to facilitate their rehabilitation process."

Furthermore, Article 46 of the same legal edict further elaborates:

The implementation of the individual detention framework translates to the detainee's seclusion from their fellow inmates, both day and night. This methodology is exclusively applied to specific categories, delineated as follows:

- 1 Individuals sentenced to death, while considering the provisions of Article 155 of this law.

¹"Places of detention" refer to the areas where prisoners reside, including halls, cells, play yards, cultural and recreational facilities, prisoners' kitchen, the infirmary, study sections, reading hall, and clinic hall.

²International Organisation for Criminal Justice and Penal Reform. (2016). Handbook for Prison Staff on Human Rights Training. Middle East and North Africa Office, Amman, Jordan, p. 23.

- 2 Those serving a life sentence, provided that the period of isolation does not exceed three (3) years.
- 3 High-risk prisoner, based on a decision issued by the judge of penal application as a precautionary measure for a specified duration.
- 4 Sick or elderly detainees, subject to a health measure based on the recommendation of the prison institution's medical professional.¹

The text of the aforementioned articles clarifies that Algerian legislation adopts the principle of collective detention as a rule. However, an exception to this principle is presented in Article 46 of the Prison Organization and Social Reintegration of Detainees Law, which introduces the system of solitary confinement for various categories of prisoners, as enumerated but not limited to.

In all cases, the decisive factor lies in whether overcrowding exists within the penal institution. There are correctional facilities inherited from the colonial era, dating back to 1840 and even slightly before the period of independence. These establishments often experience significant overcrowding in terms of the number of inmates. In such instances, the provisions of the aforementioned article cannot be strictly adhered to. For instance, the number of death row inmates confined to a single cell may reach five or six, owing to the inadequacy of such cells and the sheer volume of prisoners requiring solitary confinement under the law.

It is also noteworthy that, with regard to sick prisoners, distinction must be made between those suffering from a specific illness and others with different ailments. Consequently, prisoners with conditions such as acquired immunodeficiency syndrome (AIDS) are kept separately from those afflicted with tuberculosis, among other cases.

Upon revisiting the Minimum Rules for the Treatment of Prisoners, we find that Rule 14 states that windows must be sufficiently wide to allow prisoners to utilise natural light for reading and work,² and ventilation should be designed to permit the entry of fresh air, whether through mechanical means or otherwise.³

Furthermore, industrial lighting should also be sufficient to enable prisoners to read and work without straining their eyes. Similarly, there should be an adequate number of toilets to enable each inmate to attend to their biological needs when

¹Coyle, A. (2009).op.cit.pp.38

² United Nations Human Rights Commission. (Year). Human Rights and Prisons. United Nations Publications, New York, USA, 114.

³Rule 14 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

necessary, maintaining a clean and dignified environment.¹ Regular maintenance of all prison facilities frequently visited by inmates is essential, ensuring their utmost cleanliness at all times.²

Observations from a practical perspective reveal that Algeria is committed to constructing modern correctional institutions that align with and adhere to international standards, respect human rights, and translate them into tangible reality. Simultaneously, there is a dedicated effort to close down outdated penal facilities incapable of effectively upholding human rights due to their limited space and lack of appropriate amenities.

The overarching goal of Algeria has been and remains the humanization of detention conditions for prisoners. Consequently, no effort is spared in inaugurating modern correctional institutions that provide more extensive space for inmates and offer all necessary facilities for education, training, and various activities related to reintegration programmes and the care of vulnerable individuals. Simultaneously, prison management is vigilant in maintaining and preparing detention areas in a manner that guarantees ventilation, cleanliness, and security under all circumstances.

Conclusion:

In summation, our study illuminates the profound impact of Algerian legislation on embracing the foundational concept of humanising the conditions of incarceration. The Algerian legal framework unequivocally recognises the human dignity of prisoners and underscores that their treatment must uphold this dignity. This principle forms an indisputable boundary that admits no tolerance, even within the realms of disciplinary or punitive responsibilities. The practise of execution within Algerian prisons confirms this stance, further reinforced by the fact that the right to humane treatment for prisoners is enshrined within the initial articles of the Law on the Organisation of Prisons and the Social Reintegration of Detainees.

As we conclude our study, several key findings emerge:

- 1 The international community's commitment to staying abreast of modern penal philosophies and the evolving trends in penal policy, centred around respect for prisoners' rights, particularly their inherent human dignity, underscored by the endorsement of numerous relevant international covenants and agreements.
- 2 The conscientious efforts of the Algerian legislature to embody the principles and norms set forth in international covenants and agreements, thus diligently

¹Ibidem

²Ibid. Rule 15, Rule 17

fulfilling Algeria's international commitments. This commitment is particularly evident in the Algerian legal code's explicit recognition of prisoners' right to human dignity, as articulated in Article 3 of the Law on the Organisation of Prisons and the Social Reintegration of Detainees. This stands in stark contrast to the absence of such recognition within the section dedicated to detainees' rights.

- 3 A comprehensive examination of Algerian penal institutions reveals a significant stride undertaken by Algeria, as the supervisory authority over the prison sector, in the consolidation and perpetuation of prisoners' rights to human dignity without prejudice, condition, or restriction.

Consequently, we propose the following recommendations:

- 1 Eradicate the issue of prison overcrowding, recognising its profound impact as a significant impediment to the actualization of prisoners' rights, as it introduces various challenges and problems on the ground.
 - 2 Accelerate the construction of modern penal establishments to supplant outdated institutions, simultaneously expediting the inauguration of pending penal facilities.
 - 3 Champion the principle of equality among all inmates in terms of rights within penal institutions, particularly the preservation of their human dignity. Eliminate all forms of discrimination and foster the concept of respecting human rights among prison staff, as it substantively contributes to reformation and rehabilitation.
4. Unwaveringly enhance the functional performance of prison personnel through continuous training programmes, both national and international workshops, and training courses to consistently elevate the quality of their service.

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