Crime and Punishment around the World

Crime and Punishment around the World

AFRICA AND THE MIDDLE EAST

Volume 1

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Editorial Advisory Board

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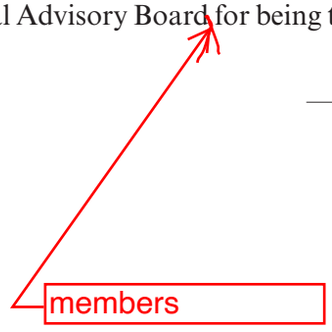
Acknowledgments

The contribution made by the volume editors to this project has been inestimable. A project of this magnitude could not have been achieved without their unceasing efforts to find contributors for large and small countries alike, to manage their contributors' contributions, and to edit them into the style and format required by a publication of this type. They helped overcome a number of crises we met along the way. For this and for their always being on the receiving end of my constant e-mails, I express my sincere appreciation. I thank especially Janet Stamatel for producing the world and regional maps from my sometimes less than adequate databases.

Many authors have contributed to these volumes. Without them, of course, this project would not have been possible. The volume editors and I express our great admiration to our contributors and appreciation for their tolerance of our editorial demands, which oftentimes must have seemed unreasonable. We apologize if your chapter ended up a little shorter than you had wanted. We bear full responsibility for any misconceptions that may have occurred as a result of our at-times heavy editorial hand.

Finally, we thank the Editorial Advisory Board for being there when we needed them.

—Graeme R. Newman
Albany, NY
December 31, 2009



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General Introduction

We humans are fascinated by the diversity of cultures, climates, landscapes, and peoples. It is part of our deep human heritage that we have never been able to stay at home. Since the beginning of human time, our haplogroups have migrated far and wide, stumbling on new fauna and evolving with them, adapting to cold, hot, wet, and dry seasons and climates. Along the way, we have constructed societies and civilizations that have come and gone, none reaching perfection; each having tried its own solutions to the problem of order; each constructing rules, laws, customs, and ways of dealing with those who, for whatever reason, have broken with the sacred commandments of order. Somewhere along the way, no matter what the civilization or society, the idea of justice emerged, perhaps independently of the need for order and, indeed, every now and again in opposition to order. But whatever order's relationship to justice, one thing is certain: order is necessary for societies to survive. And embedded in this necessity is the inevitability that individuals will break laws, rules, and customs and will, as a matter of logic (and justice), be punished for it.

So law (so-called if it is written) and custom (embodying law and rules that may not be written but that are "practiced" and conveyed orally) is universal in all known societies. They are part of the "civilizing" process, which seeks to hold in check the tendency of humans to devour each other. It is true that great thinkers, philosophers, and even scientists have insisted—in the face of the overwhelming evidence of history that stands against them—that humans, if only given a chance, can or could work together for their common good without being coerced to do so. But we know of no society anywhere in which this utopian (if it is utopian) conception of human nature has produced a society without laws or customs and their concomitant punishments. And surely humans have had plenty of chances to construct such utopian societies. Yet each time they try, order takes over, because we know that individuals only grudgingly curb their own desires. They do not like the imposition of order, but they know that they cannot survive without it and its accoutrements. Or at least, we may say that life is much more comfortable if one gives into almost any kind of order. This observation probably applies even to the worst of tyrannical orders, for it is easier to remain in submission than it is to rise up and overthrow a very powerful authority. The 18th-century enlightenment thinkers upon whose ideas much of the world's criminal justice systems are based (whether civil or common) were clearly of the opinion that punishment was a necessary evil, a price paid for the

comfort of living in an ordered society. Its universality certainly attests to the truth of this assertion.

It should come as no surprise, therefore, that getting reliable information about such a touchy subject—essentially how a society, nation, or culture maintains order in the face of a populace that may secretly or even openly resent its imposition—is very difficult. Nations can be very secretive about their crime rates and their punishments, not to mention their procedures for finding guilt and their manner of interrogating suspects. Various organizations have set themselves up to monitor the most egregious violations of individuals in the name of order, such as Human Rights Watch and Amnesty International, but there is a far larger part of the maintenance of order and the processing of lawbreakers by nations and regional governments that also needs constant scrutiny. Violations of human rights in the name of order may easily be hidden inside the bureaucratic inertia and practices of even the most "enlightened" societies. To admit to having a very high rate of murder or incarceration—perhaps one of the highest—of its citizens is not something of which a nation can be especially proud. Such statistics say something about that nation, though what that something is, unfortunately, can be easily misinterpreted. For example, some countries may be criticized for having very high imprisonment rates, but their retort may be that this is because they have very high crime rates, to which it may be asked, but why do you have such high crime rates? The reply may be, "Because we have strict laws that are strictly enforced, which is for the good of our citizens, who are kept safer than those in other countries whose administration of criminal justice is too lax." Provided here is just a taste of the controversies and disagreements concerning the differing levels of crime and punishment in diverse countries, as well as the puzzling relationship or lack thereof between prison rates and crime rates. The riddle can be stated thus: more punishment should reduce crime, but more crime requires more punishment.

One would think that the costs in public relations to a nation would be far too high to allow for the publication of crime and punishment statistics. So it is an amazing achievement that the United Nations World Crime Surveys, whose mission is to collect the official statistics on crime and justice from member nations, have shown steady and significant increases in the number of countries submitting their statistics since they were first collected in the 1970s. From a handful of countries in the beginning, the number providing crime and punishment statistics had grown to about 50 as of 2005. That is the positive spin. In fact, this is only 50 out of 190 member UN nations, and there are signs of decreasing reporting by countries in recent years, according to Jan Van Dijk, author of *The World of Crime* and former UN expert on international crime and justice.

Although it is true that nations are reticent to make public their crime and punishment statistics for reasons of public image, there are many technical difficulties in making comparisons of officially collected crime and justice statistics across countries. Many of these difficulties are serious, and *the reader is warned to use considerable caution in making such comparisons across countries*. These technical difficulties include the following:

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- Different legal definitions of offenses make it difficult to compare specific offenses across nations.
- Different reporting and recording practices of the police who generally have first official contact with a crime make comparing statistics from one country to another unreliable without knowledge of these practices.
- Different legal systems may affect the finding of guilt, recording and classification of offenses, and recording of arrests and convictions.
- Inconsistent classifications of crime records and frequent changes over time make it difficult to compare trends in crime or punishment.
- Different bureaucracies and government departments within each nation that collate and publish crime and punishment statistics may produce different statistics. For example, city- or state-level collection of crime rates or prison rates may differ from collection at the federal level, as in the United States.
- Inadequate infrastructure for collecting and processing crime and justice reports, including information technology, may hinder the amount or accuracy of criminal justice data.
- Lack of professionally trained crime analysts and statisticians may limit the reliability and depth of statistical data available.
- Local events or conditions may inflate crime and punishment statistics, such as genocidal events that may or may not be recorded as murders.
- Changing government polices about making crime and justice statistics public may affect trends and the amount and type of data made available. There have been instances where countries have revealed crime and justice statistics to the United Nations, but not to their own citizens. The reverse is also true. There was a time, for example, when the Soviet Union routinely collected crime statistics for its internal use but officially denied to the United Nations that there was any crime at all in the Soviet Union, because there could be no crime in a true communist society.
- In large populous countries, there may be vast differences within those countries. For example, the levels of crime and punishment vary enormously throughout the United States; some states still retain the death penalty, and many do not. There may also be huge differences in amounts and kinds of crime between urban and rural regions. There may even be different legal systems operating within the same country, such as, for example, Quebec in Canada or the several customary, Islamic, and civil law systems operating in Timor-Leste.

If one must make comparisons—and most people are unable to resist it—the best way to overcome these pitfalls is to make sure that one knows as much as possible about the historical and social context within which the statistics are collected. *Crime and Punishment around the World* provides just that context. This encyclopedia describes in detail the crime and punishment practices of each country and, in some instances, specific regions. The four volumes offer a glimpse of the ways in which all the nations around the world try to solve the basic problem

they all face: what to do with those who break the law? They have all enacted either customary or written criminal laws. They have all inherited their criminal laws from their ancestors near and far, not infrequently from other nations that either usurped them or overtook them through migration. They have all developed procedures for the finding of guilt of the accused, and all, of course, follow up the finding of guilt with legislated or customary punishments. These are all essentially the product of their legal systems.

World Legal Systems

For more than 1,000 years, the Roman Empire encompassed just about all the region around the Mediterranean and stretched as far north as Great Britain. Law was probably its major weapon against the peoples it subdued, bringing with it order and a stable means of commerce. Its concepts would form much of the basis of canon law and eventually much of the civil law of Europe. Furthermore, much of the Islamic and customary law of the countries surrounding the south and east of the Mediterranean was deeply affected by Roman law because those peoples were also subjects of the Roman Empire at various times for over 1,000 years. Those countries of Europe that retained more of the Roman law and its procedures would later come to be known as "civil law" countries. Those European countries that managed to put aside Roman law came to be known as "common law" countries. And those of North Africa and the Far East retained Islamic and customary law systems.

Civil law systems account for over 50 percent of the world's legal systems, although many such systems are mixed with other legal systems because of local and historical circumstance. In fact, as a result of constant reforms, it is likely that there are no purely civil law systems left in the world. Most countries have incorporated various aspects of the adversarial system. The main characteristics of civil law systems are the following:

1. Systematically written legal codes are the prime source of authority in legal decisions and procedures.
2. Their procedures are often (though not entirely) based on what is sometimes called the "inquisitorial system"—reaching back to the days of the Roman Catholic Inquisition—in which the process of finding of guilt is conducted by a judge or magistrate who both investigates and conducts the final trial. These trials are usually, though not always, conducted before a magistrate or panel of magistrates.

Probably the prime examples of European civil law systems are those of France and Germany and, to some extent, Italy, which has recently incorporated aspects of the adversarial system.

Common law systems account for another 20 percent of the world's legal systems. These are commonly referred to as "adversarial systems" because the finding of guilt is not conducted by the magistrate who decides and investigates the case as in civil law; rather, a prosecutor (or sometimes an investigating police officer) investigates the case and prepares the case for a trial by judge and jury

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(although juries are not always required). The two significant features of common law systems are the following:

1. Cases are decided based on precedent, which views previous cases and decisions as a cumulative wisdom and authority.
2. Cases are a courtroom drama in which the prosecutor is pitted against the defense.

It should be noted, however, that in modern legal systems of common law, there are legal codes that systematize the law, and these may or may not be based on the codification of past legal practice. In the United States, for example, every state, in addition to the federal system, has its own written code. Cases are decided, however, based not only on how well the offender's acts match the written code but also on the cases that came before it—that is, precedent. One sees this tradition played out in the U.S. Supreme Court, which arduously scrutinizes past decisions to conclude whether a particular case was decided correctly or not, in accordance with the supreme law of the land, the U.S. Constitution. The popular view that contrasts these two legal traditions is that civil law is focused more on finding a probably guilty person guilty, whereas common law is focused more on defending a possibly innocent person from a guilty verdict. Both systems do, however, adhere to the presumption of innocence of the accused until proven guilty. The most typical examples of common law systems are those of the United Kingdom, the United States, and Australia.

Islamic legal systems account for about 10 percent of the world's legal systems, although there are probably no purely Islamic systems anywhere in the world. This is because of the early Roman influence on all countries surrounding the Mediterranean and because of the imperialism of the West during the 16 through 20th centuries. In its pure form, the Islamic system of law follows the exact law of God, as interpreted by experts (Mullahs), deriving from the Koran, the Bible, and other sacred texts. Islamic law is often called sharia—the path to follow. Perhaps the most contrasting feature of Islamic law is that it is more a way to live one's life than a set of prohibitions laid down by a state authority as in Roman law and its progenitors. Thus, not only does it include prohibitions, some of which are set out in the Ten Commandments, but it also includes exhortations to lead a good life (e.g., love thy neighbor). No such positive exhortations are found in other Western legal traditions, whose defining principle is prohibition. The procedural rules of Islamic law are those of human reasoning and consensus. One of the problems that faces legal theorists in Islamic law is that there are many offenses that are not specifically covered in any of the sacred texts. For example, sodomy is not mentioned in the Koran or Sunna (another sacred text), but adultery is. So the judge may reason that the two offenses are similar and the punishments prescribed for one may apply to the other. In practice, however, many cases are decided also on custom and precedent, given that in many Islamic countries, tribal customs concerning redress of wrongs (e.g., feuding and vengeance) have developed alongside Islamic and other kinds of law. The majority of countries with Islamic legal systems therefore also have customary law as a major component, especially in dealing with day-to-day infractions. Finally, most Islamic law

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countries also have a considerable dose of civil law, especially in the field of commerce, though it has been necessary even there for such countries to develop ways to get around the Islamic prohibition of usury, defined rather broadly.

Customary law is the law that has arisen through oral tradition among tribes and cultures where law is not written down but rather communicated across generations by tribal elders. Village or regional chieftains are usually, though not always, the main repositories of such legal wisdom, and the finding of guilt usually occurs within an informal meeting of interested parties. In many countries of Africa and southern Asia, these kinds of local meetings occur and settlements are reached based on the hearing of all sides of the complaints. Depending on the culture, shamans or others thought to hold special powers may be brought in as expert witnesses and sometimes as judges. However, the most important attribute of customary law is its specificity to the local region or village. These traditions can be very deep and resistant to change or imposition from outside influences. Perhaps a prime example in the 21st century is that of the tribal villages in the mountains of Pakistan and parts of Afghanistan that have defied state authority for hundreds of years. Instead, these tribal areas have their own chiefs and their own informal ways of settling infractions and disputes.

Socialist legal systems are those that have arisen on top of civil law systems, for the most part. Certainly this was the case in the Soviet Union and continues to be the case in Cuba and other communist countries, although China is perhaps an exception. Yet even there, the customary legal system was usurped by Western powers in the 19th century and abolished by the revolution of 1949. However, the emergence in the 1980s of China as an industrial and trading nation required that it develop a legal system that would make commerce possible and more efficient. The result has been that its legal system is based essentially on civil law, with criminal law that codifies edicts of the State and procedures that are largely reflective of the inquisitorial system.

Finally, although there are probably no countries that are purely of one or the other legal system, there are quite a number of countries whose legal systems are mixtures of some or all of the preceding. Many African and some South Asian countries are mixtures of customary, civil, common, and Islamic law. Such countries would include, for example, India, Afghanistan, and maybe Egypt.

How Does Your Country Measure Up?

Although for the reasons recounted earlier, comparing the crime and punishment of countries to each other is a very difficult procedure, it is nevertheless important to get a rough idea of how one country compares to the rest of the world. It is probably one of the main reasons people refer to world encyclopedias of any kind, to get a sense of how one fits in the universe.

To provide a very rough glimpse of how a country's crime and punishment compare to the rest of the world, we have provided a snapshot of some major indicators of crime and punishment for each country at the start of each country essay. We have chosen these indicators because they are readily available and offer a reasonably approximate way of ranking countries along a continuum. Of

the crime indicators, murder is chosen as probably the most reliable for making comparisons because its definition is roughly similar across nations, and in most cases, the statistics have been adjusted to fit the UN standard definition of murder for countries reporting their murder rates. Nevertheless, many countries do not report their murder rates. Prison rates are also reasonably reliable for making comparisons, although they too involve great technical difficulties in measurement, considering that the counting of inmates may occur on different days of the year, and a simple accounting on a particular day does not give any indication of the flow of prisoners in and out of the prison over a given period of time. The snapshot indicators provided for each country or region when available are as follow:

- *Type of Legal System*
- *Murder*—murders per 100,000 people
- *Burglary*—those victimized by burglaries per thousand people
- *Corruption*—levels of perceived corruption
- *Human Trafficking*—how much the country is doing to control human trafficking
- *Prison*—number of prisoners per 100,000 population
- *Death Penalty*—whether the country has the death penalty
- *Corporal Punishment*—whether corporal punishment is available to the criminal justice system

Legal System

The types of legal system were compiled from the United Nations *Global Report on Crime and Justice,* supplemented by information from individual country Web sites and from the University of Ottawa Civil Law Section Web site on World Legal Systems at http://www.droitcivil.uottawa.ca/world-legal-systems/eng-tableau.php.

Murder

These are officially reported statistics on murder supplied by countries to the United Nations World Crime Surveys, supplemented where necessary by individual country information plus homicide statistics from the World Health Organization. Most of the statistics were taken from the revised listing supplied by Jan Van Dijk in his book *The World of Crime,* in which he reported the average murder rates for 1998–2002, supplemented by more recent United Nations surveys. Additional data from INTERPOL and individual country sources, where available, sometimes for a slightly different period of years, were also included. However, such small differences should not matter because we know that murder rates are fairly stable over time. The countries are ranked from highest to lowest murder rate (murders per 100,000 people) and then divided into quartiles, with the middle two quartiles classified as "Medium" and the two outer quartiles labeled "High" and "Low." The world distribution of murder rates can be seen in map 1, World Murder Rate.

Burglary

Obtaining reliable rates of property crime, the most common of which is usually referred to as theft, is especially difficult when relying on officially recorded statistics because definitions and enforcement practices vary enormously across nations. We have therefore included measures of victimization of individuals by burglary. These measures are derived from the International Crime Victim Surveys (ICVS), which are interviews or questionnaires asking samples of a population whether they have been victims of particular offenses over a particular number of years (usually the past year). In this case, the samples were households, and the survey was conducted in many countries, although *limited only to urban populations*. Therefore, they do not, of course, represent the country or region as a whole, though they do, perhaps in the case of burglary, represent most of the population of a country given that there are, generally, many more households in urban settings than in rural settings. These data are taken from Van Dijk's *World of Crime.* Countries were ranked according to their burglary rates (number of victimizations reported per 1,000 people) using quartiles, divided into High, Medium, and Low, with Medium defined by the two middle quartiles.

Corruption

The ways in which crime and punishment are eventually perceived by the public and administered by the State are affected by the level of corruption in a particular country. We have therefore included a measure of corruption, a kind of crime that is neither a violent crime nor, strictly speaking, a property crime. Rather, it is a crime against justice itself. There is also the advantage that data on perceived corruption in countries are much more available, thanks to the source of our data, Transparency International at http://www.transparency.org/policy_research/surveys_indices/cpi. This Corruption Perception Index (CPI) is based on the ranking of "180 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys" according to Transparency International. We have taken these rankings, added some additional countries in some cases where they were not included in the survey, and then divided them into Low, Medium, and High, using quartiles once again.

Human Trafficking

This measure is taken from the U.S. Department of State three-tier listing of countries it classifies as making a strong effort to control human trafficking, making some effort, or making very little effort. The classifications are taken from the U.S. Department of State *Trafficking in Persons Report 2008,* found at http://www.state.gov/g/tip/rls/tiprpt/2008/index.htm. The classification scheme is derived from the U.S. Trafficking Victims Protection Act of 2000 (TVPA), which defines the minimum standards for the elimination of trafficking. It should be noted, however, that our ratings of "High" "Medium," and "Low" in the rates of human trafficking are only very rough because they assume that countries that comply with the U.S. anti-trafficking standards of enforcement will therefore have low levels of human trafficking. This is not always true. The United States,

for example, is rated as low for human trafficking because it complies with the TVPA anti-trafficking act; however, we know that it is a major destination country for trafficked humans. The classifications are as follows:

- *Low Amount of Trafficking* (Tier 1): Countries that fully comply with the U.S. Department of State standards for anti-trafficking enforcement.
- *Medium Amount of Trafficking* (Tier 2): Countries that do not fully comply with the minimum standards but are making significant efforts to bring themselves into compliance.
- *Medium Amount of Trafficking* (Watch List): Countries on Tier 2 requiring special scrutiny because of a high or significantly increasing number of victims, failure to provide evidence of increasing efforts to combat trafficking in persons, or an assessment as Medium based on commitments to take action over the next year.
- *High Amount of Trafficking* (Tier 3): Countries that neither satisfy the minimum standards nor demonstrate a significant effort to come into compliance. Countries in this tier are subject to potential non-humanitarian and non-trade sanctions.

Prison

The prison rate assessments are derived from the International Center for Prison Studies, King's College, London, and found at http://www.kcl.ac.uk/schools/law/research/icps. The rates are of prisoners per 100,000 population, and countries are ranked from high to low and divided into High, Medium, and Low using the quartile method described previously. These were the most up-to-date and thorough statistics available as of 2008. The world distribution of prison rates is depicted in Map 2: World Prison Rate.

Death Penalty

About 65 percent of countries have abolished the death penalty either by legislation or in practice. A few have essentially abolished it while retaining it for especially heinous crimes, although it may not have been used for many years. These countries are classified as "maybe" in our assessment of whether the death penalty is available to countries. Thus, the classifications for whether countries have the death penalty as an available punishment are "Yes," "Maybe," and "No." The information has been taken from the Web site *Info Please* at http://www.infoplease.com/ipa/A0777460.html, which in turn has taken its statistics from Amnesty International. The world death penalty distribution may be seen in Map 3: World Death Penalty.

Corporal Punishment

The assessments as to whether countries have available to them the use of corporal punishment, either as a sentence for a crime or for use within the prison system for disciplinary purposes, is based on information provided by the Web site http://www.endcorporalpunishment.org/pages/frame.html, which assesses

mainly the legislative steps that countries have taken to prohibit the use of corporal punishment. The Web site covers the use of corporal punishment in homes and schools as well as in the criminal justice system. Its assessments of countries are based almost entirely on whether legislation has been passed prohibiting corporal punishment either as a sentence in criminal justice or as a means of discipline in prisons. The legal situation is often ambiguous because, as with the death penalty, many countries retain the possibility of corporal punishment's use either as a sentence or in prisons but rarely or never resort to it. Thus, there is a category of "maybe" for those countries. Perhaps surprisingly, less than 20 percent of the world's countries have prohibited by legislation the use of corporal punishment either as a sentence for a crime or for use in prison discipline. Like the death penalty, our classification of the availability of corporal punishment is "Yes," "No," or "Maybe." The world use of corporal punishment is presented in Map 4: World Corporal Punishment.

Regions of the Four Volumes

The four volumes are broken up into the following regions:

- Volume 1: Africa and the Middle East
- Volume 2: The Americas
- Volume 3: Asia/Pacific
- Volume 4: Europe

There are any number of ways to classify countries into regions of the world. We have mostly relied on a geographical classification based on the United Nations Statistics Division classification system (http://unstats.un.org/unsd/geoinfo/default.htm). But this method is far from satisfactory. Although geography (relatively speaking) remains the same, the borders of countries do not, mostly as a result of political conflict and other factors such as migration. Furthermore, the definition of what makes a country a country is also very difficult because there are many instances where "principalities" (e.g., San Marino) and "independent nations" (e.g., the Navaho Nation in the United States) exist inside larger nations or countries. The complex histories of colonialism and migration have resulted in particular countries containing a vast variety of peoples, cultures, and social arrangements, such that calling them a "country" or even "nation" gives a misleading impression of a cohesive national system governed by one set of laws. Bosnia and Herzogovina are perhaps a prime recent example of this difficulty.

Given the shifting boundaries and definitions of countries and the social, cultural, and political diversity contained in them, allocating such countries to broad regions of the world is obviously even less precise. The final allocation of countries that were hard to classify—Turkey, for example—was admittedly somewhat arbitrary. We finally placed Turkey, along with Georgia, in Asia, not Europe. And we located countries of the Middle East (itself a very difficult region to define in both geographical and political terms) along with Africa in volume 1. A number of the countries classified in the Middle Eastern region could just

as easily be placed in Asia, and others are geographically located in North Africa. And the variety of countries found in the Asia-Pacific volume is also vast in terms of both geography and culture; New Zealand and Australia, for example, have much more in common with Europe, from a historical and cultural point of view, than they do with their near and distant neighbors in Asia (although this is probably changing). Thus, comparing regions on any number of crime and punishment factors is fraught with even greater difficulties than comparing individual countries. Some commonalities and patterns, however, do emerge when one peruses the world maps that are provided. It is likely, as editors to the respective volumes point out, that these patterns reflect the colonial past of these regions, although there are no doubt other explanations related to local culture, migration patterns, and political history.

About the Contributors

We have drawn on a variety of authors to contribute to these four volumes. In some cases, these authors are professionals who work for their governments, but in other cases (the majority), these authors are independent scholars. The objectivity of reports written by those who work for governments may perhaps be questioned, but on the other hand, government officials have much greater access to information and statistics than do outsiders. With a couple of important exceptions, all governments, by and large, have a monopoly on crime and punishment information. The exceptions are the international crime-victim surveys described earlier that are conducted mostly apart from governments, because they do not necessarily depend on officially recorded statistics by criminal justice officials. However, more government departments are conducting their own victimization surveys because some governments in the past have been embarrassed by the findings. Various nongovernmental watch groups, such as Amnesty International and Transparency International, also collect crime and punishment information, and it is part of their mission to apply value judgments and criticism to governments and their administrators. As editors, we have tried in these chapters, as far as possible, to avoid either advocacy on behalf of the government's interest or criticism of governments, although in some cases the criminality and punitive practices of governments cannot be ignored.

—Graeme R. Newman
University at Albany

Murder around the World

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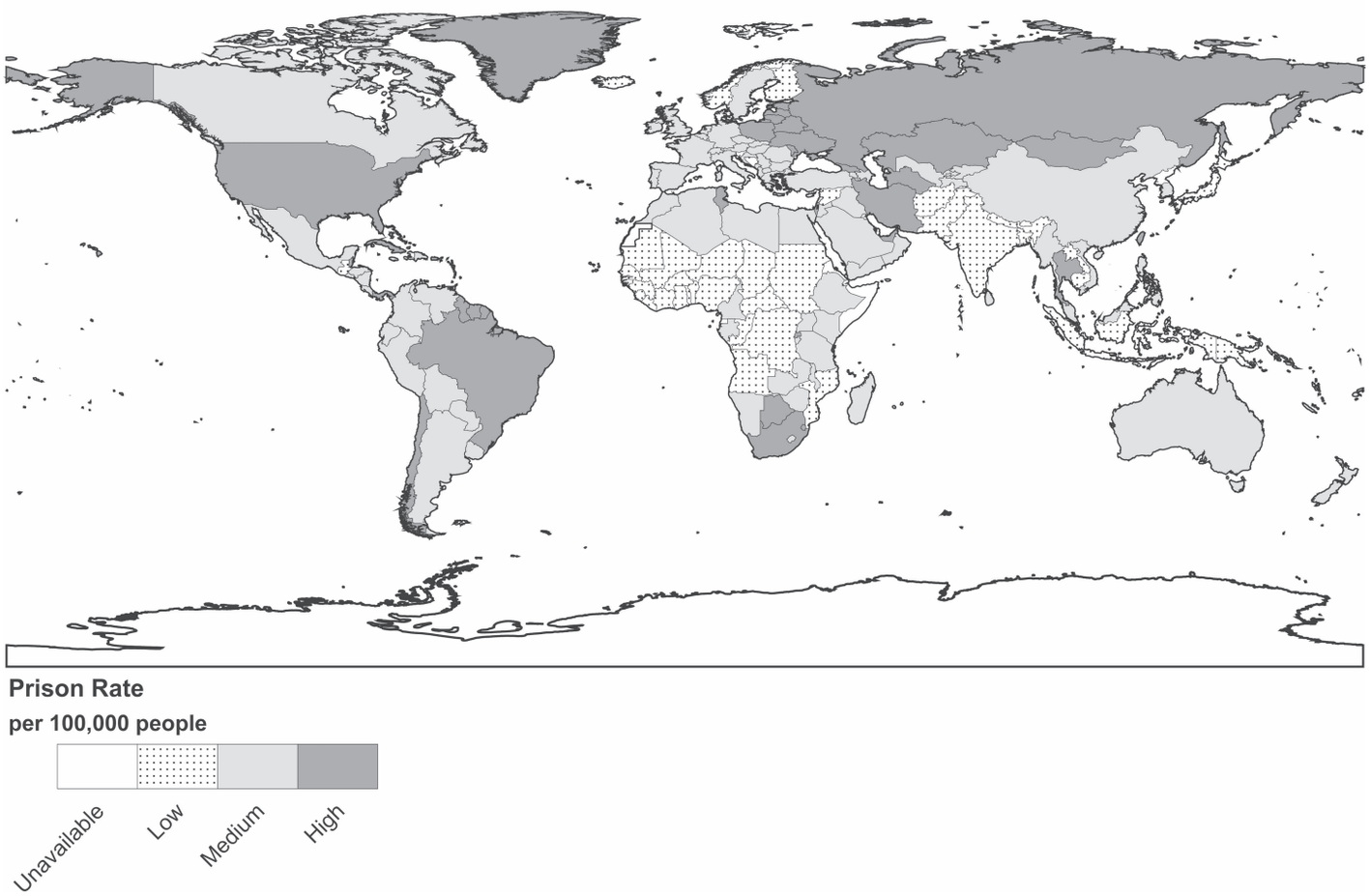

Imprisonment around the World

Corporal Punishment around the World

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Death Penalty around the World

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Introduction

Africa has a long and rich history of powerful kingdoms and is home to a variety of civilizations. Around 3000 BCE, the powerful kingdom of Egypt, which then controlled much of North and Central Africa, contributed substantially to the development of Africa through its advances in science, medicine, and technology. Other powerful African kingdoms followed, the most notable being Mali, Dahomey, Ashanti, and the empire of ancient Ghana (present-day southeast Mauritania). Islam entered North Africa around 700 CE and spread across and outside the continent. Among the first Europeans to land in Africa were the Portuguese, who arrived in 1439 seeking gold and slaves. Others soon followed, opening trade routes and setting up forts and bases along Africa's 4,000-mile Atlantic coast.

By 1890, much of Africa was ruled by the British, French, and Germans, who divided the land in straight lines with scant attention paid to ethnic and cultural traditions. Before the 1960s, when most of African countries became independent, the colonies of various European superpowers made up most of the continent, with the United Kingdom (31 colonies) and France (23 colonies) in the lead, followed by Portugal (6), Italy (4), Belgium (3), Germany (2), and Spain (2). Today, Africa is the world's second-largest continent, with nearly 12 million square miles, and contains 53 independent countries and 880 million people, who belong to more than 3,000 native groups speaking more than 1,000 languages. Africa has rich natural resources and produces nearly half of the world's gold and diamonds, yet over half of its total population lives on less than US$1 a day. According to a United Nations development program, Sub-Saharan Africa, consisting of 45 countries, has performed well economically over the past eight years, recording a 5 percent growth rate and demonstrating significant strides in democratic governance.

The Middle East, a term much criticized for being Eurocentric, generally refers to the land mass that lies west of Eurasia and east of Africa, with the Mediterranean Sea to the west and the Indian Ocean to the south. Its location and historical development—especially its role as the birthplace of such major religions as Christianity, Islam, Judaism, and Zoroastrianism, among others—make this region a strategic location. The discovery of oil in the area gave even greater strategic, political, and economic importance to this region. The top 7 of the 15 highest oil-producing countries in the world are located in the Middle East, making them some of the richest countries per capita in the world. Like Africa, the Middle East, with the exceptions of Iran and Saudi Arabia, was either colonized or indirectly governed by the English and French until the early 20th century.

Long histories of colonial rule in Africa and the Middle East profoundly influenced not only political and economic development but also the evolution of criminal justice systems. Many of the countries in these regions became independent in the early or mid-20th century. However, civil war, ethnic violence, highly unstable political systems, and military coup d'états have tremendously influenced indigenous mechanisms of social regulation and have shaped the law, the role of police, and the justice system.

Modern forms of justice administration are believed to have been introduced by European colonists, despite strong evidence of the existence of formal and informal mechanisms of social regulation prior to colonization. Notions of crime, law, and justice were introduced by the colonists and were primarily used as a mechanism of social control of the local populations in areas of European investment. The local customary laws in many of these countries were either underused or not recognized until the countries became independent states, when most nations harmonized customary laws and formal justice systems. Few countries in the region can claim little to no influence from colonists in shaping their criminal justice systems. These exceptions include Saudi Arabia, Iran, and Sudan, whose criminal justice systems were arguably built on Islamic laws.

Today, Africa and the Middle East are vibrant and growing regions with the potential to become powerful global players. Globalization has touched and influenced Africa and the Middle East in many positive ways. Yet the regions are plagued by social problems that include violence in the name of custom, tradition, religion, war, and ethnic cleansing. The development of institutions of police and justice are generally considered a measure of political and social progress. Sadly, the subject matter of crime and punishment in Africa and the Middle East has received scant attention from scholars, making it difficult to offer a bird's-eye view of crime and justice in the region. This void is filled in this volume, which offers a current look at the nature and state of crime and punishment in Africa and the Middle East.

Volume 1 of *Crime and Punishment around the World* contains 55 individual chapters for the countries making up Africa and 14 individual chapters for each of the countries in the Middle East. The purpose of this volume is not to compare and contrast issues of crime and punishment in Africa and the Middle East, but simply to offer insights into developments in this area in individual countries of the two regions. Yet this mosaic of criminal justice systems will provide readers with similarities and differences in the evolution of the regions' criminal justice systems and the extent to which colonial influences shaped the existing forms of social regulation, crime control mechanisms, and social governance. Readers will note that data are sparse and dated on many matters of crime and justice. Though limited, the data also offer clues to the reasons these are the least documented regions in terms of information on crime and punishment; coupe d'états, civil wars, terrorism, and ethnic and other forms of violence related to drugs and illegal trafficking in arms and humans have all had an impact in this regard. The conflict and confusion emerging from multiple legal systems, including colonial legal systems, customary laws, and religious laws, pose additional challenges to the administration of justice. Readers will note that some of these problems in

many of the countries included in this volume are direct outcomes of the colonial legacy, which left behind a criminal justice system that was developed to preserve a regime in power, not that evolved as a consequence of the needs of citizens. Also, the new independent rulers often continued with the previous excesses to maintain political and social control.

Each of the chapters in this volume begins with a background section that offers a brief history and context to introduce crime and punishment in the specific country. It provides an outline of the legal system; role and functions of police; classification of crimes and crime data, where available; court processes that include investigation, trial, and sentencing; and finally, a section on punishment that includes descriptions of prisons and inmates.

Legal Systems

The legal systems of Africa and the Middle East are categorized as following one or more of the following traditions:

1. Civil
2. Islamic
3. Common law
4. Customary

Only one country has a common-law tradition, and five countries in Africa have a civil legal framework. The remaining countries have some combination of civil, common, Islamic, and customary legal systems. Of the 55 African countries included in this volume, 22 have a combination of civil and customary legal frameworks. The other combinations include civil/Islamic (7), common/customary (6), common/civil (5), civil/customary/Islamic (3), and Islamic/customary/common (3). One country has an Islamic and common law combination, and one other has common law, customary, and civil legal traditions.

Among the Middle East countries, four have Islamic/civil legal traditions, and four others have Islamic/common-law legal systems. Three countries have a combination of civil, Islamic, and common law traditions, and only one does not have any form of Islamic legal tradition, with a combination of common law and customary laws.

Similar to legal systems, policing is rooted in colonial traditions, which were inherently paramilitary in nature and whose styles were adopted by the leadership in the new and fragile independent states, and therefore the consolidation of power continued. For the most part, police organizations in many African countries are underfunded, poorly equipped, and allegedly corrupt. In countries that have long histories of civil war and ethnic conflict, the lines between the military and the civil police are often blurred. Many instances of police brutality and gross violations of civil rights are noted in Amnesty International reports. Policing in the Middle East, on the other hand, is well funded, with well-trained professionals, but seems more paramilitary in nature, with state security as the primary mission.

Crime

The crime data presented in these chapters primarily come from police sources. Many of the countries in the African continent do not have recent data, and the Interpol data for some countries are very outdated. A classification of specific crimes, such as murder, into the categories of low, medium, and high (see Map 5), indicates the seriousness of the problem across the two regions. Parts of western, middle, and southern African countries have high murder rates compared to the northeastern, southwestern, and northwestern regions. None of the countries in the Middle East have a high murder rate. Only four countries—Iran, Iraq, Syria, and Yemen—have medium rates, with the remaining countries having low level murder rates.

Apart from murder, the other forms of violent crime that are frequently reported in Africa include violence against women in the forms of rape, female genital mutilation, and slavery. Drug-related violence; trafficking in women, children, and firearms; and terrorism were among the other crimes commonly noted in country reports. Most countries in the Middle East and Africa have harsh penalties for drug-related crimes, especially when compared to penalties for offenses against women. Some countries also report crimes such as poaching, cattle theft, and piracy. Among the violations noted in some of the Middle Eastern countries were crimes against domestic workers and trafficking in women and children.

Punishment

Nearly half of all African countries and nearly all countries in the Middle East have corporal punishment (see Map 7). A similar number of countries in Africa and all the countries in the Middle East have the death penalty (see Map 8). A check of these two maps suggests a high concordance rate between corporal punishment and the death penalty. The chapters also record the number of prisons and prisoners in each country (territory). Although far from reliable or current, the data offer an opportunity to determine countries and regions that have high imprisonment rates (see Map 6). In Africa, 5 countries are rated as high imprisonment countries, 20 countries have medium imprisonment rates, and the remaining have low rates. In the Middle East, Iraq and the United Arab Emirates have high prison rates, and Syria has low rates, with the remaining countries holding medium rates. A majority of African country reports indicate poor prison conditions for inmates and high incidences of human rights violations. It is not uncommon to note the absence or non-practice of due process for suspects in custody; they are often locked up with convicted prisoners and subject to similar harsh and unsanitary prison conditions.

An overview of these two regions and Africa in particular suggests many challenges encountered by governments. These problems are inherent in most all countries with colonial legacies. However, these countries also face additional challenges, such as political instability, weak economies, ethnic tensions, and environmental disasters, which result in a focus more on law and order and less on reforms in criminal justice. As seen in this volume, the legal framework in most of

the countries adopts multiple legal systems, making harmonization of the legal system more complex. Countries with police systems that are direct descendants of colonial rulers are more paramilitary than civilian in orientation. The primary mission of police organizations in these states is to protect the state, rather than to protect the citizens by following the principles of democratic policing, rule of law, and the upholding of human rights. Many of the reports from these regions note efforts at judicial reforms and the democratization of civil police, professionalization of police, and efforts in developing community policing. Some countries have reported resources being made available for streamlining court processes and improving correctional services. This is a positive sign. Reform efforts need more than money, but above all, they require political will.

—Mahesh K. Nalla
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Country key to Africa and Middle East maps

Algeria	DZ	Madagascar	MG
Angola	AO	Malawi	MW
Bahrain	BH	Mali	ML
Benin	BJ	Mauritania	MR
Botswana	BW	Mauritius	MU
Burkina Faso	BF	Mayotte	YT
Burundi	BI	Morocco	MA
Cameroon	CM	Mozambique	MZ
Cape Verde	CV	Namibia	NA
Central African Republic	CF	Niger	NE
Chad	TD	Nigeria	NG
Comoros	KM	Oman	OM
Congo	CG	Palestinian Occupied Territory	PS
Zaire	CD	Qatar	QA
Ivory Coast	CI	Reunion	RE
Djibouti	DJ	Rwanda	RW
Egypt	EG	St. Helena	SH
Equatorial Guinea	GQ	Sao Tome and Principe	ST
Eritrea	ER	Saudi Arabia	SA
Ethiopia	ET	Senegal	SN
Gabon	GA	Seychelles	SC
Gambia	GM	Sierra Leone	SL
Ghana	GH	Somalia	SO
Guinea	GN	South Africa	ZA
Guinea-Bissau	GW	Sudan	SD
Iran	IR	Swaziland	SZ
Iraq	IQ	Syria	SY
Israel	IL	Tanzania, United Republic of	TZ
Jordan	JO	Togo	TG
Kenya	KE	Tunisia	TN
Kuwait	KW	Uganda	UG
Lebanon	LB	United Arab Emirates	AE
Lesotho	LS	Yemen	YE
Liberia	LR	Zambia	ZM
Libya	LY	Zimbabwe	ZW

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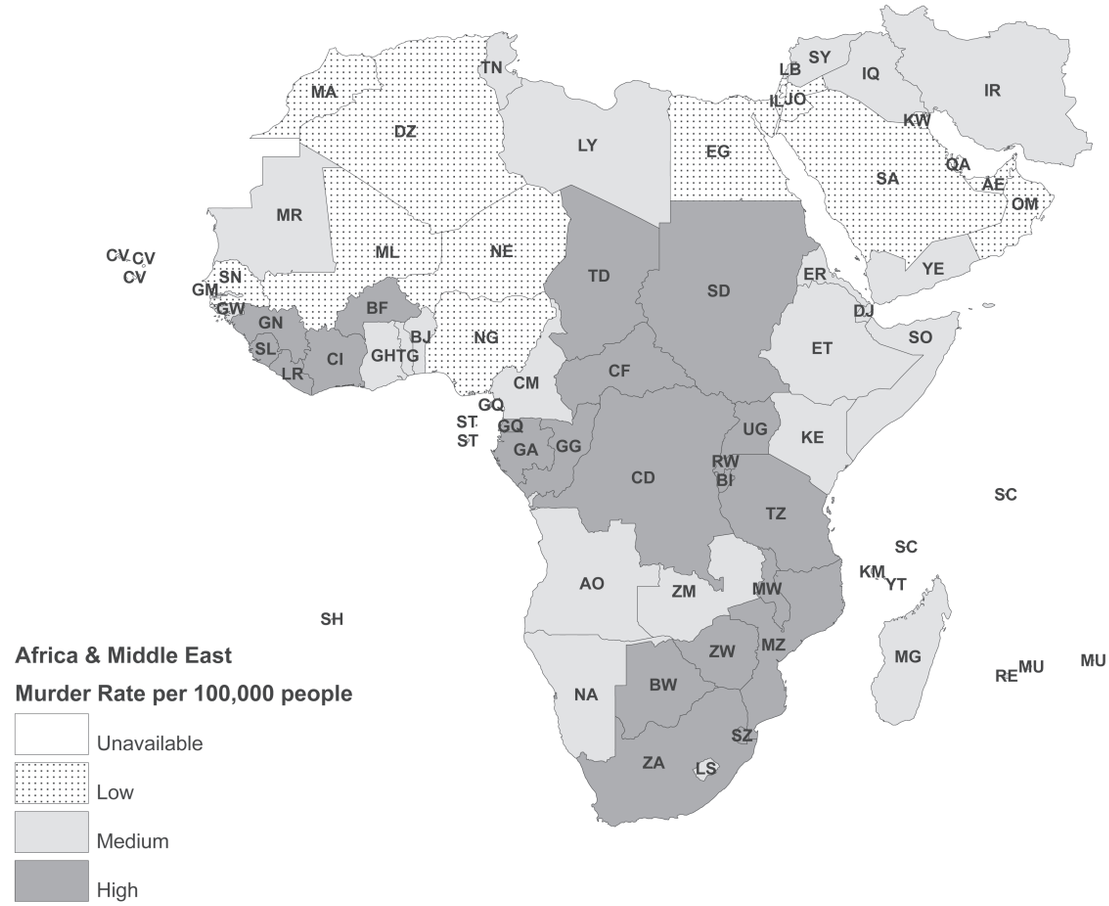

Murder in Africa and Middle East

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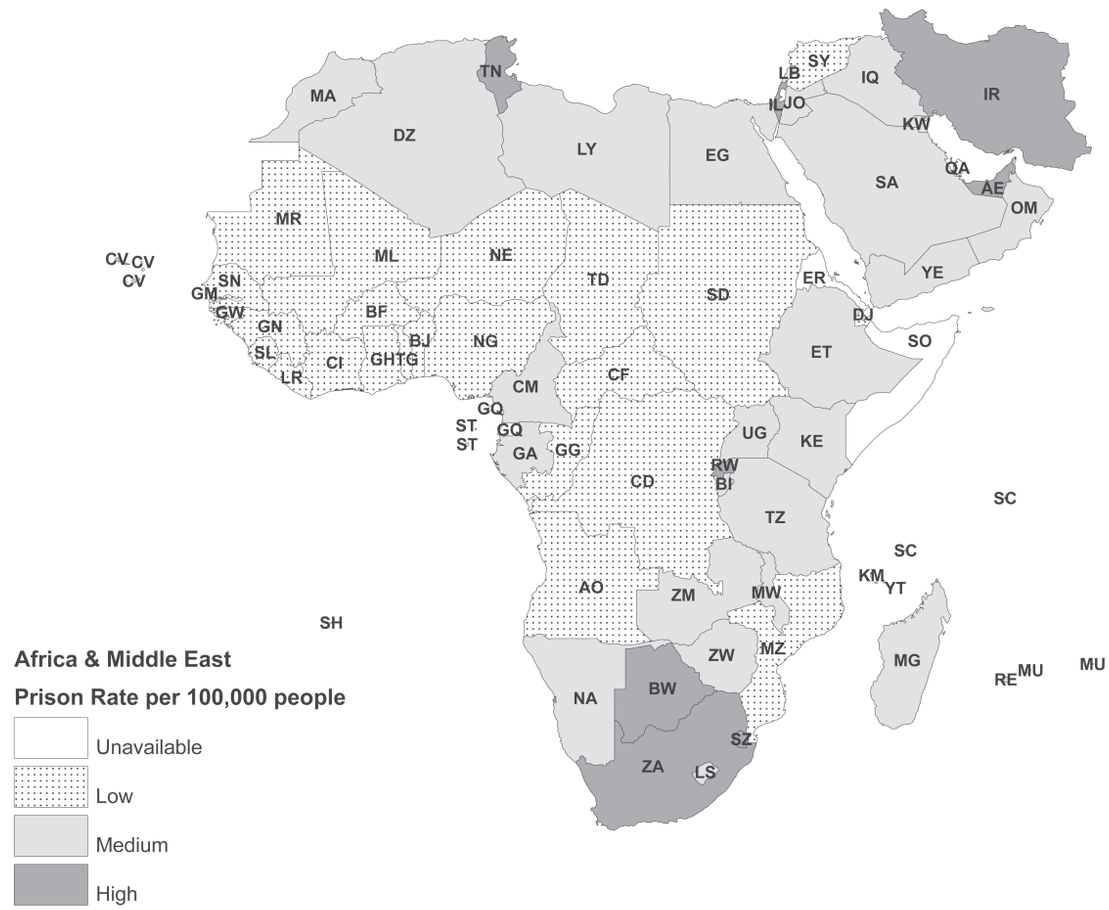

Imprisonment in Africa and Middle East

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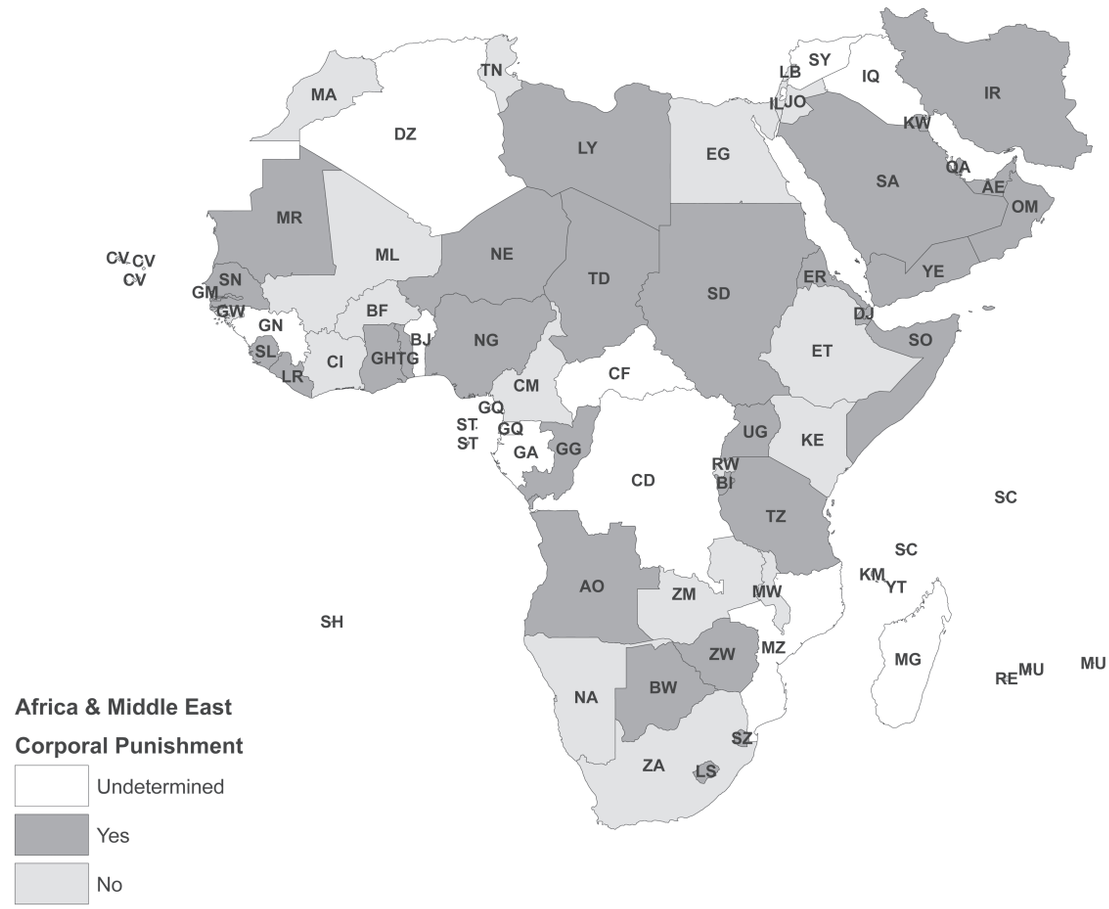

Corporal Punishment in Africa and Middle East

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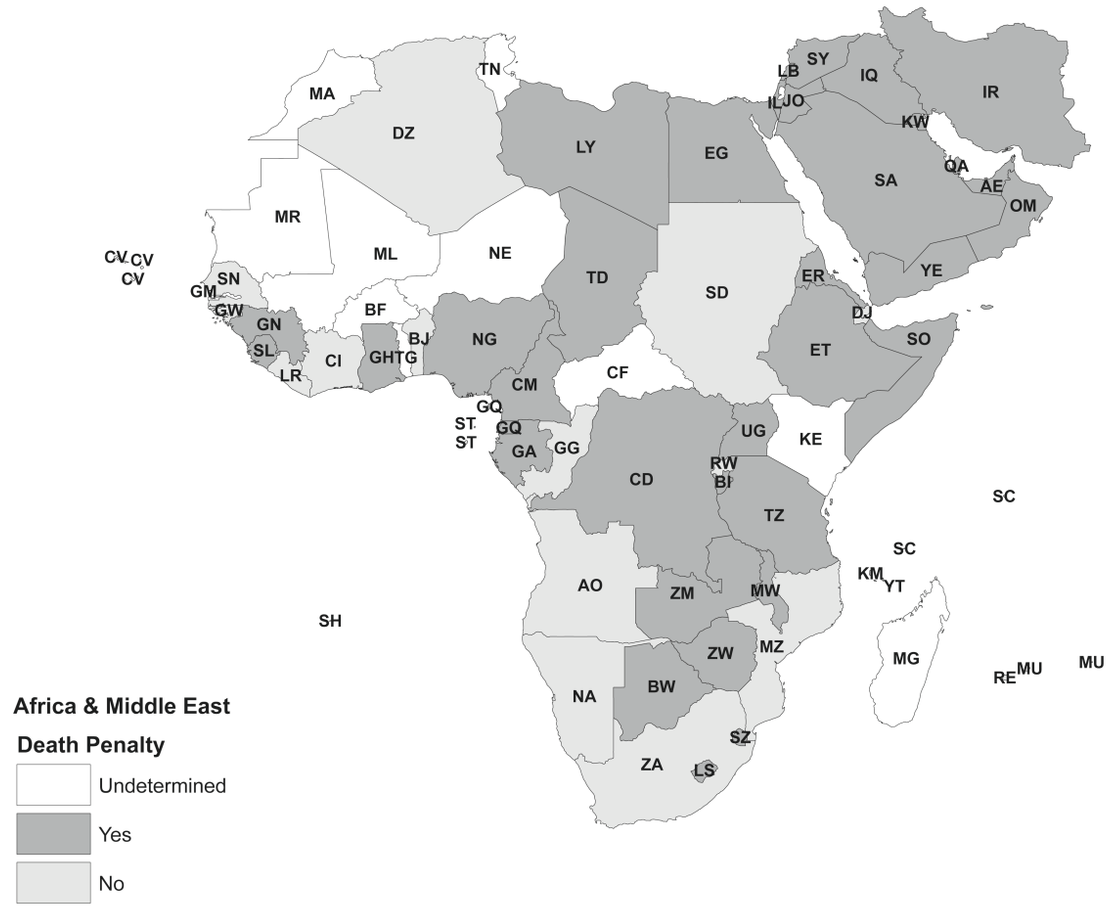

Death Penalty in Africa and Middle East

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Africa

Angola

Legal System: Civil
Murder: Medium
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: Yes

Background

Angola (Republica de Angola) is situated on the southwest African coast with the Democratic Republic of Congo, Zambia, and Namibia as its neighbors. The capital city is Luanda, and Portuguese is the official and widely spoken language. A former Portuguese colony, Angola became mired in a 27-year civil war soon upon attaining independence in 1975. The civil war between the ruling party, the Popular Movement for the Liberation of Angola (MPLA), and the National Union for the Total Independence of Angola (UNITA) left hundreds of thousands displaced internally (IDPs) or killed. The conflict ended in 2002, but the country's development was severely restricted. Post-conflict, Angola's economy began to develop with new found mineral wealth in oil and precious stones.

Angola, which had its last election in 2008, operates under a multiparty political system with a president who is both the head of state and the head of government. The 1975 Constitution was revised multiple times, with the last revision in 1992 yet to be ratified. In principle, the judiciary and legislature are both autonomous and independent of the executive branch, and members of parliament are elected into office for a term of four years. The legal system is based on the Portuguese civil law system and customary law with the Supreme Court, or Tribunal da Relacao, as its apex court, whose judges are appointed by the president.

Judicial System

Soon after independence, in 1976, Angola established a civilian court system, known as the People's Revolutionary Tribunal (Tribunal Popular Révolucionario), to deal with capital offenses against national security. These courts, composed of three to five judges, had jurisdiction over crimes against the security of the state, mercenary activities, war crimes, and so-called crimes against humanity, and they could unilaterally assume jurisdiction over any criminal case that had a significant impact on national security. Each provincial capital had one of these courts, which were administered by a national directorate in Luanda.

The Supreme Court of post–civil war Angola currently works as a constitutional court and as a first-level court in a number of matters, as a court of appeals for all provincial court decisions, and as a court of appeals for the municipal court decisions in criminal matters. Although the Supreme Court has 16 seats, a 2003 International Bar Association (IBA) report noted that only 9 were filled. There are 19 provincial courts each for criminal and civil matters such as family, labor, children, and minors. Appeals of the provincial courts go directly to the

Supreme Court. Municipal courts have limited jurisdiction in civil and criminal matters in the municipal areas and appeals from these courts go directly to provincial courts and to the Supreme Court in criminal matters. Local courts rule on civil matters and petty crime in some areas. Municipal and provincial courts operate under the authority of the Supreme Court.

The Accounting Court or "Anti-Corruption Court" (Tribunal de Contas) was established in 1996 but did not begin operating until 2001, and it was headed by a judge who was also a deputy in the National Assembly. Community-based courts and judges practice traditional law, outside the jurisdiction of the Constitution and the official legal system. Community-based courts and judges are not a substitute for those that the Constitution provides.

Police

It is widely believed that during the civil war days, very little role was played by the national police. Post-independence Angola's internal security functions were assumed by the Ministry of Defense, State Security, the Ministry of Interior, and the People's Vigilance Brigades (Brigadas Populares de Vigilância—BPV). The Ministry of Defense's Directorate of People's Defense and Territorial Troops (ODP) had over half a million members fighting alongside the army against various insurgent groups, defending bridges and other key infrastructure.

The police organization that existed before independence, Direcao de Informacao e Seguranca de Angola (DISA), which was formally abolished in 1979, was known to be repressive and was widely feared. Very little information is available about the organization, and its functions were subsumed by a new body under the Ministry of Interior, still referred to as DISA. DISA had wide-ranging powers and discretion to conduct investigations, make arrests, detain individuals, and determine how they would be treated. The national police, called the National Angolan People's Police, which evolved from the Portuguese colonial police and the People's Police Corps of Angola, was set

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E__ On January 9, 2010, Angolan police escort the bus carrying Ghana's soccer team as it leaves the compound in Cabinda,
L__ Angola, where the teams are based. (AP Photo/Darko Bandic)

up in 1976 under the Ministry of Defense. With headquarters in Luanda, the police numbered about 8,000 men and women and was supported by a paramilitary force of 10,000 that resembled a national guard.

DISA was officially abolished in 1979 and recreated in 1980 under the Ministry of State Security, which was carved out of the Ministry of Interior as part of the government reorganization. This new ministry consolidated the DISA's internal security functions with those relating to counterintelligence, control of foreigners, anti-UNITA operations, and frontier security. The Ministry of State Security also had under its jurisdiction the Angolan Border Guard (Tropa Guarda Fronteira Angolana—TGFA). With an estimated strength of about 7,000 in 1988, TGFA's primary goal was to secure Angola's borders with Congo, Zaire, Zambia, and Namibia.

In 1983, the BPV was established to maintain public order, law enforcement, and public service for urban centers. Some of the BPV units were armed but mostly performed public security functions such as intelligence gathering, surveillance, patrols, civil defense, and crime prevention activities. Each unit contained about 100 members and was organized along provincial levels and below, but they were easily mobilized in case of reported insurgencies. In 1987, it was reported that there were nearly 1 million members, a third of them women.

In 1994, as part of the Lusaka Protocol, the Angolan National Police were formally charged with managing public order, a function generally associated with civilian police. Simultaneously, an elite unit called the Rapid Reaction Police (or Policia da Intervencas Rápida—PIR) was created and stationed in strategic locations in a supportive role for maintenance and restoration of order, control of situations of concerted violence, protection against violence and organized crime, protection of strategic installations, and security for important personalities.

The Angolan National Police (NPA) is housed in the Ministry of the Interior. Various legal instruments including the National Police Statute, Angola Decree 20/93 of June 11, 1993, are in place requiring that the police act impartially and subject to the rule of law regarding the civil rights of citizens. However, there have been numerous reports of political bias among police rank-and-file in favor of the ruling party. Despite numerous reports of misconduct, there are checks and balances in place to regulate the police behavior as outlined in the 1975 Constitution, later revised in 1992. Some of the provisions include Angola's commitment to the United Nations (UN) and Organization of African Unity (OAU) charters, equality before law of all its citizens, respect for human dignity, and the provision that no person shall be subjected to torture or inhumane and degrading treatment and punishment, among others.

The organization of the NPA consists of a national command, with provincial, municipal, and communal structures under its overall control. The NPA's departments include public order, criminal investigation, traffic and transport, investigation and inspection of economic activities, and the Rapid Reaction Police. The functions of the NPA are the defense of democratic legality; preservation of public order; respect for fundamental rights and liberties of citizens; defense and protection of state as collective, personal, and private property; prevention of delinquency and reduction of criminality; and collaboration in the implementation of national defense policies, in terms established by the law.

Though many proposals have been made to upgrade and improve the NPA, lack of basic resources severely hampers any development. There are no facilities to train in areas such as criminal investigation and forensics. In 2006, a Higher Institute of Police Sciences was established to minimize the need for sending officers abroad for training.

Police brutality and corruption are areas of concern, according to Amnesty International (AI). AI reports that despite the inclusion of human rights training in the police training curriculum, officers continue to violate human rights, and few perpetrators are ever brought to justice. In almost all the cases of human rights violations, the officers were not held accountable for their actions. There were no investigations carried out, no disciplinary proceedings followed, and no suspected perpetrators were brought to justice. The AI report also notes the NPA culture of total obedience to supervisors

that results in officers executing orders without questioning the legality of their actions.

Private security played an important role in Angola's history of military involvement and in its civil war, particularly between 1993 and 1996. In the early 2000s, estimates placed the number of private security companies operating in Angola at around 80. Angola's diamond and oil industries in particular—have contributed to the growth of the industry, given that the government was unable to provide security to foreign investors. Although there have been instances of excesses of private security personnel, the government of Angola seems committed to the application of a combination of international, regional, and national legislation to regulate private armies.

Crime

The penal code (1886) and the criminal procedure code are the two main legal documents that guide the criminal justice system in Angola. Both documents are dated. In addition other laws and decrees called sundry laws have passed recently, but this does not necessarily mean that the laws are current and keep up with the social reality of Angola.

Rape: Among felony crimes, rape, including spousal rape, is illegal and punishable by up to eight years' imprisonment. Most cases never reach prosecution stage because of limited investigative resources, low level forensic capabilities, and an ineffective judicial system. Sexual relations with a child under 12 is considered rape. Sex with children between the ages of 12 and 15 may be considered sexual abuse, and offenders can receive up to 8 years in prison. NGOs offer shelter and special services to rape victims and have pressed the Ministry of Interior to increase women police as well as train police officers to improve response to rape allegations.

Trafficking in persons: There are no specific laws for trafficking in persons. Though data are not available for trafficking, there have been unconfirmed reports of trafficking of orphaned children, who are often most vulnerable. Laws criminalizing forced or bonded labor, prostitution, pornography, rape, kidnapping, and illegal entry are used to prosecute trafficking cases. The sentence for some of these related offenses carries a maximum of life imprisonment. There is no single ministry with direct responsibility for combating trafficking.

Prostitution is illegal, but the prohibition is not consistently enforced, once again because of lack of resources. Sexual harassment is common but is not specifically illegal. However, sometimes such cases are prosecuted under assault and battery and defamation statutes.

Terrorism: There is no legislation specifically targeting terrorism. However, other forms of conduct listed in Crimes against the State, Law 7/78 of 26 May, and Law against Mercenary Actions, Law 4/77 of 25 February, could be classified as terrorism. Crimes against the State, Law 7/78, specifically mentions the crime of piracy (article 15), rebel activities (article 19), sabotage (article 21), and explosives (article 22), among others.

The number of crimes

Current crime data for Angola are not avai
The most recent data available on the INTER
Web site are for 1999. Crimes reported to INTERPOL in 1999 were as follows:

Homicide/murder	1,047
Rape	248
Serious assault	1,841
Robbery and violent theft	569
Aggravated theft	4,226
Breaking and entering	3,657
Motor vehicle theft	441
Drug offenses	522

Finding of Guilt

Angolan law authorizes the Ministry of State Security to detain persons suspected of having committed serious crimes against the security of the state without charge for up to three months and then if necessary for an additional three months. Unlike common criminals, such detainees do not have any constitutional safeguards such as the right to be brought before a judge within 48 hours of arrest and cannot challenge the basis of detention. Political prisoners must be informed of the accusations against them after six months in detention and then

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must be referred to a public prosecutor or released. If charges are pressed, there is no stated time period within which a trial must be held, and delays of several years are common.

Lack of training and infrastructure inhibits judicial proceedings, according to the U.S. State Department (USSD) 2004 report. The report notes that as a result of severe disruptions inflicted due to the civil war, inadequate judicial infrastructure in many provinces and municipalities began relying on traditional leaders called *sobas* to decide local cases. Unfortunately, these local traditional or informal courts do not offer the same constitutional safeguards accorded in formal municipal and provincial courts. The International Bar Association (IBA) report noted that few Angolans have access to justice because the number of lawyers is limited. Some provinces such as Moxico, Kuando Kubango, Luanda Norte, and Bié had no lawyers and a further five provinces had only one lawyer. The USSD report noted that the government is making efforts to rebuild courts and train new magistrates and prosecutors to fill all vacancies.

According to the Angolan constitution, a person caught in the act of committing a crime may be arrested and detained immediately. Otherwise, the law requires that a judge or a provincial magistrate issue an arrest warrant or that it be issued by members of the judicial police and confirmed within five days by a magistrate. Typically, arrest warrants (*mandatos de captura*) are issued by police commanders (*comandantes da policia*). Normal police procedures include detaining an individual at a police station for up to 72 hours, but the individual must then be charged or released. Warrants have to be served personally but can be left with relatives or neighbors if the named person is not present. In the past, warrants were sometimes broadcast on the radio or published in the newspaper.

The length of time a suspect can be detained is outlined in the Angolan penal codes. The 2003 IBA report notes that "Angolan law allows: people suspected of crimes punishable for up to two years in prison to be detained for a maximum of 120 days; people suspected of crimes punishable for over two years in prison to be detained for a maximum of 135 days; and people suspected of crimes against state security to be detained for a maximum of 215 days." However, the report notes that the prolonged detention was primarily due to lack of resources in the justice system, including lack of personnel.

The Constitution accords protections to citizens from arbitrary arrest. Article 36 states that "no citizen may be arrested or put on trial except in accordance with the law, and all accused shall be guaranteed the right to defense and the right to legal aid and counsel." Additional safeguards are offered by the Constitution. Articles 37 and 38, respectively, stipulate that "preventive detention shall be permitted only in cases provided for by the law, which shall establish the limits and periods thereof" and "any citizen subject to preventive detention shall be taken before a competent judge to legalize the detention and be tried within the period provided for by law or released." Given the large number of indigent suspects who turn up in courts, legal representation becomes an issue. The 2003 IBA report notes that the Angolan Bar Association is able to provide criminal defense lawyers to some of the suspects. The Constitution also provides defendants with the presumption of innocence until a judicial decision is made by a court, with right to counsel, and with public trials.

The age of criminal responsibility in Angola is 16 years. However, the civil responsibility could be vested with parents or the guardians. For youth between 17 and 21 years, the Angolan law considers these persons not completely criminally responsible for their actions. The Juvenile Court, which started functioning in 2003 in Luanda, decrees socio-educational measures for persons within this age group, and oversees compliance.

Punishment

Amnesty International (AI) reported in March 2004 that Angola had abolished the death penalty for all crimes in 1992. Further, Amnesty also notes that article 22 of the Constitution stipulates that "the State shall respect and protect the life of the human person." It also states that the death penalty

is prohibited. However, in its 2004 report, AI cited instances of extrajudicial executions by the security forces.

Prison System

Portuguese Angola used prisons as far back as 1570s, with the first prison built in Sao Migeul in 1576. In post-independence Angola, the Ministry of State Security was responsible for administering the national prison system, with certain prison camps run by the Ministry of Interior. The principal prisons are located in Luanda. The Estrada de Catete prison in the capital and the Bentiaba detention camp in Namibe Province are the principal detention centers for political prisoners. The detention center in Cuanza Sul Province is primarily used as one of the main rural detention centers. This facility, being a former sisal plantation, is utilized as a labor farm for prisoners who perform forced labor and reside in barracks-like dwellings.

Most of these facilities are overcrowded with substandard conditions. Though prison conditions vary widely, some of these conditions include poor diet, sanitation, and medical facilities; prolonged interrogation, beatings, torture, and inhumane treatment; curtailment of visits by family and friends arbitrarily; and holding inmates incommunicado or moving them from one prison to another without notifying the family.

A 2004 U.S. State Department (USSD) report noted that prison conditions were harsh and life threatening and continued to hold as many as five times their built-in capacity. Overcrowding in Luanda prisons was said to be diminished after the completion in November 2004 of the rehabilitation and expansion of the Viana prison, the report noted. A 2004 Freedom House report also noted that prisoners are often kept in detention for long periods awaiting trial in life-threatening, overcrowded, and unsanitary conditions. Outside the capital in the Bengo, Malange, and Lunda Norte provinces, sometimes warehouses were used as prison facilities. Lack of financial resources is directly related to inadequate hygiene, food, and health care for prisoners. Some prisoners relied on their relatives to bring in food, which the underpaid prison staff would sometimes steal.

Police detention cells are also reported to be inhumane. The 2004 USSD report noted that between 8 and 16 prisoners died from asphyxiation in an overcrowded police station detention cell. Police reportedly killed two individuals as the local population protested. The reported noted that the national police commander publicly acknowledged wrongdoing and ordered appropriate disciplinary action on the officers involved.

The Constitution and the penal code prohibit all forms of mistreatment of suspects, detainees, and prisoners by security forces and prison officials. However, local and international human rights organizations have noted gross neglect and exploitation of prisoners. The USSD report also noted that sometimes prison officials operated an informal bail system for detainees, allowing their release until their trial date for a price. Female prisoners were kept apart from males, but the prison guards sexually abused female inmates. Some improvements were noted when a new prison opened in Viana with a female-only wing staffed by female guards. Juveniles are often warehoused with adult prisoners and subject to harassment and abuses from both older inmates and prison guards.

The King's College of London World Prison Brief reported that in 2002 there were 4,975 prison inmates, representing a rate of 37 per 100,000 population. In October 2005, the report noted that including pretrial detainees and remand prisoners, there were about 8,300 inmates.

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Basutholand. *See* Lesotho

Benin

Legal System: Civil
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: Maybe

Background

Benin is located in Central Africa with Nigeria, Togo, Burkina Faso, and Niger as its neighbors. Until 1975, Benin was known as Dahomey, a name given to it by its colonial master, France. Benin obtained its independence from France on August 1, 1960. The capital city is Porto Novo, with Cotonou being the largest and most commercial city. In 2005, Benin's population was estimated to be 8,439,000, and it occupies an area of 112,622 square kilometers (43,483 square miles).

Today, Benin operates as a multiparty representative democratic political system. The president is both the head of state and the head of government. According to the 1990 Constitution of Benin, the judiciary and legislature are both autonomous and independent of the executive branch. The president is elected into office for two terms of five years each. Members of parliament are elected into office for a term of four years. There are 83 members of Benin's National Assembly, which meets twice yearly. There are currently 12 political parties in the country. For administrative purposes, the country is divided into 12 departments and 77 communes.

Benin's military and policing systems are modeled after the French systems. Its security operatives consist of the armed forces, which are headed by the State Ministry of Defense. The gendarmerie is the security outfit that performs police functions in the rural areas of the country, and it is supervised by the Ministry of Defense. The police have jurisdiction in the larger, more urban centers of the country. This police establishment is under the supervision of the Ministry of the Interior, Security, and Decentralization. It is important to note that all of the security forces, the armed forces, and the police are under the control of civilians through the ministries.

Legal System

With the nation being a constitutional democracy, the Benin Constitution guarantees the independence of the judiciary. The Constitution further guarantees the citizens civil and human rights, and the government generally upholds these rights. Its security forces are under the control of the civilian administration. The armed forces are under the supervision of the minister in charge of defense matters. The police force is under the Ministry of Interior, Security, and Decentralization. The gendarmerie, which polices the rural areas, is under the supervision of the Ministry of Defense. The other police establishment, which operates in urban and bigger cities, is under the supervision of the Ministry of the Interior. However, the delivery of justice in the country is hampered by poverty, illiteracy, and endemic corruption within the judiciary. Furthermore, the citizens find the principles and processes of the state-based legal system incompatible

with the African concept of justice. Again, the police use of excessive force and arbitrary detention of suspects undermines the people's confidence in the legal system. As a result, the people seek to resolve their conflicts through the African indigenous justice institutions and may out of frustration resort to lynching and vigilante justice.

The legal system of Benin is based on both the French civil law system and African customary law. Consistent with the constitutional provision, there is a clear division of power among the branches of government. Thus, the judiciary acts independently of the executive branch. The Benin court system operates at both the national and provincial levels. There is one Court of Appeals and one Supreme Court. The Supreme Court has the final jurisdiction on all administrative and judicial matters. The Constitution also provides for a Constitutional Court, which has the original jurisdiction in determining constitutional laws, as well as settling conflicts between the National Assembly and the president. The Constitutional Court also handles disputes resulting from both presidential and legislative elections. Judges of the civil courts are career magistrates appointed by the president. However, the Constitution empowers the Ministry of Justice with supervisory authority over the judges of the civil courts. The ministry assigns judges and can transfer them to any area of the country where their services are needed.

In the event that the president or a minister of the state is the defendant in a criminal proceeding against the state, a High Court of Justice will convene according to the Constitution. Members of the High Court include members of the Constitutional Court, excluding the president of the court, and six deputies elected by the National Assembly

S_ E_ L_ Women walk past the Justice Ministry building in Cotonou, Benin. Benin has seen three peaceful transfers of power in 15 years, making the former Marxist dictatorship—once nicknamed "Africa's Cuba"—an unlikely leader of Africa's checkered democratic rebirth. (AP Photo/George Osodi)

and the Supreme Court. The chairman of the Supreme Court presides over the proceedings of the High Court.

The criminal code distinguishes between juveniles and adults, as well as between first-time offenders and repeat offenders. For example, judges may grant suspended sentences to first-time offenders. The age of criminal responsibility is 18 years. The revised 1994 penal code of Benin replaced the Code of Criminal Instruction of 1958. The code recognizes three levels of offense, namely crimes, misdemeanors, and other violations. Crimes are punishable with between 5- and 20-year prison sentences; misdemeanors are punishable with prison sentences of up to 3 years; and violations are punishable by up to a year in prison. According to Borricand in the *World Factbook of Criminal Justice Systems,* crimes are classified into attacks against persons, property, and public security:

> Attacks against persons include intentional homicide (murder, assassination, infanticide), intentional violence (non-intentional death, harm resulting in a permanent injury), and rape (including rape with more than one offender, aggravating circumstances, simple rape, and rape of a minor under 15 years of age). Attacks against property include theft, robbery, fraud, breach of trust, aggravated robberies and vandalism, public security and counterfeiting.

The penal code also distinguishes between completed and attempted criminal acts. Criminal trials must be public and fair. However, when public order is threatened, the court president may restrict public access to the court to preserve order and protect the individuals involved in the judicial process. Defendants may be granted bail upon the recommendation of the attorney general. An accused is innocent until proven guilty and is entitled to legal representation financed by the state if he or she cannot afford the services of a lawyer. It is the right of the accused to be present in court during trial and to confront any witnesses. The accused must also be granted full access to any evidence in the government's possession.

A lack of qualified judges in Benin is currently hampering the delivery of justice in the country. The salaries of judges are also grossly inadequate, and many contribute to the endemic corruption in the judiciary. Serious attempts were made in 2004 by the government of Benin to curb corruption within the judiciary; several judges and other senior officers of the judiciary who were found guilty of corruption were sentenced to prison. In addition, the salaries of judges have been increased, and ethics training for judges and other senior officers of the judiciary has been instituted.

The language of the courts is French, which the average Beninoise does not understand, and this further limits the people's access to justice. Furthermore, the courts have introduced illegal court fees that judicial authorities claim is necessary to meet court costs for which the government does not provide. This practice of charging fees is another limitation to the average person's access to justice because only the very rich can afford the court fees. Once again, the principles and processes of the government courts are incompatible with the principles and processes of traditional African justice, to which the people have become accustomed. Whereas the goal of the government's courts is the punishment of the offender to deter the offender and others from committing crime, the goal of African indigenous justice is the restoration of the victim, the community, and even the offender. Many Africans therefore are reluctant to patronize the government courts because the "winner take all" approach undermines community bonds and can create community bitterness, which may endure for several years and even generations.

Unfortunately, citizens sometimes resort to lynching crime suspects, out of frustration resulting from their lack of trust in the agents of the criminal justice system. Lynching occurs mostly in the urban areas where the African indigenous justice system is not available. Another major crime problem in Benin is human trafficking, which the security agents are ill equipped to handle. Benin is a major source and transit point for human trafficking. The U.S. Department of State reported, from research conducted by the World Bank and the National Institute of Statistics and Economics, that an estimated 49,000 children from rural areas between the ages of 6 and 16 are trafficked to Côte d'Ivoire

and Gabon as agricultural and domestic workers. Some villages are more affected than others. Some villages lose up to 51 percent of their youths to child human trafficking. Although important legislative steps and local NGO efforts have been introduced to stamp out child trafficking, the country remains in Tier 2 of the U.S. 2008 State Department trafficking report. Benin is also a major source and transit point for drug trafficking. Although a small amount of illegal narcotics is produced locally, the drug of choice is marijuana in Benin.

Crime

Benin's crime rate is relatively low, although the country has experienced a slight increase in crime in recent years. According to the available 1998 crime data, INTERPOL reports that the crime rates per 100,000 population for Benin were as follows: murder, 5.12; rape, 2.55; robbery, 4.27; aggravated assault, 102.03; burglary, 4.57; larceny, 59.90; motor vehicle theft, .63; and total crime rate, 179.07. According to the Ministry of Interior, an estimated 17 percent of crimes and misdemeanors were drug-related.

Punishment

Prisons

The prison conditions are very harsh. The eight prisons in the country are overcrowded, holding many more detainees than the maximum capacity. The prisons also lack adequate sanitation and medical facilities. The quality of the food served to inmates is inadequate for nutritional needs. Malnutrition and diseases are common, and family members of detainees are expected to provide food for their loved ones in government custody.

Angela A. Morris and O. Oko Elechi

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Botswana

Legal System: Civil/Common
Murder: High
Burglary: High
Corruption: Low
Prison Rate: High
Death Penalty: Yes
Corporal Punishment: Yes

Background

Botswana is a land-locked nation located north of South Africa, bordering Namibia, Zambia, and Zimbabwe. In 1966, it became independent from the United Kingdom. Botswana has a bicameral parliamentary democracy. It has a House of Chiefs, whose members are leaders of the local communities and appointed by the president. The House of Chiefs serves an advisory role in making decisions regarding customary law and tradition. Members must not have been actively involved in politics for five years prior to appointment and must not be a member of a political party. The nation also has a national assembly elected by direct vote of the population. The national assembly is the law-making branch of the government. These combined represent the national assembly. Although there is some evidence of media manipulation by the government, the most recent presidential election in 2004

was described as free and fair. The government also has firm control over the military and the police.

The Botswana Defense Forces (BDF) is responsible for external security and operates domestically to protect wildlife areas from poachers. The Botswana Police Service (BPS) is the primary agency responsible for maintaining internal security. There are approximately 6,500 police personnel for 1.8 million residents, which represents approximately 1 policeman for every 276 people in the population. The BPS operates under the Ministry of Presidential Affairs and Public Administration. Until March 2008, there were also local and customary police that operated separately from the BPS. These organizations have since been merged into the BPS.

The BPS has low levels of corruption and police brutality. Police command staff indicate some corruption among lower-level police personnel. There is also some evidence of use of excessive force during interrogations. BPS personnel are held accountable by the people and the government. The State Department indicates numerous incidents of police being arrested and fired or imprisoned for committing crimes. In 2006, two police officers were arrested for collaborating with civilian burglars and subsequently dismissed. Between January and September 2008, 31 police officers were arrested for criminal offenses, and 19 of these were brought to trial. It must be noted, these incidents do not indicate high levels of corruption among the BPS, and rather these incidents indicate that police personnel are held accountable for their actions.

More generally, the government has also taken steps to deal with official corruption. Official corruption generally refers to the use of public power for private gain. Prior to 1990, the Botswana civil service was reputed to be efficient and incorruptible. But a number of high-profile corruption cases, including illegal land sales and large unpaid loans to public officials, resulted in the resignation of some high-level members of governments. This resulted in the development of an ombudsman to deal with complaints of corruption by the general public and in the creation of the Directorate of Corruption and Economic Crime (the Directorate or DEC) to deal with high-profile economic crime and corruption.

Some critics indicate the Directorate is merely a tool of the current government in power, but the agency has had a number of successes. Since its creation, the Directorate has heard thousands of complaints. In 1996, the DEC successfully prosecuted 60 of the 95 cases it brought to court. It also successfully lobbied the government to require members of parliament to declare their financial assets and make them available to the public. The Directorate is facing serious man-power shortages and problems in its working relationship with other government agencies. The existence of the ombudsman, the Directorate, and the prosecution of police personnel by the courts indicates a high level of accountability and a drive to reduce corruption.

The peculiarities of its colonial history have influenced the development of Botswana's legal system. Because of the assumption that the country would be annexed by South Africa, the legal system of Botswana was originally based in Roman-Dutch rather than English common law. Roman-Dutch law was the legal system of the British colony of the Cape of Good Hope. At independence, Botswana adopted British common law in criminal codes and contracts. It continues to rely on Roman-Dutch law for rules of evidence and procedural law. South Africa continues to have a significant legal influence on Botswana. Since 1995, the South African Constitutional Law Reports have published decisions of Botswana. South African criminal procedure textbooks are also recognized in Botswana.

Botswana's legal system is heavily influenced by traditional practices. The country has a dual legal system, which includes a westernized legal system and the customary courts that are based in the traditional practices of the Botswana people. Throughout this chapter reference will be made to customary courts and the legal system. The legal system is here defined as the contemporary Western system of common and civil law courts, judges, and attorneys that operate in Botswana. Customary courts are the traditional dispute resolution mechanisms separate from the legal system.

The system of customary courts is incorporated into the formal legal structure of the country. The Botswana Supreme Court has determined that the

customary courts are subordinate to the legal system and that traditional leaders are subordinate to the national government. However, the legal protections enshrined in the Botswana Constitution are not applicable in the customary courts. These traditional courts play a major role in dispute resolution and try approximately 85 percent of all criminal cases.

Crime

The crime problem in Botswana is of both domestic and international importance. Evidence regarding levels of crime in Botswana is available, although more recent data are limited.

Classification of Crime

Crimes are classified according to whether they are an offense against the law of Botswana. Crimes are further classified according to the extent they are "serious," from crimes in which the maximum penalty is death to crimes for which the penalty is imprisonment for not less than two years. Information on crime classifications outside of those described is as follows:

1. *Rape:* Section 2 of the Penal Code (Amendment Act) No. 5 of 1998 reads: "Any person who has unlawful carnal knowledge of another person, or who causes the penetration of a sexual organ or instrument, of whatever nature, into the person of another for the purpose of his own sexual gratification, or who causes the penetration of another person's sexual organ into his or her person, without the consent of such person, or with such person's consent if the consent is obtained by force . . . or by means of false pretences."
2. *Defilement:* Rape of a person under the age of 16.
3. *Economic crime:* Bribery, conflict of interest, diversion of public revenue, and possession of unexplained income.
4. *Money laundering:* A person is deemed to have been engaged in money laundering if he engages, directly or indirectly, in a transaction that involves money, or other property, that is the proceeds of a serious offense, whether committed in Botswana or elsewhere.
5. *Crimes involving drugs:* No person shall deal in any habit-forming drug or any plant from which any habit-forming drug can be manufactured; or shall possess or use any such drug or plant.

There exists some tension between the legal system and the customary courts because many traditional rules are not codified within the criminal code. A customary court can find guilty an individual who violates a community rule and punish them accordingly. However, the customary courts must obey the penal law and cannot technically punish a person unless the "crime" he or she committed was established in the penal code.

Crime Statistics

There are a number of different sources of crime data, including INTERPOL data, Afrobarometer data, and other government and nongovernment sources of data. Each is described independently. The most recent crime data available from INTERPOL are for 1996. It is unknown the extent to which those cases handled by the customary courts are incorporated into this INTERPOL data, though it is likely that they reflect crimes reported to the police. These data are as follows:

Homicide	207
Sexual offenses	1,254
Rape	1,101
Serious assault	5,939
Theft (all)	28,549
Aggravated theft	13,642
Robbery and violent theft	1,172
Breaking and entering	123
Theft of motor vehicles	1,799
Other thefts	11,185
Fraud	657
Currency offenses	17
Drug offenses	762
Total	**125,680**

It is unknown whether the preceding data represent current levels of crime. The United Nations Office on Drugs and Crime indicates that all persons treated for drug abuse in Botswana were treated for abuse of cannabis. However, there is some available information on rape and motor vehicle theft. According to police records, in 2002, there were 303 cases of rape of a person under the age of 16 (defilement) and 1,473 cases of rape a person over the age of 16. In 2003, there were 303 cases of defilement and 1,506 incidents of rape. This represents a 28 percent increase in defilement and a 2 percent increase in rape. The level of human trafficking is unknown, and information was not available on prosecutions or convictions for this crime. Motor vehicles are stolen in Botswana to be sold in Zambia, Zimbabwe, Zaire, and Tanzania.

There are additional data available on both victimization and fear of crime among persons who live in Botswana. The Afrobarometer survey interviewed a representative sample of individuals in 22 countries throughout sub-Saharan Africa on a wide range of topics. This survey asked questions on a range of topics, including perceptions of crime, trust in the police, perceived levels of corruption, and difficulties in obtaining police services. Data from this study in 2005 reveal that 64 percent of Botswana citizens have never feared crime in their homes, less fear than South Africans, Zambians, and Lesothans, the nation's neighbors. These data also indicate that 69 percent of Botswana residents have never had something stolen from their house, victimization higher than its neighbors. A large majority (86%) of Botswanans have never been physically attacked.

delete

Information on the perceptions of crime by Botswana police personnel is available. Police personnel indicate they are largely responsible for maintaining order. Lethal violence in Botswana is perceived as rare and generally relates to drunken disputes. There are some indicators of increasing levels of crimes based on these interviews with BPS personnel and a review of available police records. There has also been an increase in serious assaults because of large numbers of squatters. There were very low levels of forcible theft after independence, but levels have increased since the 1990s. Coinciding with this increase in robberies was a movement of police stations to more commercial areas and a growth in private security. Forcible thefts are largely committed by the poor and involve small sums of money. The police have also become more involved in dealing with both thefts and burglaries. The BPS tends to be less concerned with public order crimes and more concerned with maintaining order in urban areas and dealing with rural migrants.

Botswana is dealing with two internal crime and human rights problems of international significance. These include discrimination against women, including domestic violence. and the mistreatment of its ethnic San minority.

Although women have the same civil rights as men, there is still significant discrimination. Traditional laws enforced through the customary courts restrict the property rights and economic opportunities of women in rural areas. Customary law allows husbands to treat their wives as if they were minor children.

Domestic violence is a significant problem in Botswana. Although the law prohibits rape, it does not recognize spousal rape. The law also does not prohibit violence against women. Because domestic violence is not considered a crime in Botswana law, the police do not collect statistics on domestic violence.

The Basarwa ethnic group, also known as the San, represents approximately 3 percent of the country's population. The San are culturally and linguistically distinct from the Tswana majority. Although legally protected from discrimination, the San are marginalized economically and politically, have limited access to education, and are not fully aware of their civil rights.

Finding of Guilt

The Botswana Constitution provides for an independent judiciary. Judicial independence is generally respected by the government. These include the legal system and the customary courts. The customary courts handle minor criminal offenses and civil matters between tribesmen. The legal system has jurisdiction over both civil and criminal matters.

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To make an arrest, the police must have an arrest warrant signed by a magistrate that has been substantiated with compelling evidence. Persons arrested have the right to remain silent and must be charged by a magistrate within 48 hours after arrest. A magistrate who charges a person with a crime may hold the accused for 14 days through a writ of detention, and the writ must be renewed every 14 days. In 2008, the government established a new domestic intelligence agency called the DISS. This agency has the authority to enter premises and make arrests without a warrant if the agency believes a person has committed a crime.

Persons accused of a crime in Botswana are innocent until proven guilty. Defendants have the right to a fair and independent court and a public trial. Accused individuals have the right to a trial in a language they can understand. They also have the right to call defense witnesses and cross-examine the accused. The accused also has the right to address the court before judgment.

Although the Botswana people have the right to legal representation, the state provides it only in capital cases. This leaves many defendants without legal representation because they do not have the funds to retain an attorney. A lack of legal representation means that many defendants are not informed of their rights in pretrial or trial proceedings. Legal representation is perceived as a right only at trial, not at the time of arrest or during interrogation by the police. This system of legal representation also does little to protect defendants who cannot afford the services of a lawyer.

Criminal defendants have the right to bail. Bail is not allowed for individuals accused of murder, rape, or treason. Detention without bail is uncommon. When deciding on the right to bail, the court considers the seriousness of the offense, the impact on the victim, the nature of the evidence, and the possibility of the defendant interfering with the victim.

Victims in Botswana have some rights in criminal proceedings. They have the right to request that a case be withdrawn. Victims must be made aware of ongoing developments in their case. Investigating officers also have the duty to update the victim on the progress of an investigation. At the end of trial, the prosecutor is allowed to address the court on behalf of the victim.

Botswana does have a separate juvenile justice system, and juveniles are treated differently under the law. Juvenile courts are located at the same place as the other courts, but they follow different procedures and have different sitting magistrates. Court proceedings with juveniles are closed to the public, and their confidentiality is guaranteed. However, there is some confusion regarding the exact definition of a juvenile. In some laws, a juvenile is defined as any person under the age of 21. In other laws, those under the age of 18 are considered juveniles.

A person who is dissatisfied with the legal process has the right to appeal in both the legal system and the customary system. Appeals may be made within 30 days against both a conviction and a sentence. Dispositions in the customary courts can also be made to the legal system.

The legal system does not have sufficient number of personnel to try cases in a timely manner, resulting often in delays in both criminal and civil matters. It takes an average of 10 months for a person in pretrial detention to be brought to trial. In part because of these delays and staff shortages, the customary court system plays a significant role in the resolution of disputes.

Customary Courts

The system of traditional dispute resolution, also known as the *kgotla,* has been used in Botswana for hundreds of years. The *kgotla,* or customary court, is not an adversarial process. The customary court typically involves the complainant and the defendant discussing their dispute before a judge. It allows every man present to speak for or against the person accused.

The government codified the place of customary law and the customary courts in the Customary Law Act. This act has three provisions. First, customary law in Botswana typically operates at the local level. Only members of a particular community are bound to the laws of that community. Second, the customary law must be "compatible with morality, humanity, or natural justice," but the law

does not define exactly what that means. Third, customary laws that conflict with written law are not enforceable. Each customary court operates under a different jurisdiction and has powers mandated by the state. The state mandates the types of offenses each court may handle and the type and severity of punishments they can impose.

There are indications of numerous issues with the administration of justice through the customary court system. These include a lack of legal representation, problems with the competencies of customary court judges, and the frequency of the use of the customary court system.

Customary courts do not provide constitutional due-process protections. Customary courts do not allow for legal representation. There are no standardized rules of evidence. Any party to a dispute in customary court does have the right to have that dispute transferred to a local magistrate's court. It is unknown whether this automatic transfer can occur after a course has been adjudicated by the court or prior to when a decision is made. Lack of knowledge regarding remedies in the legal system and a lack of money to pay for an attorney can keep many disputes in the customary system.

There are indications that only limited numbers of presiding officers (judges) in customary courts have a high school education and that large numbers are not literate. Court officers are expected to apply the penal codes, but these statutes are not written in the vernacular language, only in English and Setswana. The 2008 State Department Human Rights Report indicates that the decisions reached in the customary courts vary considerably, and often defendants lack the presumption of innocence.

Customary courts handle a large number of cases in Botswana. In 1998, there were 27,057 cases registered in customary courts. Of these cases, 9.9 percent of defendants were acquitted, 12.35 percent were pending trial, and 76 percent resulted in a conviction. Of those 20,577 convictions in 1998, only 1.2 percent resulted in an appeal. These court officers can sentence convicted offenders to prison for up to five years. More than two-thirds of prison inmates in the prison system were placed their by customary courts.

The customary court system creates a conundrum for the administration of justice in Botswana. The legal system provides all the procedural and due process protections that any citizen of a Western nation could expect, but it handles a minority of cases. The customary courts, which are bound by rules of tradition rather than constitutional legal protections, handle a large majority of cases. Botswana needs the system of customary courts, but this could also be creating problems with the administration of criminal justice.

Punishment

The legal system and the government developed a system of punishment with the premise of deterring criminals from committing crime. Botswana seeks to deter crime by punishing its offenders severely. Punishments appear to generally involve fines, corporal punishment, or incarceration. The extent that community corrections, such as community service and probation, are utilized is unknown. There is no available information on punishment in the juvenile justice system.

In the early 1990s, the government adopted a number of mandatory minimum sentences to deal with increases in specific crimes. Mandatory minimum sentences have been passed for treason, murder with no extenuating circumstances, unlawful possession of arms and ammunition for war, possession of and dealing habit-forming drugs, motor vehicle theft, road traffic offenses, stock theft, causing grievous harm, aggravated robbery, rape and attempted rape, and defilement and attempted defilement. The government is under the belief that these mandatory minimum sentences will not only deter crime but also ease the workload and expedite the trial process of the courts. They believe it will do this by reducing the amount of information about the convicted person's background that has to be gathered to sentence someone. Prescribed punishments are as follows:

1. *Rape:* 10 years imprisonment; with violence, suspect has HIV: 15 years; if suspect knew he was HIV-positive: minimum of 20 years and corporal punishment.

2. *Attempted rape:* 5 years imprisonment and corporal punishment.
3. *Money laundering:* Maximum of 3 years' imprisonment or fine of 10,000 pula.* If a manager/director of a group, fine not to exceed 25,000 pula.
4. *Possession/use of 40 grams of habit-forming drug other than cannabis:* Imprisonment of not less than 10 years or more than 15 years, fine of 15,000 pula.
5. *Possession/use/sale of less than 60 grams of cannabis:* Imprisonment for up to 3 years, fine of 1,000 pula.
6. *Murder:* Death penalty.
7. *Murder with extenuating circumstances:* 15 to 25 years imprisonment.
8. *Treason:* Death penalty.
9. *Instigating a foreigner to invade Botswana:* Death penalty.
10. *Committing an assault with intent to kill in the course of piracy:* Death penalty.

* In March 2009, 1 pula was equal to approximately .13 U.S. dollars.

Botswana utilizes corporal punishment. The customary courts issue sentences that include corporal punishment such as lashings on the buttocks. Corporal punishment is not to exceed 12 lashings, or 6 lashings for persons under the age of 18. Corporal punishment of females, males sentenced to death, and males believed to be over 40 years old is prohibited. Corporal punishment is also combined with imprisonment for serious offenders.

Botswana retains the right to use the death penalty for normal crimes. The death penalty can be used for persons convicted of murder, treason, instigating a foreigner to invade Botswana, or committing an assault with intent to kill in the course of piracy. Use of the death penalty is prohibited for persons under the age of 18, women who are pregnant, and persons suffering from a disease affecting their mind that makes them incapable of understanding the act. There is no provision for persons with an intellectual or mental deficiency. The president and members of parliament support the use of the death penalty. Members of government have indicated that the population supports the continued use of the death penalty, although there is no evidence available to support this assertion.

Human rights groups indicate significant problems with the implementation of the death penalty by the Botswana government. Under the law, condemned prisoners are not given notice of their execution date until 24 hours before hanging. The International Federation for Human Rights (FIDH) and Ditshwanelo indicate that often there is no public knowledge of an execution until after it occurs. The family and the condemned prisoner's lawyer are not allowed to see the condemned prior to execution, and executions have been carried out while petitions before the African Commission on Human and People's Rights were pending.

Botswana executed 32 prisoners between 1966 and 1998. Since 2001, it has executed a further 6 prisoners. The most recent execution in April 2006 was of a black South African man accused of murdering a police sergeant. Outside of the use of the death penalty, the use of mandatory minimum sentences is increasing the severity of punishments handed down to persons convicted of a crime. The average adult prisoner spends five years in jail after conviction.

Prison

Botswana has approximately 6,300 prisoners, an incarceration rate of 314 prisoners per 100,000. The incarceration rate is lower than what was reported to the United Nations between 1998 and 2000. The Botswana prison system has a capacity of 4,900 prisoners and a total of 23 prisoners, including the Center for Illegal Immigrants. Based on available figures, ~~this would indicate~~ the system is operating at 129 percent of capacity.

prisons

In 2004, 25.1 percent of all prisoners were pretrial detainees, and 5 percent of the prison population was female. Approximately 13 percent of the prison population are residents of foreign countries. The prison service does provide voluntary and free HIV testing, peer counseling, and treatment to Botswana citizens in detention. The government will house refugees in local jails.

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Overcrowding, combined with high levels of HIV/AIDS and tuberculosis among the general population, is creating a serious health threat within the prison system. The conditions inside the Botswana prison system are described as poor, with conditions worse in male than female prisons. Nongovernmental organizations indicate difficulties in attaining access to prisons to assess conditions.

The State Department indicates that some children under the age of six are being held with their mothers in prison. Juveniles were held with adults, and pretrial detainees and convicted prisoners are held together. In 2000, there were 290 juveniles incarcerated, for a rate of 18.1 juveniles for every 100,000 in the population.

There are some opportunities for early release from prison. A prison commissioner has the authority to release a terminally ill prisoner in the last 12 months of his or her sentence. Prisoners who are citizens in Botswana also have the opportunity for work release. This system allows the prisoners to complete "extramural" work at government facilities. These prisoners must have short-term sentences and must have served at least half of their sentence. Prisoners with serious and violent felonies are not eligible for this program.

Mistreatment of prisoners is illegal, but the number of complaints by prisoners was not available. Any allegations of mistreatment or suspicions of mishandling of prisoners are forwarded to the police for investigation. There is some evidence of accountability for abuse, given that three prison officials appeared before a magistrate in 2000 for allegations of prisoner abuse. One of these individuals was fired from his position.

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Burkina Faso

Legal System: Civil/Customary
Murder: High
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Maybe
Corporal Punishment: No

Background

Burkina Faso (short form Burkina and formerly called the Republic of Upper Volta) is situated in West Africa with Mali, Niger, Benin, Togo, Ghana, and Côte d'Ivoire as its neighbors. Burkina is an ethnically diverse society with a 2006 census of 13.7 million population. In a country where most aspects of state administration are relatively new and underdeveloped, the police, courts, and prisons have historically been few in number and ill-suited to the needs of a society struggling with economic change, demographic growth, social dislocation, and the domestic repercussions of civil war and strife elsewhere in West Africa. Only since 2002, with the start of a comprehensive judicial reform

program, has the infrastructure of Burkina's justice system begun to extend more systematically outside the largest cities.

Legal System

Based on the new constitution adopted in 1995, the legislature approved a new organizational structure for the country's court system. At the top, the old Supreme Court was divided into four new entities: a constitutional court to monitor the constitutionality of legislation and certify election results, a council of state responsible for resolving disputes among state institutions, a court of accounts to oversee the management of public finances and resources, and a court of cassation to review and possibly overturn rulings by lower-level criminal and civil courts. There was also provision for a high court of justice, with the authority to hear allegations against the president should parliament vote to lay such charges. The courts that hear and judge major cases are the *tribunaux de grande instance* (TGIs), with separate chambers to take up criminal infractions, commercial disputes, and civil actions involving inheritance, divorce, and other matters or material claims exceeding CFA1 million (about US$2,000). These courts may try cases with panels of up to three judges and several nonprofessional jurors. Trials are generally public, except for certain specified cases—for example, to protect the privacy of a rape victim. Below these tribunals are lower courts at the level of departments and arrondissements, with jurisdiction to hear minor infractions and the authority to impose only small fines or sentences of community service; they may also include nonprofessionals and follow looser, more streamlined rules for hearing cases. In addition, there are a variety of administrative and labor tribunals, a separate system of military courts, and provisions for establishing courts for children and juveniles.

Police

A number of the larger municipalities employ their own police services, with limited powers of detention and enforcement. There is also a well-equipped and highly trained elite police force of about 250 men known as the Compagnie Républicaine de Sécurité (CRS), which is often used to contain riots and other civil unrest and which sometimes takes part in operations against gangs of armed bandits. But the main bodies for carrying out routine policing are the national police and gendarmes. Their duties overlap, although the national police fall under the Ministry of Security and the gendarmes under the Ministry of Defense. The national police generally have been more lightly armed than the gendarmes, and the gendarmes have greater capacity to investigate serious criminal infractions.

In 2002, there was just 1 police officer or gendarme for every 3,686 inhabitants, that is, a total of about 3,400. By the end of 2005, the ratio had improved to 1 police or gendarme for every 2,700 inhabitants (a total combined force of nearly 4,900). The interior ministry reports suggest that there are 112 territorial gendarme brigades and 171 police posts, including one central station for each of the 45 provinces and 126 district stations. The following year, the national police academy graduated another 1,500 new recruits for the national police, gendarmes, judicial services, and municipal police. In August 2007, the minister of security reported that there were only 183 police and gendarmes in that region, or 1 security agent for every 6,185 inhabitants. Moreover, they had just 30 vehicles to cover an area of approximately 14,000 square kilometers.

In response to increasing public complaints about violent crime, many are being reorganized into more visible and active units (*police de proximité*) that regularly patrol neighborhoods and high-crime areas. And to encourage greater public cooperation with the police, "local security committees" were authorized in 2005. Thousands of such committees were subsequently established, each composed of dignitaries, officials, traditional chiefs, and other influential figures, to encourage local populations to remain alert to possible criminal behavior and to provide the police with information.

Although the regular army has resisted occasional calls by politicians and other public figures to become engaged in the fight against armed banditry, the military has taken some modest steps

toward helping the national police and gendarmes. In some areas, especially where gangs of armed bandits operate out of heavily forested reserves that are impassable to police vehicles, mobile army units have carried out maneuvers and exercises to make it harder for organized criminal groups to use them as sanctuaries.

In their fight against armed criminals, it also appeared that the police and gendarmes committed serious violations of the law. In early 2002, the country's foremost human rights association charged that the security forces had summarily executed 106 suspected criminals in just the three-month period from October 15, 2001, to January 15, 2002. The group presented to the press photographs of 30 bodies with bullet holes and charged that most of those killed were livestock thieves, not major armed bandits. Amnesty International called on the authorities to open an inquiry into the allegations.

Police extortion or misconduct is just one facet of a wider problem in Burkina: the country's public institutions, though in the past considered only moderately corrupt, are perceived to have become increasingly marked by various forms of corruption. Since 2000, an association of nongovernmental organizations concerned about corruption, known as Ren-Lac (Réseau national de lutte anti-corruption), the local affiliate of Transparency International, has systematically published annual reports on the state of corruption in Burkina, based in part on national public-opinion surveys. The network's first report in 2000 revealed that the police were considered the single most corrupt institution in the country: 82 percent of respondents who said they had personally experienced corruption cited the police as the source, mostly the extortion of small bribes when they wished to pass at roadside checks, to obtain identity documents, or to secure release following arrest.

Crime

Burkina's legal system recognizes the same type and range of crimes as those specified in France, the former colonial power, at the time of independence in 1960. Its penal code is a virtual copy of the French code, with only a few modifications over the years.

Historically, Burkina was considered a country with very low crime rates. According to data supplied to INTERPOL, the murder rate in Burkina in 1998 was 0.38 per 100,000 population. Ethnographic studies of rural communities in particular often indicated that even serious offenses such as murder or theft were handled without any police or other state involvement, sometimes through customary procedures of redress managed by village and lineage elders and sometimes through direct retaliation by the aggrieved individuals or their families. Nevertheless, there appeared to be wide agreement among both Burkinabè citizens and travelers in the region that serious crime was far less prevalent in Burkina than in some of its immediate neighbors, especially in more urbanized coastal countries such as Ghana or Côte d'Ivoire. It is likely that violent crime, particularly homicide, for which the WHO reported a rate of 18.2 per 100,000 population in 2004, are much higher today.

Beyond the more spectacular crimes of murder, armed robbery, drug smuggling, or corruption, which receive some coverage in the national media, many other legal infractions also occur on a daily basis, and some of them are dealt with by the police and courts routinely. Few official statistics are available on such instances. One type of crime that has received some public attention and stirred a degree of debate relates to contraventions of family law or violence against women and girls, which have been highlighted because of recent policy interventions by the legislature and government.

For example, female genital cutting, also known as female excision, was made a penal offense in 1996, punishable by sentences of between six months and three years. With the criminalization of the practice, the power of the police and judicial system was also brought to bear. The police started compiling files on known excisors, and some excisors and parents have been prosecuted under the statute.

Other harmful social behaviors have also been difficult to counter solely through police or judicial enforcement. Among the Gurmantché ethnic group, for example, the practice of kidnapping women and young girls for marriage is widespread. It often involves not just the individuals directly concerned

but also their extended families and lineages. The main criminal court in Bogandé, for example, is frequently confronted with such kidnapping cases, although the penal code provides serious sanctions only if the female is under 13 years of age. Sometimes the police resolve cases directly by detaining a member of the family of the kidnapper until the girl is returned. Further complicating the issue, some charges of "kidnapping" are brought by family elders who disapprove of a daughter's decision to elope with a male suitor of her own choosing. Violence against women is also frequent, and a number of civil society organizations actively campaign against the phenomenon. But beatings, sexual assaults, and other forms of violence against women are rarely reported to the police, especially if such acts take place within the conjugal home.

Finding of Guilt

From initial detention to trial, defendants are in theory guaranteed a range of rights protecting them from arbitrary imprisonment or mistreatment. In practice, such rights are not always observed and are sometimes violated flagrantly. A suspect, for example, legally may be detained without charge or access to a lawyer for only 72 hours, renewable for another 48 hours upon approval by the prosecutor's office. Yet it is not uncommon for suspects to be held for weeks before they are charged or released. There also have been numerous reports of beatings and other forms of abuse of people awaiting charge or trial, in some cases as police seek to elicit confessions or obtain information about possible accomplices. Once charged, an accused person may have to wait for many months, sometimes several years or more, before the case comes to trial. Even if the charges are serious, the accused may petition for provisional release pending trial. Given the costs of holding someone for long periods and the overcrowded conditions in Burkina's detention facilities, release may well be granted, especially for defendants facing less serious charges. All accused may retain legal representation, although the costs of hiring a qualified attorney are prohibitive for many. In serious cases, the government can cover the cost of legal representation for poor defendants, and some lawyers willingly take on such cases for nominal fees (if a defendant is found guilty, restitution of court costs may be included in the sentence). Lawyers and other legal professionals have set up a variety of organizations, programs, and services to provide legal advice at low or no cost to citizens facing charges or otherwise engaged in court proceedings.

Because legal reporting is not well developed or systematized, there are almost no consistent official data publicly available summarizing trial verdicts and sentences. Yet because most court proceedings are public, some anecdotal information can be gleaned from news coverage. Overwhelmingly, media reports focus on cases involving high-profile crimes such as murder, armed robbery, assault, and major instances of corruption or fraud, especially those heard in Ouagadougou's larger courts. During 2007, however, a correspondent based in the provincial town of Kaya regularly filed reports on scores of local cases with the national news agency, providing a rare glimpse at some of the more routine and less spectacular trials that take place beyond the national spotlight. Because Kaya, the capital of Sanmetenga province and of the Center-North region, is a modest-sized town of just 36,000 people, the cases heard and verdicts delivered there may be more typical of the country as a whole than those taken up by big-city courts. According to *Sidwaya Magazine,* the numbers of persons charged for various offenses in 2007 were as follows:

Theft	70
Excision	20
Assault	14
Fraud	10
Property damage	8
Bodily threat	7
Kidnapping	4
Drug use/sale	4
Receiving stolen goods	4
Negligence	1
Child abandonment	1

The overwhelming majority of these defendants were convicted. Fines and prison terms of various lengths were the most common sentences.

Punishment

Death Penalty

The penal code permits the death sentence for murder, treason, and attempted murder of a father or other close relative, with execution by firing squad. Several such trials have been held in the criminal chamber of Ouagadougou's court of appeals.

Public attitudes are divided on the death penalty: A public opinion survey in 1997 found 54 percent opposed to the death penalty. Custodial penalties are the most typical for major cases. Monetary penalties are also sometimes imposed, including in cases of bodily harm. However, such monetary penalties have been most common in cases of theft, embezzlement, or fraud.

Prisons

Burkina has few prisoners. According to the International Centre for Prison Studies at King's College, University of London, the country had a total of approximately 2,800 prisoners in September 2002, the latest year for which the center had data provided by the Burkinabè authorities. Based on the estimated population at the time, this gave a ratio of 23 prisoners for every 100,000 people.

Paradoxically, although the overall prison population is low, the existing prison system is severely overcrowded. In September 2002, the country's 11 prisons had an official capacity of just 1,650, yielding an occupancy rate of 169.7 percent. Of these, 58.3 percent of the prison occupants were pretrial or remand prisoners.

Among the prisons, Ouagadougou's central prison, MACO, is often in the spotlight. Originally built in the early 1960s for a population of about 600 detainees, it housed 1,128 prisoners as of July 2007, that is, more than 40 percent of the country's total prison population. Such crowding inevitably has had a negative effect on other conditions in the prisons, further worsening nutrition, sanitation, health care, and the overall quality of life.

Prison regulations stipulate that different categories of prisoners should be housed separately, for their own security: serious offenders from pretrial detainees or those convicted of minor infractions, women and children from the general prison population. The excessive occupancy rate has made such separations difficult to implement, although as of 2001, only 1 percent of the entire prison population was female, and 2.4 percent were minors. Separate women's blocks exist only in the prisons in Ouagadougou and Bobo-Dioulasso. Nursing mothers are permitted to keep their infants with them until they are old enough to be placed with other family members. As of 2004, only seven of the country's prisons had separate quarters for minors, but there were plans to build such quarters in three more prisons.

As part of the judicial reform program to expand the number of major case courts nationally, each new court was to be accompanied by a new prison as well. That aspect has lagged, but over time, the construction of new prisons and rehabilitation and expansion of the existing ones should in theory ease conditions somewhat—unless the size of the prison population itself also increases significantly.

Within the limits imposed by inadequate financing, MACO and other prisons operate various training, educational, sports, and work programs for inmates to aid in their longer-term rehabilitation and reintegration back into society. Minors attend basic literacy classes, as do some adults. Men and women inmates have access to facilities where they can learn skills in carpentry, welding, soap-making, fabric dying, market gardening, and other trades. All prisoners are required to assist in cleaning their cells and the prison grounds. Participation in craft activities is permitted as a reward for those regarded as well-behaved. Good conduct can also earn prisoners who have served at least a quarter of their sentence special leave to keep medical or legal appointments; to attend funerals, weddings, and other major family functions; or to take up part-time jobs outside the prison. Inmates who have records of good conduct, who have participated actively in prison work programs, or who are in ill-health periodically receive presidential pardons, often on national holidays. They also may be released on parole once they have completed a specified portion of their sentence. Such early releases are one option

the authorities employ to keep down the overall size of the prison population.

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Burundi

Legal System: Civil/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

Burundi is a landlocked country of Central Africa with Rwanda, the Democratic Republic of Congo, and the United Republic of Tanzania as its borders. Its surface area is 27,834 square kilometers, and it has a population over 8 million. The capital city is Bujumbura, and the country is divided into 17 provinces. The executive branch consists of a bicameral parliament with 60 percent Hutu and 40 percent Tutsi seats, with women constituting an overall 30 percent of members. Burundi's legal system is based on German and Belgian civil codes and customary law.

Crime

The Burundian penal code is composed of 444 articles divided into two volumes:

1. Book 1 deals with offenses and punishment in general.
2. Book 2, the most voluminous, is dedicated to a detailed examination of these offenses and in particular to their punishment.

Offenses punishable by prison sentences of more than two months are called infractions. Offenses punishable by more than five years of prison time are crimes. Other offenses are misdemeanors.

Homicide (Voluntary and Involuntary)

A homicide is defined as a murder committed against a known individual, or against someone who is found or encountered, though intent may be dependent on particular circumstances or particular conditions, even if the perpetrator was mistaken as to the identity of the victim of the attack (based on article 141, Burundian penal code).

The Burundian penal code also contains a series of provisions punishing all attempts on human life with heavy penalties. Articles 141 to 155 in particular make homicide and voluntary bodily harm a crime. The right to life is protected from conception, not birth, with the penal code outlawing abortion in articles 353 to 356.

Despite all of these texts ratified by Burundi, and even though the Burundian penal code is clear on matters related to criminality as just described, the data on human rights gathered over the years by the Iteka League (the most renowned Burundian human rights organization) show that the current situation remains nevertheless bleak, especially in the province of Bujumbura-Rural as depicted in the following table.

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Crimes against the person, by province

	TORTURES		MURDERS		RAPES	
PROVINCE	**2004**	**2006**	**2004**	**2006**	**2004**	**2006**
Bubanza	10	5	47	24	30	38
Bujumbura Capitale	—	—	—	—	—	—
Bujumbura-Rural	199	52	107	77	12	7
Bururi	13	8	27	14	17	15
Cankuzo	11	4	35	32	15	44
Cibitoki	7	13	23	29	15	32
Karusi	—	—	—	—	—	—
Kayanza	20	15	40	42	37	27
Kirundo	14	14	36	22	23	16
Gitega	3	—	29	37	23	16
Makamba	25	8	15	25	35	39
Muyinga	3	—	25	19	7	8
Muramvya	4	1	23	12	32	17
Mwaro	7	4	13	4	5	12
Ngozi	11	16	39	23	36	37
Rutana	1	—	18	4	3	1
Ruyigi	5	—	22	—	13	—
Total	321	140	477	364	290	309
Average	29	13	34	26	21	22

*Totals and averages are calculated only for provinces with data for the two years (2004, 2006) by crime.
Source: Annual Reports, Iteka League

The same source (Iteka League) tells us that these murders were committed by soldiers with the National Army; by members of the current and former rebel movements, CNDD-FDD and Palipehutu-FNL; and by armed bandits and third parties. Forms of social violence such as witch hunts, vigilante justice, and infanticide have likewise claimed many victims.

Torture

Burundi ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on December 31, 1992. The term "torture" signifies any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering inherent in or incidental to lawful "sanctions."

No such definition of torture exists in Burundian law. In practice, those who inflict torture are prosecuted and punished based on definitions of offenses in penal law such as "voluntary bodily harm" provided for in articles 145 to 150 of the Burundian penal code. Nevertheless, because it has ratified the previously noted convention, Burundi recognizes the definition contained in the convention and has

made it its own. Normally, "all of the States' parties to the Convention see to it that the competent authorities proceed immediately with an impartial investigation whenever they have reason to believe that an act of torture has been committed within any territory under their jurisdiction." Article 25 of the Constitution of Burundi also stipulates, "All women and men have the right to the liberty of their person, in particular, to physical integrity and to liberty of movement."

Indeed, in addition to the fact that torture is not even defined, neither has it yet been established as a punishable offense in the eyes of Burundian penal law. It constitutes only an aggravating circumstance in the offenses of homicide and voluntary bodily harm (articles 145 and 147). To this end, a national law defining the offense of torture as such is needed to implement the convention ratified by Burundi.

Rape

Burundian law defines violence as acts of physical force exercised against people (article 196, penal code). Several cases of violence and discrimination against Burundian women, particularly within their households, were recorded during 2004. Burundian women, especially rural women, are confronted with various forms of physical as well as psychological violence, in particular domestic violence. Yet in the majority of cases, they do not dare to come forward, the tendency in Burundian society being to trivialize these incidents and to reduce women to silence about this dangerous and oppressive scourge. However, according to Doctors Without Borders, the number of rapes reported to women's health centers has reached worrisome proportions.

According to the Iteka League, rape involving children has reached alarming proportions. They note that among the reported cases, 43 percent involve minors, of which 17 percent are children under the age of 10. These rapes take many forms, most notably gang rape and rape involving violence. These types of cases have been reported chiefly in the provinces of Bujumbura-Rural, Bubanza, and Cibitoke. Cases of incest are also found in many provinces. For example, during the night of August 13, 2004, in the city of Gihanga, Bubanza province, a 55-year-old man was accused of raping his 15 year-old daughter. The victim suffered wounds to her neck and uterus and was treated at the women's health center of Doctors Without Borders–Belgium.

In addition to women and children, rape also affects men. However, many of these cases are not reported, especially when they involve adults who prefer to hide their misfortune, doubtless for reasons of pride. For example, on April 27, 2004, on Nyagatovu hill, in Tangara commune, Ngozi province, a 17-year-old male servant was raped by his boss, a shopkeeper from the same hill. On March 7, 2004, in the Muzinda sector, Rugazi commune, Bubanza province, an 18-year-old man raped a 7-year-old boy. The rape was committed in an old house in the Muzinda market.

It should also be noted that rape is used for criminal purposes by known carriers of HIV/AIDS, as these examples show: A man infected with HIV from Muramvyz hill, Mbizi zone, Bujumbura-Rural province, raped a number of women whom he met in his travels. The police searched for him, but he remained at large. On May 23, 2004, at 7:00 P.M. on the Kwibaru River, Mitakataka zone, Gatura sector, Mpanda commune, Bubanza province, a 41-year-old widow was raped by more than four men. She was able to recognize three of them, who were, according to locals, HIV carriers. The rapists took 25,000 Burundi Francs (F/Bu) and her clothes, so that she had to return home totally naked. Unfortunately, the victim did not seek medical treatment in time; she arrived at the hospital at Bubanza three days later.

The Burundian penal code contains, however, several provisions punishing indecent assault and rape, in articles 382–387. In addition to the previously cited cases, domestic violence, sometimes fatal, has been reported. These tragedies affect women in particular. This situation is rooted in the practices of concubinage and polygamy, especially in outlying provinces of the country and in the Imbo plains. Polygamy was nevertheless outlawed in Burundi under the Second Republic. However, public authorities seem to turn a blind eye to this widespread trend, which contributes to the spread of HIV/AIDS, as well as to the destabilization of

families and its many unfortunate consequences, in particular the violation of women's and children's rights, as the following examples illustrate.

On May 14, 2004, on Matana hill, under Kavuza hill, Bururi province, a man killed his wife over a lost hoe. The murderer found his son in the fields and accused him of losing the hoe. When the father began to beat the son, the mother jumped in and tried to save her child. Her husband pounced upon her, saying, "It was you I was looking for." He began to beat her severely until she fell unconscious. The victim was taken to the hospital at Matana and was transferred to Bujumbura, where she passed away two days later. After her death, her husband sold her cow and goat. It seems that the victim had previously refused to allow her husband to sell them. On January 8, 2004, in Gacokwe sector and hill, Gisuru commune, Ruyigi province, a woman went missing. The perpetrator was likely her husband, who strangled her because of constant turmoil in their marriage.

War Crimes and Crimes against Humanity

Burundi has witnessed several periods of serious violence and massacres. The years 1965, 1972, 1988, and 1993 were the bloodiest, resulting from political-ethnic conflicts between the ruling Tutsi party and Hutu rebel movements. These episodes of violence resulted in hundreds of thousands of deaths, in particular during 1972 and 1993.

The current conflict began with the murder of president Ndadaye in 1993 by Tutsi National Army officers. This was followed by massacres of Tutsi civilians throughout the country, leaving several tens of thousands dead. The army reacted with horrific violence, killing several thousand Hutu civilians. The result of these massacres was an ongoing civil war that has not yet ended. To distinguish the civilian population from soldiers, at the end of the 1990s, the national army rounded up thousands of civilians into relocation and refugee camps where serious human rights abuses were the norm.

In August 2004, rebels from the FNL movement, in collaboration with the Mai Mai of Congo and the Interahamwe of Rwanda, massacred Banyamulenge refugees at Gatumba. More than 150 people died, and 106 were wounded. In April 2003 in Kabezi in Bujumbura-Rural province, Burundian army soldiers and the FNL opened fire on civilians who were fleeing the combat. In September 2003, in Rubiza and Muyire, also in Bujumbura-Rural province, Burundian soldiers massacred civilians, apparently in reprisal for the assassination of several of their ranks by FNL members in surrounding areas. Administration representatives and other civilians were deliberately killed by FDD soldiers during the same period. They also forcibly recruited civilians to serve in their ranks. In Ruyigi, Bubanza, Kayanza, Bujumbura-Rural, and other parts of the country, women were raped by FDD and FNL combatants as well as by Burundian army soldiers. Civilians were also subjected to forced unpaid labor as porters or guides by members of rebel and militant movements, sometimes in unsafe areas where they were exposed to danger.

There has been no adequate judicial response to these serious crimes against humanity since 2007, perpetuating impunity in Burundi. In a 2003 report, Human Rights Watch writes that the National Transition Assembly adopted the law ratifying the Rome Statute that created the International Criminal Court, but the president still has neither enacted the law nor revealed his intentions as to its fate. In May 2003, a law against genocide, war crimes, and crimes against humanity, long demanded by the Tutsi, was adopted and enacted, but in August, the National Transition Assembly voted provisional immunity into law, exempting a certain number of Hutu leaders returning from exile from all judicial prosecution. These mutual agreements pursuing political ends seem to seek to satisfy claims exclusive to each of the Tutsi and Hutu communities more than to facilitate the administration of justice. The November 2, 2003, protocol extended the notion of immunity to all members of the national armed forces and to all FDD soldiers, without adding any time limit to this protection. Judicial authorities took steps to arrest several persons of interest in the case of the assassination of a World Health Organization representative in Burundi. Military courts failed to pursue or to bring the soldiers implicated in these serious crimes to justice.

In 2005, the Commission of Truth and Reconciliation (CVR) was put into place, composed of six members: two from the government, two from nongovernmental organizations, and two from the United Nations. This commission has the ambitious task of investigating all crimes against humanity and war crimes perpetrated in Burundi since its independence. As the United Nations sees it, the creation of the CVR will also lead to a special tribunal. The commission did not begin its work until April 2008.

Criminal Justice System

The National Police

The national police force was officially created in 2004. It is made up of elements of the former Public Security Police (PSP) and the Judicial Police, the former governmental army and local police, and former armed opposition movements. This latter group constitutes more than one-third of the total members of the new police forces. The Burundian national police force is a civil force operating under the authority of the newly created Ministry of Public Security, formerly an arm of the Ministry of the Interior. It is made up of four commissariats: the Internal Security Police (PSI), the Judicial Police (PJ), the Penitentiary Police, and the Police for Air, Borders and Foreigners (PAFE). The Rapid Mobile Intervention Groups (GMIR), a specialized reserve force created in 2006, was part of the PSI until December 2007, when it became an autonomous force reporting directly to the director of the national police under a police restructuring program.

Judicial police and internal security police officers share responsibilities for prevention and punishment of everyday crimes and have the most regular and direct contact with the population. The judicial police conduct pre-jurisdictional investigations, interrogate suspects, and provide evidence to the prosecutor (Law No. 1/020 of 12/31/04). The internal security police keep watch over public areas, apprehend offenders, and execute search and arrest warrants issued by the prosecutor. Internal security police, including GMIR agents, are not authorized to conduct interrogations or detain suspects.

The integration of former combatants into the ranks of the national police has caused the latter's numbers to swell from 2,300 in 2000 to 15,000–20,000 in 2007. The actual number of police officers is unknown to even police administration because not all have been registered, and some do not have administrative files. It is widely recognized, however, that the police force is far larger than the country needs. In accordance with the conditions established by the International Monetary Fund for future aid, the police force intends to select and demobilize officers to reach a target of 15,000 officers.

Merging these diverse components into a single impartial force to serve citizens of all ethnic groups and political affiliations and ensuring that all police personnel are trained in accordance with necessary standards have proven to be major challenges. Officers from the former police force had been trained for police work, whereas soldiers transferred from the army had military, not police, training. Moreover, some soldiers transferred from the army had not performed well in the military and had been sent to the police because the army did not wish to retain them. More than a third of new police officers were former rebel soldiers without formal military or police training. Some of these new officers are illiterate.

Judicial Procedure

According to Burundian law, judicial procedure consists of two phases. In the inquest phase, the code of criminal procedure accords a certain number of powers to judicial police officers, including the power to deprive a person suspected of breaking criminal law of his or her freedom. They exercise this prerogative, however, under the authority and supervision of the public prosecutor. A prejurisdictional arrest cannot last more than 15 days according to the law. Despite judicial police officers' prerogative to restrict citizens' freedom, the fact remains that in principle, the code of criminal procedure has only one concern: to protect all individuals from unlawful detention. The code of criminal procedure was written as much with police and prosecutors in mind as judges. For the police, the code of criminal procedure envisages situations that give rise to the deprivation of freedom, but they are well defined. This deprivation of freedom can take the form of police custody and preventive detention.

The examination phase is an even more important step in that the detainee will see the charges against him or her even more clearly outlined, at least more than they had been by the police. It is during this phase that the case is actually built. The examining judge must, in principle, investigate the case for the prosecution as well as for the defense. The pertinent provisions are found in chapter 2 of the code of criminal procedure, most notably in articles 22–26. The public prosecutor is in fact the guarantor of public order, which means that he has the mission to assure the just and equitable application of the law. His role is to assemble the evidence of guilt. The prosecutor's work is in reality similar to that of the police. However, differences in method can be noted in that the public prosecutor employs manifestly less coercion to persuade detainees to confess.

Nevertheless, Burundian judicial procedure has experienced a fair number of problems, such as the failure to respect preventive detention terms, where months can pass without a judge hearing a person's case. This is the case notably for detainees suspected of participation in the 1993 massacres. There is also the problem of slowness of judgments and of their execution once they are entered.

Prison

As for prisons, Burundi has 11 old buildings at its disposition with an overall capacity for 3,650 detainees. These 11detention centers are as follows:

1. Central Prison of Mpimba (Bujumbura)
2. Ngozi Men's Detention Center
3. Gitega Detention Center
4. Ruyigi Prison
5. Rutana Prison
6. Muyinga Prison
7. Rumonge Prison
8. Ngozi Specialized Center for Women and Children
9. Bururi Prison
10. Muramvya Prison
11. Bubanza Prison

Today, these prisons house around 7,350 people when all sectors are taken together (convicts, defendants, women, and minors), despite a current capacity of only 3,650. The causes of prison overpopulation are likely the slow handling of cases, irregularities related principally to poor recordkeeping, prison conditions that are lacking, and also the persistent failure to separate groups of detainees (adults and minors) according to the Human Rights League Iteka (2006 annual report) and the October 2007 monthly report of the Division of Human Rights and Justice of BINUB.

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Cameroon

Legal System: Civil/Customary/Common
Murder: Medium
Burglary: Low
Corruption: High
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

Cameroon is a developing country located in Central Africa with the Atlantic Ocean, Equatorial

Guinea, and Gabon as its borders. Yaoundé is Cameroon's capital city, and Douala, its largest city. The 2006 population estimates indicate that there are over 17 million people in Cameroon spread over 250 tribes. Though English and French are both constitutionally recognized as official languages, French is the common spoken language. Pidgin English is also a commonly used lingua franca in the English-speaking countries of West Africa. Christianity (40%), Islam (20%), and indigenous African beliefs (40%) are the predominant religions in Cameroon. In 1961, southern Cameroon wanted to gain its independence by reuniting with French Cameroun, which had already become independent in 1960, and northern Cameroon wanted to remain a part of Nigeria. In 1961, southern Cameroon and the independent French Cameroun were known as the "Federal Republic of Cameroon."

There are three branches of government. The executive branch is headed by the president. The president is entitled to a seven-year term in office that is renewable once. The president appoints and dismisses the prime minister, cabinet members, judges, generals, provincial governors, prefects, and heads of para-statal firms. The president disburses expenditures and approves or vetoes regulations to implement new laws. The president declares states of emergencies. The prime minister is responsible for implementing polices established by the former head of state.

The legislative branch of government has a unicameral national assembly made up of 180 members with five-year terms. This assembly meets twice yearly, in June/July and November/December. Laws are adopted by the majority vote of the national assembly or by the president himself. Since 1990, when political opposition was legalized, parliament has been represented by more than 168 oppositional parties. The Cameroon People's Democratic Movement (CPDM) has dominated parliament.

The judicial branch of government is part of the executive ministry of justice. The Supreme Court reviews the constitutionality of laws only at the president's request. The traditional courts have a role in domestic, property, and probate law. Tribal and customary laws are honored within the judicial system, when they are not in conflict with national law.

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Cameroon has made attempts to develop a modern legal system that embraces its heritage and current socioeconomic/political climate. The history of Cameroon's legal system reflects its difficulties in trying to embrace national legislation that has been derived from customary and international laws. As a result of complications stemming from Cameroon's colonial past, there are two foreign legal systems struggling for power in determining the nature and content of its non-uniform laws.

Legal System

This legal system is based on the dual English-French colonial legal heritage. The predominant sources of law in Cameroon are the Constitution, the legislation, judicial precedents, and customary law. Since Cameroon's independence and reunification of the former British Southern Cameroons and the French Cameroun, this country has had three different constitutions with varying amendments. The first constitution was under the French Cameroun, when it became independent in 1960. The second constitution was a 1961 amendment of the 1960 Constitution of French Cameroun. In 1972, after a referendum, a new constitution was developed, and the country's name changed to the United Republic of Cameroon. In 1984, "United Republic" was changed to "Republic."

Judicial precedence as a source of Cameroonian law varies depending on whether a province is an English-speaking Anglophone or French-speaking Francophone province. The English law uses stare decisis under which judicial precedence is major law, which is subject to the complexities of judicial organization of the court system. The Cameroonian courts operate within a unified and decentralized fashion, with a Supreme Court for the entire country. This Supreme Court operates in a manner similar to the French Cour de Cassation rather than as an English court of appeal. The appeal court is the highest in both provinces. Within the Anglophone provinces, precedents are binding within that locale. Within English provinces, precedents have limits to which they are binding because of the "provincialized" system. Controversial cases may be presented in the appeals court and in the Supreme Court;

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appeals

these cases are not generally handled as appeals in the strict sense of the meaning of the word. The Supreme Court provides persuasive authority. Judicial precedents are important in Anglophone provinces because of the structure and operation of the court system. In Francophone provinces, judicial precedents are not the primary sources of law. However, judicial precedents in superior courts are highly persuasive in Francophone provinces.

Traditional law is important in Cameroon. Traditional laws are based on the customs of the dominant ethnic groups in a province. Traditional law depends on the region and ethnic group trying the case. The British and French enforced this type of law; however, not every type is recognized and utilized. For example, traditional courts have tried the criminally accused for practicing witchcraft, subjecting them to drinking poison. In another example, an Anglophone province, as established by a southern high court, supported and recognized traditional laws that are not repugnant to natural justice or equitable treatment and are in good conscience. Further, traditional law must not be incompatible with any previously established law. Traditional laws are applied if there is consent from both the plaintiff and the defendant. That said, many persons in rural provinces do not know their rights under civil law and have been taught only that traditional law must be enforced. Traditional courts often hear cases that involve property, domestic, and probate matters. Traditional laws most often apply to and are used by persons living in rural areas.

Police

The national police and intelligence service, the gendarmerie, the ministry of territorial administration, military intelligence, the armed forces, and the presidential guard are all responsible for reinforcing Cameroon's security. The president and the civilian minister of defense and head of police are responsible for the security forces. There are 25,000 military personnel, including a 13,000 member security force and 3,000 presidential guards. The presidential guard's main responsibility is maintaining internal security. The national police force has 15,000 personnel and a domestic intelligence network.

Cameroon's security forces have been accused of committing serious human rights violations. Unjustified arrests, detentions, stripping, confinement in overcrowded jails, torture, beatings, denial of access to the toilet and other sanitation facilities, denial of access to health care, disappearances, executions, and murder at times are all instances that have occurred and are said to have been politically motivated. These crimes are often committed with impunity. The Cameroonian government rarely investigates and charges security personnel. These methods are often used to extract confessions.

When unjustifiable detentions occur, these suspects are subject to two kinds of physical beatings. The first is known as the *bastinade.* This form of abuse involves the detainee being beaten on the soles of the feet. The second is known as the *balancoire.* This form of abuse involves the detainee's genitals being beaten.

The police and gendarmes harass citizens by conducting unlawful stops and searches without warrants and by forcefully entering homes. In Douala and Yaoundé, law enforcement sweeps occur regularly. These sweeps are known as "kali-kali" or "raffles." When sweeps occur, law enforcement may close off an entire neighborhood while conducting unlawful stops and searches without warrants, forcefully entering homes, arbitrarily arresting individuals, and seizing contraband and/or suspicious items. At times, law enforcement loot homes during sweeps.

The Cameroonian Constitution prohibits such human rights violations. The law requires arrest and search warrants, except when the criminal is caught in the act of breaking the law. Individuals arrested must be brought before a magistrate, and it is unlawful to detain accused individuals for prolonged periods of time without granting them this privilege. However, detainees are kept for months and even years before seeing a magistrate. The accused may be detained for up to 24 hours for committing a crime, a time frame that is renewable three times, before formal charges are implemented. In Anglophone provinces, the law supports judicial review and release on bail. In instances where British common law is taken into consideration, bail is not likely. In Francophone provinces, the law precludes the judiciary from acting on a case until the

administrative authority turns the case over to the prosecution. After a magistrate has issued a warrant to bring a case to trial, the detainee can be held indefinitely until trial. Eighty percent of prisoners within Cameroon's judicial system have not been tried.

Crime

Predatory crimes in Cameroon are the result of famine, mismanagement of financial resources, political conflicts, disease, and persistent economic stagnation. Refugees from neighboring countries, such as Chad and Congo, further contribute to this already fragile political economy. Predatory crimes impact rural and urban Cameroon.

Domestic violence is an example of a predatory crime. Women are quite often victims of domestic violence. Female genital mutilation still occurs in rural areas of Cameroon and causes physical and psychological damage. There aren't any effective gender-specific laws that prosecute men and protect women from domestic violence.

Trafficking of people is an example of a predatory crime. Trafficking of persons is punishable by 10 to 20 years of incarceration. Cameroon is a transit and international destination point for trafficking. Juveniles are trafficked to and from Nigeria, Benin, Niger, Chad, Togo, Congo Kinshasa, and the Central African Republic. Children are trafficked for i~~ed or domestic servitude and as~~ sexual exploitations. In 2000, the International Labor Organization reported that in Yaoundé, Douala, and Bamenda, trafficking accounted for 84 percent (530,000) of an estimated 610,000 child laborers.

The 1998 INTERPOL data for crime rates in Cameroon for various offenses per 100,000 population were as follows: murder, 0.38; sex offenses, 1.37; rape, 0.45; serious assault, 1.17; theft, 31.73; and total offenses, 78.17. Although the crime rates were reportedly low in 1998, since 1995 crimes have increased fivefold. ~~There are notable recording and reporting practices~~ between 1995 and 1998. Murder increased from 0.23 to 0.38 per 100,000 population; sex offenses from 0.05 to 1.17; theft from 4.69 to 31.73; and total offenses from 13.45 to 78.17. The robbery rate of 0.39 and breaking and entering rate of 1.50 were recorded in 1995, but ~~unfortunately~~ not in 1998.

Punishment

In 1998, Cameroon's penal institution housed 15,903 inmates, representing a rate of 115 inmates per 100,000 population. Cameroon's prisons are characterized by conditions such as lack of food, overcrowding (four to five times the original capacity), lack of access to health and medical care, and unsanitary conditions. At times, women, men, and juveniles are housed together. Women can be incarcerated with their children, even if their children are babies. Detainees are tortured and beaten. Prisoners are entitled to one meal per day. Inmates are also entitled to 4.4 ounces of soap every six months.

In Douala's New Bell Prison, there were only 7 water faucets for approximately 3,500 detainees, in a space built for 600 detainees. Two thousand of these inmates were pretrial detainees, whose presence exacerbates overcrowding. Maroua's prison is also overcrowded. This prison's capacity is 300 detainees, but it holds 900 prisoners. The Bertoua Prison's capacity is 50 detainees, whereas this institution has 700 prisoners. Yaoundé's Kondengui Central Prison has the capacity for 1,500 detainees but has 3,600 prisoners; the facility has only 16 bathrooms and 400 beds. The Bamenda Central Prison's capacity is 300 detainees, but it has 750 prisoners.

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Cape Verde

Legal System: Civil
Corruption: Medium
Prison Rate: Medium
Death Penalty: No
Corporal Punishment: No

Background

The Republic of Cape Verde is an archipelago consisting of 10 islands located in the eastern Atlantic Ocean roughly 300 miles off the coast of Senegal in Western Africa. The former Portuguese colony and province gained its independence on July 5, 1975. This island nation is inhabited by approximately 500,000 residents of mixed ethnic backgrounds. Seventy percent of the population is of Creole descent (a mixture of African and Portuguese), 28 percent of the population is African, and approximately 1 percent of the population is European. Because of a lack of natural resources and domestic production, a majority of the Cape Verdean population is emigrant. Population estimates indicate that approximately 700,000 Cape Verdeans live outside the country's borders (predominately in the United States and Portugal).

After gaining independence from Portugal in 1975, Cape Verde was governed by a one-party system until 1990. The first multiparty elections in Cape Verde were held in January 1991. Since that time, political power has fluctuated between the country's two main political parties, the African Party for the Independence of Cape Verde (PAICV), which split from the PAIGC after a coup in Guinea-Bissau, and the oppositional Movement for Democracy (MPD). Overall, Cape Verde exhibits one of Africa's most stable democratic governments.

The Cape Verdean government is guided by the country's Constitution, which was adopted in 1980 and revised most recently in 1999. The head of state is the president, who is elected to a five-year term by popular vote. The head of the government is the prime minister, who is nominated by the National Assembly and appointed by the president. The National Assembly is the legislative branch of the Cape Verdean government, and it consists of 72 members from four political parties. Like the president, the National Assembly is elected to a five-year term by popular vote.

The judicial branch of the Cape Verdean government consists of a Supreme Tribunal of Justice and numerous regional courts. Members of the supreme court are appointed by the president and the National Assembly. Civil, criminal, and constitutional cases are heard by separate courts and appeals are heard by the Supreme Tribunal.

The primary law enforcement agency in Cape Verde is the Public Order Police, which is made up of the national police, responsible for law enforcement, and the judicial police, responsible for investigations. The police force is organized nationally under the Ministry of Internal Administration and the Ministry of Justice. Also included under the jurisdiction of the Public Order Police are the economic and fiscal police, who are responsible for combating smuggling and related offenses. The police in Cape Verde were controlled by the military until 1994 but are now a separate agency answerable to civilian authority.

Statistics from 2006 list Cape Verde's total police personnel at 3,981 officers. This figure indicates a population per police officer of approximately 110. According to a 2007 UN study on crime and

corruption in Cape Verde, there was an overall consensus among respondents that police in Cape Verde do a reasonably good job of preventing and controlling crime. Over 50 percent of the general population and over 70 percent of private sector respondents indicated that the police do at least a "good" job of maintaining law and order.

The law enforcement agencies of Cape Verde face a number of challenges that may limit their ability to effectively operate. According to the 2008 Human Rights Report, logistical constraints, including lack of vehicles, limited communications equipment, and poor forensic capacity, have limited police effectiveness. The Human Rights Report also listed police corruption as a growing problem in Cape Verde. Approximately 12 percent of the citizens surveyed by the United Nations Office on Drugs and Crime said that they considered corruption among police officers a problem.

Crime

The legal system in Cape Verde is similar to that of Portugal because of the heavy Portuguese influence on Cape Verdean government structure and politics. The Portuguese legal code can be classified as a civil law or continental legal system. It is similar to legal systems of other European nations such as France, Spain, Italy, and Germany. A variant of the Portuguese civil law system is recognized in Cape Verde. The Cape Verdean legal system distinguishes more serious crimes as felonies.

Because of its geography, Cape Verde faces some unique challenges when it comes to crime control.

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L__ A group of 40 illegal immigrants are escorted by Cape Verde police after they were rescued as their boat drifted off the coast of Cape Verde on June 7, 2007. (Ulisses Moreira/AFP/Getty Images)

The combination of a highly accessible coastline and lack of regulation in the country's maritime ports has caused smuggling to become a growing concern in Cape Verde. Government officials have raised concerns about the smuggling of drugs, small arms, and other contraband into Cape Verde in recent years and have cited this as a contributing factor in observed increases in organized and street crime in some areas. The Cape Verdean government is working to increase security in maritime ports to combat this growing smuggling problem.

Most of the crime that occurs in Cape Verde is classified as property crime, not typically involving violence. Although burglary does not occur at a very high rate in Cape Verde compared to other African nations, it is particularly prevalent in urban areas, especially in the city of Santiago. Recent victimization surveys revealed that more than 10 percent of the residents of Santiago experienced at least one home break-in in the previous five years. According to the U.S. State Department, petty thievery and burglary are common in Cape Verde, especially in crowds, such as marketplaces, festivals, and celebrations. Despite an overall low rate of car ownership, rates of auto theft are relatively high in urban centers when compared to other African cities.

As noted previously, drug trafficking is a growing concern in Cape Verde. A 2007 UN victimization survey revealed that 20 percent of respondents had been exposed to drug problems in the previous year and that approximately 25 percent of respondents felt that drug trafficking was the most dangerous type of crime in Cape Verde. Respondents also rank drug consumption as a leading cause of crime in the country. Police respondents echoed this concern, citing drug use and trafficking as the primary cause of crime in Cape Verde. In response to the growing concern about drug use and trafficking, penalties for drug crimes in Cape Verde are severe. If convicted, offenders can expect long jail sentences and heavy fines.

Violent crime in Cape Verde is relatively rare overall. However, although official statistics are unavailable, rates of violent crime appear to have increased dramatically in recent years. Citing the country's investigative police, the UN Integrated Regional Information Networks (IRIN) reported that violent crimes occurred five times more often in 2007 than in the previous 10 years combined. According to this data source, there were as many as 56 attempted or completed murders in 2007 compared to just two completed murders between 1996 and 2006. Victimization surveys also revealed that robbery and theft with force were growing problems in urban areas. Although the overall rate of violent crime in Cape Verde is relatively low, there has been growing concern about escalating rates of violence in the island nation, especially in urban areas.

Crime in Cape Verde is substantially more prevalent in urban areas than it is in the predominately rural regions of the country. The UNODC victimization survey revealed that citizens in urban areas experienced crime three times more frequently than citizens in rural areas. The nature of this crime appears to be more violent than that occurring in more rural areas as well: victim reports revealed that 34 percent of the crime in urban areas involved violence, whereas only 27 percent of victims in rural areas reported the use of violence. Victimization data also reveal that crime is underreported in Cape Verde, especially in urban areas.

Finding of Guilt

The Constitution and law of Cape Verde provide a justice system that follows a due process model. Arbitrary arrest and detention is prohibited by law, and the government generally observes these prohibitions. Arrest without a warrant by an authorized official is prohibited unless a person is caught in the act of committing a felony. The law requires that an accused suspect be notified of charges within 24 hours and appear in front of a judge within 48 hours of being arrested. According to the 2008 Human Rights Report for Cape Verde, the right to a prompt judicial determination of the legality of detention was generally observed by authorities.

Accused suspects in Cape Verde have the right to a public nonjury trial before an independent judiciary. They are presumed innocent and have the right to legal counsel; free counsel is provided for the indigent. Defendants and their counsel have the right to confront witnesses and evidence against them and also have the right to present witnesses

and evidence on their own behalf. Additionally, defendants and their counsel have the right to access any government-held evidence relevant to their case prior to trial. Criminal investigations are conducted by the judicial police branch of the national Public Order Police. Appeals of regional court decisions can be made to the Supreme Tribunal of Justice. The rights of due process are provided to all citizens.

Although the aforementioned due process rights are provided by the Constitution of Cape Verde, numerous barriers exist that may jeopardize the rights of the accused. The judicial system in Cape Verde is overburdened and understaffed, and cases are often dropped without court judgment as a means of clearing cases from the booked docket. This logistical situation has caused lengthy pretrial detention and trial delays to become a serious problem in Cape Verde. Reports suggest that detainees often remain in jail for more than a year while awaiting charge. Another cause for concern is the rights of juvenile offenders. Cape Verde does not have a separate judicial system for juveniles, and they are detained alongside adult offenders.

Punishment

Punishment for serious offenses in Cape Verde typically takes the form of fines and imprisonment. The maximum prison sentence allowed under Cape Verdean law is 25 years. Capital punishment is prohibited, and the last official execution in Cape Verde occurred in 1835, when the country was still under Portuguese rule. The penalty for rape is 8 to 16 years in prison and can be higher if the victim is under the age of 16. Domestic violence, which is considered a major problem in Cape Verde, is punishable by 2 to 13 years in prison but is rarely reported to the police. Government corruption, which also has been identified as a problem in Cape Verde, is punishable by a sentence of up to 15 years in prison. Because of the major concern over drug use and trafficking in Cape Verde, punishments for possession and distribution of drugs are severe. Individuals convicted of drug offenses may face lengthy prison sentences and heavy fines.

Prison conditions in Cape Verde are considered substandard and a major human rights concern. Cape Verdean prisons are characterized by frequent overcrowding, poor sanitation and medical care, and some accusations of prisoner abuse. Although women and men are housed separately, juvenile offenders are housed with adults, and pretrial detainees are housed with convicted offenders. There are 11 total prisons in the Cape Verdean nation, and the official capacity of the prison system is 1,997. Official prison statistics from the national prison administration list a total prison population of 755 inmates, including pretrial detainees. The prison population rate per 100,000 citizens was approximately 178 as of 2007. Approximately 5 percent of the prison population are female, 3 percent are juvenile prisoners, and 37 percent are pretrial detainees. Because of the poor condition of Cape Verdean prisons, medical and psychological health problems are frequently reported. The state of prisons in Cape Verde is one of the country's most significant human rights issues according to the U.S. State Department. Before the country's independence, Cape Verde was home to one of the world's most cruel and infamous prisons, the Tarrafal prison on the island of Santiago. Between 1936 and 1974, the Tarrafal prison, "the swamp of death," was run by the PIDE (Portuguese secret police). Tarrafal was not actually a prison, but rather a concentration camp where political prisoners and opponents of Portuguese colonial rule and fascism were sent to die. Prisoners sent to Tarrafal were often held long after their sentences had been completed or without ever being formally charged or tried. The conditions at the camp were abysmal, and survivors tell stories of isolation and torture on a regular basis. Poor conditions and a lack of medical care caused many prisoners to die from malaria and tuberculosis, among other ailments. Survivor reports describe cement punishment cells where prisoners were intentionally exposed to the sun and mosquitoes for days at a time. The temperatures in these torture chambers often exceeded 150 degrees. The camp was closed in 1954.

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Central African Republic

Legal System: Civil
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Maybe

Background

The Central African Republic (CAR) is a constitutional republic. Its population is estimated to be around 4.4 million. It is located in Central Africa with an area of 240,535 square miles surrounded by Chad to the north, Sudan in the east, Republic of Congo (Brazzaville) and Democratic Republic of Congo to the south, and Cameroon to the east. CAR has a strong executive branch and weak legislative and judicial branches of government

CAR remains a country in which suspected witches and sorcerers are dealt with harshly, despite the existence of a highly bureaucratic civil legal system in which codified law and due process are supposed to take precedence. Unfortunately, this system is circumvented by the government as well as the citizens at every turn. Written codes and Constitution aside, the CAR is very much a country in which mob justice and brutal government repression remain the supreme methods of handling the problem of crime. The country has agricultural, water, and mineral resources, but unfortunately, international bodies such as the United Nations and International Monetary Fund see problems with the way the government runs the country.

Formerly the French colony of Ubangi-Shari, the CAR was formed upon gaining independence in 1960. In subsequent decades, the country has experienced many coups resulting in civil war–like situations, displacing hundreds of thousands of citizens. Many civilians have been killed, kidnapped, or subjected to violence during these times. The failure of the civilian government to control security forces has resulted in a sharp deterioration of the security and humanitarian situation. Further, arms proliferation in the country has complicated the law and order situation, resulting in the deployment of peacekeeping soldiers from neighboring countries.

At the time of independence, the penal code, the code of criminal procedure, and the Constitution were codified such that the criminal justice system resembled the French civil law tradition. As a civil law system, the judicial processes within the CAR are inquisitorial in nature, and the legal profession is highly bureaucratic. The system of policing and the rest of the criminal justice system are also still based very closely on the French structures that were imported during the colonial period. Although there are some remote rural regions in the CAR in which traditional methods of arbitration and conflict resolution are used predominantly, such a situation simply does not exist within the capital, Bangui, and the most populous areas. Moreover, since independence, few changes have been made to either of the two pertinent codes mentioned previously, despite some urgent and very specific crime problems, some of which are seemingly created by the dysfunction of all layers of the criminal justice process.

Unfortunately, the place that the criminal justice system occupies within the greater social and political contexts within the Central African Republic is extremely discouraging. From the perspective of the Central African citizens, the police and the formal judicial process are perceived to hold little legitimacy because of their inability to effectively battle the crime problems of the country. Furthermore, the rule of law is seemingly undermined by discrepancy between popular customary law and the inherited structure and codified law—another problem

common to postcolonial African states. As a result of this lack of confidence and support for law enforcement and the judiciary, citizens commonly apprehend and execute suspected bandits or witches through their own brutal methods. Also born out of the feeble crime control system, the government forces and police engage in human rights violations such as summary executions, illegal searches, arbitrary arrests, and torture in attempts to brutally suppress rampant crime problems.

Politically speaking, units of the national police and the gendarmerie are often utilized by the government to quell political dissenters, rebels loyal to the Patassé government—ousted in a 2003 coup—as well as those suspected or accused of supporting such groups. These individuals are often arrested arbitrarily and held for long periods of time without being brought before a judge, and without the benefit of communication with a lawyer or family members. These practices are in violation of international standards, but also of the Constitution, the penal code, and the code of criminal procedure of the Central African Republic.

There are two major police forces operating within the CAR, listed earlier, as well as several notable specialized divisions. Beginning with the two overarching structures, the national police in the CAR are organized under the director-general of the police and the Ministry of the Interior and Public Security, whereas the national gendarmerie is organized under the Ministry of Defense. Literature regarding the Central African Republic has placed little emphasis on the officers of these two forces in general, but rather has most typically discussed the actions of specialized units found under their auspices. The government's inability to pay wages makes both the national police and the gendarmerie vulnerable to corruption. What are considered routine matters for police, such as calls for police assistance, involve victims paying gas money for police.

The police unit receiving the majority of the attention in the CAR, because of the interest of international human rights advocates, has been the Central Office for the Repression of Banditry (OCRB). Formed by the government to combat the high incidence of banditry throughout the Central African Republic, this particular unit is responsible for a great deal of the human rights violations noted previously. It is common for the OCRB to conduct illegal searches, arrest individuals, and then take them to a location where they are tortured and then killed. Most often, the bodies of suspected bandits, or those who are accused of assisting them, are then driven through the villages in open-air government jeeps as a deterrent to crime, before their bodies are dropped off at the local hospital to be picked up by their families.

Although provisions in the penal code referring to the abuse of power by government representatives are strong, by all accounts agents of the OCRB operate with near total impunity; none have recently been prosecuted for their part in the atrocities committed against the Central African people. It is without question that the vast majority of serious crime problems in the CAR are handled in this extrajudicial fashion, with only rare use of the formal judicial process. Also implicated in the aforementioned activities—as well as rape and other atrocities—has been the Section of Research and Investigation (SRI), which originally operated as a unit of the presidential guard. In fact, the predecessor to the SRI was disbanded in 2003, before being reformed and renamed, following the conviction of five members in the rape of a woman. One final force worth noting in this regard is a mixed brigade of armed forces personnel and members of the national police and national gendarmerie formed in 2004 and tasked with matters of security throughout the country. Citizen complaints against military and police personnel have indicated instances of rape, beatings, and torture.

Crime

General infractions contrary to the law within the Central African Republic are broken up into three categories by the country's penal code. Using the best literal translation, and in descending order of seriousness, the three categories are delineated as crimes, offenses, and infringements. As in French law, these types of infraction are distinguished in the code by the punishments that may be incurred on the individual found guilty of committing them. The types of punishment within the CAR are then also broken up into the three corresponding

categories. Again using the best literal translation, and in corresponding order, the categories of punishment within the CAR will be referred to as those that are imposed in criminal matters, those that are correctional matters, and last, matters of simple police. For the purpose of organization, the actual punishments that fall within these three categories are discussed in greater detail later in this entry under a separate section regarding punishment.

In the area of juvenile justice, the 1994 publication of the Central African Republic's penal code does not specifically denote an age of criminal responsibility under which an offender holds no culpability whatsoever. What is does specify, however, is that a youth offender is someone 16 years of age or younger, who must go to trial before a youth judge (offenders over the age of 16 then are considered adults by the criminal justice system). The youth magistrate must then decide whether the individual shall be held accountable for his or her crime consistent with the present code, or whether the youth offender is deserving of some lesser punishment. A lesser punishment typically holds a minimum punishment equivalent of "simple police matters," although any judgment that the magistrate finds suitable for the rehabilitation of the offender is acceptable. For those accused who are under the age of 14, the judge may only impose a judgment that contributes to the "reeducation" of the offender. Toward this end, an entirely separate juvenile court system was established in the late 1990s in Bangui, and it was reported in 2006 to have tried cases throughout the year. The U.S. Department of State (2007) also reported that this court had provided counseling services for families and young offenders throughout the year. These findings should be viewed as somewhat of an encouraging step, considering that the juvenile court had gone as long as a year without any operation in the past because of lack of funding and personnel.

Crime Statistics

The Central African Republic has yet to report any official crime or arrest statistics to either the UN or the INTERPOL international crime surveys. In fact, there does not seem to be any available data regarding crime rates published within the CAR or otherwise. Given the situation and current context within the CAR, there are several apparent reasons that this might be the case. First, we should consider the fact that the government simply does not have the resources, personnel, or technological capabilities to produce such a statistical product. Amnesty International (2006) reported that the Ministry of Justice had only one computer and one printer for the entire country. Further contributing to the problem, analysts have estimated that as little as 2 percent of the country's geographic territory is actually under the authority of the federal government.

The second factor that has likely as much, if not more, to do with the lack of official crime statistics within the CAR is the government's aversion to transparency. For many reasons, it would be unfavorable from the government's perspective to provide an accurate and official statement regarding crime and punishment to the international community—again, assuming the government was in fact able to do so. For instance, it would be unlikely that the government would publish statistics for arrest made by law enforcement, when in fact in many cases the suspects were simply tortured and killed extrajudicially by the OCRB or the SRI before being dumped at the local hospital.

Several international sources have indicated that one of the most troubling crime problems within the Central African Republic at present is the trafficking of human beings. The CAR is noted as both a source and a destination for trafficked persons—usually children—who are often sold into bondage or prostitution. The CAR currently has no law on the books prohibiting human trafficking, despite having ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others prior to 1992. It should be noted, however, that it is possible under the CAR's current penal code to prosecute human traffickers under articles that are relevant to the trade, such as laws against slavery, sexual assault and exploitation, labor violations, and prostitution and laws governing the mandatory school age for children.

A third prominent crime problem within the Central African Republic is that of rampant banditry. Because very little of the country's actual territory is developed and controllable by the government,

bandits are able to operate extensively in the unstable northwestern regions. These groups are thought to be made up of a mixture of common criminals as well as the remnants of organized rebel groups. According to a report published by the United Nations High Commissioner for Refugees in 2005, the bandits are responsible for kidnapping, hostage taking, ambushes, and general pillaging in addition to armed robbery, and they are typically armed with AK-47 assault rifles and grenade launchers. The government of the CAR has taken some steps toward combating banditry in both the remote regions and the capital of Bangui with the deployment of the Central Office for the Repression of Banditry.

Despite the lack of crime data published by the Central African Republic, outside sources provide some information about the existence and nature of more common crime problems within Bangui as well as the rural areas. Although it is noted by Safer Access (2006) that banditry is a growing problem in the city and on the main roads, this problem is typically confined to the remote villages and routes of travel. Right within Bangui, on the other hand, simple muggings are more commonplace. It is also worth noting that the majority of women arrested in Bangui are facing charges of sorcery or witchcraft. Bangui prison officials in 2006 reported that 50–60 percent of women arrested in the capital were accused of witchcraft or sorcery, an offense that carries the death penalty in the CAR.

Finding of Guilt

The judicial system in the Central African Republic is based very closely on French law, so many of the protections enjoyed by the accused are written into the formal codes. From arrest through the entire court process, the penal code and the code of criminal procedure dictate that the accused are treated in a reasonably just and humane manner. Unfortunately, it is these very tenets of justice that are so commonly violated by the government.

The court process in civil law systems such as France and the CAR can be broken up into three phases. First, there is the investigative phase in which the public prosecutor—who is presented the charge by the police—collects evidence and decides whether such evidence is substantial enough to warrant a formal action. From this point, those cases found to be worthwhile by the prosecutor are forwarded to the examining magistrate, or *juge d'instruction,* who again collects evidence and questions witnesses to in preparation for trial and also determines whether the case should proceed. Finally, during the trial process, both the defense and the prosecution are provided with a record of the investigation and are allowed to make their oral arguments to the judge and jury.

According to formal codes, there are a number of rights that can and should be invoked by the accused in the Central African Republic immediately upon arrest. First, and perhaps most importantly, the offender is by law allowed to meet with defense counsel; it should also be noted here that this right is to be provided at the expense of the government in the case of an indigent suspect. Second, there are several rights delineated in formal code that are intended both to ensure the speedy processing of a case and to limit any unnecessary or prolonged pretrial detention. The pretrial process found in the inquisitorial civil law systems is by nature longer than those of common law counterparts; however, provisions regarding a speedy trial process in the CAR are typical when compared to other civil law systems in that regard. Except in cases of national security, those arrested on criminal charges in the CAR are to be taken before a magistrate within 96 hours of arrest, and any request for bail is to be answered by the *juge d'instruction* within five days. At any point during the investigation or examining phase, if the evidence does not support further detention, the suspect is to be released, and if the investigation is longer than one month, the *juge d'instruction* must come forward to formally make known the reason.

It becomes clear when examining what is known that the pretrial process in the CAR is a serious weak link, one that is institutionally flawed to the point where it would literally be impossible for the court system to satisfy the requirements of the country's own Constitution, penal code, and code of criminal procedure. It should be understood that the civil law

judicial system imposed on the CAR and adopted at the end of colonial rule is one that relies on a great degree of bureaucracy. The type of bureaucracy employed in other civil law countries, however, is simply not sustainable in the Central African Republic. For instance, as a result of lack of funds and trained personnel, several courts within the CAR have remained out of operation for entire calendar years in recent times. Even when operating to government expectations, the criminal court in Bangui does not operate continuously. The Constitution dictates that the court is to have its sessions set up according to needs by the minister of justice, with a typical expectation being once a year for a period of two months. The effects of the institutional and bureaucratic problems such as these would seemingly preclude the possibility of compliance with the speedy trial provisions written into formal code.

The effectiveness of the judicial bureaucracy is severely hampered by the inadequate number of personnel: 150 judges and only 40 practicing barristers in the entire country, and even these are almost exclusively found in Bangui. Judges and lawyers within the Central African Republic enjoy civil servant status and a flexible merit-based system for promotion and salary increase. However, despite the fact that there are very few judges and prosecutors in the CAR, this status has been greatly diminished because of the government's inability to pay its staff.

Regarding the rights provided to the accused when their case reaches the trial phase and beyond, the failure of ineffective bureaucracy has stripped the meaning from any provisions of law pertaining to due process. Technically, the presumption of innocence exists at every stage of the process until conviction, and as mentioned earlier, the ability to put up an effective defense is in theory guaranteed. Defendants in the CAR are tried before a jury in criminal cases and have the right to be present during their trials, and the defense also has the right to question or call witnesses on defendants' behalf. Unfortunately, judges, underpaid or sometimes unpaid, are particularly susceptible to bribes and are often paid off in some way or another by the lawyers in exchange for an outcome favorable to their cause. Once again, it cannot be overemphasized that the trial process is often moot given that the vast majority of criminal problems are dealt with extrajudicially.

Following a ruling by one of the courts of first authority, an individual convicted of a crime in the Central African Republic is afforded the right to an appeals process. In the French tradition, formal code dictates that an appeal may work its way through the appeals courts of jurisdiction and, if necessary, come before the supreme court of appeals, which is the Court of Cassation.

Punishment

The penal code of the Central African Republic divides punishments applicable under the law into three different categories, which correspond to the three different classifications delineated as general infractions. Beginning with the punishments found in the class of "crimes" under article 1, several harsh options are available at the sentencing phase. Listed primarily in article 6 of the penal code are the punishments of death, perpetual forced labor, and a period of forced labor of between 10 and 20 years. Given the typical process we have discussed already, this is the classification of punishments least likely to be imposed through formal court proceedings in the Central African Republic. A second subheading under article 6 lists some additional punishments that are to be applied by the courts in criminal matters of a political nature. Punishments available in specifically political criminal matters include life imprisonment, a prison term of an unspecified length, banishment, and civic degradation.

Three of the most seriously treated crimes—murder, robbery, and rape—fall into this category of infractions, though they are treated somewhat differently at times by the code. For the crimes of voluntary homicide and armed robbery within the Central African Republic, there exists only one possible sentence: death. Robberies that do not include the use of a weapon but that still utilize violence, on the other hand, can earn an individual a life sentence of forced labor. In contrast with homicide and robbery, rape is treated with a little more

ambiguity throughout the code and is liable for a greater amount of judicial discretion. For the simple rape of an individual over the age of 15, a Central African offender can be sentenced to any length of forced labor. Ambiguity again comes in when the penal code states that it reserves the ability to impose stronger punishments on those found to be habitual sexual offenders, as well as those who commit the act of rape on a person under the age of 15. Offenders who are found guilty of lesser sex-related crimes in the CAR, which are separated similarly in Western countries, face a punishment of 5 to 10 years of incarceration.

After listing the death penalty as an option in the category of "criminal matters," the penal code goes on to specify the methods and manner in which the death penalty is to be employed by the state. Somewhat similar to the common practices for summary executions, all those condemned to death in the Central African Republic are to be executed in public, and the only available option for carrying out the death penalty is by firing squad. Once the offender has been executed, the government then turns over the body to the person's family for burial. By law, men and women in the CAR are to be executed in the same manner and by the same means. However, if a woman who is sentenced to death is pregnant, the execution will occur only after she has given birth. Finally, the penal code also prohibits the state from executing convicts on Sundays, or any other religious or national holidays. The Central African government notes that no official death sentence has been imposed in the country since 1981, but again this manifests the lack of formality in executing offenders rather than a progressive stance on the use of the death penalty.

Article 7 of the penal code specifies the punishments for "offenses," which are applicable under our second category of punishments known as "correctional matters." This particular category manifests the punitive philosophy of incarceration and fines. Correctional matters within the CAR are those offenses that are punishable by law through imprisonment for a period of between 1 month and a day and 10 years—except in the case of recidivists or other special cases for which the law has determined different limits. Correctional matters may also carry a punishment of up to 100,000 Central African francs, either in lieu of or in addition to imprisonment.

Burglary and theft in the Central African Republic are both offenses that, under the penal code, merit punishments in the correctional-matters category. Most general forms of theft are said to carry a punishment of one to five years of imprisonment, and a fine of 100,002 to 1,000,000 Central African francs. Burglary, on the other hand, carries the stiffer punishment of 10 to 20 years of forced labor and can result in an even harsher penalty should certain aggravating circumstances be present.

At least through the formal code, the government of the Central African Republic has taken a particularly tough stance against the sale, possession, cultivation, or supply of drugs—also all offenses that are considered correctional matters. In fact, in addition to the development of a special antidrug police force under the OCRB, the law provides for some pretty tough penalties for any form of drug offense. Article 285 of the penal code, found under "special offenses," notes that the aforementioned crime will be punished by 2 to 10 years' imprisonment and a fine of between 100.000 and 5.000.000 Central African francs. It is important to note that this article makes no distinction between growing, selling, possessing, or providing drugs, thus giving the magistrate a great deal of discretion in the sentencing options for any of these listed offenses. Equally peculiar is the fact that there is no difference in seriousness based on classification of drugs; the article tacitly states that hallucinogens will be treated the same way by the law as hashish and other cannabis products.

The final category of punishment listed in the penal code refers to "matters of simple police" and corresponds to the least serious forms of infractions, termed earlier as "infringements." Matters of simple police within the Central African Republic are punishable by imprisonment for a term between one day and one month and by a principle or complementary punishment of a fine between 100 and 50,000 Central African francs. It is also worth noting at this time that the state may confiscate any products or tools of the offense in an infraction that falls into any of the aforementioned categories. In

criminal and correctional matters, these items are subject to confiscation as either principle or complementary punishments, whereas for matters of simple police, said items can be confiscated as a complementary punishment.

Prisons

The prison administration is within the Ministry of Home Affairs. The latest official statistics provided by the CAR's National Prison Administration were published by Home Office (2001) and indicated a total prison population of 4,168 individuals with an incarceration rate of 110 per 100,000. At the time, these figures were among the highest from those central African countries that supplied official statistics. Unofficial estimates provided by the International Centre for Prison Studies (ICPS) later estimated the total prison population within the CAR to be 1,000 however, with a much smaller rate of incarceration, totaling 24 per 100,000 in 2006. In 2002, there were 56 prisons with a capacity of 6,000 inmates. Because the larger number of cases is handled informally, prisons appear somewhat underused in proportion to the amount of serious crime. Another contributing factor is the heavy use of extrajudicial killings and other sanctions in recent years. However a number of prisons were destroyed in 2003 during internal conflict following the revolutionary coup, according to the U.S. Department of State Human Rights Report (2007), so that many of the 56 prisons counted in 2002 were out of service in 2005.

Incarceration practices common within the CAR are often in violation of not only international standards but also the nation's own Constitution and code of criminal procedure. For instance, a large percentage of the general prison population is made up of pretrial detainees—approximately half of all inmates in the nation's two largest prisons in 2006. Contrary to international standards and the relevant legislation, these individuals are often held at length without trial or charge and at times are refused the ability to consult counsel or speak with their families. In addition to these issues, children are housed with adult inmates, where they are often subjected to physical or sexual abuse. In fact, aside from the Ngaragba and Bimbo prisons in Bangui—the nation's sole gender-specific prisons—male and female prisoners within the Central African Republic are housed together as well.

In addition to the systematic institutional practices, prisoners within the CAR are also subjected to a number of abuses by the guards and the administration at each individual prison. Evidence of torture by the guards was observed during a 2000 prison inspection conducted by the African Commission on Human and Peoples' Rights. Corruption is rooted in the system and manifests itself in several common practices. For instance, in recent years inmates have been forced to perform unpaid labor at the houses of political elites, as well as magistrates and other government legal professionals. Visitation from family members is allowed in most cases; however, at times the guards must first be bribed. Despite sometimes having to bribe the guards, the families play an important role throughout prisoners' incarceration. It is typically necessary for the families to supply medical amenities to the inmates and sometimes even food—especially in police or gendarmerie cells. In 2000, it was reported that no food was supplied by prison authorities at Berberati prison in Mambere Kadei prefecture for a period of more than seven months. Even inmates who require serious medical attention are typically without the benefit of an onsite physician, are often refused medical attention at local hospitals, and receive it only at their own expense.

Poor health within the institutions of the CAR can further be aggravated by the conditions under which the prisoners are housed. Communal cells are often overcrowded, with inmates sleeping on dirt floors covered only by straw mats. The 2006 U.S. Department of State Report on Human Rights (2007) noted that a five-square-meter cell at the national gendarmerie's Research and Investigation Division was housing 12 inmates, with only a single bucket to serve as a latrine. The same report noted that the cell frequently flooded during the rainy season, further exposing inmates to disease. In fact, it is not uncommon for there to be so many prisoners in a single cell that they do not have enough room to lie down at the same time. The spread of the HIV virus is also an

immense concern among prisoners within the CAR, given that prisoners with infectious diseases are not segregated from those who are generally healthy, and the majority of the facilities are coed.

As mentioned previously, the two main prisons within the Central African Republic are found in the capital of Bangui and are the only gender-specific prisons in the country. Aside from a few notable exceptions, the Ngaragba prison houses the country's male inmates in conditions much the same as those noted already. Among the general prison population, there are large communal cells shared by both convicts and those on remand—in which the prisoners are required to sleep on straw mats. A second wing of the prison referred to as the "White House" contains former dignitaries of the Patassé regime who are serving time there as a result of the 2003 coup. Finally, a third wing is maintained in which there are isolation cells to be utilized as a disciplinary measure against the inmates.

For information regarding Bimbo prison in Bangui, the second major prison in the CAR, a report completed following a 2000 inspection provides the best description. Again, Bimbo houses female convicts in the same communal cells as those who are on remand. It is notable that some of the latter had been held without trial for as long as five years and that a large number of both types of prisoners at Bimbo were either accused or convicted of witchcraft. The overall conditions at Bimbo prison during the inspection were in large part similar to those found elsewhere around the country. The four cells there housed 36 prisoners, who were subjected to a damp atmosphere courtesy of a leaky roof and the subsequent mosquito infestation. Similar to Ngaragba, civil servants were kept in a cell separate from the rest of the inmates and were provided more favorable amenities including mosquito nets. Aside from the mere exposure to the conditions described here, there were no complaints of abuse from the prisoners during the visit.

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S__ **Further Reading**

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Chad

Legal System: Civil/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

Chad is located in Central Africa with Libya to the north, Sudan to the east, the Central African Republic to the south, and Niger to the west. Chad is home to approximately 10 million individuals. Arabic and French are the official language groups. Islam is the most widely practiced religion.

Chad is a constitutional regime. According to its 1996 Constitution, Chad is a republic founded on the principles of democracy, the rule of law, and justice. Separation of powers is recognized in the Constitution, which established an executive made up of a president elected by the people for a renewable five-year term and a government led by a prime minister appointed by the president. The government is responsible before a single-house parliament (the National Assembly). The National Assembly has the power to remove the other branches of government. The president has the power to remove the National Assembly in the case of excessive conflicts between the executive and legislative branches. The judiciary is established independently, consisting of a supreme court, a court of appeal, tribunals, and a justice of the peace.

Chad's political culture can be grouped as a Romano-Germanic approach of law (sometimes referred to as a "code" law). The legal system is characteristic of a code law system in that it is based on comprehensive legislative statues often bound together as codes. Chad also has maintained traditional and customary laws. Citizen control over the various branches of government is weak. There appears to be general agreement that police and army officials are relatively unconstrained by the paper guarantees of civil liberties, enshrined in various constitutions adopted after 1990.

The rule of law in the Republic of Chad in the past has been and continues to be in a state of flux. Originally the rule of law was based on the framework of French law inherited from the previous colonial rule. Later an austere form of Arab socialism (1969) was incorporated that forbids alcohol, prostitution, nightclubs, and Christian churches. Islamic interpretations were also incorporated into the legal code. All the while, traditional and customary laws were maintained, which often superseded Napoleonic law in practice. Thus, sorting out any definitive set of laws is complicated. These frequent revisions have impacted the Chadian legal system specifically and the Chadian political culture in general.

In 1960, Chad obtained independence and officially received the blessings and diplomatic and economic assistance of France and the Western world. In reality, France encouraged little constitutionalism or free markets in its occupied land. The Constitution adopted in 1990 laid the foundation for political transition but did not provide any explicit blueprint for reform of the security establishment. Ever since Chad's "independence," Chad has been plagued by political violence and recurrent attempted coup d'état. The executive appears to dominate the legislative and judicial branches of government. Members of the judiciary receive death threats, demotion, or removal when they do not cooperate with government officials in terms of granting them immunity for their crimes. Further, evidence suggest that the gendarmerie and the Rapid Intervention Force were formally part of the National Army of Chad (ANT) and received favorable treatment from the executive branch. In fact, it has been suggested that this unit is the real seat of coercive power at the disposal of the ruling elite.

The criminal justice system in Chad has been impacted in numerous ways. Chadians distrust police because they often target unfavorable ethnic groups with verbal abuse, excessive questioning, discriminatory patterns of arrest, and excessive use of force. Because of the breakdown of stability after the 1990 coup, there is considerable pressure for the police to be watchful of certain minorities who might be a threat to the state. What further feeds this officer mentality is that the sheer composition of decision-makers has been based on the preferences or objectives of whoever is in power. That is, positions in the criminal justice system, as in the political system, are often handpicked. This method of selection has resulted in biased policing and ill-experienced officials in general. The inadequacy of the police force has had a ripple effect on the criminal justice system (for example, their inability to protect refugees or control long stretches in the desert). In short, as both the perpetrators of injustice and the protectors of justice, the Chadian criminal justice system's ability to address crime and punishment continues to be problematic.

Moreover, the police act as one of the instruments of the elite in power. Numerous incidents of political harassment as well as coercive action against the press and political parties have occurred. In addition, accusations of extortion and sexual assaults by serving police are common. Officers are

paid low wages and have few benefits. In addition, they are held in low esteem by the citizens. Post-independence politics in Chad, as in numerous other African countries, has been to replace or alter the civic public realm inherited from the colonial powers. In the case of Chad, often it has been replaced with rivaling communal or primordial realms.

Chad inherited its structure of policing from French colonial rule, and the police still bear some features traceable to the colonial factor today. As in France, policing is undertaken by a plurality of organizations whose classifications and nature have changed over the years since independence. Specifically, law enforcement in Chad is the responsibility of multiple agencies including the local police, the state police (gendarmerie), the National and Nomadic Guard (NNG), the Police Rapid Action Company (CARP), and the national army and various executively sanctioned investigative organizations.

At independence, various policing agencies existed, some with a remit extending over several French colonies, such as the National Security Police, or Suret. The Territorial Police (renamed the Nomad and National Guard in 1968 and reconstituted in 1996) were entrusted with security for government officials, premises, and regional posts. A national gendarmerie, formally a military unit, was responsible for rural security, and a national police force of uncertain nature also existed. The onset of rebellion led to the restructuring of existing units and the creation of new ones. Under President Habre, a political police known as the Direction de la Documentation et de la Securite (DDS) came into being and is alleged to have been largely responsible for the extrajudicial killings of up to 40,000 people that occurred under this president (Habre is now standing trial). By the Deby era, policing had come to be parceled out among a number of units whose activities were largely under the control of individuals serving the president. These units included the state police force or gendarmerie, a national police force, the Nomad and National Guard, the Rapid Intervention Force, the Republican Guard, and the Presidential Security Force.

Chad's police force is approximately 30,000 strong (Economic Intelligence Unit Limited). The inadequate size and lack of training and regional violence have come to the attention of the United Nations (UN), who are in the process of compromising with Chadian officials to send in troops to protect citizens (particularly in those areas flooded with refugees from neighboring state chaos).

The Ministry of Public Security and Immigration is responsible for the national police. The ANT, gendarmerie, and GNNT report to the Ministry of Defense (which is under the discretion of the president). The national police fall under the Ministry of Public Immigration. The Republican Guard and ANS report to the president.

Crime

The Republic of Chad has chosen to maintain colonial pieces of legislation, until such time that they are replaced by national laws. The most important colonial piece of legislation is the civil code. Chad is still using the 1958 edition of the French Civil Code. In 1999, the government drafted the "Code des personnes et de la famille" to replace the civil code; however, this has yet to be passed into law by parliament. The penal code and the penal procedure code were adopted on June 9, 1967, and the Anti-Corruption Act on February 16, 2000.

Under both the penal law and penal procedure, there is a tripartite distinction of offenses based on their respective seriousness: crimes, misdemeanors, and violations. Under the penal code, crimes and misdemeanors can incur a 20-year sentence and a 5-year sentence, respectively. Crimes are also classified into attacks against persons, attacks against property, and attacks against public security. Attacks against persons include intentional homicide (murder and assassination), intentional violence (nonintentional death, harm resulting in a permanent injury), and rape (including rape with more than one offender, aggravating circumstances, simple rape, and rape of a minor under 15 years of age). Attacks against property include theft, robbery, fraud, breach of trust, aggravated

An alleged looter is detained at the Chadian prime minister's residence in N'Djamena, Chad, on February 11, 2008. Government buildings were looted in the aftermath of a rebel attack on the Chadian capital. (AP Photo/Jerome Delay)

robberies, and vandalism. Illegal drug use, possession, and sale are also taken very seriously by the courts, and convictions carry stiff sentences and fines.

Challenging Crimes

The following information has been compiled from many sources, including reports to and by the United Nations' human rights treaty bodies. Chad has many crimes that are a particular challenge, including (this list is not exhaustive) state-perpetrated crimes, human trafficking, kidnapping, and child labor.

State perpetrated crime is a major issue for Chad and as such has been brought to the attention of the United Nations and other organizations who are trying to address it. According to the United Nations, security forces have committed and continue to commit politically motivated disappearances, and they have officially sanctioned extrajudicial killings of suspected criminals. Indeed, political instability is a contributor to some of the more horrendous crimes in Chad. In eastern Chad, for example, attacks on villages often result in attacks on women who suffer grave human rights abuses, including rape. In one instance, seven women were abducted and brutally attacked in Djimeze Djarma and held by their attackers for 20 days.

Human trafficking is a growing problem in Chad. It is difficult to measure the extent of the problem of commercial sexual exploitation of children in Chad because of the lack of reliable data and the taboo surrounding the subject. It is known that prostitution, including child prostitution, trafficking for sexual purposes, and forced labor exist in Chad. In fact, children in Chad are some of the most at-risk children in the world. The number of street children and children struggling to survive is growing. More than 11,000 children live in the streets and become victims of violence, exploitation, and disease. According to a UNAIDS/WHO report, in 2002, the population of orphans living with HIV/AIDS was 72,000.

Recent media reports of the inability of EUFOR (European Union Force) and MINURCAT (UN Mission in the Central African Republic and Chad) to protect civilians and curb bourgeoning criminality in Chad raise some serious concerns. In 2008, humanitarian agencies reported various human rights violations in eastern Chad including beatings, livestock theft, and the rape of women and children.

Forced military service is another form of internal child trafficking. The Chadian armed forces are known to have recruited children between 12 and 15 years of age. In 2000, the World Organization against Torture reported that many of the children recruited into the military forces and sent to the front line to detect landmines were under 13 years of age. Chad has no effective restriction on the military recruitment of volunteers who obtain the consent of a guardian. The report noted that 30 percent of abducted children in these areas were recruited as soldiers, 13 percent were raped, and 2 percent used as forced labor. It has been estimated that between 7,000 and 10,000 child soldiers operate in Chad national army and rebel and militia groups.

The practice of female genital mutilation, traditional within some of Chad's larger religious groups, is legally prohibited but widely practiced, affecting nearly half of the country's female population. The traditional sale of child wives is common in Chad's more rural areas. The age of consent in Chad is 14 regardless of marital status, but this is also not enforced, nor are most of the laws prohibiting prostitution and the operation of prostitution houses, which have become commonplace in the south.

Crime Statistics

Gauging the incidence of crime in Chad is more of an art than a science given that Chad has not participated in UN surveys or contributed to the INTERPOL. What further complicates gauging the incidence of crime is that many of the perpetrators of these offenses are members of the military and police forces and are rarely prosecuted. Finally, Chadian civilians are at times reluctant to report crimes to the police out of fear of re-victimization. In terms of reliable information regarding crime in Chad, the U.S. Sate Department Counselor Information Sheet provides some qualitative statements. Other information provided hereafter is based on multiple sources such as newspaper articles, various organizations, and basically whatever information the author gauged to have some validity.

Although politically motivated abuses are common, the incidence of violent crime in Chad is on the rise. Petty theft, burglary, and auto theft occur frequently. The Economist Intelligence Unit's analysts have estimated that Chad experiences over 20 homicides per 100,000 people a year. Expatriate U.S. and European tourists are often targeted for armed robbery (and in the process have been assaulted) and are advised against overt displays of wealth. Sexual harassment and sexual discrimination against women is legally permissible and widespread.

Rural areas are extremely dangerous. Armed bandits operate on many roads, assaulting, robbing, and killing travelers. In some cases the motive appears to be robbery. Suspected perpetrators of these crimes were identified as active duty soldiers or deserters. Employees of foreign assistance organizations or nongovernmental organizations (NGOs) have also been targeted. Interethnic violence is increasing in rural areas as well. Particularly, violence resulting from land disputes has been increasing.

Finding of Guilt

The following section discusses the rights of the accused according to the Constitution of the Republic of Chad, which was adopted in March 1996 and promulgated on April 14, 1996. Accordingly, all citizens are equal before the law. Articles 21 through 26 of the Chadian Constitution form the foundation for fundamental rights under the law. Illegal and arbitrary arrests are forbidden. The accused has the right to a self-obtained lawyer or to a lawyer chosen by the state. The accused is presumed innocent until proven guilty, and no individual can be held responsible for a crime he or she did not directly commit. The Constitution does make mention of the state's right to conduct searches in private domiciles as provided by law. Other rights granted by the state include the following: no individual may be detained in a penitentiary institution unless by virtue of a penal law in source. Incarceration before or while awaiting trial is allowed. The accused also has the right to appeal the judge's decision on the grounds of it being unconstitutional.

The gap between practice and policy in terms of these rights is palpable. More specifically, much of Chad's police force is corrupt and functions primarily to secure political objectives at the expense of socially desirable ones. State and local police regularly ignore certain crimes such as prostitution. Politically motivated arrest, detention, rape, and torture are common. Extrajudicial kidnappings and murder are known to be practiced by the gendarmerie against rebels, suspected criminals, and even election observers. In some cases, these extrajudicial actions have been officially sanctioned. Although members of the police force are occasionally prosecuted for criminal violations such as drug crimes, they are rarely if ever brought up on charges of human rights abuses. Though constitutionally prohibited from doing so, Chad's police agencies regularly arrest and detain suspected criminals and enemies of the state without the required warrants. As with many of the freedoms guaranteed

by Chad's Constitution, the rights of the citizenry and press are secondary to the political objectives of the ruling party. The press in Chad is routinely controlled through intimidation tactics, police harassment, and detention.

At the national level, the Constitution provides for a Supreme Court, Constitutional Court, and Court of Appeals. At the provincial or local level, there are appeals courts in N'Djamena, Moundou, and Abeche. Chad's legal process begins with the submission that a crime occurred. After crimes are submitted to the criminal courts under the provisions of the criminal procedure code, the judicial process ensues. A hearing takes place, led by the chairman, in which a prosecutor or deputy prosecutor is present. The next phase would involve the courts of divisions, which are separate jurisdictions to which judges are assigned. Civil and commercial cases go to the chairman, and criminal cases go to the state prosecutor. Trials are public; guilt is often assumed, particularly in the case of theft and rape; and in theory, defendants and their attorneys have the right to question their accusers.

Criminal courts are nonpermanent jurisdictions and are made up of a chairman of the Court of Appeals or a counselor, two counselors, and four magistrates' assistants. For civil cases, commercial cases, minor offenses, and police court matters, the criminal courts (also referred to as courts of first instance) are the common law authority. The judicial system consists of 4 criminal courts, 4 magistrates' courts, 4 labor tribunals, 14 district courts (in major cities), 36 justices of the peace (in larger townships), and a court of appeal (the Appellate Court of N'Djamena). Criminal courts convened in N'Djamena, Sarh, Moundou, and Abéché, and criminal judges traveled to other towns when necessary. In addition, each of the 14 prefectures has a magistrates' court, in which civil cases and minor criminal cases are tried. In 1988, 43 justices of the peace served as courts of first resort in some areas.

Chad also has an unofficial but widely accepted system of Islamic sharia courts in the north and east, which have operated for a century or more. Most cases involve family obligations and religious teachings. In most rural areas where there is no access to these formal judicial institutions, sultans and chiefs preside over customary courts. Their decisions may be appealed to ordinary courts.

In other areas, traditional custom requires family elders to mediate disputes involving members of their descent group—that is, men and women related to them through sons and brothers. Civil courts often consider traditional law and community sentiment in decisions, and the courts sometimes seek the advice of local leaders in considering evidence and rendering verdicts.

Originally, a supreme court was inaugurated in 1963 and abolished in 1975. The Court of State Security was established in 1976. Courts-martial, instituted early in the Déby regime to try security personnel, no longer operate, and the remaining military magistrates sit as civilian judges on the N'Djamena Court of Appeals. Following the 1990 coup, the structure and functioning of the judicial system was seriously disrupted. Because of the breakdown of law and order, the judiciary was unable to handle criminal cases. Interference by the government and by the military contributed to the breakdown. Many magistrates went out on strike in 1993 to protest difficult working conditions and nonpayment of salaries.

The new constitution, adopted in March 1996 by referendum, mandates an independent judiciary from the executive and the legislature. Judges remain in office on a permanent basis, and they are only subject to judicial review. The judiciary comprises the Supreme Court, courts of appeal, tribunals, and the justices of the peace.

The administration of the judiciary (including the appointment, promotion, discipline, and responsibility of judges, etc.) is the responsibility of the High Council of the Judiciary (HCJ). The HCJ proposes judges to the president for appointment and promotion. The council is chaired by the president of the republic, with the minister of justice and the chairperson of the Supreme Court, respectively, as first and second vice-chairs. The other members of the HCJ are judges elected by their peers. When sitting on disciplinary matters, the HCJ is presided over by its second vice-chair.

Though steps have been taken to follow these provisions, it is clear that there continues to be

significant interference in the independence of the judiciary, including from the executive arm of the government. In 2000, the chief justice of the Supreme Court demoted two Supreme Court justices, reportedly because they made a decision that adversely affected the interests of the chief justice. The president names the chief justice, and 15 councilors are chosen by the president and the National Assembly. Appointments to the bench are for life. A Constitutional Council reviews legislation, treaties, and international agreements before adoption. Nine judges are elected to the Constitutional Council for terms of nine years. The Superior Council of Magistrates oversees and guarantees the independence of the judiciary. In 2001, several justices were sanctioned for malfeasance.

The government of Chad has not put in place appropriate legal provisions to protect children against abuse and exploitation. Chad has ratified most of the relevant child rights treaties. Chad does not have a policy for free primary education or a juvenile justice system. However, the establishment of separate juvenile quarters is on the policy agenda according to a recent meeting between Chad and the international community; the UN committee encouraged and applauded the establishment of juvenile chambers to deal with offenders ages 13 to 18 in courts of first instance; and additional legislation on the treatment of juveniles has been recently adopted. Accordingly, Chad has plans to build facilities to separate juveniles from adults and continue training judges.

Punishment

Punishments typically used in Chad are fines, prison, and various forms of corporal punishments. What follows is a sample of crimes and punishments allegedly associated with those acts. Because of the Chadian blend of various legal frameworks (e.g., French civil law and the inclusion of traditional and Islamic interpretations), types of punishments vary depending on a number of factors, such as geographical region, religion, citizen status (refugee), ethnicity, and police corruption. The latter factor has further complicated any real attempts at gauging crime because authorities contribute heavy-handedly to the prevalence of various crimes, which in turn helps to mask actual crime rates because of underreporting by citizens and officials alike. In addition, police agency incompetence in general has stunted Chad's capability and prevented any sense of progress from entering the professional era of policing.

In part owing to Africa's legacy of using corporal punishment, Chad frequently resorts to this sanction for certain offenses, although not overtly. A recent report posited that in Chad corporal punishment in the penal system as a sentence for a crime is prohibited. It can be used, however, as a disciplinary means whether on a suspect or a convict. In a recent incident, security forces in N'Djamena arrested, detained, and reportedly tortured two individuals who were accused of theft (Bureau of Democracy, Human Rights, and Labor 2007). In a separate case (June 2007), security forces arrested without charge, beat, and detained for one week a lieutenant (Bureau of Democracy, Human Rights, and Labor, 2007).

Legally speaking, the law does not explicitly forbid corporal punishment against individuals, but it mentions in general torture and maltreatment or assault and battery (see article 252 of penal code). The law provides for higher sentences where children are involved. In Chad, corporal punishment in schools was prohibited by decree in 1970. Both lethal and nonlethal and legal and nonlegal forms of corporal punishment are employed by police authorities. In all, acts of democide and genocide—perhaps the most extreme form of punishment possible—over the last half century are responsible for the deaths of 20,000 individuals in Chad.

Economic sanctions are used often as penalties for breaking the law. For example, assault is handled primarily through economic sanction, but there is the option of a prison term ranging from six days to one and a half years (article 252 of the penal code). Where a child below 13 years is the victim of assault and injuries, the sentence may be double. In most cases we see economic sanctions in combination with imprisonment. For example, "pimping," or living off the prostitution of others, is punishable by a fine and imprisonment for six months

to two years. If the offense is committed against a minor, the imprisonment increases to two to five years. Operating an establishment for prostitution in a brothel or on other premises is also prohibited. Punishment for the offense is a fine and two to five years' imprisonment.

Those found guilty of engaging in forced marriages face anywhere from six months to two years in prison and a fine of 100 to 500 dollars. Trafficking violations are accompanied by penalties of between 10 months and life imprisonment. If trafficking involves children, the penalty jumps to 10 to 20 years of hard labor in prisons. Rape is punishable by prison. However, it is rarely prosecuted or reported. Homicides are punishable by death or long prison terms accompanied by hard labor. Drug offenses carry fairly long prison sentences; however, ascertaining the length of those sentences was difficult.

With the integration of multiple sources of law, in the northern Muslim areas, the concept of dia, which is payment to the family of a crime victim, is practiced widely. These payments are decided by local leaders and are challenged by non-Muslim populations who support the civil code and claim the practice of dia violates the Constitution.

The death penalty is allowed in Chad. Crimes punishable by death include homicide. However, it appears the people of Chad can be put to death for a variety of reasons, such as protesting, suspicion of belonging to unfavored group, and so forth. Executions are carried out either judicially or extrajudicially. Extrajudicial killings usually occur outside the capital. The judicial method of execution is execution by firing squad. It is suspected that extrajudicial killings are carried out by a single official. Other methods have included death while in custody as a result of torture and stoning. The 19 death sentences imposed on July 30, 2004 were the first since the November 2003 executions of 9 individuals. Based on available data, Chad has fairly low rates of legal executions. One reason may be because extrajudicial killings help mask those figures.

The Chadian legal system does not respect the right to a full appeal against either conviction or sentence in capital cases, in contravention of international law. The only recourse open to those sentenced to death is to submit a cassation plea on grounds of gross errors of fact or law to the cassation chamber of the Supreme Court. If successful, the case is sent back for retrial. If unsuccessful, the convicted prisoner may appeal for presidential clemency. The 19 men's lawyers have submitted a cassation plea to the Supreme Court. In at least one known case, a man was convicted and put to death while his appeal was being put together by his lawyers.

Prison

According to the International Centre for Prison Studies, Chad's total prison population as of 2007 was roughly 2,800 prisoners, approximately 35 per 100,000 national population. Females make up roughly 2.4 percent of the total prison population. Foreign prisoners constitute 1.3 percent of the total Chadian prison population.

Chad has a total of 46 prisons throughout the country. The central prison is located in the capital city of N'Djamenas and houses over 700 prisoners. All of Chad's prisons are characterized as having harsh and life-threatening conditions. For example, N'Djamena's Central Prison was built to hold 350 prisoners, yet it holds nearly double its capacity. Overcrowding also translates into the mixing of prisoners across categories of those incarcerated (pretrial detainees, convicts, juveniles, men, and women). Available data show very high numbers of pretrial detainees in prisons as well as those awaiting sentencing or the outcome of appeals. These individuals account for anywhere between 50 and 70 percent of the prison population.

Not only are prison conditions in general poor; so too is management of those prisons. The Department of State described Chadian prisons as primitive. Food rations are inadequate, and prisoners usually need an outside connection to food. Prison personnel lack professional training and as a consequence often abuse prisoners. It is not uncommon for individuals to serve their term but not be released because of inadequate record keeping. Juvenile males are not always kept out of sight and sound of adult prisoners. Pretrial detainees are

commonly held with convicted prisoners. Although the law authorizes forced labor, reports from human rights organizations suggest that forced labor generally does not occur.

Access to Chadian prisoners is possible under certain circumstances. The primary determinant is whether the prison is civilian or military. For the most part, with the confirmed existence of illegal prisons run by the gendarmerie, national security agency, and the police, Chad officials have granted certain nongovernmental organizations a permanent authorization notice to visit civilian prisons at any time. Other NGOs must obtain authorization from a court or director of a prison. In short, selected prisons are accessible to selected individuals.

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Comoros

Legal System: Islamic/Civil
Murder: Medium
Corruption: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

The Union of Comoros consists of three islands named Grande Comore, Anjouan, and Moheli. The island of Mayotte is claimed by Comoros as a fourth island; however, Mayotte is still very much under French control. Comoros is located in the Indian Ocean off the southeastern coast of Africa between Madagascar to the north and Mozambique on the northeast. Comoros, with an area of 863 square miles, is a poor country, with very few natural resources. The population is over 700,000, and transportation among the three islands is insufficient. Ninety-eight percent of the country is Sunni Muslim, and children attend Quranic school for two or three years, beginning around age five. School for older students has more French influence.

Comoros is a federal presidential republic, and the president is the head of the government and head of a pluriform multiparty system. The Constitution of the Union of Comoros was ratified on 2001. Comoros has had a history of political unrest, in part because its Constitution allows for each island to have governmental autonomy in addition to the union government.

Although many disputes are resolved by village elders or small courts, there is a clear criminal process and a criminal code that is a blend of Islamic law and French law. Although the judiciary is independent of the executive and legislative bodies, corruption of government is also an issue of great importance, and there are concerns that judges face pressure to make decisions in favor of government officials or risk removal from office.

Police forces are varied among the islands, with each island supporting its own local police force. Grand Comore and Moheli have a union military and a union gendarmerie that handle both defense and local policing. The union police handle immigration issues and local policing on Grande Comore. Anjouan police authorities may be difficult to distinguish, given that several military groups are armed on the island. Corruption among police forces is rampant, and officers have been known both to take bribes from citizens and to bribe citizens into making false reports. Police officials are attempting to develop their professional skills and

raise the integrity of police work in the nation. Attendance at international law enforcement trainings held by the United States allowed Comoros to take part in training on dealing with terrorism, anticorruption, financial crimes, border security, drug enforcement, and firearms. The training also focuses on adhering to the rule of law while supporting democracy.

Crime

There is evidence that transnational crime issues are plaguing officials because assistance has been sought in dealing with these problems from police training agencies, and human rights offenses are reported to be of most concern to the international community. Technology does not appear to pose a problem for collecting criminal data because there appear to be at least 22,000 Internet users on the islands, a sign that the Internet is a reliable communication device and citizens are not without technology skills. The hope is that as Comoros reaches out for assistance from developed nations in addressing these human rights and transnational crimes issues, pressure will be applied on Comorian officials from those providing the assistance to collect data on criminal activity and other activities in the criminal justice system.

The legal system incorporates French and Islamic law, and although violent crime does appear to be uncommon, there is evidence of crimes against human rights, including violence against women, child abuse and child labor, and issues surrounding the trafficking and use of drugs, and there is concern that terrorists seek refuge in the islands. Reports indicate that government leaders are not in denial about these transnational crime issues and are seeking to address them, either through unifying with other African nations to ratify protocols that would establish laws and systems to handle certain crimes or through training provided by U.S. law enforcement and other aspects of criminal justice.

Comoros relies on the French criminal code to prosecute criminal activity; therefore, it would appear that offenses are categorized according to their seriousness as felonies, misdemeanors, and petty offenses. However, it is difficult to pinpoint which crimes fall into these categories. In France, crimes considered felonious include murder, trafficking of drugs, treason, rape, money laundering, certain offenses related to destruction of property, and terrorism, and those considered misdemeanor crimes include some forms of counterfeiting, threatening an individual, certain forms of negligence that cause physical harm to others, and degrading behavior toward another person, including assault. The law does consider unmarried children under the age of 18 as minors, and the U.S. State Department Report on Human Rights Practices suggests that minors are not incarcerated but sent home to parents. There does not appear to be a separate criminal code dealing with juvenile offenders. Because Islamic law also governs, it is important to point out that Islam does prescribe a punishment for criminal offenses as well, which may be employed by courts in Comoros. In Islam, crime is a serious moral problem and has a broad perspective, meaning Islam defines crime as any act forbidden in sharia against a person or his property.

Crimes that represent a particular challenge to Comoros are mostly in the areas of human rights. Reported to officials frequently, crimes such as violence against women, child labor, and child abuse are rarely investigated or prosecuted. Comoros did ratify the Protocol on the Rights of Women in Africa, which establishes the African Court on Human and People's Rights, but critics of the countries that have stepped forward indicate that little has been done in these nations to inform women of their rights and of access to this new forum for resolving these abuses against them. Reports indicate that 28 percent of children ages 5 to 14 are engaged in child labor, some in homes as domestic servants.

Penalties for possession, use, or trafficking of illegal drugs are very stiff, including long terms in prison and very high fines. Information on which drugs in Comoros are declared illegal could not be located; however, reports on other nations in Africa do indicate opiates, cocaine, and heroin among the drugs that are being tracked throughout the continent. Reports indicate that there is a possibility that terrorists have sought safe haven in Comoros. Officials in the nation have taken measures to increase counterterrorism training for military and police

officials, relying on the United States to provide much of this training.

Several U.S. and international travel advisories' Web sites warn against mugging and pickpocketing but advise that violent crime is not likely in Comoros. Comoros does not report any crime data to INTERPOL or to the United Nations.

Finding of Guilt

Religious courts, those that make decisions based on Muslim teachings, conduct hearings on family or personal relationships and are scattered throughout the islands. Lower courts, or courts of first instance, are located in towns on the islands and handle small disputes. The High Council reviews the decisions of the lower courts and consists of two members appointed by the president, two members elected by the Federal Assembly, and one elected by the council of each island. This High Council, similar to the U.S. Supreme Court, hears cases involving the constitutionality of laws. Magistrates are appointed by decree.

In Comoros, the law does require that a warrant be issued for a person who is detained; however, in practice, persons may be detained for long periods of time without being charged. Persons detained are advised of their right to an attorney, but with scarce legal resources, this service is rarely available to defendants. Persons are admitted to bail if conditions are met. The law does provide for the right to a fair, public trial, and defendants are presumed innocent until proven guilty. Juries deliberate on criminal cases, and defendants do have the right to appeal their case to a higher court. Many of these rights are also supported by statements in the Constitution of the Union of Comoros, which states that all persons are equal under the law and have the right to defend themselves. Although these provisions are acknowledged as proper and legal practices in Moheli and Grande Comore, citizens on Anjouan are not as lucky. It is reported that journalists, politicians, and teachers have been detained without due process on numerous occasions and held for months. These radical actions likely have resulted from their protests against Bacar, the self-appointed leader of Anjouan. References to prosecution of trials in Comoros indicate that magistrates or judges themselves prosecute cases. Statistical data on the number of lower-court judges in Comoros could not be located. There is no juvenile court system or welfare system to attend to juveniles.

Punishment

The categories of punishment in Comoros are known as *hudud, qisas,* and *ta'azir.* According to these three systems, for certain offenses, such as adultery or fornication, death by stoning is the punishment. For stealing or robbery, the punishment might be cutting off the defendants' hands. In Islam, no man or court has the right to alter the punishment. The most serious form of punishment is capital punishment.

In the French code, prison terms, fines, and reparations to the state or victim are common punishments. Examples of punishments per the French code include 20–30 years' imprisonment for abduction, and 20 years' imprisonment for rape, with all terms carrying very hefty fines to the state. Depending on the severity of the drug offense, life imprisonment might be ordered; in any event, a conviction of possession alone will likely carry at least a five-year prison sentence. There are no statistics available as to the number of state executions of prisoners.

Prison conditions are poor; many of them are overcrowded, are lacking in medical care, and have little or no running water. Women and men are kept separate from each other. The government does allow prisoners to have visitors. Information regarding the number of prisons was not obtainable, however, on the Island of Anjouan; authorities use makeshift prison containers, such as crates or boxes.

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Congo, Democratic Republic of the (Congo-Kinshasa)

Legal System: Civil/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Maybe

Background

The Democratic Republic of the Congo (DRC) or the *Republic democratique du Congo* is a Francophone country located in Central Africa. To distinguish it from its neighbor with the same name, it is called Congo-Kinshasa, after its capital. It is also known variously as DR Congo, DRC, or RDC. The DRC has been plagued by social and political turmoil since gaining its political independence from Belgium on June 30, 1960. The name Congo is derived from a major river in the area called Congo or Zaire found in the Bakongo ethnic group enclave. Kinshasa is the largest and capital city of the Democratic Republic of the Congo. The DRC's neighbors include the Central African Republic and Sudan to the north; Uganda, Rwanda, and Burundi to the east; Zambia and Angola to the south; and the Republic of the Congo to the west. It is separated from its neighbor to the east, Tanzania, by Lake Tanganyika. The DRC has a small coastline of 40 kilometers to the west of the Atlantic Ocean and a nine-kilometer access to the Gulf of Guinea through the Congo River. A recent estimate puts the population of the Democratic Republic of the Congo at 66,514,506.

The DRC became an independent country in 1960. The new constitution that came into force on February 2009 allows for the establishment of a bicameral legislature, comprising the Senate and the National Assembly. The executive branch of government consists of a 60-member cabinet, the president, and four vice presidents. The four vice-presidential positions in the DRC government are unique and have earned the president and vice presidents the popular nickname "the 1 + 4." The president is the head of state and commander-in-chief of the armed forces. The party with the majority in parliament is authorized by the Constitution to appoint prime minister and the cabinet. ~~Unlike in many countries, it is the government rather than the president that is responsible to parliament~~. The Constitution allows for the establishment of an independent judiciary headed by the supreme court of the land. The Supreme Court has powers to adjudicate or interpret matters of constitutional significance. However, under the new constitution, the powers of the Supreme Court are to be scaled down with its division into three new institutions, including a constitutional court to perform the functions of the Supreme Court in interpreting constitutional matters.

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Crime

The DRC has an independent and relatively autonomous judiciary. The judicial branch is composed of the constitutional court, the appeals court or *cour de cassation,* the council of state, and the high military court, in addition to civil and military courts and tribunals. The DRC's new constitution was adopted on December 18, 2005, following a national referendum. The DRC has accepted International Court of Justice (ICJ) jurisdiction, although with reservations.

Prosecutor Benjamin Bansenga, left, and Judge Midagu Amani conduct a court case in Bunia, Democratic Republic of Congo, on April 23, 2004. The two are part of a small team of judges and prosecutors dispatched here from Congo's capital to help restore the rule of law and central government authority to a region still tense and violent after a five-year war. (AP Photo/Schalk van Zuydam)

Numerous civil wars, economic and political instability, and governmental corruption all have contributed to the destruction of the DRC's infrastructure, making it difficult to maintain law and order in the country. Armed robbery, theft of vehicles, and carjackings are common in the DRC. Despite the presence of the largest UN peacekeeping operations in the area, the Democratic Republic of the Congo is considered a dangerous, high-crime area. Kinshasa has been rated one of the most dangerous crime cities in Africa. The maintenance of law and order in the country has been a challenge because of the social and political upheaval that has plagued the country for several years. Further compounding the security problem in the country are the civil wars in neighboring countries. Kinshasa's homicide rate is about 12.3 homicides per 100,000. Muggings, robberies, rape, kidnapping, and gang violence occur throughout the country. A recent UN report notes that some of the murders, robberies, rapes, lootings, and arsons are committed by a Rwandan rebel group, the Democratic Forces for the Liberation of Rwanda (FDLR). Many view the FDLR crimes against the civilian population as retribution against the people of the DRC for to the DRC's support of the Rwandan government against the rebel group. The frequent attacks on the civilian population by the rebel groups have left many children orphans, homeless, and street beggars. The Congolese army is also involved in the looting and mass rape of the women.

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The DRC is also a major source and destination for women, children, and men trafficked for forced labor, sexual exploitation and child armies. Many of the child victims of human trafficking are orphans and street children whose parents were killed or abandoned them while fleeing the war. Reports by UNICEF indicate that there are approximately 15,000 to 40,000 children, from as young as 3 years to 13 years, in the streets of the Democratic Republic of the Congo. Some of the children are abandoned in the streets because their parents or their church pastors have declared them witches. It is also reported that some of the children are driven away from their homes by their parents to reduce the number of mouths they must feed. The children sometimes join criminal gangs for survival.

The Democratic Republic of the Congo is considered one of the biggest producers of cannabis. However, the cannabis produced in the country is for local consumption only. Money laundering is said not to be a problem because the banking and financial systems are underdeveloped. The maintenance of law and order in the DRC is ineffective because the law enforcement agencies lack the financial, technical, and human resources to carry out their duties. Corruption within the government and law enforcement agencies is also a major limitation against effectiveness. However, the MONUC, the UN peacekeeping force, is mobilizing joint civilian groups to help protect civilians against both rebel and military attacks in war-torn areas. The personnel for the joint civilian protection are drawn from the agencies of civil affairs, child protection, human rights, and political affairs.

Police and Punishment

Political corruption, social and economic injustice, exclusion, poverty, and more than 40 years of conflict and wars in the DRC have greatly affected the well-being of the people and their relationship with the government, especially the police. The police force has been politicized, underfunded, ill-equipped, and ineffective. During the regime of Mobutu Sese Seko, one of the branches of the police charged with investigating crimes was converted by the president and used to witch-hunt his political enemies, for example. The Center Nationale de Documentation (CND), formerly known as the Surete Nationale, had authorization from the president to arrest individuals perceived as enemies of the state without regard to constitutional safeguards. The primary function of the CND changed from that of national police to an outfit for the protection of the president. Political opponents and perceived enemies of the state were implicated by the CND for planning or attempting overthrow of President Mobutu Sese Seko and other treasonable felonies.

One of the agreements reached during the recent inter-Congolese dialogue was the creation and reunification of the republican army and police force. This new force is to be well equipped, trained in new technologies, provided better wages, and devoted to the protection of the people and the nation. To enhance the security of persons and property, the new police force will be well equipped to perform security and intelligence services throughout the nation. They also will be involved in the training of specialized units of the armed forces, police, and security services. Other countries such as Nigeria, Israel, the United States, the United Nations, South Africa, Tanzania, and Uganda have provided training, logistics, and resources to the DRC police force.

The DRC enacted a new constitution in February 2006 that included many provisions to protect human rights. It has, however, failed to amend most of its acts of parliament, which give power to the authorities under the military penal code, allowing for military trials of civilians for several offenses. According to the Constitution, the military tribunal has jurisdiction over army and police personnel and not civilians, and the right to freedom from discrimination on several grounds, including sex, is guaranteed. Yet the failure to amend jurisdiction and control of the military tribunals results in many human rights violations. For instance, the Constitution does not make any reference to the death penalty for a number of offenses, including some against the state, yet scores of people are given death sentences by military courts every year, although no executions have been reported since 2003.

Prison

No information is available on corrections in the DRC. Kinshasa, the capital of the DRC, has several prisons. Some of them function within the authority of the courts and tribunals. The places of detention include prison cells under the authority of courts and tribunals; lockups of the Armed Congelese Forces (FAC) and Congolese National Police (PNC); private prisons of certain authorities that include both civil and military offenders; and prisons of the civil and military police forces. Data from 1997 indicate that in Kinshasa, the Kinshasa Penitentiary and Re-education Centre (CPRK, the Central Prison of Makala) is the only official detention center under the authority of the courts and tribunals. This facility houses both military and civilian prisoners, a procedure adopted with the closure of the military prison at Ndolo.

The administration of this facility comes under the Ministry of Justice as well as the Ministry for National Defense. There are about 10 wings, including include one for adolescents and one for women. Though the facility is intended for less than 1,000 inmates, in December 2001, there were an estimated 2,285 civilian and military prisoners. Families can visit detainees every Wednesday, Friday, and Sunday between 10 A.M. and 4 P.M. in all wings with the exception of Wing 1. For Wing 1, visitation is allowed only on Sundays between 12 noon and 3 P.M. Visitation is limited to 10 minutes, but families are allowed to leave food for inmates. Inmates' diet is a serious concern. There are widespread reports of severe malnutrition among the inmate community and, reportedly, a high number suffering from tuberculosis.

The prison of DEMIAP/Central District called "Ouagadougou" is considered one of the most dreaded prisons in the Kinshasa area. It consists of an unfinished storied building with a long corridor containing three narrow cells each measuring 4.5 square meters. Inmates in these cells are subjected to inhumane, cruel, and degrading conditions. The inmates sleep on the ground, in a narrow overpopulated cell with no toilets or other amenities. Rainwater seeps in, and with the heat and stench from stagnant water and no toilets, the conditions are considered inhumane. In addition, prison guards extract money from inmates in exchange for meager food rations. Torture is a common practice, and often, many inmates are kept isolated from any contact with their lawyers or families for months at a time.

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Congo, Republic of (Congo Brazzaville)

Legal System: Civil/Customary
Murder: High
Burglary: Low
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

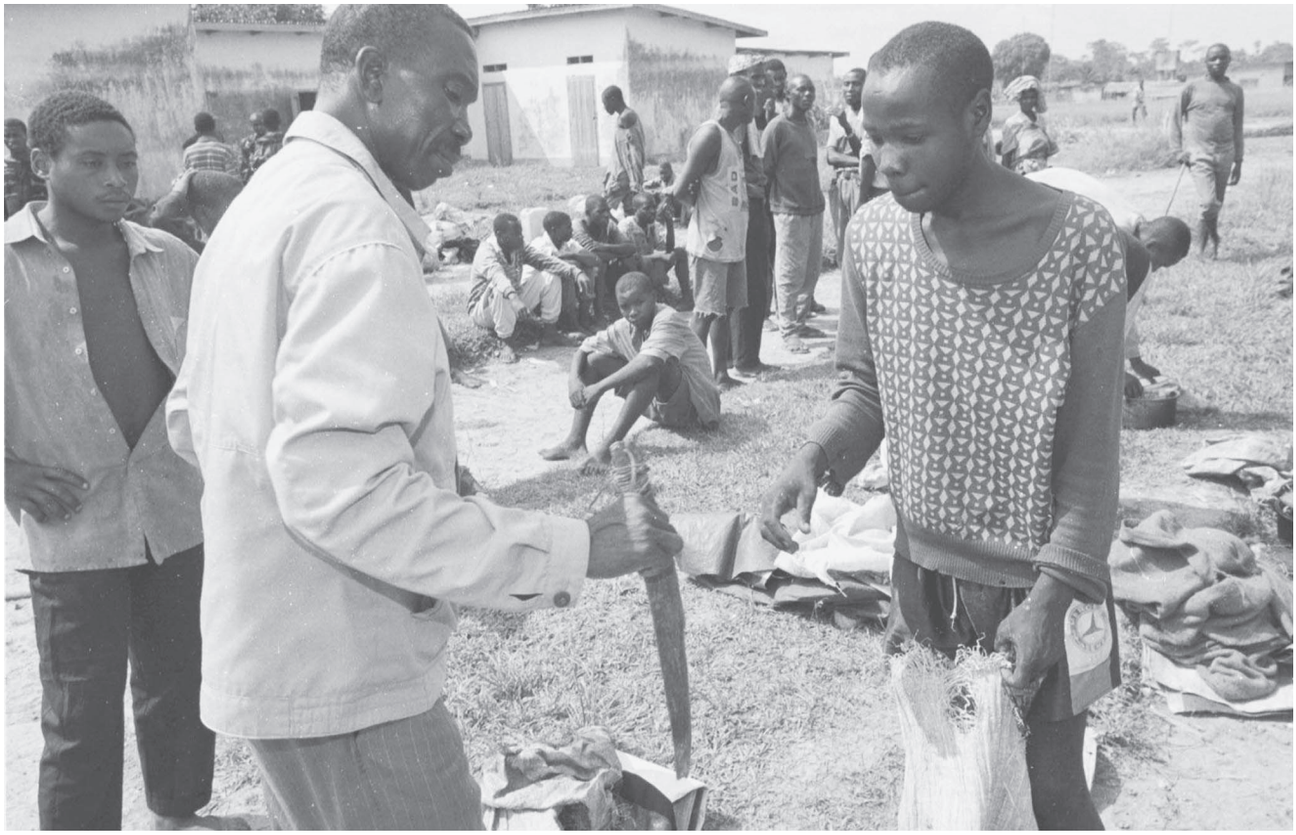
Background

The Republic of Congo, also referred to as Congo Brazzaville or Congo, is located in Central Africa, bordering Cameroon, Central African Republic, Gabon, the province of Cabinda, the Democratic Republic of Congo, and the Gulf of Guinea. In 1960, after gaining independence from France, the nation's government experimented with the ideas of Marxism. In 1992, after Marxist theories were deserted, a democratic government took office. The

democratic government lasted until 1997, when a civil war broke out in Congo. This ultimately led to a period of ethnic and political unrest.

The legal system is based on French civil law and African customary law. In general, the French legal system has developed through several stages, resulting in a blend of both an accusatorial system and an inquisitorial system. Two codes were adopted in France at this time: the Code of Criminal Instruction of 1808 and the Penal Code of 1810. The penal code resulted in a list of definable offense and reforms, including stiffening of punishment for recidivists, parole, and probation, which were used to accommodate the new penal code. Since this time, new reforms have taken the place of the Code of Criminal Instruction, which was replaced by the Code of Penal Procedure. In 1992, a new penal code was established, taking effect in 1994. The new penal code kept the three-part distinction of crime that France had established—crimes, misdemeanors, and violations—and also addressed new issues within the legal system, including new types of crimes.

The security forces in the Republic of Congo include the police, the gendarmerie, and the armed forces. However, the distinction between the three is ambiguous. The police are tasked with maintaining internal control mainly in cities, whereas the gendarmerie focuses its efforts outside cities. A primary and important task for police is to provide election security, whereas the military is responsible for external security. In theory, the police should be the first to respond to incidents, with gendarmes and army units intervening later on, if necessary. How the police forces are divided also remains unclear. The Congo government is unclear not only about how the police are organized, but also about its strength in numbers.



A police officer from the village of Loukolela, Republic of Congo, northeast of Brazzaville, confiscates a knife from a Hutu refugee, who arrived after crossing the Congo River by canoe. Loukolela hosts 6,250 Rwandan Hutus who fled across Congo fearing attacks from Laurent Kabila's Tutsi-led army. (AP Photo/Jean-Marc Bouju)

Estimates suggest that there are currently about 70,000 to 100,000. What is known is that police forces and the military often have operations that overlap and are generally not effective. Since the civil war in 1997, new recruits have mainly come from nongovernmental militias. One of the most infamous groups of security forces are the "Cobra" militiamen under control of President Sassou-Nguesso. The Cobras have been responsible for numerous killings of unarmed civilians believed to be supporters of the Ninjas, former prime minister Bernard Kolela's militia. In 1998, forces considered loyal to President Sassou-Nguesso reportedly killed more than 100 unarmed civilians and raped numerous women.

Moreover, Congo's military is made up of the Congolese Armed Forces (Forces Armees Congolaises, FAC), which includes the army, navy, Congolese Air Force (Armee de l'Air Congolaise), gendarmerie, and Special Presidential Security Guard (GSSP) (2008). Manpower available for military operations is approximately 842,771 for males ages 16 through 49 (2008). As of 2007, women were not allowed to serve. The army remains weak and could again collapse quickly if faced with a serious threat. Although most former belligerents now form the transitional government and formally support the new army, they and their ex-soldiers sometimes ignore orders from the military hierarchy that they consider to be in conflict with the interests of their respective factions. Indeed, the reluctance to move forward with reform in many security structures is a deliberate strategy on the part of the leaders who fought the 1998–2002 war to preserve their ability to respond with force if the elections do not turn out to their satisfaction.

Beating civilians and detainees and raping women is a norm for security forces in the Republic of Congo. In practice, security forces sometimes use beatings as punishment and to gain a confession. Female detainees are often raped. Other acts by the security forces in Congo include beating citizens and stealing from their homes and extorting travelers for money at checkpoints. Often times, no action is taken against the security forces. In 2001, a survey was conducted of 2,000 persons. Of the 81 percent that had contact with the police, more than 65 percent were dissatisfied with the treatment.

Crime

The classification of crime in the Republic of Congo follows the French classification. Under the French Penal Law and Penal Procedure, there are three classifications of offenses: crime, misdemeanors, and violations. These offenses are classified according to their seriousness. For crimes and misdemeanors, a distinction is made between completed and attempted acts. Under the classification of crime, there are three different distinctions: attacks against persons, attacks against property, and attacks against public security. Attacks against persons include crimes such as murder, assassination, infanticide, intentional violence (nonintentional death), and rape. Attacks against property include robbery, theft, and breach of trust, and attacks against public security include counterfeiting. Under the penal code, crimes can draw a 20-year sentence, misdemeanors receive 5 years, and violations receive 2 years. Typically, though, sentence length is 10 years for crimes, 3 years for misdemeanors, and 1 year for violations. The age of criminal responsibility is 18 years of age.

Between the civil war, the problems surrounding the Lissouba-Sassou-Nguesso rivalry, and the security forces, the Republic of Congo has its share of crimes. After attempts to contact numerous officials on the crime status in Congo, one anthropologist, Bruce Whitehouse, stated that the only significant crimes perpetrated in the Republic of Congo since their independence have been those perpetrated by the state, or at least by individuals and networks operating within the apparatus of the state. Whitehouse further goes on to state that according to a Web site (http://www.mwinda.org) run by the political opposition in exile, the newest problem in the Republic of Congo is "operateurs economiques vereux." This means that people in power receive high government contracts but never do any actual work. "Shadow businesses" are being designated on paper, but no actual enterprise is receiving the contracts. In 2005, Transparency International in its survey of Corruption Perceptions Index ranked Congo 130 out of 159 countries surveyed (the higher the rating, the worse the corruption). There were media reports of government bribery and corruption, particularly

regarding oil revenues and mismanagement in the government-run diamond industry.

Amnesty International (1999) and the U.S. Department of State (2007) both have released reports about the human rights abuses in the Republic of Congo. In 2006, the Bureau of Democracy, Human Rights, and Labor released its Country Report on Human Rights Practices in the Congo. According to the report, although there have been some improvements in Congo's human rights record, it still remains poor because of the numerous crimes begin committed, mainly by the state. Killing of suspected criminals, mob violence, security force beatings, trafficking in persons, lengthy pretrial detentions, and physical abuse of detainees are just 6 of 24 named problems within the Congo.

Besides human rights violations, other crimes that are of a particular challenge to this country include (but are not limited to) rape, burglary, muggings, and drug trafficking and production. According to the United Nations, crimes against women, particularly rape, constitute a disturbing phenomenon. Although widespread, rape is rarely reported. For example, in 1999, more than 1,000 women were raped during the conflict by soldiers and militiaman. This number may be underestimated because it was based on those who came to the Brazzaville hospital for medical attention. Indeed, the International Rescue Committee (IRC) reports that 3,000 rapes were recorded in the capital of Brazzaville following the beginning of the second conflict between the government and militiaman. When rapes are reported, the government does not effectively enforce the law, which prescribes 5 to 10 years for this conduct. In addition, spousal beating is a major problem. Unfortunately, no specific provisions outlaw spousal battery. Domestic violence is typically handled within the extended family.

According to the U.S. State Department's Consular Information Sheet, the Republic of Congo is best known for its nighttime muggings and petty street crime. In addition, carjacking, rape, murder, armed robbery, gang conflicts, taxi wars, vigilantism, and police shootings frequently dominate newspaper headlines. Travel advice for this country warns against walking the streets after dark and urges tourists to use air travel as opposed to road travel. For the latter, road conditions are cited as being generally poor and deteriorating, leaving the road and railway between Brazzaville and Pointe Noire pass a magnet for criminal gangs who continually rob vehicles and trains. For the most part, males disproportionately commit crimes and are disproportionably at risk. For example, 70 percent of all firearm injuries involve males between the ages of 11 and 30. The Public Health Study finds that at least 15 percent of firearm injuries involve youth under the age of 11.

Because of the strategic geographic position and its highly urbanized characteristics, Congo-Brazzaville is an ideal candidate for drug trafficking and production, muggings, and burglaries, as well as gun trafficking. In 2004, the Republic of Congo adopted laws aimed at reducing illicit drug trade. Prior to the adoption of these two new laws, Congo had only two statutes on its books concerning drugs, laws that dated back to colonial times. Specifically, the two previous laws were the 1929 decree prohibiting the cultivation of hemp and its use as a narcotic and the 1932 decree regulating the possession of poisonous substances. Despite the adoption of drug laws, statistical information regarding drug offenses is minimal.

Finding of Guilt

Because the Republic of Congo's legal system is based on French civil law system and customary law, their court proceedings are generally held in the same manner. The Fundamental Act provides for an independent judiciary, but as the Republic of Congo has shown, this judiciary is generally corrupt. The court system within the Republic of Congo is mainly influenced by politics and is also extremely underfinanced and overburdened. Following the civil wars, much of the records and statistics held within the courts were taken, so nothing remains of law books, case decisions, and judicial records. The courts are also suffering from a severe lack of resources. With all of these problems combined, the court systems within the Republic of Congo are extremely poor. Despite this, the Ministry of Justice began to rebuild the court system beginning in 2001. This rebuilding involved a new

"Law Library and Information Center" that was opened to the public.

In general, there are four courts within the Republic: local courts, courts of appeal, traditional courts, and the Supreme Court. Traditional courts are generally designed to handle local disputes, at least within rural areas. Local disputes include property and probate cases and domestic conflicts that cannot be solved by the family. Defendants have some rights that include access to prosecutorial evidence and testimony. They also have the right to counter this evidence and have a lawyer present during questioning. The accused are tried in a public court of law with a state-appointed magistrate presiding over the case. Besides the right to access evidence and testimony, within the formal courts, defendants also have the right to appeal. One of the many issues with the Republic's courts is the legal caseloads, which affect the defendants' rights. The courts are so overburdened with their caseloads that the judiciary cannot provide defendants with the right to a fair and speedy trial. Other rights of the defendant include the right to a self-obtained lawyer or one appointed by the state and the right to compensation if placed in abusive custody.

The process for bringing a suspect to trial can be elaborate, but it depends on the seriousness of the crime. Generally, there are two procedural stages prior to trial, the police stage and the judiciary stage. The police stage involves an investigation being conducted by the police under the supervision of the prosecutor. During this stage, the suspect is held for supervision for 24 hours. This can be lengthened by the authorization of the prosecutor. The accused is allowed to appeal this decision and request release. The proceedings begin when they are initiated by either the public minister (a government official) or the victim. The public minister decides whether the case should be brought before a judge or handled alternatively, whereas the victim can only force the prosecution to take action by filing a civil suit against the accused. Alternatives to trial are not known. If there is doubt in the case, it is handed over to an examining magistrate who has the power to examine the suspect. At this time, the magistrate can interrogate, confront, bring warrants against the suspect, and arrest the suspect and bring him or her before another judicial authority. If the examining magistrate deems necessary, the case is handed over to the public minister for prosecution. Under the French civil law system and customary law, suspects are not allowed to plead guilty; therefore, every accused shall be presumed innocent until proven guilty, which can be established only at the end of the criminal procedure.

It is unclear how the majority of cases within the Republic of Congo are resolved. It is also unclear how many courts and judges operate in the country. With the rampant corruption in the government and the lax legal system, defendants are not likely to receive a fair trial. With the amount of extrajudicial killings and beatings of detainees taking place in the Congo, it seems as though a majority of criminal cases are "resolved" through nonlegal ways.

One special alternative to going to trial or further in the criminal justice system in the Republic of Congo is through the use of bribes. Specifically, the U.S. Department of State reports that bribes generally determine the length of detention. Because arbitrary arrest is a problem in this country, sometimes detainees awaiting trial are released after a bribe is paid and/or after pressure from external sources to release the individual occurs.

The Republic of Congo does not have a separate system for juveniles. It does, however, have special procedures that differ from adult procedures when handling youth. Most of the officials who work in the child justice sector in the Congo-Brazzaville do not know the various requirements that govern children's rights. Consequently, youth rights are often violated. Furthermore, magistrates in the country have been accused of abusing the rights of children. One report found that when being arrested and held in custody, children suffer violence. Also, some of them are held in custody past the legal time-frame of 73 hours and are detained in the same cells as adults.

One of the biggest cases of maltreatment of detainees in the legal system became well known when Amnesty International (2006) released a report about political prisoners being held in the Republic

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of Congo. In 2005, at least 25 members of the Congolese security forces were stopped in Brazzaville. According to reports, the group was thought to be plotting the overthrow of current president Denis Sassou-Nguesso. Thirteen of those members were put into jail, and the rest were thrown into a prison in Brazzaville. Members were held for seven months without charges or a lawsuit. In March 2006, Amnesty International talked to the prosecutor, who stated that the examining magistrate in the case had concluded that no charges were being retained. But by November 2006, authorities had not released the prisoners.

During their imprisonment, many of the members were subject to acts of torture and other inhumane, degrading treatment. For four months, the members were retained and held in secrecy, without the ability to contact members of their family or lawyers. Some of the members were in bad health and did not receive proper health care, nor adequate amounts of food. Amnesty International has shown interest and worry in the case because as of the time the report was released (December 2006), some of the members still in detention were being denied the right to dispute the charges and their right to speedy and fair trial.

The case of the political prisoners is a typical example of how the legal system in the Republic of Congo works. Wrongful arrests, illegal detentions, and denial of rights are a frequent occurrence, as is the mistreatment of detainees. As the next section details, there are very few options for those who are detained.

Punishment

Detainees are not given all of their rights, and unlawful detention and arbitrary killing are common. Security forces typically disobey the Fundamental Act and do as they please not only with detainees but even with those not accused of any crimes. Security forces frequently use beatings to coerce confessions or to punish detainees. These practices are used both in institutional settings (jails and prison systems) and on the streets (e.g., security forces beat citizens). For females, there have been reports of rape committed on female detainees by security forces. Other typical punishments include fines (either legitimate or through bribery), corporal punishment, public punishments, and banishment from cities.

The Republic of Congo does have the death penalty. Capital offenses punishable by death include burglary, espionage, murder, treason, robbery, arson during riots of national emergencies, and causing disorder. The method of execution is shooting. Executions are generally closed to the public, and there are no available data for the number of executions that have been carried out.

Often times, Sassou-Nguesso will detain persons thought to be friendly to the opposition. Once they are detained, these persons are subjected to long periods of detention, beatings, and in the case of women, rape. Sassou's militia, Cobras, is responsible for numerous killings. People who are thought to be with the opposition and fail to identify themselves with a Cobra unit are blindfolded, ordered to run, and then shot by the Cobras.

Prisons

Prison conditions in the Republic of Congo are extremely poor and obsolete because of a lack of funding and conformity to the international standard for human rights protection. Facilities are extremely overcrowded, and with a lack of resources, the prisons fail to provide food or health care to those inside. According to the most recent data available from the International Centre for Prison Studies, the total prison population averages around 900 inmates (including pretrial detainees and remand prisoners), a mere .22 percent of the overall population. The prison system consists of one central prison located in the capital, Brazzaville, and six smaller prisons located in Djambala, Dolisie, Impfondo, Ouesso, Owando, and Pointe-Noire. The central prison, built in 1938, has an official capacity of 100–200 prisoners but held as many as 502 prisoners in January of 2007, and all seven institutions were reported to be overcrowded in 2006.

Decay, disease, and violence are commonplace within the prison system. Reports from the United Nations Integrated Regional Information

Networks (UNIRIN) attest to the appalling conditions within the prisons. In the central prison, cells designed for four inmates are shared by up to 12 inmates, with men, women, and juveniles confined together. Prison cells are not ventilated, and most do not have windows. Many inmates suffer from malnutrition because inmates receive only one meal a day, usually bread and fish, and have virtually no access to public health care, but some prisons allow inmates to leave prison facilities during the day for medical treatment when paid for by family and relatives. The cells lack running water or toilets, so prisoners often have to relieve themselves on the same floor on which they sleep.

Overcrowding and poor hygiene combine to create prime conditions for disease and violence. Although no hard data are available, reports from the UNIRIN state that the prevalence rates for rape and sexually transmitted diseases, including AIDS, among inmates are high and increasing. Prison officials have little or no means to prevent incidents of violence or to treat inmates who are ill or injured. As part of its effort to stem the spread of AIDS, the government launched an HIV-prevention program in 2006, but there are no data available to evaluate the success of the program.

The Ministry of Justice began attempting to repair the prisons in 2001, but progress has been slow because of a lack of funds. Detainees who do make it into a prison are subject to overcrowding, beatings, extortion, and other cruel treatments. In 2000, a group of prisoners filed a suit against the prison they stayed in for 16 months. The prisoners claimed they were subjected to cruel and inhumane treatment, including torture. Angered by the slow pace of the suit in Pointe Noire, the prisoners took their suit to a Belgian national court.

The state of prisons in the Republic of Congo is extremely poor with little effort being made to fix them. The policies within the prisons are also poor, with women being imprisoned with men and juveniles being held with adults. Those being held as pretrial detainees are also being held in the same place as convicted prisoners. As is the case with much of the other information on the Republic of Congo, little exists on prisons, except regarding the atrocities being committed there.

Kristan Fox and Nicole Reinsch

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Côte d'Ivoire. *See* Ivory Coast

Djibouti

Legal System: Civil/Common/Customary
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: Yes

Background

Djibouti is located in northeast Africa, across from the Arabian Peninsula and the coast of Yemen on the Horn of Africa. Off of the Red Sea coast, it is

bordered by Eritrea, Ethiopia, and Somalia. Djibouti is slightly smaller than the American state of Massachusetts. The capital of Djibouti is also Djibouti, and more than two-thirds of the country's estimated 650,000 inhabitants live there. Djibouti's population is quite youthful, with more than 43 percent below 15 years and about 53 percent of the population between the ages of 15 and 64. Only about 4 percent of Djibouti's population is over 64 years old.

Legal System

Djibouti is largely a multiparty democracy with at least nine major political parties. There are also three branches of government: executive, legislative, and judicial. Its legal system is based primarily on French civil law. However, since breaking with the French in 1977, Djibouti has coupled French civil law with Islamic Law (sharia) and other more localized traditional practices.

The French-inspired legal system in Djibouti is based on both legislative and executive decrees. That is, in terms of French law and judicial practices, crime is dealt with in a court system. Civil actions are similarly brought into the French-adopted style of courts of law and judicial practice.

Islamic law, or sharia, is more restrictive and takes into concern only civil and family matters, like marriages, for example. Based on the Koran and administered by the Qadi (the country's senior Islamic law judge), Islamic law is then concerned primarily with the Muslim peoples. The exception to this rule is that a non-Muslim man may marry a Muslim woman, though only after converting over to Islam.

Finally, traditional law, or Xeer, is believed to predate Islam, although Islam is thought to have influenced this system. Under this system, elders serve as mediators in disputes to help settle matters. Elders use conflict mediation practices and seek compensation for the victims. In the case of murder and rape, elders use their own, more traditional set of stipulations. For example, a traditional stipulation for crimes of murder and/or rape is a blood price for the crime.

Police

Djibouti has multiple policing agencies. These agencies have been largely French-inspired. More recently however, and specifically since 9/11, various U.S. agencies have extended a hand to help with the training of Djibouti's policing agencies. Officers in Djibouti are being trained in such services as motorcade operations, VIP protection, motorcade route analysis, and improvised explosive devices (IED), as well as in illegal immigration, drug interdiction, and antiterrorism.

In terms of actual policing agencies, Djibouti has an estimated 8,000-member National Police Force (FNP). The FNP's responsibilities largely include internal security and border control. They are responsible to and serve directly under the Ministry of Interior. The Gendarmerie Nationale is a separate police force in Djibouti. Serving under the Ministry of Defense, it is primarily responsible for the president's security. Djibouti also has a national army, coast guard, and a navy, all of which serve under the Ministry of Defense. The country has also retained the elite Republican Guard, an independent unit of the Genadarmerie Nationale. The Republican Guard is a small intelligence firm that reports directly to the president of Djibouti.

Although in recent years Djibouti's law enforcement has benefited from the United States and generally from the war on terror, there are still many issues with funding, materials, and not to mention officer training, development, and accountability. The FNP in Djibouti, for example, is underfunded and lacks such amenities as transportation, fuel, and communications technology and equipment. These issues in turn have affected police responsiveness. Another issue has to do with human rights abuses. Some of Djibouti's policing agencies have been known for their brute-force tactics on civilians. Such acts go beyond and are independent of Djibouti's government rules and standards.

Courts

Djibouti's judicial system is based largely on French Napoleonic code. Under this system, laws can be applied only if they are duly promulgated and

published officially. Judges or magistrates are encouraged to interpret the law.

Djibouti's legal system is composed of a lower court, court of appeals, and Supreme Court. Only the Supreme Court can overrule the decisions of the two lower courts. Magistrates serving in Djibouti's courts are appointed for lifelong terms. The country is also developing a Constitutional Council, which rules on the constitutionality of laws, including those of human rights and civil liberties.

Crime

Classification of Crime

Crime in Djibouti is classified as follows:

- Crimes against the individual: homicide, rape, robbery, domestic violence, female genital mutilation, and so on
- Property crimes: theft, burglary, motor vehicle theft, and so on
- Crimes against the state: terrorism and espionage, and so on
- Organized crime: drug trafficking, and so on

Crime Statistics

Although Djibouti lacks accurate crime statistics, it appears that crime is on the rise. INTERPOL data from 1996 and 1998, the most recent available, for Djibouti indicate some results for index crimes such as murder, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. For that period, the total index crimes increased from 138 in 1996 to 219.35 in 1998, an increase of 58.9 percent within two years. More specifically, murder and other individual and property offenses seem to have increased. It must be noted here, however, that such increases in the basic statistics may be a direct result of new recording practices or data-collection techniques in Djibouti over this two-year time frame.

Nevertheless, the incidence of crime in Djibouti compared to the more industrialized countries is generally low. Most crimes in Djibouti range from petty thefts and pick-pocketing to home invasions. Narcotics smuggling and prostitution are also rife. But importantly, more serious crimes such as murder are rare; however, they are increasing in frequency.

Other crimes include drug offenses. Khat is a local drug and popular, but legal in Djibouti, though it is recognized as a source of social problems by UNICEF and other nongovernmental organizations. However one may receive harsh punishments for the trafficking of other drugs, such as heroin, cocaine and alcohol. Although sharia law prohibits and thus punishes for the use and sale of these various substances, there is little known about Djibouti's drug-abuse prevention and treatment activities.

Domestic violence and child trafficking also exist in Djibouti but are rarely reported to the police. Such issues are dealt with within the more traditional clan structure, in the family, or not at all. Specifically in terms of girls and women, it is estimated that many young women from ages 7 to 10 have undergone FGM, or female genital mutilation. An educational campaign on this issue began in 1988 with the Union of Djiboutian Women (UNFD). And after the 1995 UN conference in Cairo Egypt, the UNFD declared that all forms of FGM should be illegal. There is currently a penalty for FGM of up to five years in prison and a fine of US$5,650; however, under this statute there has not been a single documented conviction.

Some crimes in Djibouti do involve third-country nationals (TCNS). That is to say that Djibouti's international borders are fairly open, and thus there are gaps for terrorists and insurgents to use Djibouti either as a haven or as a sort of gateway to Westerners. In particular, Somalia, a country that borders Djibouti to its south, is known for its increasing terrorist and insurgent presence. On October 29, 2008, a coordinated attack on Djibouti took place in the regions of Somaliland and Puntland. Multiple car bombs against local and international targets were set off almost simultaneously.

Finding of Guilt

Preventive Detention

When one is accused of a crime in Djibouti, the law stipulates that he or she cannot be held more than 48 hours without formal charge from a magistrate.

The exception to this rule is when a prosecutor provides prior approval. The accused then may be held for another 24 hours before having to be released.

Rights of the Accused

Upon being accused of a crime, whether it is petty theft or a kind of political or national security offense, the defendant has the right to be informed of his or her crimes and is allowed to contact family members. Once detained, the defendant has the right to also obtain access to an attorney of his or her choice. Djiboutian law also allows arrangements for bail and guarantees an expeditious trial.

Assistance Provided to the Accused

In Djibouti, the accused has the right to legal assistance when he or she cannot afford an attorney and is without any form of optional legal representation. However, there must be proof that the accused cannot afford an attorney.

Investigation

Following French law, the judge is provided with the powers to investigate and obtain evidence that pertains to the accused crime to determine innocence or guilt. Within these powers, the judge has the right to authorize search and arrest warrants. The judge also has the ability to delegate judicial powers to police officials, allowing them to identify suspects and gather information. Based on the evidence gathered and provided by the judge and/or police officials, the prosecutor then decides whether the case is strong enough for criminal prosecution.

The Criminal Court

A total of three judges hear a single court case. One is the presiding judge, and the other two are considered accompanying judges. Judges are formally considered to be magistrates and are appointed to lifelong terms. Defendants, on the other hand, have the presumption of innocence. While being prosecuted, they have the right to access and view the state's or government's evidence. They also have the right to be present during their trial, question witnesses, and appeal if necessary.

According to Djiboutian law, juveniles are to be provided with separate courts, judges, and all accompanying measures, including a social worker who is legally assigned to his or her case.

Under Djiboutian law, crimes are resolved by trial. That is, there are no guilty pleas or plea bargaining on behalf of the defendant. These latter actions are not allowed in Djibouti.

Punishment

Types of Punishment

Guided primarily by French penal code, in Djibouti there are a variety of punishments that may be handed down by the residing court magistrate. These punishments include fines, community service, probation, suspended sentences, suspended sentences coupled with probation or community service, reparations, incarceration, and expulsion. Importantly, various types of crimes also carry different weights of punishment.

- *Homicide:* In Djibouti, the punishment for murder is 30 years of imprisonment. If the murder is premeditated and/or against a public service official, the accused could receive a prison term of life.
- *Rape:* Any form of penetration or blatant rape receives 15 years of imprisonment. If the victim is under the age of 15, is pregnant, or becomes in some form disabled, or a weapon is used during the incident, the punishment is 20 years of imprisonment. If the rape results in the death of the victim, or torture is involved, the punishment is 30 years to life imprisonment.
- *Theft:* Theft is punishable by anywhere from 3 to 30 years' imprisonment, and the accused is required to pay a fine.
- *Drug offenses:* Drug offenses range from 5 years of imprisonment and a fine for sale and consumption to life imprisonment for organizing the production, manufacturing, or transport of illegal drugs.

Prison

Djibouti's prison system is relatively small. Gabode is currently the only known functional prison in Djibouti, and it houses up to as many as 350 inmates at a time. In Gabode, men, women, and juveniles are incarcerated, but they are separated from one another. Women who have children under a certain age (five years) are allowed to have them in prison with them. Once one is found guilty of a crime and sentenced to imprisonment in Djibouti, the prisoner is allowed visitations. However, because of funding issues, there are no known rehabilitation or educational services or courses provided to inmates in Gabode.

Based on a national population of about 650,000, the prison population rate for Djibouti is estimated to be about 61 per 10,000 people. More specifically, Djibouti has an estimated total of four prison-type institutions. But again, only one facility is known to actually contain national prisoners, Gabode. Located in the city of Djibouti, Gabode is designed to house 350 prison inmates at one time in two-by-two-meter cells. In 1999, Gabode had maxed out its prison facility with more than 384 detainees.

The Death Penalty

Djibouti's last execution was in 1977. In fact, there have been no executions since the country's independence. In 1995, Djibouti went as far as abolishing its death penalty when the penal code and code of penal procedure were enacted and enforced. And in 2005 Djibouti became a cosponsor during the 61st UN Commission on Human Rights to abolish the death penalty worldwide.

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Equatorial Guinea

Legal System: Civil/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Death Penalty: Yes
Corporal Punishment: Maybe

Background

Equatorial Guinea is located on the west coast of Central Africa, bordering Cameroon and Gabon. With an area of 28,050 square kilometers, Equatorial Guinea has an estimated population of 600,000, mostly of Bantu origin. Equatorial Guinea was first discovered by Portuguese explorer Fernando Po and later was ceded by Portugal to Spain in 1778, remaining under Spanish Rule until October 1968. The new constitution mandated that the republic join the United Nations and coordinate assistance with Spain until the nation had become fully "Africanized." The Constitution was later suspended when President Macias assumed power, making law by decree. Even after the second constitution was approved, Macias retained much of this power.

The government is composed of three branches, the executive, legislative, and judicial; however, the president significantly influences the workings of all three branches. The president is the head of state and is elected for a seven-year term by direct universal suffrage and governs through the Council of Ministers. The executive branch is headed by a prime minister, who is the president's appointee

and who is the leader of the majority party in the House. The body responsible for implementing national policy, which is determined by the president, is the Council of Ministers. The president is also responsible for appointing the governors of the seven provinces. The duty of the Council of Ministries is to propose and implement socioeconomic development plans and draft and execute a budget approved by the president and national assembly.

The legislative branch consists of a unicameral parliament. The House of Representatives of the People consists of 80 members who are directly elected by universal suffrage for a five-year tenure.

The judicial branch of government in the republic is organized around the constitutional law that dictates the necessary organization and powers of courts. Article 83 of the Constitution provides for a judicial system independent of the legislative and executive branches, and article 86 declares the Head of the State as first magistrate of the nation who must guarantee the independence of the judiciary. The president appoints the Supreme Court members for five-year terms. The appointments and dismissals of the justice professionals such as judges and the officials of the justice system are outlined in article 91 of the Constitution. The highest court of the judiciary is the Supreme Court of Justice, which hears all matters. The constitutional court is charged with determining whether challenged laws are unconstitutional and hearing appeals against regulations and acts that violate civil liberties provided for in the Constitution. Lastly, the judiciary is tasked with adjudicating matters independent of the executive and legislative branches. The Constitution also provides for many individual rights, including the right to a fair trial, freedom from double jeopardy, and the presumption of innocence. Despite numerous provisions in the Constitution, the judiciary is seriously undermined by flawed practices in the appointment of senior magistrates and a serious lack of resources for the judicial system.

Police

Policing in Equatorial Guinea is split between the police, who are primarily responsible for the urban areas, and the gendarmes, who are charged with patrolling rural areas and special events. A small paramilitary police force called the Civil Guard (Guardia Civil) consists of about 2,000 personnel and is located at Malabo. These personnel are trained in Guardia Civil schools in Spain. The police are both poorly funded and poorly trained. Law enforcement officials continue to extort money from citizens, and impunity remains a problem. Efforts by the government to investigate these allegations of abuse of power are poorly developed.

Arbitrary arrests are significantly increasing in frequency because vigilante groups belonging to the same tribe, Fang, to which the president belongs assist security forces in illegal arrests, detention, and gross violation of human rights. The 2007 Country Report on Human Rights Practices notes that arrest warrants are not a legal requirement in the Equatorial Guinean criminal justice system, and therefore, individuals may be taken into custody based solely on the verbal instructions of police officials. The abuse of prisoners during or immediately after arrest is of particular issue in some police precincts in Equatorial Guinea. There also have been complaints by foreigners of excessive force and harassment by law enforcement during their detention according to the Country Reports on Human Rights Practices of 2008. However, the 2007 Amnesty International report suggests that the number of arrests in 2007 decreased in frequency from the previous year.

Crime

Violent crime is rare; however, the Global Peace Index of 2008 indicates a homicide rate of 2 and a violent crime rate of 2.5 per 100,000 population, respectively. There has been a significant rise in nonviolent street crimes and burglaries in residential areas. The rise in street crime as opposed to violent crime may be partially explained by the large percentage of the population that is minor children.

The unequal rights of males and females in Equatorial Guinea are reflected in the laws that govern it. Rape is illegal in the republic, and yet the criminalization of spousal rape is not provided for in the law. Rape is considered shameful to the families

involved, and as such, the number of actual rapes is unknown. This low social status of women puts them at greater risk of domestic violence and wife beatings, occurrences that are not generally prosecuted. The 2007 Country Report on Human Rights states that domestic violence and spousal abuse is illegal but that the government does not effectively enforce such laws, and thus, violence in the home remains a substantial problem.

Human Trafficking

The 2006 Trafficking in Persons Report notes that Equatorial Guinea is primarily a destination country for children trafficked for the purposes of labor and possibly sexual exploitation. The cause of human trafficking relates to the supply of victims generated by a lack of employment opportunities: poverty, discrimination and violence against women, violence against children, government corruption, armed conflict, and political instability. The booming oil economy has generated a large demand in the agricultural and commercial sectors that encourages the trafficking of children from surrounding nations to work in these sectors. The penalties for trafficking in persons for either sexual or other forms of exploitation are 10 to 15 years in prison and a fine of at least $100,000. However, enforcement officials have done little to investigate let alone prosecute cases of trafficking.

There are minimal efforts in Equatorial Guinea to prosecute human trafficking. The government does not train law enforcement in trafficking, and subsequently law enforcement does not investigate trafficking cases. Not only does the Republic of Equatorial Guinea do little to investigate trafficking cases, but it also fails to adequately protect its citizens from trafficking. There are no shelters for women or children where victims can seek assistance. The Republic of Equatorial Guinea does not comply with the current minimum standards for the elimination of trafficking, but the nation is making an effort to do so. An anti-trafficking action plan is aimed at developing shelters, and campaigns are being made to raise awareness for the new legislation concerning trafficking.

Organized Crime

Other enterprises that have either emerged or gained momentum recently include pirate fishing, unsustainable logging, forced labor, and drug trafficking. There is considerable evidence that officials of Equatorial Guinea participate in the trafficking of drugs, and as such, the republic has been labeled a "narco-state," or a nation whose economy is greatly supported by the production or trafficking of drugs. In general, the nations in Western Africa fail to personify good governance because of their inability to control corruption or hold the elite accountable. Such governance will not likely reduce organized crime anytime soon.

Finding of Guilt

The court system of the Republic of Equatorial Guinea is based on the Spanish civil law tradition and tribal custom. This court system consists of the Supreme Court of Justice, two appellate courts, lower provincial or first instance courts, military courts, and customary or traditional courts. The administrative levels of the judicial system begin with the president and his judicial advisors and the Supreme Court, and then in descending rank are the appellate courts, chief judges for the different divisions, and local magistrates. The court system generally operates under customary law, but because of a lack of established practice and ill-experienced personnel, the judiciary is a combination of traditional, civil, and military justice, operating in an informal manner. These customary courts are composed of tribal elders who hear mainly civil and minor criminal offenses. Appeals from first instance courts are rare, and tribal law is honored in the formal system only when it is not in conflict with the provisions of national law.

As noted earlier, the Constitution provides for basic individual rights, but although the Constitution may prohibit arbitrary interference in the privacy of an individual, according to the Country Reports on Human Rights Practices 2007, security forces often arrest suspected criminals, foreign nationals, and other individuals without judicial order. The Constitution also calls for the

right to an independent judiciary, and the state fails to meet this provision in practice. The judges represent the will of the president, and cases are sometimes decided on political grounds. It is unclear what procedures are in place to hire judges below the Supreme Court, who are appointed by the president. Judges are not well trained, and rampant corruption makes the judicial system ineffective. The opportunity for criminal offenders to have a fair trial that is heard by an impartial and competent adjudicator is not very likely in practice.

There is a serious issue of pretrial detention. As already noted, the police and gendarme are very corrupt, and the law does not require an arrest warrant to detain an individual. Once an individual has been detained, within 72 hours, they have the right to be aware of the reason for their detainment; however, in practice, this requirement is not often met. The stint of incarceration is sometimes much longer before individuals are informed of the charges pending against them. Insufficient judicial process, staff shortages, corruption, and a lack of monitoring result in an estimated 80 percent of incarcerated individuals being pretrial detainees.

Most trials are indeed public, but juries are not often utilized. Defendants have a right to be present in the courtroom, but they do not usually have the opportunity to confer with an attorney prior to trial. Offenders have the opportunity to question witnesses and present their own evidence or witnesses, but again, this seldom happens. Public defenders may be supplied on request for the accused who cannot afford their own representation, but this right is not typically discussed with the defendant. Appeals are not very common, and defense lawyers do not necessarily represent the wishes of their client. The right of due process is often undermined by the highly centralized and corrupt judiciary.

Tribal elders adjudicate minor criminal and civil offenses in the traditional courts in the countryside. Civil judicial matters may be handled outside of a formal court setting. However, there are no known informal means of mediation besides adjudication by tribal elders. Civil cases do not often go to formal adjudication for fear of an impartial trial and a general misunderstanding of the actual process by the populous.

Punishment

The most common form of punishment appears to be imprisonment. The law prohibits torture and any other forms of cruel and degrading punishment of criminal offenders, but the abuse and torture of detained individuals remains a problem in the prison systems. In addition to the elongated pretrial detainment of suspected criminals and their immediate abuse or neglect, substandard conditions in correctional facilities are also common. Equatorial Guinea has the death penalty, and three prisoners were executed in 2007.

Harsh conditions in the correctional facilities are life-threatening, leaving prisoners without food, medical care, water to drink, or a healthy living space. Medical attention is frequently denied to inmates, and family members of prisoners report that the time allotted for visitation with inmates is merely minutes, and prison guards refuse to distribute food care packages. The Country Reports on Human Rights Practices 2007 found that male and female prisoners were not housed in separate facilities. Females are believed to be sexually assaulted by prison authorities and fellow male inmates. Prisoners are also used as laborers in construction for judges and other officials without pay or other means of compensation. The government has made significant improvements in the nation's three main prisons, including the notorious Black Beach prison, as the result of some major renovation projects. Reports of poor sanitary conditions and insufficient provision of food and water decreased sharply in 2007. According to the Country Reports on Human Rights Practices 2007, a law banning torture can partially account for the improvement in the major prisons, including Black Beach.

Juvenile offenders are prohibited by law from being placed in facilities with adult prisoners, although most often juveniles are not imprisoned. Juvenile offenders tend to be detained in local precinct facilities for a short period of time and later released to their homes with a warning.

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Eritrea

Legal System: Civil/Customary/Islamic
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

Eritrea is a country in East Africa, between Sudan and Djibouti, bordering the Red Sea. It has a population of nearly 5 million people, in nine ethnic groups, with Asmara as its capital. Eritrea achieved full independence in 1993 from Ethiopia, and its Constitution was ratified in 1997. The Constitution provides for an independent judiciary and democratic freedom. However, in reality, the judiciary is very weak and regularly subjected to executive interference. Free elections have yet to occur. They were originally postponed as a result of the devastating two-year war with Ethiopia from 1998 to 2000 but have not occurred since the signing of the peace treaty in 2000.

Eritrea has a transitional government made up of legislative, executive, and judicial branches. The legislative body (described as the supreme representative of the Eritrean people by the Constitution) is the unicameral Transitional National Assembly. It is composed of 150 members, half elected members of the PFDJ and the rest appointed members of the same party. This assembly has not sat since 2002, and elections have been postponed indefinitely.

The executive body is made up of the president and his 19-member cabinet. It has the highest authority between sittings of the national assembly and is accountable to the assembly when it is sitting.

Police

Given the history and the colonial legacy, police organization resembles the military in many aspects, including the titles and ranks. The policing function after independence was primarily performed by the Eritrean Peoples Liberation Front (ELPF). In 1994, as part of the demobilization, many military personnel who became civilians entered the police force, which was primarily responsible for internal security. Eritrea continues to depend on the military, its reserves, and decommissioned personnel to respond to emergencies within the country.

People's Protection Brigades

People's Protection Brigades were a creation of the Derg, the communist military junta that came to power from the mid-1970s to mid-1980s. They performed several key functions, including law enforcement duties such as protection of public property and enforcement of land reforms. They had police powers, which they exercised following a few months of training. They were deployed not only inside Ethiopia but also in the provinces, including Eritrea.

The current Eritrean police force is not only bureaucratized but also militaristic in many aspects. Although the police force carries out the traditional functions of maintaining law and order, investigation of crimes, patrol, and conducting arrest, it is dependent on the military forces in dealing with emergency situations. Members of armed forces committed human rights abuses during the conflict with Ethiopia, and their record has not substantially improved. Under the law, warrants are required for searches, but in practice, the authorities do not obtain warrants.

Capacity-Building for the Police Department

With the support and cooperation of the Netherlands Ministry of Foreign Affairs, bilateral arrangements were made for capacity building for the Police Department during the late 1990s. The forms of this capacity-building included creation of a police training center and various other units found in police organizations around the world. The overall aim was to gear the capacity-building within the framework of the evolution of a multiparty democracy to help Eritrea build a civilian and professional police force to function in a democratic society.

Crime

Reliable statistics are almost impossible to obtain. The country did not even fully participate in the international survey known as the Global Peace Index 2008. Limited information from 1999–2000 INTERPOL data suggests that crime rates per 100,000 population in Eritrea are as follows: murder, 2.77; rape, 1.69; aggravated assault, 10.26; burglary, 5.8; and larceny, 26.37.

Classification of Crimes

All violations of criminal law, together with those of juvenile law, are divided into major categories, examples of which include felonies and misdemeanors. The most familiar distinction in describing crimes in Eritrea is between felonies (or serious crimes) and less serious crimes. The distinction exists to determine not only which courts have jurisdiction over which category but also the nature of punishment or sanctions appropriate for each category. The serious crimes include the following:

1. *Political crimes.* Perhaps the most discernible category of crimes in Eritrea is political crimes. They are both externally and internally induced. The former is associated with the border conflict between Ethiopia and Eritrea, whereas the latter involves warring internal factions, that is, the conflicts between members of the ruling party and the dissidents. The political crimes are serious, deep-rooted, and spread throughout the social fabric.
2. *Rape and other forms of sexual abuse.* It has been estimated that in 2001, 65 percent of women in the capital Asmara were victims of domestic violence, and 95 percent of women had been subjected to genital mutilation. There is no law against genital mutilation, but when the United Nations still operated in Eritrea, it worked with the government to discourage the practice. Prostitution is illegal, but it is a serious problem in the country.
3. *Human trafficking.* Eritrea is among the countries in the Horn of Africa from which human trafficking originates. However, there is little documentation of the extent and forms of this social problem in Eritrea.
4. *Drug trafficking.* The introduction of drug trafficking in the country has been attributed to the new influx of the children of the Eritrean nationals living in North America.

Juvenile Delinquency

There are relatively small numbers of young offenders in Eritrea in its transitional period. Juvenile offenses including gang involvement, sex offending, substance abuse, property theft, and truancy are the social problems that have yet to appear in Eritrea.

Finding of Guilt

After Eritrea achieved independence, the administration of justice commenced provisionally on the basis of the Ethiopian penal code and the criminal

procedure code. These codes were amended to reflect Eritrea independence, but the revisions have not yet been fully completed. Some of the difficulties with the Eritrean legal system can be traced back to the rule of Ethiopia. The transitional Eritrean government inherited a weak and under-resourced judicial system with few qualified judges, prosecutors, and lawyers. It has faced a difficult challenge in building a system to effectively administer justice. When the Ethiopians ruled Eritrea, they systematically used detention and torture as well as military trials and executions. This meant that no traditions of judicial independence or legal defense activism were allowed to be established. A judiciary was formed by decree at independence in 1993. It has never disagreed with the government, and constitutional guarantees are ignored in cases related to state security.

The Eritrean Constitution provides for an independent judiciary and democratic freedom and prohibits arbitrary actions on the part of government officials, including those in policing and those in the judiciary and the penal systems. It contrast, it stipulates protections for the citizens. In theory, the judiciary is deemed independent from the executive branch of the government, but in reality, the judiciary is weak and regularly subjected to executive interference. Article 48 of the Constitution stipulates that "in exercising their judicial power, courts shall be free from direction, control and supervision of any person or authority." However, selected elements of this separation of power have been eroded by arbitrary arrests and detention pursuant to suppression of political crimes according to Amnesty International. In addition, influential administrative authorities' practice of reversing or rescinding court decisions for well-connected individuals has been noted.

The country's original (1993) Constitution was also written to endorse basic universal elements found in multiparty democratic countries. Examples of such elements include presumption of innocence until proven guilty in a court of law; formality, or step-by-step official actions starting from arrest until guilt or innocence is proven; right to an attorney or legal counsel; and appeal process upon conviction followed by sentencing; and protection from double jeopardy.

The current Eritrean system is a combination of traditional laws and laws inherited from its colonizers, particularly Ethiopia. It generally follows a civil law system, with some influence from common law. Sharia law also has an influence. The transitional laws of Eritrea incorporate some pre-independence statutes of the EPLF, revised Ethiopian laws, customary laws, and post-independence enacted laws.

There are three sources of law. The Constitution is the most important source of Eritrean law. It has not yet been fully implemented, and full implementation will see authority move from the executive to the legislature. Customary law is not an official source of law but is very important in practice and can be applied by community courts. Sharia law has de facto status as a source of law and is enforced through separate civil courts.

The Eritrean judicial system has three parts: civilian, military, and special courts. All parts of the system suffer from a lack of trained personnel, inadequate funding, and poor infrastructure. This makes it difficult for the state to grant a fair or a quick trial. However, the low recorded crime rate has allowed the judicial system to function with relatively few delays.

The Supreme Court is the apex court, with high courts serving as the appellate courts and subordinate courts, which have responsibility for initial trials as well as summary jurisdiction over the less serious crimes. The normal court of first instance is known as the Zoba court, or the community court. Community courts have a one-magistrate bench system, filled by elected magistrates. Magistrates have no legal training and base their decisions on local custom. The court operates at both a regional and a subregional level. Decisions of the Zoba court can be appealed to the high court. The high court also functions as a court of first instance in some of the most serious cases, such as murder, rape, and serious felonies. It consists of a panel of three judges and includes a bench that functions as a Supreme Court. Military courts have jurisdiction over penal cases brought against members of the armed forces. They assume jurisdiction over crimes committed by and against members of the armed forces.

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Because the Eritrean population is largely rural, most citizens have contact with the legal system only through traditional village courts. Village judges hear civil cases and minor infractions, and trained magistrates hear criminal cases. These community courts have potential to introduce restorative justice, a concept that is becoming popular worldwide, including parts of Africa such as South Africa. Maintaining law and order or simply social order through these courts provides opportunities and challenges in serving social justice in the rural areas. These courts also continue to make justice accessible at minimum financial costs. Further, they continue to provide an opportunity for resolution not only of the legal issues but also of the social issues subsumed under antisocial (or deviant) behavior (e.g., violation of ethnic traditions, customs, and norms). There is a consensus among observers that most petty offenses continue to be adjudicated by the local elders in their traditional village courts. Examples of such offenses include land and property disputes and marriage disputes, including abduction of girls to induce grounds for marriage. The Ministry of Justice also holds training in informal dispute resolution to handle some petty criminal cases.

Defendants in the civilian court system have access to legal counsel, usually at their own expense. Although there is no formal public defender's office, the government has requested that attorneys work without fees to represent defendants without money who are charged with very serious offenses. In 1996, however, the government established special courts. The stated rationale for these was that there was a significant backlog in the civilian court system, caused primarily by the drafting of many civilians into the army. The government also considered that existing courts were too lenient in corruption cases.

Special courts prohibit legal defense counsel and the right of appeal. The hearings are held in private and decisions are not reported. They allow the executive to mete out punishment without due process. Judges in special courts are military officers without formal legal training; they are expected to base their decisions on "conscience." Judges are appointed directly by the head of state, and there are no requirements regarding competence or judicial training. There is no limitation on the punishment that special courts can impose. The special courts have jurisdiction over such offenses as capital offenses, felonies, and large-scale tax evasion and also have the right to reopen cases already processed through the regular criminal justice system. Trials are summary. As well as the lack of opportunity to present a full defense, there is a lack of judicial independence and impartiality.

Special courts were set up as a temporary measure, but there is no sign that they will cease to operate. They operate in a separate jurisdiction not under the control of the chief justice and fail to meet international fair-trial standards. Special courts have been responsible for violations of human rights, in particular failing to protect the rights not to be tortured or unlawfully detained. They hand down prison sentences in summary trials without legal representation or the right to appeal.

This continued use of an executive-directed special court system allows ongoing executive interference with the judicial process. Amnesty International has called for the abolition of the special court.

There are problems in the infrastructure of the courts, both civilian and special. For example, the key court personnel such as prosecutors and judges lack formal legal education and training; funding is limited; and there are court delays. Other related court problems include the crumbling physical infrastructure, facilities, and equipment; lack of housing for court judges; and use of temporary buildings commonly called containers.

Eritrea has embarked on judicial reform as one of the national agendas. Several specific aspects of this reform include crash training programs for members of the judiciary to replace their Ethiopian counterparts, promoting education of a new cadre of judges, replacing archaic infrastructure and facilities, performing procedural assessments, and building judicial associations or work groups.

Punishment

The categorization of the prisons in Eritrea is less discernible than in Ethiopia. That is, prisons are not

prison cells

identified as maximum-security prisons, medium-security prisons, and minimum-security prisons. However, references are made to regular prisons, military prisons, and underground.

The punishment of offenders is affected by the legacy of Eritrea's rule by Ethiopia, and the subsequent war between the two countries. In 2000, Eritrea detained between 10,000 and 20,000 Ethiopians as prisoners of war, scheduled for deportation and repatriation.

Amnesty International visited a prison in 1999 and reported that conditions appeared to meet international standards. There have, however, been no reports of international NGOs visiting Eritrean prisons subsequent to that date. The International Red Cross has been refused access to the prisons. In addition, prisoners are warned not to discuss prison conditions after release, so accurate information is hard to obtain. All the indications are that prison conditions are difficult. The government permits three visits a week by family members. Women and men are held separately, but there are no juvenile facilities, so children are held with adults. Pretrial detainees are held alongside convicted prisoners.

It is known that religious and political prisoners are held in harsh conditions amounting to cruel, inhumane, and degrading treatment. Many are held in metal shipping containers that are overcrowded, lacking in sanitary facilities, and subject to extreme temperatures. Medical treatment is virtually nonexistent, and prisoners are taken to hospital only when they are near death.

The transitional penal code prohibits torture, but many observers believe that police have resorted to torture and physical beatings of prisoners during interrogation. This torture is not applied solely to those suspected or convicted of criminal involvement; draft evaders and deserters have been arrested and sometimes tortured as well. Government opponents, supporters of opposition groups, and religious prisoners have been tortured.

Arbitrary arrest, often for political reasons, and punishment are also relatively common. Although the penal code specifies a limit of 30 days for those held without charge, in practice, the authorities do sometimes hold people (including Ethiopians, Sudanese nationals, members of opposition groups, and Jehovah's Witnesses) for much longer.

Juvenile justice in Eritrea is in its formative years. These formative forms of juvenile justice are exemplified by the official recognition of the need to take action against juvenile offenders even though no separate juvenile law and juvenile institutions exist. Amnesty International has made investigation into their treatment in adult institutions. Being housed in adult prisons means that juvenile offenders are subjected to the same poor prison conditions whose descriptions appear in the reports of Amnesty International. The death penalty has been effectively suspended since independence in 1993, although it remains as an optional penalty for homicide and treason.

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Ethiopia

Legal System: Civil/Customary
Murder: Medium
Corruption: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

Ethiopia is a diverse country with an approximate population of 75.1 million, located in Eastern Africa. Ethiopia's first legal code, the Fetha Nagast (Law of Kings), is attributed to a 13th-century Egyptian Coptic scholar and was translated into the language of ancient Ethiopia around the 15th century.

The Fetha Nagast combined elements of the Old and New Testaments, Roman Emperor Justinian's civil law, early Christian canons, and the Koran. It addressed ecclesiastical and secular law, family law, property law, and public law. The Fetha Nagast was an important first step in the development of the Ethiopian legal system. However, the Fetha Nagast applied only to Christian Ethiopians; Muslims who came under Ethiopian rule were subject to Islamic sharia law.

The Fetha Nagast remained the basis for criminal procedure in Ethiopia well into the 20th century. It was not until 1930 that Emperor Haile Selassie established the first penal code, which defined offenses and prescribed punishments. Increasing interaction between Ethiopia and the rest of the world, however, made it clear that Ethiopia still appeared backward by comparison. The creation of a constitution in 1931 was one attempt at proving that Ethiopia was taking its place among modern nations. Prior to 1931, there had existed a sophisticated unwritten traditional constitution, and tribal judges had possessed complete discretion to render decisions based on their own concept of justice. There had been no conformity from one tribal court to the next. A written constitution served to bring Ethiopia into an era of continuity across the legal system.

By the 1950s, the social and political climate of Ethiopia had changed so dramatically that the 1931 Constitution and penal code were outdated. In 1945, Ethiopia became a founding member of the United Nations. This new alliance brought more opportunities for the introduction of Western ideas. As a result of the changing social situation in Ethiopia, and perhaps because of international pressure, Emperor Haile Selassie revised the Constitution in 1955 and the penal code in 1957.

The revised Constitution expanded on concepts introduced in the 1931 Constitution and introduced entirely new concepts. It outlined the rights of the accused, delineated the functions of parliament, and established the independence of the judiciary. Separation of power between the legislative, executive, and judicial branches was also strengthened.

Emperor Haile Selassie directed the revision under the stated purpose of bringing it up to date with Ethiopia's social progress; however, some speculated that his motives were not so magnanimous. The first 36 articles of the revised Constitution concerned the imperial throne and the rights thereof. The emperor was declared sovereign and his election divine, based on a bloodline tracing back to King Solomon of Israel. The throne would remain attached to the bloodline of Haile Selassie, and only direct male descendents could succeed him. Despite a thin veil of new rights for the people, the powers vested in the emperor by the 1955 Constitution were so extensive that they made Haile Selassie, and those who succeeded him, absolute monarchs.

In 1961, a criminal procedures code drafted by a British scholar introduced English common law into the Ethiopian legal system. The code detailed minimum and maximum punishments for each offense and emphasized the concepts of culpability, willingness to accept responsibility for one's actions, and mitigating or aggravating circumstances.

In 1974, a socialist military regime known as the Derg deposed Haile Selassie and assumed control of the government. Under the Derg and Chairman Lt. Col. Mengistu Haile Mariam, the penal code was amended to reflect socialist philosophy. The code was revised to include the death penalty for antirevolutionary activities, and new laws were applied ex post facto to previous officials. In 1981, the code was revised again to include a new category: economic crimes. Economic crimes were actions in conflict with the socialist state: food hoarding, overcharging, damaging public property, or interfering with the production or distribution of goods.

In 1987, a decade into its rule, the Derg ratified a Constitution that ended military rule and provided for a civilian government. Although the layout of the government changed on paper, little changed in practice. The old Derg officials were still in charge, with new titles. Critics claimed that the new Constitution did little to address the needs of Ethiopians as a people or as individuals. It was instead a manifesto affirming the socialist principles of the Derg, much of which was taken almost verbatim from the 1977 Soviet Constitution.

In the late 1980s, insurrections, droughts, and famine eventually brought about the Derg's collapse. In

1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF) advanced on the capital city, Addis Ababa. Members of the Derg, including Mengistu, fled the country. The EPRDF established a transitional government and instituted a charter that functioned as a transitional constitution. Meles Zenawi assumed the role of interim president during the transitional period. Under his leadership, the Constitution of 1994 was ratified, and in August 1995, Ethiopia became the Federal Democratic Republic of Ethiopia. The same year, Ethiopia held its first-ever multiparty election.

Ethiopia's legal codes have been rewritten numerous times, with each version reflecting the current ruler's ideals and purposes. As a result, the current Constitution is still in its infancy. In the decade since the Constitution was drafted, Ethiopia has worked to decentralize government power and give more authority to individual states. In addition to returning the government to the hands of the people, decentralization serves as a guard against the resurgence of the monarchical and despotic rule Ethiopia has experienced in the past.

Police and Courts

Ethiopia has a federal police force, established by the 1994 Constitution. However, because bribery and corruption are widespread in the Ethiopian police force, it has faced serious challenges in establishing legitimacy. Further, decades of bloody political coups have blurred the lines between national security, public order, and general criminal activity. The lack of distinction between political crimes and other criminal acts means the police have become embroiled in volatile political situations. This has resulted in accusations of human rights violations, including the use of torture, massacres of protesters, and political disappearances. The government is working to increase the level of human rights and constitutional law training among members of the police force, but it has a long way to go before the police force reaches a level of professionalism befitting a modern, industrialized country.

The 1994 Constitution provides for two formal court systems: a three-tiered federal court and regional courts, which are arranged in the same three-tiered design as the federal courts. The Constitution also legitimizes customary and religious courts. Ethiopians may consult customary or religious courts in personal or family matters, if both parties agree to this arrangement. Muslim citizens may consult sharia courts, as well. Customary and religious courts handle minor personal disputes that would otherwise bog down the formal court system and are therefore an important part of the criminal justice system.

Crime

The criminal code defines a range of criminal offenses, including offenses against the person, property offenses, moral offenses, technological crimes, and political offenses. The code also contains a number of progressive inclusions, such as penalties for human trafficking and female circumcision. Crimes are classified based on the nature of the offense and whether the offender poses a future danger to society. The less serious offenses are generally punished with reprimand, probation, fines, fines converted to labor, or simple imprisonment, whereas grave offenses are punished by imprisonment, up to life imprisonment, or death. If an individual is found criminally responsible, the court will calculate the penalty taking into account the individual's guilt, disposition, education level, and personal circumstances, as well as the seriousness of the crime.

Those who commit criminal offenses are also categorized by age. Children who have not reached 9 years of age cannot be held criminally responsible for their actions. Youth between the ages of 9 and 15 may be held criminally liable for their actions but do not face adult penalties. Offenders who are older than age 15 but younger than age 18 are tried as adults under the provisions of the criminal code. However, in these cases the court can take into consideration the nature of the crime and the offender's age and, based on these considerations, may sentence the offender to a penalty applicable to young persons. Penalties applicable to young persons include reprimand,

The Federal Supreme Court building in Addis Ababa, Ethiopia. (AP Photo/Anthony Michell)

fines, probation, school or home arrest, admission to a curative or corrective institution, or incarceration in an adult facility where they will be segregated from adult offenders. Youth offenders who are mentally ill or addicted to alcohol or narcotics may be sent to a curative institution, which provides medical care as well as education or training when possible.

Crime Rates and Trends

The International Criminal Police Organization (INTERPOL) crime data for the year 2000 revealed the following rates of crime reported to police per 100,000 persons: homicide, 5.48; rape, 1.12; robbery, 5.01; aggravated assault, 71.61; burglary, 1.79; larceny, 28.92; and motor vehicle theft, 2.06. The combined rate for all offenses was 115.99 per 100,000 persons.

Examination of crime trends shows that there have been increases and decreases depending on the crime in question. INTERPOL data for the years 1995 to 2000 reveal that crime rates have increased for rape, aggravated assault, and motor vehicle theft. However, crime rates have decreased for homicide, robbery, burglary, and larceny. Overall, the crime rate in Ethiopia decreased 6.0 percent between the years 1995 and 2000.

Ethiopia faces crimes of an international nature such as human trafficking, drug trafficking, terrorism, and violations of human rights. It has been found that underage girls have been sent abroad as

well as used in urban areas of Ethiopia as child prostitutes. Women have been trafficked for sexual purposes and forced labor. Economic crisis is thought to be a driving force for the trafficking of women and children, given that poor and uneducated children and women may be enticed or forced into labor or prostitution within the country or abroad.

Although Ethiopia is not a major player in the international drug trade, it is situated along major transit routes for narcotics. The United Nations Office on Drugs and Crime Prevention (UNDCP) conducted a study in 1998 that revealed that although Ethiopians were not consuming hard drugs such as heroin and cocaine, there was an increase in the use of khat, cannabis, and inhalants such as glues and solvents. These increases have been most prominent among women and youth. To respond to the problem, Ethiopia has a Counter-Narcotics Unit that works to interdict drugs and traffickers specifically at the Bole International Airport. Although this unit does what it can to suppress trafficking within Ethiopia, financial restraints cause Ethiopia to rely on other countries such as the United States and Germany as well as the United Nations to combat drug trafficking.

As for its role in combating terrorism, Ethiopia's National Intelligence and Security Service (NISS) is responsible for managing counterterrorism efforts. Federal and local law enforcement focus on responding to terrorist events when and if they occur. The 2005 criminal code criminalized financial crimes such as money laundering so as to prevent terrorists from using Ethiopian financial networks to finance their operations. Further, Ethiopia is in the process of drafting its own counterterrorism legislation and also actively participates in the African Union and its efforts to combat terrorism.

Finding of Guilt

The 1994 Constitution of Ethiopia details the protections provided for persons accused of crimes. It guarantees that arrestees will be promptly informed of the charges against them and receive an explanation of those charges before a court, if desired. Arrestees must be informed that they have a right to remain silent and that self-incriminating statements may be used against them. Appearance before the court must be prompt, within 48 hours of arrest. A special exclusion is provided for the reasonable time it takes to transport the accused to the court because in remote areas of Ethiopia, one is likely to encounter mountains, marshlands, or deserts that would greatly impede travel. Bail is also a constitutionally guaranteed right, except when the court determines that no amount of bail will protect society or ensure appearance in court.

The 1994 Constitution also contains trial rights. The accused is presumed innocent until the court determines guilt. The accused has the right to discovery of the evidence against him or her and must be given adequate time to review the evidence and prepare a defense. The Constitution guarantees the right to defense counsel, and in the case of indigents, the court must provide defense at its own expense. Public trials are also a guarantee, except in cases where the safety of those involved is at risk. However, as a general rule, the right to a public trial is of great constitutional importance, and only the gravest circumstances warrant an exception.

There is no jury system in Ethiopia. Instead, prosecution and defense argue their case before a panel of judges. A finding of guilt is determined by a majority vote, and the criminal code is consulted to determine appropriate punishment. Finally, the accused has the right to appeal his or her verdict to a higher court.

Punishment

Conditions in Ethiopia's prisons are said to be less than favorable. Human rights organizations have criticized the country for what they believe is inhumane treatment of prisoners. In the past, prisoners were said to be subjected to beatings, unsanitary conditions, exhausting work, overcrowding, and political propaganda. Further, there were few recreational or rehabilitative opportunities.

Although capital punishment is an option in Ethiopia, the death penalty may be used only for grave offenses such as homicide, genocide, and attacks on the political or territorial integrity of the state. Generally, the method of execution is firing squad. Although the death penalty is an option for some crimes, there have only been two executions carried out since 1998, the most recent occurring in 2007.

Finally, international human rights organizations such as Amnesty International and Human Rights Watch point out that although Ethiopia is moving forward in recognizing human rights, there are still problems to confront, such as police brutality, illegal detention, inhumane prison conditions, and the use of torture and the death penalty. For these reasons, Ethiopia remains under scrutiny by human rights organizations and international governmental groups such as the European Union.

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Gabon

Legal System: Civil
Murder: High
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes

Background

AuQ1 People's Republic of Gabon is a country near the equator in Western Africa bordered by Equatorial Guinea to the north, Cameroon Republic to the south, the People's Republic of Congo to the east, and the Gulf of Guinea to the west. The CIA country profile lists Gabon's current population at 1,454,867. Gabon officially became an independent republic on August 17, 1960, but the French influence has continued to modern-day Gabon.

That influence is evident in Gabon's legal system, in that the contemporary civil law and customary law are highly influenced by the French civil law system. Gabon's civil court system has three tiers: the trial courts, the appellate courts, and the Supreme Court. Additionally, there are three courts (judicial, administrative, and accounts) in the Supreme Court, each serving different functions. A constitutional court was also established in 1991, to deal with constitutional issues. National legislation on civil, criminal, and social matters, is maintained by the laws that either were in place and inherited by French colonization or that have been modified to take care of customary laws.

The police in Gabon consist of two groups: the national police, who fall under the control of the Interior Ministry, and the gendarmerie, who work under the Defense Ministry. Exact numbers of police officers are not available, but the national police and gendarmerie, along with the army, navy, and air force, make up a military of approximately 5,000 personnel. The Overseas Security Advisory Council (OSAC) reported in 2007 that Gabon's police infrastructure is inadequate to deal with the country's crime problem, and police assistance for visitors can be expected to be "minimal at best." Police corruption is also alleged, and it is possible that a criminal can be released and never charged—for the right price. Military and police checkpoints are also used randomly throughout the country. The officers at these checkpoints often wind up extorting bribes from individuals who cannot provide requested documentation. In addition to the gendarmerie and national police, there is also an elite, heavily armed unit called the Republican Guard. This unit is tasked with the job of protecting the president.

Crime

In Gabon, the minimum age for criminal responsibility is 13. Although Gabon's justice system is based on the French civil law system, and there can

be an assumption that Gabon's crime classification is also influenced by France's crime classifications, one of the shortcomings to researching limited data sources is that there is no direct mention of exactly how the distinction is made between serious and minor crimes.

A wide array of crimes are committed in Gabon. The OSAC notes that petty theft is widely reported. Gabonese criminals commit crimes when the opportunity is right, often preying on those with visible valuables or going after victims who are weak, drunk, or unfamiliar with their surroundings. Violent crimes also occur in Gabon, more often around bigger cities such as Libreville, the capital. Possibly the greatest threat to the public's safety are motor vehicles. OSAC warns travelers of the poor driving skills of average Gabonese drivers who have little regard for traffic laws and drive at high speeds.

Current crime statistics for Gabon are unavailable. The 1996 INTERPOL report provided crime data for some categories. The rate was 105 per 100,000 population for rape; 125 for robbery; and 114 for motor vehicle theft. For murder, the rate in 1996 was not reported, but recent data collected by the WHO indicate that the level is high.

One crime that is of particular challenge to the country is that of human trafficking, especially with children. Children from Benin, Nigeria, Togo, Guinea, Sierra Leone, Burkina Faso, and Cameroon are trafficked to Gabon, usually by boat, for the purpose of forced labor. Young boys are trafficked for forced street hawking and forced labor in workshops, and girls are trafficked for market vending, forced restaurant labor, and domestic servitude. Despite the problem of child trafficking, the Gabonese government does not appear to be making efforts to battle it. Although Gabon does not fully comply with the minimum standards to eliminate human trafficking, efforts toward progress were initiated in 2004. A law passed in 2004 prohibits child trafficking and calls for a punishment of 5 to 15 years' imprisonment with a $20,000–$40,000 fine. Gabon has also prohibited child trafficking for the purpose of sexual exploitation. No trafficking convictions were reported within the last year, and there are only 12 to 20 trafficking cases currently in the judicial system. Data from the U.S. Department of State report show that from February 2007 to January 2008, there were 16 female suspected traffickers awaiting trial; three escaped, eight went to trial, and the remaining were released because they needed to care for their children. The report also noted that the government had assigned two judges for two-year terms to work exclusively on trafficking cases.

Another crime challenging Gabon is poaching. About 85 percent of the land is forest, with a tropical climate that makes it one of the most hospitable territories for wildlife. Poaching of elephants, lowland gorillas, and mandrils continues to be a problem. In 2002, Gabon set aside 10 percent of its land for the purpose of establishing national parks with no poaching allowed. Unfortunately, there is no way to keep the animals safe once they wander outside of the park boundaries. According to one report, there were an estimated 4,000 forest elephants in the national parks in 2005. One year later, that number had already dwindled to 3,000. Despite government efforts to stop the illegal poaching of animals, it is still a profitable crime and continues today.

Finding of Guilt

Although the Constitution prohibits torture or cruel punishment, Gabonese security forces still occasionally engage in human right violations. Suspects and prisoners are often beaten and subjected to mistreatment to obtain confessions. The Constitution also prohibits arbitrary arrest and detention; however, the government does not observe such prohibitions. The law states that the police have 48 hours of initial preventive detention, and during that time, police must charge a detainee before a judge. Police do not often respect this law.

If there is to be an ongoing investigation, bail can be set for the prisoner. Pretrial detainees have a right to free access to their attorneys and a speedy trial, a right that is practiced and respected. Pretrial detention cannot exceed more than six months for a misdemeanor and a year for felony charges.

Although some minor disputes may wind up going before a local area chief, the state does not officially recognize such decisions. Procedural safeguards during the trial phase are still lacking, and there have been reported instances where the

presiding judge has delivered an immediate verdict of guilt at the initial hearing, if the state presents sufficient evidence.

Gabon has been consistently working to strengthen its national system of human rights promotion and protection. The Ministry of the Advancement of Women and Child Protection, the National Human Rights Commission, the National Observatory on the Rights of the Child, and the National Observatory for Women's Rights and Equality, among others, have all been established to ensure that the rights of Gabonese citizens, including children, women, and the handicapped, are respected.

Punishment

On September 13, 2007, the Gabonese government decided to abolish the death penalty. This was a request by President Omar bongo Ondimba, who was seeking to stop the death penalty because nobody had been executed in over 20 years. Gabon currently has around 2,750 inmates in the country's prison population. Out of the total number of prisoners, approximately 40 percent are considered pretrial detainees or remand prisoners awaiting trial. Statistics were unavailable for the percentage of female prisoners or for the rates of foreign prisoners in Gabon's prison system.

Data are unavailable on the number of prisons and their locations. Some details about the inside of the prisons have been released. Conditions are considered to be life-threatening or harsh, with poor ventilation and sanitation. Food is inadequate for inmates, and medical care is almost nonexistent. With the exception of some rural prisons, detainees are segregated. Accused persons are kept separate from convicted persons, and juveniles are kept apart from adults. Finally, although the government does not impede such visits, there were no known visits by human rights monitors to observe prison conditions during 2001.

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Gambia

Legal System: Islamic/Common/Customary
Murder: Medium
Corruption: High
Human Trafficking: High
Prison Rate: Low
Death Penalty: Maybe
Corporal Punishment: Yes

Background

Gambia is located on the west coast of Africa. It is a multiparty democratic republic, having gained independence from Britain in 1965. After independence, it continued to be a member of the commonwealth with a prime minister as its head of government, while being governed under the constitutional monarchy of the British throne. It became a republic in 1970, adopting its own constitution as a sovereign state with an executive president. A new Constitution of the Second Republic came into effect on January 16, 1997. The head of state is an executive president elected by universal adult suffrage. Legislative authority is vested in the national assembly, the members of which serve a five-year term. The assembly is composed of 53 members: 48 are elected, and the remaining 5 are appointed by the president. The president appoints all government cabinet ministers and senior security chiefs.

Legal System

The Gambian judicial system is based on the English common law system, combined with a mixture of customary and Muslim sharia law. The court process is adversarial. Trials are generally public,

and defendants generally have the right to a lawyer at their own expense. They also have the right to confront witnesses and challenge evidence presented in their cases. Finally, the accused remains innocent until proven guilty.

The Gambian court structure operates on a two-tier system comprises the superior courts and the lower courts. The superior courts consist of the Supreme Court, which is the highest and final court of appeal in Gambia, with jurisdiction to hear all appeals from the high courts and court of appeal. The court of appeal is the second level of the superior court system. This court hears all appeals arising from cases decided by the high court and the special criminal court. This is followed by the high court, which is the first level of appeal from the lower courts. The court recently created special internal divisions, which are commercial, civil and land, miscellaneous, and family court. And finally, the special criminal court has jurisdiction over all criminal matters.

The subordinate lower courts consist of eight magistrates' courts, the Cadi courts (of the Islamic sharia law), and district tribunals. Most of the magistrates in the magistrates' courts are lawyers by profession. Cases presented before the magistrates' court usually involve a bench trial, in which the magistrate exercises summary jurisdiction. A magistrate can sentence offenders to custodial sentences with hard labor or impose fines on the finding of guilt.

The Cadi courts adjudicate cases relating to the Muslim religion and cover such matters as civil status, marriage, succession, donations, testaments, and guardianship as prescribed by Islamic laws. Before the 1997 Constitution, there were only two Cadi courts, located in the capital region. The 1997 Constitution empowered the chief justice and allowed him to establish a Cadi court anywhere in the country. An ordinary first hearing of the Cadi court is presided over by three members, including a senior Cadi and two qualified Muslim scholars with knowledge of the Sharia law. For review hearings, a Cadi and four other panel members preside.

The district tribunals have jurisdiction to hear less serious criminal and civil matters. They are customary courts headed by a local district chief (*seyfo*), who acts as president, with six or seven other panel members appointed by the Secretary of State for Local Government and Lands. The district tribunal's panel members are usually senior male members of the district who are familiar with local laws and customs. The tribunal's jurisdiction is limited to areas under its geographical command. District tribunals are generally considered the first formal level of adjudication for most rural people.

Police

The Gambian Police Force (GPF) was created by The Police Act of 1949 as amended by Act 5/1988 and comes under the Secretary of State for the Interior. The chief of police is known as the inspector general of police (IGP), a presidential nominee. All other senior ranks are appointed by the IGP through the office of the Secretary of States for the Interior, following the consent of the president.

The recruiting age range for the Gambian police is 18 to 25 years. A recruit is required to have a minimum of a secondary school certificate. There are provisions to appoint people with higher academic qualifications as cadet officer or other senior positions. All such appointments must be approved by the president. Police recruits go through a six-month training at the police training school, located at Yundum, a few kilometers from the capital, Banjul. The training includes physicals, firearms training, and lectures on legal subjects related to the profession.

The Gambian police are made up of about 2,000 sworn officers. The Gambian Police Force rank structure consists of the inspector general of police (IGP), a deputy inspector general (DIG), and 10–20 commissioners of police. Of the remaining senior- and middle-management team, there are at least 15 chief superintendents, 50 superintendents and assistant superintendents of police (ASP) combined, 100 inspectors (including chief inspectors and sub-inspectors), and between 150 and 200 sergeants; the remainder of the force includes corporals, first class constables, constables, and recruits (in training or on probation).

The country is divided into nine police boroughs. The borough commanders are directly answerable to the IGP. A borough commander must have the minimum rank of an assistant superintendent of police (ASP). However, all boroughs are now headed by a police commissioner, who has several police stations under his command. A commissioner of operations based at police headquarters in Banjul, who acts as an operations liaison officer between the borough commanders/commissioners and the IGP, also assists the inspector. All borough commanders are, therefore, expected to coordinate activities with headquarters through the commissioner of operations, which limits their level of discretion in police operational matters.

A police station commander usually bears the rank of an inspector, but a sergeant or corporal may man a smaller station. A station may have fewer than five officers or more than one hundred. Most rural police stations have fewer than 10 officers, whereas the Serekunda police station, Serekunda being the biggest city in Gambia, has up to 200 officers or more.

Crime

Crimes in Gambia are classified into felonies and misdemeanors. Misdemeanors offenses are nonserious offenses and include all minor crimes against a person and property. Felonies include all serious offenses that carry a penalty of up to three years or more. Felonious offenses include homicide, robbery, aggravated assault, aggravated theft, rape, and arson.

Offenses involving actual bodily harm, sexual assault, theft, and serious driving offenses are seriously prosecuted and may involve a custodial sentence. Homosexuality is a felony crime under chapter 5 of the Gambian Criminal Code 1965. Offenses against morality may be punishable by imprisonment for a term of up to 14 years, but no such case has been tried to guilt yet.

The age of criminal responsibility is 18 years. Depending on the nature and seriousness of an offense, crimes can be prosecuted by either the police prosecution unit or the director of public prosecution (DPP). Generally, most cases are prosecuted by the police prosecution unit at the magistrates' court level.

Property theft, minor drug offenses, and petty street crimes, such as pickpocketing, are the most prevalent crimes and account for the most demand on police services. Cannabis or marijuana (*yamba* or *tie* as it is locally known) is the most common drug in Gambia. Most offenses involve the use and trafficking of cannabis. It is illegal to sell or use all common dangerous drugs such as heroin, marijuana, cocaine, and other classes of designer drugs. Penalties for drug offenses can be severe and may include lengthy custodial sentences.

Generally, crime statistics are not readily available. In 1995, the INTERPOL crime data provided the crime rates per 100,000 population as follows: 8 murders; 6 rapes and serious sex offenses; 1,236 larceny thefts; 385 robberies and violent/aggravated thefts; 227 breaking and entering thefts; 331 serious assaults; 55 fraud cases; 300 drug-related offenses; and 4 auto thefts.

The most prevalent crime in the rural areas is cattle rustling, which is constantly reported in the local press. House burglaries are also common. There are also the occasional land-related disputes, most of which are settled at the village *alkalo* or district chief/*seyfo* level.

Petty theft is most prevalent in the urban areas. Gambia is a popular tourist destination for Europeans. The government has demarcated a Tourism Development Area (TDA) that is considered to be one of the safest areas, as it is visibly patrolled by the Army National Guard, with its manned station near a cluster of hotels. Regardless, the TDA attracts petty criminals and tricksters who are involved in the occasional pickpocketing and bag stealing/snatching. Petty drug peddling and the sex industry are also of concern in the TDA, and tourists are known to get in trouble for trying to buy cannabis.

Finding of Guilt

Trials are public, and defendants generally have the right to a lawyer at their own expense. There is no

free legal aid system in Gambia. The law requires that there be probable cause to initiate an arrest. Most arrests are post-incident, and a suspect can be arrested and held in custody for up to 72 hours based on a complaint or a report of wrongdoing made to the police.

The Constitution prohibits arbitrary arrest and detention, but the police and other law enforcement units appear to operate with unchecked powers to stop, question, and apprehend a suspect with or without a warrant. The police, army, and National Intelligence Agency (NIA) are known to arbitrarily arrest and detain people. The Constitution requires that arrested subjects be charged and brought to court within 72 hours, but this is not generally observed, especially with political and security-related detainees. Arbitrary arrest and detentions are frequently reported in the local and international press. Such claims can also be verified from former detainees, especially political detainees. Generally, in most ordinary cases, detainees are granted access to family members and a lawyer or are allowed bail.

The Constitution provides for an independent judiciary, but in reality, most cases are subject to several forms of executive pressure. The Constitution provides for a fair trial, but the courts are known to be overloaded with work and lack the capacity to handle the demand.

The police prosecution unit would normally lead on and prosecute all minor offenses at the magistrates' court level. The police are required to charge and bring an accused before the court within 72 hours. There is the presumption of innocence until proven guilty. The police are required to send copies of all prosecutable offenses to the DPP for legal advice. The DPP has the discretion to remand cases back to the police, with legal advice and instructions for the police to prosecute. The police prosecutor, just like the office of the DPP, has some discretion in either bringing formal charges against a suspect or dropping all charges.

An alternate dispute resolution (ADR) facility has recently been set up as an annexed court to provide an alternative form of dispute resolution, which is recognized within the court system. However, in Gambia, dispute resolution exists in both the formal judicial structure and the traditional system. At the village and family level, for instance, such methods as negotiation, mediation, and dispute resolution are used as an alternate to avoid government involvement in what many consider family matters. Customary law and the Muslim sharia law are still considered by many as alternatives, though they are now incorporated as part of the formal legal system. Customary law is designed for non-Muslims to cover marriage and divorce, inheritance, land tenure, tribal and clan leadership, and other traditional and social relations, whereas the sharia law deals with Muslim marriage and divorce matters.

Several petty crimes are also settled informally, post-incident and arrest, but before any formal charges are made. Even within the urban and capital regions, most petty crimes do not go to trial. Only serious criminals are fingerprinted. Arrest bookings usually entail nothing more than a subject's name, his or her address (usually the name of a neighborhood or compound owner), and a brief detail of the offense for which the person was arrested. For instance, in a typical case of home burglary or simple assault, the victim may be satisfied with recovering lost property and have no interest in pressing charges after the suspect has spent a few days in a local police cell. In some cases, especially where the suspect is locally known (perhaps a delinquent juvenile or a known repeat petty criminal offender), family members could mediate by appealing to the victim, who would in turn go to the police or the village head (*alkalo* or chief) to pardon the offender. Police generally tend to drop charges in cases where the victim has recovered his or her property, and there is no further interest to pursue the case by either the police or the victim.

The Children's Act of 2005 was passed to protect the welfare of children, and a children's court has now been set up in Kanifing, which is completely devoted to juvenile cases. The act covers the issues of adoption, custody, maintenance, parentage, and special and criminal cases affecting children, except for the offense of treason where the child is jointly charged with adults. During 2007 several criminal cases were heard regarding rape and

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abuse of children. However, there were no reported convictions.

Punishment

The death penalty was abolished in 1993 by the previous government but was reinstated in the 1997 Constitution with a provision for the national assembly to review its desirability within 10 years of the introduction of the new Constitution. There have been no known executions; all murder and treason convictions are generally commuted to life imprisonment, which the Constitution clearly made provisions for in section 18(2) (the protection of right to life).

Rape is a crime under the law, and a person who has carnal relations with a girl younger than 16 years is guilty of a statutory felony, which is punishable by a custodial sentence. Gambia is a predominantly Muslim country, which allows the practice of polygamy; however, incest is a crime. The police tend to treat crimes such as domestic violence as incidents outside of their ordinary jurisdiction, and thus rape within the confines of a marriage is rarely heard of. Rape is punishable with a custodial sentence. Punishment for such offenses as theft, burglary, and robbery usually involve a custodial sentence depending on the nature and value of the property involved.

Prisons

Gambia does not keep up-to-date and accurate statistics of its prison population. Gambia prisons have a total capacity of about 780 inmates. Mile 2 Central Prison has capacity for 500, Jeshwang for 200, and Janjanburay for 80. There are about 250 prison wardens altogether. In 2002, the Gambian Prisons Department reported 450 people in prison, including pretrial detainees. Prison statistics are treated with some level of secrecy; therefore, the current figures can only be estimated in relation to the total capacity.

The Prisons Act required the separation of prisoners based on sex and conviction status. Section 36 of the act specifically required separating prisoners by age and separating first-time offenders from recidivists, as well as those on remand from those already convicted. However, the prisons are generally separated into sections for male, female, remand, and security detainees. The Security Wing is known to house a mix of all classes of prisoners, including political prisoners and convicted murderers.

There are three prisons in Gambia, all of which were built during the colonial period or just after independence. The three prisons, as listed previously, are Mile 2 Central Prison, located on the island of the capital city of Banjul, with a capacity for 500 inmates and housing mainly felony convicts and political and remand prisoners; Jeshwang Prison, located in the suburb of Serekunda (the biggest town in Gambia) and with capacity for 200 inmates, who are generally deemed to be of less security importance; and Janjanburay Prison located in the Central River Division, with a capacity of 80 inmates and which typically holds convicts from the rural areas who are considered to be of no or minimal security threat, as well as temporarily remanded security prisoners awaiting transfer to Mile 2 Central Prison.

The central prison at Mile 2 has an official capacity for 500 inmates. It is located exactly two miles from the center of the capital city of Banjul. The only ways off of the main island of Banjul are by ferry or small boat or through the guarded Denton Bridge. All regular ferry and motor crossing points are guarded by armed officer.

Prisoners serving time with hard labor sentences work anywhere within or outside the precincts of their place of confinement. Non–hard labor prisoners, as well as female prisoners, engage in productive activities within their prison of confinement only. Prisoners are supposed to be involved in learning vocational skills, such as carpentry, but there is little to no evidence to suggest that this is in practice because of the lack of resources. Jeshwang prisoners are known to be involved in some poultry farming, and Janjanburay prisoners are known to work on rice and millet fields. The produce from these fields is used to feed the prisoners.

Section 21 of the Prisons Act recognizes the rights of prisoners to have visitors. Prisoners are generally

allowed family or private visits according to their conviction status. Most prisoners are allowed one visit a month; however, some get only one visit for every three months. Prisoners can be allowed emergency visits, but this has to be approved by the head of the prison. Visits can last from 15 minutes to an hour. Appointed members of the Prisons Committee are known to occasionally visit prisoners. The Red Cross and other international human rights groups are also occasionally allowed to visit prisoners.

Pa Musa Jobarteh

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Ghana

Legal System: Common/Customary
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

Ghana is a West African multiethnic nation of more than 24 million people covering 92,000 square miles. Divided into 10 administrative regions, Ghana became a multiparty democracy in January 1993, after years of political instability, especially 12 years of military rule. Ghana's current criminal justice system was first introduced by the British in 1844 when they signed an agreement with eight coastal chiefs of the present-day Central Region of Ghana under which the chiefs relinquished their powers to the British, especially their ancient political and judicial powers to try cases and deal with offenders. The sources of law in Ghana are the 1992 Constitution, legislation, existing law, common law, and native law. Ghanaian law distinguishes between adults and juveniles. A juvenile in Ghana is a person under 17 years of age. The law forbids detention without due process, deprivation of property without due process, and enslavement of any kind.

Criminal Justice System

Ghana's current criminal justice system consists of the Ghana Judicial Service, the Ghana Police Service, and the Ghana Prisons Service. Through these institutions, the Ghanaian society investigates, identifies, accuses, tries, convicts, punishes, and "rehabilitates" those who break the law. The department of the attorney general (AG) and police prosecutors prosecute all criminal cases in Ghana except for homicide and very high-profile cases. The police arrest, investigate, charge, and prosecute most of the criminal cases/offenses in Ghana. Each criminal justice institution has its own personnel selection criteria, training schemes, and career prospects. All the justices of the courts are trained lawyers. Legal education in Ghana is strenuous and expensive. Following the English tradition, lawyers are not permitted to advertise their services, and the media cannot comment on any substantive case before a court of law.

Crime

Crime in Ghana is usually grouped into three broad categories. These are offenses against the person, offenses against property, and offenses against public order, health, and morality. Offenses against the person include murder, manslaughter, threatening, causing harm, assault, abortion, infanticide, rape, defilement, child stealing, slavery and slave dealing, criminal libel, insulting behavior, and attempted suicide. Offenses against property include arson, criminal damage, larceny theft, burglary, and pickpocketing and trust offenses such as fraud,

dishonestly receiving, extortion, embezzlement, and swindling. Offenses against public order, health, and morality relate to state or national security, public health and morality, and treason.

Police reports from the Ghana Police Service suggest that among the three broad offense categories, offenses against the person account for 48 percent, followed by offenses against property at 44 percent, and offenses against public order, health, and morality at 8 percent. Most criminal offenses recorded by the police are nonserious or misdemeanors.

Specific crime rates per 100,000 population in 2000 were 448.42 assaults, 2.48 murders, 6.85 rapes, 2.15 robberies, 1.3 burglaries, and 0.08 larceny thefts. In 2002, there were 459 homicide cases, and between January and June 2003, there were 211 homicide cases recorded. During the same period, there were 11,121 cases of threatening; 44,422 assault; 87 rape; 4,920 causing damage; 490 defilement; and 5,508 fraud. In 2006, all the major offenses declined except defilement (sexual assault of a minor), which rose 29 percent, from 428 to 552 cases, and rape, which rose 15.2 percent, from 145 to 167 cases. One growing crime in Ghana is narcotic offenses. Both locals and foreigners arrested for narcotic offenses, including cocaine, methamphetamine, hashish, LSD, and marijuana, as well as organized crime and fraud involving locals and foreigners from the West African subregion have increased recently.

Most offenders in Ghana, 99.7 percent, are young adult males, between 18 and 37 years. Fifty-six percent of the offenders are single and unemployed. Most offenders either do not possess any educational qualification or possess only an elementary school certificate.

Ghana's police headquarters in Accra, where two 16-year-old British girls were being held on suspicion of drug trafficking, July 12, 2007. The two girls from London were allegedly carrying $600,000 worth of cocaine when they were stopped by Ghanian drug officials at the Accra airport. (AP Photo/Kouame Adou)

Finding of Guilt

In Ghana, a distinction is often made between the formal court system introduced by England after 1844 and the informal court system that existed before English colonization. The judiciary has expanded profoundly over the years. There are more than 300 courts of all levels and jurisdictions and more than 430 judges to dispense fair and impartial justice. Ghanaian courts adhere strictly to precedence and follow the common law accusatorial tradition. Ghana's current court system is made up of the Superior Court of Judicature and the lower courts. The Superior Court includes the Supreme Court, Court of Appeal, High Court, and regional tribunals. The Supreme Court consists of the chief justice and no fewer than nine justices, all appointed by the president of Ghana on the advice of Ghana's Council of State and, in the case of the chief justice, approved by Ghana's parliament. The Supreme Court is the highest and final court of appeal in Ghana. The Court of Appeal hears appeals from the High Court and the lower courts. The High Court hears civil and criminal cases. All the Supreme Court justices do not sit at once on a case. The chief justice, the chief executive officer of the Ghana Judicial Service, either presides or empanels a number of the justices, usually five, to decide on a case. Any dissatisfied party or parties may then appeal to the entire justices for a full hearing.

Subordinate to the Superior Court of Judicature are the lower courts whose judges are appointed by the chief justice. Most criminal offenses and civil cases are handled by these lower courts. Plea bargains and grand juries are not utilized in Ghana, but jury trial is guaranteed, especially in murder trials. Murder trials begin at the lower courts before committal to the High Court. Punishment for murder is death, but Ghana has been a de facto abolitionist nation since 1993. By law, suspects and those appearing before the courts have a right to an attorney. Most of the courts are in the urban areas, although over 70 percent of Ghanaians live in the countryside. Consequently, most of the rural residents resort to the native courts for justice or resolution of disputes.

The Native/Customary Court

The native court, also variously called the customary, traditional, chiefs', or informal court, operates under the local (village/town/traditional) chief or ruler and deals primarily with chieftaincy and land disputes, as well as summary offenses such as petty thefts and assault, especially in areas without court and police coverage. Every Ghanaian city, town, and village has a native court. The highest customary court is the Judicial and Arbitration Division of the National House of Chiefs (comprising all the paramount chiefs, heads of the ethnic groups of Ghana) in Kumasi. Each region has its own regional judicial and arbitration court. The native court is nonaccusatorial. Attorney representation is not necessary. Except at the national and regional levels, proceedings of the native courts are not recorded, and statistics of cases pending or adjudicated are not kept. Moreover, the native court cannot order arrest or incarcerate anyone who appears or refuses to appear before it. Rather, the court seeks to maintain communal solidarity through mediation and conciliation. The formal courts have often referred and deferred cases to the native courts. As well, the formal courts have sought the expertise of the native courts on specific matters and issues.

Police

The Ghana Police Service (GPS), with headquarters in Accra, is the sole law and order enforcement agency in Ghana. The head of the GPS is the inspector general of police (IGP). The GPS has several specialized departments, including the Criminal Investigations Department (CID) formed in 1921, the Intelligence and Professional Standards Bureau, the Strategic Direction and Monitoring Department, the Armored Division, and departments of special services, operations, motor traffic, services, welfare, finance, human resources, and legal services. In 2006, a new unit, the Domestic Violence and Victim Support Unit (DOVVSU), was created to assist women and children victims of domestic violence.

Between 1966 and 1969, 1972 and 1979, and 1981 and 1992, the police forged a political alliance with

the Ghana Armed Forces to overthrow the lawfully elected civilian governments of Ghana and established police-cum-military administrations to rule the country. Even so, the relation between the police and the military has been one of love and hate. In 1974, the GPS became a self-accounting institution (Police Force Decree, NRCD, 303). Consequently, new and improved service conditions and new units, regions, divisions, and districts were implemented or created. The GPS is a member of several international associations and organizations, including INTERPOL, and has conducted numerous peacekeeping duties and operations; it has also offered technical and training assistance programs to Afghanistan, Bosnia, Cambodia, Kosovo, Liberia, and Sierra Leone.

For law enforcement purposes, the GPS divides Ghana into 12 regional commands, 51 divisions, 179 districts, and over 651 police stations and posts across Ghana. The GPS has undergone tremendous changes since its inception. From the first 120-member Gold Coast Militia and Police (GCMP) to guard the English castles, investigate crimes, and serve summons, the GPS currently has over 18,000 personnel. The police-to-civilian ratio is 1:1,200. The functions of the GPS include crime detection and prevention, apprehension and prosecution of offenders, maintenance of law and order, and the due enforcement of the law (1970, Police Service Act, Act 350).

The highest policy-making body of the GPS is the Police Council, chaired by the vice president of the Republic of Ghana and made up of representatives of some identifiable professional groups and bodies, such as the Ghana Bar Association, as well as individuals appointed by the president of Ghana. The Police Council regulates in the areas of recruitment; promotions; personnel ranks; uniforms; conditions of service, including salaries, pension, gratuities, allowances, authority, and powers of commanders; and code of ethics and discipline and other areas that will ensure the smooth and effective administration of the police. The council also advises the president of Ghana on internal security, budgeting and finance, administration, and promotion above the rank of assistant commissioner of police. Each region has its own regional police council, chaired by the regional minister. As well, each district of Ghana has its own council chaired by the district chief executive.

Among the challenges facing the police in the 21st century are increased violent armed robberies, home invasions, larceny theft, and domestic violence; proliferation of transnational crimes; local and international criminal gangs; "contract" killings; local and international illegal narcotic/drug smuggling and use; laws on intellectual property and piracy; poaching; money laundering; and crowd control. Some of the difficulties facing the police include inadequate and obsolete equipments and accoutrement, poor data and poor criminal record keeping, slow and sloppy investigations, and insufficient and oftentimes unqualified personnel. Widespread cases of bribery and corruption are but two negative activities that continue to tarnish the image of the GPS in the eyes of the Ghanaian public. Real and perceived cases of bribery and corruption have often led to violent confrontations between members of the GPS and sections of the public, which sometimes have resulted in the killing of police personnel. Mistrust of police among Ghanaians is rather profound. The mistrust has oftentimes led to lynching of suspects when police were perceived as not doing their job. As well, increased incidents of police misconduct, such as assaults, both physical and sexual, and sometimes killing of innocent people, are among the concerns expressed by the citizenry and human rights groups and activists. The GPS is currently underfunded and ill-equipped to deal with the crime problem and other challenges facing contemporary Ghana. Several towns and villages do not have a police station or law enforcement presence. Despite these shortcomings, the GPS vigorously maintains law and order by apprehending and prosecuting criminals.

Prison

The Ghana Prisons Service, with headquarters in Accra, receives into lawful custody all adult offenders committed to prison, as well as all the juvenile offenders committed to the Ghana Borstal Institution

(GBI). The current prison system was first introduced by the British after the 1844 agreement. The Prisons Service used to be part of the Ghana Police Service before it was separated in the 1920s. The head of the service is the director-general of prisons, appointed by the president of Ghana on the advice of the Council of State (1992 Constitution, articles 206 and 207). The highest policy-making body of the Prisons Service is the Prisons Council chaired by the vice president of the Republic of Ghana and made up of nominees from various identifiable professional bodies and organizations and individuals appointed by the president of Ghana. The Ghana Prisons Service currently employs over 4,600 people. Most officers perform guard and escort duties. Prison personnel have participated in international assignments and training programs in Liberia, Sierra Leone, and Afghanistan.

There are 47 prisons or correctional facilities, seven of which are female prisons. Almost every prison has a remand block within it. Thirty-four prisons, including all the female prisons, are walled, 2 are camp-prisons, 10 are farmstead prisons, and 1 is a contagious diseases camp. All the female prisons are attached to male prisons, except the largest female prison in Ghana, the Nsawam Female Prison. Of the male prisons, 6 are maximum-security; 1, Nsawam, is medium-security; and 25 are minimum-security. Most of the prisons, including the Kumasi Central Prison (1904) and the Sekondi Central Prison (1905), were built between 1904 and 1930. Few new prisons have been constructed since the 1960s. The Ghana Prisons Service also operates the only correctional facility in Ghana for juveniles between 17 and 21, the Ghana Borstal Institution (GBI).

The Ghana Prisons Service places little emphasis on offender classification because of the nature and conditions of the prison buildings and chronic overcrowding. Only death row inmates and remands are separated from the general population. Offenders sentenced to "Imprisonment Hard Labor" (IHL) are required to work unless declared unfit by a medical officer. Work detail includes farming and poultry, construction, mechanics, laundry, and other menial work. Only a few adult prisoners and the Borstal inmates attend classes to receive formal education or vocational training. By law, every prison inmate has the right to receive visitation from relatives, social workers, friends, philanthropists, and religious leaders. Churches and faith-based groups play a vital role in prisoner welfare in Ghana. Thus, groups and individuals visit, counsel, feed, clothe, and provide medication to several needy prisoners in Ghana daily. Prison Visiting Committees, assigned medical officers, public officials, and human rights groups also visit the prisons frequently to ensure that safe and humane conditions prevail.

The average daily prison population of Ghanaian prisons is in excess of 13,800, of which 98.2 percent are males; 4,218 are remands awaiting trials, and 700 are foreign nationals from over 25 African, European, and the Far Eastern countries. Ghana and Nigeria have frequently exchanged convicted prisoners. Prisoner transfer/exchange negotiations under which the exchanged prisoners complete their sentences in their native countries are ongoing with other West African countries. Most female prisoners were convicted of assault, larceny theft, fraud, or drug/narcotic offenses. Sentences of the female offenders range from six months to life. Ghana has never executed any female offender; female death sentences are always commuted to life. Female prisons are neater, and the conditions are generally better than in the male prisons. Sentences of the male prisoners range from one month of imprisonment to death. More than 70 percent of the convicted male offenders are in prison for less than four years. More than 64 percent of all the offenders are recidivists, having been convicted at least once previously. The Ghanaian prison population is young; more than 98 percent of the offenders are younger than 50 years of age. Ghanaian prisons are notoriously overcrowded. To reduce overcrowding and the negative effects of incarceration, the government has frequently granted amnesty to certain categories of offenders, mostly first and second offenders, as well as nonviolent offenders who have served over half of their sentences. The level of HIV/AIDS among inmates is unknown because of the absence of thorough and periodic medical examinations of the inmates. However, 31 of the 118 deaths reported by the service in 2006 were classified as HIV/AIDS-related. The Ghana Prisons Service is at a crossroads. Many

accomplishments have been achieved over the years in the areas of personnel recruitment and improved conditions of service, but there remains a lot to be done.

Outside of the criminal justice system, the Ministry of Employment and Social Welfare operates industrial homes for boys in Accra in Greater Accra, in Swedru in the Central region, and in Jakobu in the Ashanti region for boys and for girls in Kumasi in the Ashanti region, as well as detention centers for juveniles under 17 of both sexes in Accra, Sekondi, Cape Coast, and Kumasi.

Joseph Appiahene-Gyamfi

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Guinea

Legal System: Civil/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes

Background

Guinea is a country in Western Africa with Guinea-Bissau, Senegal, Mali, Côte D'Ivoire, and Liberia as its neighbors. In 2002, its population was 8,444,559, which included refugees and foreign-born residents. The capital city is Conakry, which has a population of 2,000,000. Guinea was a colony of France until 1958, when it gained independence. In 1990, Guinea adopted a new constitution that limited the number of political parties to two and also made it law that the ruling party had a total of five years to establish order in the country prior to the first election.

The Guinean Constitution is known as the Fundamental Law, and it has 96 articles grouped into 12 titles, including Sovereignty, Rights, Fundamental Freedoms and Duties, President of the Republic, National Assembly, Relationship Between the president of the Republic and the National Assembly, Treaties and International Accords, Judicial Power, High Court of Justice, Economic and Social Council, Local Governments, Constitutional Review, and Transitional Provisions.

The Constitution has some very interesting points, including that Guinea will follow the principles of the African Union, the United Nations, and the Universal Declaration of Human Rights. Other interesting inclusions are a separation of governmental powers and 18 specific articles that speak to the duties and rights of all Guinean citizens.

The legislative power in Guinea is held by the National Assembly. Of the 114 members of the assembly, 76 of them are elected from the party's national list and are chosen by a proportional poll. ~~Seventy-six of the members are elected from the party's national list and are chosen by a proportional poll~~. Thirty-eight of the members are elected by a majority system and are drawn from the 33 prefectures and 5 separate communes of Conakry. Each elected member must be at least 25 years old, must be represented by a constituted political party, must be a Guinea citizen by birth or be a naturalized citizen for 10 years, and must have been living in Guinea since being naturalized. Guinea mainly uses an inquisitorial type of legal system. The inquisitorial legal system is characterized by having extensive pretrial interrogations and investigations, with the goal being that no innocent person be tried in a court of law.

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Police

The Ministry of Justice and Human Rights has the task of creating rules for the organization, jurisdiction, and operation of correctional services that guarantee human freedoms and ensure the rule of

law. The Ministry of Interior and Security has the task of maintaining order, managing internal and external security of the state, protecting the security of people and their property, maintaining public order, preventing terrorism, preventing economic and financial crime, fighting drugs, and fighting organized crime.

Internal security is conducted by the gendarmerie, a part of the Ministry of Defense, and by the national police, which is a part of the Ministry of Security. Although the army is used for external security in most cases, it also may intervene in internal security issues. The Anticrime Brigade, a quasi-police unit used to fight criminal gangs, is used in the capitol of Conakry and in most of the prefectures and regions of Guinea. An interesting fact is that the code of penal procedure states that only the gendarmerie is allowed to arrest people. However, it is well known that the state police, the army, and the Red Berets or Presidential Guard make arrests also.

The 2007 Country Report on Human Rights Practices claimed that the police forces lacked training, were not staffed adequately, had poor administrative controls, and rarely followed the law that they were paid to enforce. The police have also been seen extorting money from citizens at roadblocks and ignoring basic legal procedures. The report also suggested that many citizens viewed the police and security forces as dangerous and ineffective.

In a 2006 study conducted by Human Rights Watch, 35 people, many of them children, were interviewed in Conakry and provided insight into police operations. Many of the individuals complained of torture suffered during the interrogation phase. They told of being severely beaten, abused, burned, bound in painful positions, and hung from a tree. The author of this study has concluded that police torture is commonplace.

Crime

Rape is considered a criminal offense in Guinea, but it is rarely prosecuted because women fear being ostracized and because of social beliefs. Spousal rape is not considered a crime at all, and overall, there are few, if any, prosecutions against rapists. A 2003 study reported that victims of sexual assaults accounted for 20 percent of all female visits to a local hospital. One-half of the victims were young girls, the majority of them knew their attacker, and the crimes took place mainly at schools.

Domestic violence against women is a common issue in Guinea; however, there are no actual statistics to confirm this observation. It is suggested that women fear retribution and stigmatization and rarely report domestic abuse unless it is at a divorce hearing. Beating one's spouse is not specifically prohibited by the law, but assault charges could be filed.

Prostitution is illegal but the law is not enforced. Pimping minors for prostitution is illegal, but the government does nothing when this charge is brought to their attention. Sexual harassment is not against the law; however, the government often speaks negatively about it in the media. Equal treatment from the law is provided for in the Constitution, but women and especially rural women still face discrimination. Typically, men have better divorce settlements than women, and their statements carry more weight in a court of law.

Female genital mutilation (FGM) is illegal. However, it is widely practiced in all regions of Guinea. Underage marriage is illegal, and the legal marriage age is 21 for men and 17 for women. Regardless of the law, underage marriage is allegedly a problem.

Human trafficking is illegal. The U.S. Human Trafficking Report of 2008 concludes that Guinea is a transit point, source, and destination point for human trafficking. It is reported that children, men, and women are trafficked internationally and within the country for illegal labor and for sex. The most common trafficking is taking people from the poorest rural areas in Upper Guinea and then moving them to the urban centers. Children are typically used as labor in diamond mining camps, in agriculture, for prostitution, for domestic work, and for begging.

Another source suggests that many adult and juvenile females are trafficked to Spain, Greece, Nigeria, Côte d'Ivoire, Benin, and Senegal for sexual exploitation and domestic servitude. This report also suggests that women from China are trafficked into

Ousmane Conte, son of Guinea's late president, Lasante Conte, sits in detention in Conakry, Guinea, on March 11, 2008. He admitted in a taped confession that he was in the drug business. (AP Photo/Jerome Delay)

Guinea to be used for sexual exploitation. Lastly, this report concludes that Guinea does not fully comply with minimum expectations for the prevention of trafficking. The country is doing much better than in the past but should pass legislation that would prohibit all forms on trafficking.

Petty street crime is common in Guinea's cities, and the government has imposed a midnight to 6 A.M. curfew as a means to combat it. Along the borders on Sierra Leone and Liberia, banditry has been reported. Criminals have also been reported to target foreign travelers near airports, hotels, traditional markets, and restaurants, often using children to commit the actual crimes. Visitors may receive unsolicited offers of help at hotels and airports from people who are often trying to steal wallets and luggage. The cities of Taouyah, Niger, and Madina are cited as being particular hot spots.

The U.S. State Department suggests that the majority of nonviolent crimes include purse snatching and pickpocketing, and the violent crimes include muggings, assaults, and armed robberies. It is further suggested that the police have not been able to prevent this type of crime and sometimes ask directly or indirectly for bribes when being asked for help. Drugs are an issue in Guinea, which has become a transit point for transnational drug networks.

Business fraud is very prevalent, and the victims are usually foreigners. The common scam is to send unsolicited e-mails to people and companies and promise quick monetary gains. A similar scam is present in legitimate business deals that require payments in advance on large contracts. The business deal might be legitimate, but people who give credit and bank card information sometimes find out that their accounts have been drained of all resources.

Violent crime is increasing in Conakry, the capitol of Guinea, and the nation's economic output has decreased during the past 40 years. Four districts in Conakry have been ruled off-limits to United Nations staff, and life for Guineans who live there is very dangerous because of the large number of firearms held by the residents. With constant power cuts, even walking the streets of Conakry after dark is dangerous.

Refugee camps in Guinea have been used as bases for armed groups and are threats to national security because of the large quantity of small firearms in refugee-populated areas. In 2000, President Conte had more than 450,000 refugees rounded up because he felt that they had caused a wave of violence throughout the country. During this same time, Conte recruited an estimated 7,000–30,000 young Guineans, called Young Volunteers, to push back the refugees. At the same time, Liberia was sponsoring attacks against Guinea, and these attacks usually took place at the refugee camps. As a result, Guinea based numerous militarized groups around the camps to protect the refugees.

Because of the refugee status in Guinea, camp security is probably the largest criminal-justice issue facing Guinea at this time. Inside the camps, the Brigade Mixt (BMS), a mix of gendarmerie and police officers, is charged with camp security. Over 78,000 refugees are distributed over seven camps, Laine, Kouankan, Kola, Nonah, Kuntaya, Telikoro, and Boreah, with an average of 1 BMS guard to every 1,000 refugees, resulting in very little effective security, so that theft, rape, and fistfights are common.

The exchange of sex for food and gifts is widespread in refugee camps. Currently, there are thousands of refugees living in Guinea who are there because they are trying to distance themselves from the war. Furthermore, there have been reports that some UN peacekeepers are to blame for some of the sexual exploitation.

Armed conflicts around Guinea starting in the 1990s have created a heavy financial toll on Guinea. There is a huge cost associated with having several hundred thousand refugees in the country because the military must protect the border and the people, and the government must house and feed the refugees. In turn Guinea's economic growth rate dropped to 2 percent in 2000, which was down from an average of 3.7 percent in 1989–1999.

A result of the Liberian Civil War ending was the 3,800 Young Volunteers who were armed and had not been reintegrated into society, causing huge security concerns in the Forest region of Guinea and concerns that they might be recruited by other armed political organizations.

Crime statistics are hard to find for Guinea. However, NationMaster (2008) has provided some key indicators on how crime and the courts affect business people:

- 1.67 percent of the managers surveyed agreed that crime is a constraint on their business.
- 2.68 percent of the managers surveyed agreed that corruption is a major business constraint.
- 59.01 percent of the managers surveyed agreed that they lack confidence in the courts to uphold property rights.
- 42 percent of the managers surveyed agreed that the courts were a major business constraint.

Finding of Guilt

Human Rights and Legal System

All citizens of Guinea have the following rights guaranteed to them: protection from arbitrary or unlawful deprivation of life; protection from disappearance; protection from torture and other inhumane, cruel, or degrading punishment; protection from arbitrary detention and arrest; the right from to a fair public trial; and freedom from arbitrary interference with home, family, and private correspondence.

Civil and penal proceedings are the two categories of trials in Guinea. Penal cases are designed to protect society from those who threaten it, and civil matters protect public order by applying punishments and seeking a balance between private parties. Penal cases consist of identifying the offender and the application of law. Each court has a unique magistrate charged with gathering all of the facts in the case; this happens during the investigation stage. In some misdemeanor cases, this

stage is not even used, and the suspect goes directly to the application of law stage. During the application-of-law stage, every court decision has to be deliberated, and then the sentence can be delivered. The following sentences are then given: a provisional order is given; the suspect is acquitted or released; the suspect is exempt from punishment, such as what happens when the suspect is under 13 years old; a decision of punishment is made, or there is a decision of inadmissibility, in which a case is dropped because the court feels that the case is weak.

Court System

Guinea's court system consists of the Supreme Court, courts of first instance, justices of the peace, the Tribunal of the First Instance, the Second Instance Court, courts for minors, the High Court of Justice, the Court of State Security, the Military Tribunal, tribunals of labor, and the Chamber of Arbitration. Factors such as the crime, a person's age, whether the person has been tried before, and numerous other legalities determine what court a person's case will be assigned to.

The Supreme Court has a first president who is appointed by the president of Guinea. The other members of the Supreme Court are appointed by the president also, and they must retire after they become 65 years old. During their time in the Supreme Court, they cannot be fired at will, but they can be prosecuted for committing a crime.

Ordinary courts, such as the court of first instance, deal with cases for the first time, and the monetary value of the case decides the jurisdiction. Typically, misdemeanors that carry a punishment of up to five years in jail are tried in a court of first instance. Within the courts of first instance, the public prosecutor is in charge of supervising the police officers of the Criminal Investigation Department who investigate cases. The public prosecutor also has to visit police stations as a check and balance against extra long preventive custody and detention. Lastly, the public prosecutor inspects Justices of the peace and makes sure that they are following the correct policies and procedures.

The Second Instance Court is the court of appeal, and there is one in Conakry and one in Kankan. The court in Conakry covers Middle and Lower Guinea and has 7 courts of first instance and 14 justices of the peace under its jurisdiction. The court in Kankan covers Upper Guinea and the Forest Region, where it has 3 courts of first instance and 12 justices of the peace under its jurisdiction.

There is a justice of the peace in every prefecture, and there are a total of 26 justices of the peace and prefectures in Guinea. Justices of the peace must deal with all civil and commercial matters when the value of the case is not more than 50,000 Guinean francs and the ultimate punishment is not more than 15 days in jail.

Courts for minors have the responsibility of dealing with all cases involving a minor. A minor is defined as somebody under the age of 18 the day the offense happened. These courts are presided over by the magistrate for children, who often investigates the offense the minor has committed. Minors are treated differently from adults in the court system, and legislation that impacts minor court cases has to be strictly interpreted.

The High Court of Justice deals with cases against the president and cabinet ministers, which are usually high-treason cases. High Court cases are not eligible for any type of appeal in the Court of Appeal or in the Supreme Court. The High Court of Justice has three full-time judges and three substitutes, and each is chosen on a yearly basis from the pool of Court of Appeal judges.

The Court of State Security is run by one Supreme Court judge and also has two professional judges and two high-ranking military officers on the panel. This court has jurisdiction over the entire country, and it mainly deals with crimes that are political in nature. This court's jurisdiction is optional, and the president can choose to send cases to the courts of first instance.

The Military Tribunal court also has jurisdiction over the entire country and deals with all offenses that are military-based in nature. Some of the types of offenses dealt with in the Military Tribunal court are abuse of authority, damage to the security of

the state, treason, destruction of property, embezzlement, and abuse of authority.

Arrest and Pretrial Civil Rights

The Human Rights Practices Report of 2007 suggested that incarceration before trial is allowed with the following rules: suspects cannot be arrested inside of their home between 4:30 P.M. and 6:00 A.M., the government must issue a warrant before somebody is arrested, detainees must be charged within 72 hours of their arrest, the accused can be held until the case is over, attorneys must have access to their clients, and bail is given purely at the discretion of the magistrate. The report also claims that on numerous occasions, these listed rules have not been followed by Guinean security forces.

The Human Rights Watch report of 2008 notes that people charged with a crime are often transferred from the police department to prisons where they are left for years awaiting trial. It is suggested that hundreds of petty criminals and others charged with assault and murder are mainly held in Maison Centrale based on confessions that were obtained by the police using torture as a method to get incriminating evidence. Of the 1,000 people being held in Maison Central, it is estimated that 700 to 800 of them have not yet been tried in a court of law. Human Rights Watch interviewed 20 inmates who stated that they had been incarcerated for more than six years without a hearing.

Punishment

Types of Punishment

Beating of a spouse would not bring a charge of domestic violence in Guinea, but could result in a charge of assault. The penalties for assault include the potential for two to five years in jail and fines ranging from US$13 to $79. Female genital mutilation (FGM) is illegal and holds a three-month prison sentence along with a $26 fine; however, it is still widely practiced in all regions of Guinea. Human trafficking is illegal and carries a punishment of 5–10 years in prison and the forfeiture of all property and money obtained while trafficking humans.

The death penalty was last used in Guinea in 2001. Currently, there are 11 criminals sitting on death row waiting for their punishment. The death penalty was reintroduced in 1984 by Minister of Justice Abou Camara because he wanted to put an end to the general feeling of insecurity among the citizens of Guinea as a result of fighting in Western Africa and an influx of war weapons into the country. Prior to 1984, criminals were often hanged in public so that they would be made an example of. Typically, the public hangings would be politically motivated. Long jail sentences can also be expected for the trafficking, possession, and use of illegal drugs; for sexual contact with a minor; and for using or giving away child pornography.

Prison

As of 2002, there were a total of 3,070 people incarcerated in Guinea, which had a total population of 8.4 million people. This would give it a prison population rate of 37 per 100,000 inhabitants. The largest prison in Guinea is the Maison Centrale, which is located in Conakry. Maison Centrale was designed to hold between 240 and 300 prisoners, but it currently holds around 1,000 inmates on average and had a high around 1,500 in 2006. It has been acknowledged by prison officials that overcrowding is the biggest issue facing this prison. With an average of 1,000 inmates, there are basically 3.3 to 5 inmates for the designed space of 1 inmate. Human Rights Watch reports that many of the inmates spend their entire day in very small and dimly lit cells.

The United Nations has produced the Standard Minimum Rules for the Treatment of Prisoners, which mandates that all inmates receive enough food to remain healthy and strong. Human Rights Watch reported that inmates at Maison Centrale typically get a few handfuls of rice covered with palm oil on a daily basis. Because of this lack of nutrition, seven inmates died of malnutrition and disease in 2004. The authors suggest that this number is actually lower than the true number of inmates

who die because the director of Maison Centrale has a policy of releasing inmates who are about to die so that they do not die in custody.

Human Rights Watch reports that the majority of prisons in Guinea are staffed by untrained and unpaid volunteer guards. These guards usually receive their compensation by selling food, clothing, marijuana, cigarettes, and anything of value to the inmates; they also use extortion as a means of making money. One method of extortion the guards use is to house boys with the men. This is against prison policy but is done so that the boys will pay the guards to house them with other boys, so that they will not be victimized by the men.

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Guinea-Bissau

Legal System: Civil/Customary
Murder: Medium
Corruption: High
Human Trafficking: Medium
Death Penalty: No
Corporal Punishment: No

Background

Guinea-Bissau is a small nation located in northwestern Africa. Bordered by Senegal to the north, Guinea to the south and east, and the Atlantic Ocean to the east, tiny Guinea-Bissau is slightly less than three times the size of Connecticut. With an area of only 13,948 square miles, Guinea-Bissau has a relatively low population of 1.745 million. Its capital city, Bissau, located in the country's southwest region, is also one of the country's four ports.

Guinea-Bissau has been a republic since its independence in 1974. It has three branches of government: executive, legislative, and judicial. The executive branch is headed by a president, the chief of state, who is elected to a five-year term with no term limits. The president is also head of state, supreme commander of the armed forces, symbol of national unity, and guarantor of national independence and the Constitution. The executive branch also contains a prime minister, the head of government, who is appointed by the president in line with party representation in parliament. In addition to these two figures, there are also 21 ministers of various departments.

Next to the executive, the legislative branch is relatively simple in its composition. Here there is only one main body: the Unicameral National People's Assembly. The assembly is composed of 100 members elected by popular vote for four-year terms. During its term, the assembly is tasked with passing laws and revising the Constitution, if needed. Its power as a body, however, is seemingly less than that of the executive. In times of crisis, the president has the right to dissolve the assembly.

The final branch is the judicial and is based on French civil law. This branch is composed of three levels of courts. The Supreme Court is the apex court. This court consists of nine justices who are appointed by the president and who serve as the final court of appeals in criminal and civil cases. Below this court is a system of regional courts, one in each of the country's nine regions. In addition to serving as the first court of appeals for the courts below it, regional courts also hear all felony cases

and civil cases valued at more than $1,000. And at the bottom of the judiciary is a network of 24 sectoral courts. Here civil cases valued at less than $1,000 and misdemeanor criminal cases are heard. But it is worth noting that judges in any of these courts are not necessarily trained lawyers.

A number of parties compete within this political system for power. Though they number in the dozens, only two political parties are of serious consequence. The first is the current ruling party, the African Party for the Independence of Guinea-Bissau and Cape Verde (PAIGC). Also the oldest party in Guinea-Bissau, the PAIGC was begun during the nation's years as a Portuguese colony and led the war for independence. As a result, much of the party's support comes from military veterans and elder citizens. The PAIGC's largest opposition is the Social Renewal Party (PRS). In sharp contrast to the PAIGC, the PRS finds support primarily among urban youth.

Crime

Despite a majority Muslim population, homosexuality is generally tolerated in Guinea-Bissau so long as couples are discreet. As a result, there are no known laws against homosexuality. Additionally, there are no established laws against domestic violence, including wife beating, which is an accepted means of settling domestic disputes. Related to that, there is no law prohibiting sexual harassment either, an oddity considering that the law claims to view the genders equally and prohibits discrimination. Other prohibitions in the law are fairly common. For example, rape (including spousal rape) is prohibited, though government enforcement is weak. Much the same story can be found in prostitution, which is prohibited by law, but allowed to flourish as a result of lack of enforcement.

A seeming contradiction in Guinea-Bissau criminal law also exists in the area of forced labor. The law prohibits forced or compulsory labor, including by children, but reports indicate that such practices occur. The contradiction arises when it is learned that the law, though outlawing forced labor, does not prohibit trafficking in persons. Children are commonly the victims of this contradiction, being trafficked from and within the country to work as domestic servants, to shine shoes in urban areas, and to sell food such as bananas and peanuts on the streets.

The one area of law that does seem of great consequence is drug crime. In light of the nation's recent troubles with the international drug trade, penalties for possession, use, or trafficking in illegal drugs in Guinea-Bissau are severe. Additionally, convicted offenders can expect long jail sentences and heavy fines.

Crime Statistics

Data on crime are not available in Guinea-Bissau, partially because of the great degree of political instability. Instead, international observers are left with only general impressions. And in general, crime rates in Guinea-Bissau are not high. In the case of normal, daytime street crime, the occurrence is fairly low; however, far greater rates are seen in pickpocketing in marketplaces and bandits accosting rural travelers. Conversely, the threat and occurrence of terrorism are exceedingly low.

Drug Trafficking

Also low is the apprehension and conviction of drug traffickers. In spite of the law prescribing severe sentences for drug crimes, the application of the law is rare; traffickers operate with almost complete impunity. In recent years, Guinea-Bissau has become a major transshipment point for Latin American cocaine heading to market in Europe. Conservative estimates say 50 tons of cocaine a year are now being transshipped through West Africa, and Guinea-Bissau is at the center of this problem. The reasons for this are many.

The first is the abject poverty shared by most all citizens in Guinea-Bissau, which makes them vulnerable to enticement of the money drug traffickers may offer. Reports indicate this is true from children on up to top government officials. And the enticement is easy to appreciate. The UN Drug and Crime Office has estimated that the national budget of Guinea-Bissau is roughly equal to the wholesale value in Europe of 2-1/2 tons of cocaine.

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That value touches on another reason for Guinea-Bissau's selection by drug traffickers. Although demand and prices for cocaine have peaked in the United States, the drug's popularity is exploding in Europe, specifically in England, Spain, and Italy. And because of the value of the Euro, cocaine profits are twice as great in Europe as well. These conditions have led, in part, to a shift in world drug distribution.

Geography also plays a role in Guinea-Bissau's selection. Located on the Atlantic coast of northwestern Africa, the nation is only 400 miles directly south of Spain, one of Europe's growing cocaine markets. Besides location, Guinea-Bissau also features an archipelago of more than 70 islands just off its coast, most uninhabited, each of which provides landing strips for small aircraft and staging areas for the distribution of cocaine. Exacerbating this is the fact that Guinea-Bissau's maritime area is larger than its mainland, making effective patrols difficult, that is, assuming there is a patrol at all. As a small nation, its navy is formed of only two boats, one of which is out of service. Further, the air force has no functioning aircraft of any kind. Even were there regular patrol, there is no guarantee that drug law would be enforced because there are strong suspicions and confirmations of corruption within the military as well.

Although the cocaine trade has taken on national importance, most residents remain ignorant of the narcotics trade. Reports indicate that villagers have even found cocaine bundles floating in the ocean. Not recognizing what they have found, the villagers have used the cocaine to fertilize their crops. Some have even seasoned their food with it.

So now Guinea-Bissau is in danger of becoming a narco-state—a nation run primarily for the benefit of drug gangs. Other countries have acknowledged this fact. To help this struggling country, Portugal, and a handful of other countries, the European Union and the United Nations have pledged more than $6 million to help overhaul the justice system there. But there is much still to be done in this tiny nation. Corruption still reigns in a nation where 674 kilograms of cocaine can disappear from the treasury's vaults. And with more than 33 percent of cocaine arriving in Europe being funneled through West Africa, Guinea-Bissau's battle with drug traffickers is unlikely to be over soon.

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Police

The nation of Guinea-Bissau is divided into 37 police districts. These 37 districts are serviced by an estimated 3,500 officers nationally in nine different police forces reporting to seven different ministries. Of these 3,500, 1,300 members of the public order police are under the Ministry of Interior. These officers are responsible for preventive patrols, crowd control, and conventional maintenance of law and order. Although the public order police wield the greatest numbers, the greatest prestige and international attention are awarded to the less than 100 members of the judiciary police under the Ministry of Justice. This group's popularity stems mostly from its responsibility for investigating transnational crime, including Guinea-Bissau's growing drug trade. Other policing groups include the state information service, the border service, the rapid intervention force, and the maritime police. Whichever policing agency is examined, though, all share a dramatic absence of training and other resources. In a nation with 3,500 officers and only two patrol vehicles, this is not surprising. More surprising are reports of traffickers eluding capture because police vehicles ran out of gasoline while in pursuit. This resource poverty is not endemic to the rural police either. Even the elite federal officers of the judiciary police lack handcuffs, only half of them have firearms, and they share one laptop computer. The use of this computer itself is in question too because of the nation's unreliable energy generation. Also unreliable is the payroll. Inspectors in the judiciary police are supposed to make less than $65 a month, but they cannot even rely on that; officers commonly go for several months without pay. Because of this, corruption is not only a temptation but also a widespread reality. This combination of corruption and resource-scarcity has rendered the police ineffective.

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Finding of Guilt

Warrants are required for arrests. It is similarly required by law that detainees be brought before a magistrate within 48 hours after arrest and that prisoners be released if no timely indictment is filed. Detainees also have the right against arbitrary arrest and detention and cruel and unusual punishment and the rights to counsel at state expense, to question witnesses, to have access to evidence held by the government, and to appeal. However, many of these rights are normally ignored in practice. At the same time, trials are commonly delayed, and there is no right to a jury trial.

However, Guinea-Bissau's justice system is different in practice than in theory. Like the police, the judiciary is paid poorly, poorly trained, and susceptible to corruption. Accusations of bias and passivity are also common, particularly in respect to court-appointed attorneys and with the judges, where there is no requirement that they have a legal education. Court-appointed attorneys also receive no compensation from the state for representing indigent clients, are not punished for failing to do so, and generally ignore such responsibilities. On a positive note, though, those who go to trial do have their rights respected in practice. There is also a functioning bail system in place.

Punishment

The corrections system is virtually nonexistent in Guinea-Bissau. With its only prison largely destroyed during the civil war of the late 1990s, the nation has no real prison to speak of. In place of a purpose-built prison, Guinea-Bissau now houses its prisoners in a former office building in Bissau, a facility generally without running water and adequate sanitation. The prison's guards consist of two uniformed men standing outside the building's door, only one of whom has a pistol. Inside, approximately 40 prisoners are housed. Pretrial detainees, who constitute the majority of the inmates and convicts, are housed openly together, as are adults and children. With the exception of the serious offenders (who are kept in a padlocked room), nothing stands between the prisoners and freedom but an open door and the two guards. This lack of capacity and security has led to predictable outcomes. Many detainees who are remanded to their homes as a result of space constraints fail to return to face charges. And the poor nutritional quality of food provided has led to the release of thieves and murderers to find something to eat if they promise to return.

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Ivory Coast (Côte D'ivoire)

Legal System: Civil/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: No

Background

The Republic of the Ivory Coast (formal name: *République de Côte d'Ivoire*) is situated in Western Africa. The Ivory Coast became a French colony on

March 10, 1893, and part of French West-Africa in 1902. It remained a colony until the French Constitution of October 27, 1946, changed it into an overseas territory. As allowed by the French Constitution of October 4, 1958, the Ivory Coast was a Member-State of the French Community. The Ivory Coast became a sovereign republic on August 7, 1960.

The Preamble of the Ivorian Constitution proclaims its dedication to liberal democratic principles and inalienable human rights as expressed in the 1789 Declaration of Rights of Man and the Citizen and the 1948 Universal Declaration of Human Rights. The Ivorian judicial organization, criminal code, and code of criminal procedure have been considerably influenced by the French legal and judicial tradition. Whereas the criminal code defines offenses and determines penalties, the code of criminal procedure dictates rules on the form of the proceedings. Specific offenses, procedures, measures, and/or punishments exist for minors (persons under 18) and members of the armed forces.

Crime

The criminal code is composed of two books. The first book includes general provisions, common to all criminal offenses. The second book, called special criminal law, defines specific felonies and misdemeanors and determines their penalties. Petty offenses and their penalties are determined by decree, and some specific types of criminality, such as drugs, are dealt with in separate criminal laws. The code of criminal procedure contains a preliminary title concerning public prosecution and civil action, followed by five books. The first book concerns the exercise of public prosecution and judicial investigation. The second book concerns the trial courts and tribunals, namely the Assize Court, the Correctional Tribunal, the Police Tribunal and the Appeal Court. The third book lists special remedies such as cassation applications before the Supreme Court. The fourth book describes some specific proceedings, including for criminal offenses committed outside the territory of the republic. Finally, the fifth book concerns procedures for the execution of penalties.

Classification of Crimes

Criminal offenses are categorized according to their seriousness, as felonies, misdemeanors, or petty offenses. Felonies are in principle judged by Assize Courts, misdemeanors by Correctional Tribunals, and petty offenses by police tribunals.

A criminal offense is categorized as felony when it is punished by death, imprisonment for life, or imprisonment exceeding 10 years. It is a petty offense when it is punished by imprisonment of maximum two months and/or a fine of maximum CFA360,000. Misdemeanors are all criminal offenses that are punished neither as a felony nor as a petty crime.

Crime Statistics

The dark figure of crime (a term to describe the amount of crime that is unreported or does not come to the attention of police agencies) is important because many criminal offenses are still resolved according to indigenous laws and customs, by indigenous chiefs or elders, and through negotiations, mediations, and arbitrations.

Officially known criminality has been linked to socioeconomic change related to urbanization; industrialization; labor migration, especially toward Abidjan; proliferation of urban slums; unemployment; and so on.

According to the United Nations Operations in Côte d'Ivoire (UNOCI) report, there were 9,586 inmates on May 30, 2007, of whom 71 percent were convicted inmates and 29 percent were pretrial detainees. Women constituted 2.5 percent of the inmates.

Finding of Guilt

The proceedings in criminal cases are very complex and can be divided into two major parts. First, there are the public prosecution and judicial investigation (book 1) that are primarily secret and written. Next, there are the proceedings before the trial courts and tribunals (book 2) that are generally public and oral.

Ivorian soldiers listen to a judge in a courtroom in Abidjan on November 12, 2008, before their trial on charges of harming public order. Over a hundred soldiers were charged after taking part in violent protests in September in the cities of Daoukro and Yamoussoukro. The soldiers were demanding payment of their war benefits. (Issouf Sanogo/AFP/Getty Images)

In the first title of the first book of the code of criminal procedure, the authorities in charge of public prosecution and judicial investigation are described. They are the Judicial Police, the Public Prosecution, and the Investigating Judge. The second title regards the inquiries divided into the preliminary inquiry and the inquiry in case of flagrant felonies and misdemeanors.

A flagrant felony or misdemeanor is one when, almost immediately after the act, the suspect is chased by hue and cry, or is found in the possession of articles, or has on or about him traces or clues that give grounds to believe that he has taken part in the felony or misdemeanor. Along with a flagrant felony or misdemeanor are felonies and misdemeanors committed inside a house and for which the head of the house calls on a judicial police officer or the Prosecutor of the Republic to ratify them. The Judicial Police officer, who is told of a flagrant felony or misdemeanor punishable by imprisonment, immediately informs the Prosecutor of the Republic, who initiates the investigation. The preliminary inquiry is carried out by Judicial Police officers either on the instructions of the Prosecutor of the Republic or on their own initiative.

The third title concerns the investigating jurisdictions, divided into the Investigating Judge and the Investigating Chamber. A judicial investigation by

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the Investigating Judge is mandatory when a felony has been committed. It is generally optional for misdemeanors. The Investigating Judge undertakes or procures an inquiry into the personality of the suspects, as well as into his or her material, family and social situation and may order a medical or psychological examination. He has large powers when it comes to home searches and seizures, which are made in all the places where items may be found that could be useful for the discovery of the truth. The summons is designed to give the suspect a notice to appear before the judge at the date and time specified by this warrant. An arrest warrant is an order given to the law enforcement agencies to find the suspect and take him to the prison mentioned in the warrant, where he will be received and detained. Any suspect detained due to those warrants must be heard by the investigating judge within 48 hours. Pretrial detention is supposed to be an exceptional measure in which the modalities depend on the seriousness of the criminal offense. Bail is possible. If the judge concludes that the facts amount to a petty offense, he makes an order referring the case to the Police Tribunal, and if he concludes they amount to a misdemeanor, he refers them to the Correctional Tribunal. If the investigating judge concludes that the charges accepted against the suspect constitute an offense qualified as a felony by the law, he orders the indictment before the Assize Court. Appeals can be filed against orders of the investigating judge before the Investigating Chamber.

Each appeal court includes an investigating chamber, composed of a president and two appeal judges. The duties of public prosecution are performed by the prosecutor general or his deputies. At the investigating chamber, the hearings are held, and the judgments are given in chambers. In pretrial detention matters, the investigating chamber must decide whether to uphold the investigating judge's decision or to quash and modify it. On appeal against closing orders of the investigating judge, if the charges brought against the suspect constitute an offense classed as a felony by law, the investigating chamber does not always order indictment before the Assize Court. If it considers that, because of circumstances, only a penalty for misdemeanors need be pronounced, it may refer the suspect, by motivated order and with due submissions of the public prosecution, to the Correctional Tribunal instead of the Assize Court.

The proceedings before the trial courts and tribunals constitute the second book of the code of criminal procedure. The general principle is that felonies are judged by assize courts, misdemeanors by correctional tribunals, and petty offenses by police tribunals.

The assize court has full jurisdiction to judge individuals committed for trial before it by the indictment judgment. This means that the assize court, which is not a permanent trial court, judges only serious felonies. Assizes are held within the tribunal of first instance. The assize court comprises the court proper, which consists of a president and two assessors, and six jurors. The Public Prosecution is represented by the prosecutor general or the prosecutor of the Republic or their deputies. Once the jury is composed, the public hearing can start. The president orders the retirement of the witnesses, and the referring judgment is read. Then the accused is interrogated by the president. Next, the witnesses, who take an oath, make their statements. After each statement, the president may ask questions to the witness. The other parties may also ask questions through his intermediary. When the investigation made in the course of the hearing is ended, the public prosecutor makes his submissions. The accused present their defense arguments. The public prosecutor may reply, but the accused will always have the final word. The president declares the hearing closed. Before the judges of the court and the jurors retire to the deliberation chamber, the president reads out an instruction stipulating that their innermost conviction prevails. The judges of the court and the jurors deliberate and vote on the guilt and the penalty. The president reads out the verdict in the courtroom and informs the accused of the faculty of a cassation application. Because of the complexity and costs of the assizes, they are not often organized. This leads to long-term pretrial detentions in matters of serious felonies.

The Correctional Tribunal judges misdemeanors and felonies referred to it by the Investigation

Chamber. It is composed of a president and two other judges. The public prosecution is exercised by the prosecutor of the republic or his deputies. Suspects arrested in flagrant cases who are under committal warrant of the prosecutor of the republic are forthwith brought before the Correctional Tribunal. Hearings are public. Offenses may be proven by any mode of evidence, and the judges decide according to their innermost conviction. However, they may base their decision only on evidence that was submitted in the course of the hearing and adversarially discussed before them. Confessions, like any other type of evidence, are left to the free appreciation of the judges. The suspect and witnesses, who take an oath, are interrogated and heard by the president. When the investigation at the hearing is over, the prosecutor of the republic makes his submissions, and finally, the suspect presents his defense. The public prosecutor may respond, but the suspect will always have the last word. Judgment is pronounced at the same session as the hearing or at a later date. Every judgment must be motivated. A suspect who is regularly cited but does not appear on the day and at the time fixed by the summons is tried by default. The judgment by default is deemed nonexistent if the defendant files an application to set aside its enforcement. The case will then be tried again by the Correctional Tribunal. Judgments in misdemeanor matters may be challenged by appeal. The appeal is brought before the Appeal Court. The Chamber for appeals is composed of a president and two appeal judges. The duties of public prosecution are performed by the prosecutor general or one of his attorneys general or his deputies. The rules applicable before the Appeal Court are similar to those set out for the Correctional Tribunal.

The Police Tribunal tries petty offenses. The functions of the Police Tribunal are exercised by the Correctional Tribunal. For most petty offenses, criminal proceedings may be extinguished by the payment of a fine. When it comes to a hearing, the proceedings are similar to those mentioned for the Correctional Tribunal. An application to set aside may be filed, and an appeal can be brought before the Appeal Court.

There are nine Correctional Tribunals in the Republic of the Ivory Coast. To reduce the geographic distance between the citizens and the tribunals, there are 25 delegated sections of the correctional tribunals. Until the reform of 1999, they were usually presided over by one, sometimes, two judges, cumulating the functions of trial judge, investigating judge, and public prosecution. From the judicial year of 2004–2005 on, each delegated section has been composed of a president, an investigating judge, and a deputy prosecutor of the republic. There are three Appeal Courts. Three additional Correctional Tribunals and Appeal Courts are foreseen.

The cassation application is an important special remedy, elaborated in book 3 of the code of criminal procedure. Judgments made by the Investigating Chamber and judgments rendered by courts of final instance in felony, misdemeanor, or petty offense matters may be quashed in the event of a violation of the law. The cassation application is brought before the Supreme Court located in Abidjan.

Punishment

The types of punishments are dealt with in the first book of the criminal code, which is subdivided into five titles. In the first title, the constitutional principle of the equality of all before the criminal law is repeated. The only distinctions that are permitted are those foreseen by law, such as the seriousness of the criminal offense and the social danger the offender presents.

The second title concerns the penalties in more detail. They must be imposed according to the circumstances of the criminal offense, the danger it presents for public order, the personality of the offender, and his possibilities of rehabilitation. The principal penalties are death, different types of imprisonment, and fines. Although the criminal code foresees capital punishment by shooting, the Ivorian government has not employed such executions since its independence.

Title III regards criminal liability and stipulates the grounds for absence or attenuation of criminal liability. For instance, a person is not criminally liable

in a state of legitimate defense. The judge may, taking into account the seriousness of the facts and the culpability of the offender, allow consideration of mitigating circumstances. The judge need not justify this decision. The mitigating circumstances may lead to a substantial reduction of the penalties. For instance, the penalty for felonies punished by death may be reduced to an imprisonment for life.

Recidivism, which is defined and elaborated in Title IV, leads to severe penalties; the maximum of the prison sentences may be doubled for repeat offenders.

The execution of penalties may, in conformity with Title V, be partly or totally exempt, through suspension, pardon, prescription, and death of the convicted person. Suspension may be granted, taking into account the seriousness of the offense and the fact that the offender, at the time of the offense, had not yet been convicted and imprisoned for a felony or a misdemeanor. Pardon by the president of the republic may commute a penalty to a lesser penalty. Death, for instance, can be commuted to an imprisonment for life. Prescription of penalties occurs after 25 for felonies, 5 years for misdemeanors, and 2 years for petty crimes. Death of the convicted person obviously ends imprisonment but does not prevent the execution of fines and confiscations.

Prisons

The proceedings for the execution of penalties are described in the fifth book of the code of criminal procedure. The Public Prosecution is responsible for the execution of the criminal penalties. When it comes to imprisonment, the constitutional principle of the prohibition of arbitrary detention is repeated. Parole may be granted to convicts who have given sufficient proof of good behavior and serious efforts toward social rehabilitation. They must also have served part of their prison sentence, with duration depending on the seriousness of the criminal offense and the social danger the offender presents. The parole decision specifies the conditions under which it is granted. In the event of a new conviction, of notorious misconduct, of violation of the conditions, or of a non-observance of the measures determined by the parole decision, it may be revoked.

There is a prison next to each Correctional Tribunal and delegated section. The largest prison is the MACA in Abidjan. The Rule of Law of ONUCI evaluated the prisons of the Ivory Coast in 2005 and 2006 and pointed out that the budget of the prison administration is very limited. Permanent overcrowding is a major problem, and the material conditions of the prisons are generally poor. Men and women are separated, but there is no separation between pretrial detainees and convicted inmates. The dietary conditions are often insufficient, and the medical and sanitation facilities are minimal, leading to a high mortality rate. The inmates have the right to regular visits, and family members often bring them additional food. Prison staffs and guard forces are small relative to the number of inmates. The prisons serve primarily as punitive and custodial institutions, in which little attention is paid to rehabilitation.

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Kenya

Legal System: Civil/Islamic/Customary
Murder: Medium
Corruption: High
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Maybe
Corporal Punishment: No

Background

Kenya is an east-central African country sharing borders with Sudan and Ethiopia to the north; Somalia to the east; Tanzania to the south; and Uganda to the west. Kenya's population stood at over 34 million in 2007. A former British colony, Kenya attained political independence in 1963, following a drawn-out indigenous insurrection, which came to be widely known as the Mau Mau, under the leadership of Jomo Kenya, who became the first head of state. It became ostensibly politically stable until the election of Mwai Kibaki in 2002. The two previous regimes had been known to be predatory, scandal-prone, or corrupt and to employ the tactics of divide-and-rule to keep political opponents at bay. In the late 1990s, the Kenya government itself admitted the widespread practice of torture by its security forces.

Crime

In Kenya, as in the other former British colonies, police gather crime data on both adult and juvenile offenses. Data are published on conventional crimes such as armed robbery, assault, homicide, embezzlement, theft, disturbance of public order, and rape. Secondary sources now include the media and special reports by NGOs.

(2007)

A sample of crime data available from the Kenyan police Web site (http://www.kenyapolice.go.ke), is as follows:

Homicide	1,912
Offenses against morality	3,673
Other offenses against persons	17,831
Robbery	3,492
Breaking and entering	6,337
Theft of stock	1,568
Stealing	10,749
Theft by servant	2,169
Vehicle and other thefts	1,221
Dangerous drugs	5,401
Traffic offenses	46
Criminal damage	2,770
Economic crimes	1,908
Corruption	177
Offenses involving police officers	32
Offenses involving tourist	10
Other penal code offenses	3,732

The statistics on homicide should be viewed with caution. Taking the average of three years, from 2005 through 2007, the rate per 100,000 population comes to 6.1; however, the WHO estimate for 2004 was 20.8, a much higher rate that most likely includes many homicides that are technically either not recorded or not dealt with by Kenya police because they may fall under the heading of "terrorism" or other such categories. Such crimes as offenses against persons, stealing, breaking and entering, and drugs account for the majority of recorded crime. Additional data suggest that over 2005–2007, the total crime fell by about 16 percent. The Kenya police also report recorded crime by province, showing that Nairobi, Rift Valley, Central, Eastern, Nyanza, Coast, and Western account for the most amount of crime.

Data on rapes, defilement, and other forms of sexual violence against women and children have been relatively sparse or notoriously underreported. Kenya is one of several African countries in which rape and other forms of sexual violence against women and children were on the increase before the elections of 2007. The trend worsened during post-election violence from late December 2007 through March 2008, upon the formation of the joint government. The increased incidents caused fear of HIV infection, especially in the cases of gang rapes.

Kenya has witnessed an increase in environmental crimes in recent years. One of the major dilemmas

Kenyan Wildlife wardens display confiscated elephant tusks at the Kenyan Wildlife offices in Nairobi, Kenya, on November 30, 2009. African wildlife authorities have seized nearly 3,800 pounds of illegal elephant ivory, and the Kenya Wildlife Service has arrested 65 people during the six-nation operation. (AP Photo/Khalil Senosi)

for the Kenya police in general and the wildlife police in particular involves the hidden nature of wildlife crimes. Perhaps the foremost concerns relate to the remote locations where these crimes tend to be committed: for example, deep in isolated forests in the cases of poaching. A second concern relates to the limited budgets and sparse resources, which impose restraints on hiring more personnel to regulate these crimes.

A consequence of these problems has been an increase in environmental crimes such as poaching, smuggling of ivory, and illicit trade in ivory. These crimes are also difficult to detect, investigate, and prosecute for a variety of reasons. For one thing, the offenders are often part of organized criminal gangs, are sophisticated, and use modern technology for communication and committing crime. In its fight against poaching and trafficking in ivory, Kenya has emerged as a pioneer in the use of DNA experiments followed by tracking the origin of poached elephants. The downside of the tourist attraction is that the same precious game parks have also been targets for not only farming but also human settlement, coupled with illegal hunting activities.

Terrorism has been an emerging crime since the 1990s. Illegal firearms are also a rising problem for Kenyan police. The Institute for Security Studies report on a 2001 public survey on attitudes toward arms in Nairobi, the capital of Kenya, indicates that 47 percent of the respondents point out the inability of police in handling the problem. The findings call for greater improvement by the government in a number of key areas, including crime control and policing.

According to a survey conducted by the South Africa-based Institute for Security Studies, in

response to the incidents of crime victimization, individual Kenyans have been arming themselves but also forming vigilante groups. The weapons in common use include knives, guns, sticks, and clubs.

Kenya border-crime problems have been around since even before colonial rule. Given its porous borders, cross-border crimes include arms smuggling, cattle rustling, and smuggling of ivory, among others.

Kenya has become a key transit route for heroin and hashish destined for North American streets, according to a new U.S. State Department report on narcotics control. The report also notes police corruption and a network of commercial and family ties linking some Kenyans to southwest Asia, the route for much of the narcotics. The United Nations Office on Drugs and Crime has noted that organized criminal groups have established international networks to carry out both legal and illegal drug trafficking with Kenya as a hub and a route.

Vigilantism

Also called mob justice or market justice, vigilantism is alive and well in Kenya's urban areas and occurs in increasing numbers and with increasing ferocity. Also, police inaction punctuated by corruption has become a notorious contributing factor.

Juvenile Delinquency and Juvenile Offenders

Juvenile delinquency is now a broad, complex concept incorporating a mix of the elements of antisocial or deviant behaviors that encompass street children, and common crimes such as truancy, theft, carjacking, shoplifting, and prostitution. Increasingly, the number of special-needs youth offenders has caught the attention of the media, scholars, and practitioners. A classic example is the youthful offenders with HIV/AIDS whose treatment defies the use of traditional juvenile institutions.

Police

The Imperial British East Africa Company introduced as well as operated private security before 1887. This was similar to the other standard initiatives in East Africa as well as other British possessions, territories, and colonies in the world. The evolution of the colonial police forces did not mean the end of the existence of the private security. Far from it, the two forms of policing coexisted, to a greater or lesser extent. The private security units were present in the private-sector enterprises such as large-scale farming, mining, transportation, and tourism.

The concept of strong centralized police administration became a reality with the central government police forces. The colonial authorities established their police force to undertake tasks dealing with the enforcement of criminal law in the urban areas and to be realigned with those in rural areas under the jurisdiction of the various ethnic customary laws and Islamic law. The central police force was the primary enforcer of criminal law, whereas the tribal police were focused on the customary laws.

The number of police functions increased during the 1940s, thanks to urbanization and the unintended consequence of urban crime. This development was met with expanded recruitment and training activities. By the early 1950s, the Kenya Police Force had the strength of 5,935 personnel.

The Kenya Police Service is under the jurisdiction of the Ministry of Home Affairs; its commissioner reports to the Police Service Commission as the policy-making as well as monitoring authority. Nairobi, the capital, has been the police service's headquarters since the colonial period. By the mid-1980s, Kenya's police force had 19,000 uniformed personnel, including female officers.

There are many special units within the police bureaucracy. These include the paramilitary general services unit, the railways and harbors police, the inspection department, the criminal investigation directorate, the police air wing, and the dog section. Although there has been a great diversity in the form and size of each of these units, their administration somewhat mirrored the central administrative ethos in terms of the rules, procedures, regulations, policies, and budgets and expenditures. In addition, the tribal police force was established to serve as the conduit between the central police and the ethnic authorities. The lat-

ter administered exclusively customary laws and Islamic law.

The police service in Kenya has since the dawn of the 21st century been in the midst of responding to the needs and problems of the masses who have been at the receiving end of injustice since the colonial period. There is no doubt that postcolonial police reform in Kenya was made more difficult by the dictatorial regimes of the 20th century. Unlike South Africa, the Kenya political leadership embraced the concept of the ombudsman as a matter of a constitutional move to address, among other things, the past and current human rights violations and, in general, complaints against the police.

Public–Private Partnership for Police Reform

An emerging phenomenon in the Kenya Police Service is the notion of public–private partnership for police reform. It involves sharing resources in funds and technical expertise with the private sector in an effort to improve the performance of the police in selected projects. This development promotes the enhancement of the mutual interests as well as benefits for the participating parties. Public–private partnerships for police reform are exemplified by the Nairobi Central Business District Association, with its express purpose of evolving what is called "community policing." The understanding is that the practice of this concept will lessen the tension between the police and the public segments such as the street children and street commercial vendors and hawkers.

Courts and Judiciary

Prosecution of Crimes

The Kenyan legal system is a mixture of statutory law, common law, and customary law, and thus the responsibility for prosecution has, since the colonial era, been split between the police and the Director of Public Prosecutions. The former has been primarily relegated to the lesser serious crimes under the jurisdiction of the magistrates' courts. The Director of Public Prosecutions' Office has had the staff to handle the trials and appeals in the High Court and Court of Appeal, with jurisdiction over the serious crimes.

Colonial Courts

The colonial courts were structured to constitute a dual court system, meaning that there were central government courts and customary-law grassroots courts. The former had jurisdiction over the criminal law and related laws. They were increasingly bureaucratized. They were subdivided into the high courts and magistrates' courts. The high courts tried the major criminal and civil cases to begin with and were appellate courts, with highest court of appeal being the Privy Council in the United Kingdom, as was the arrangement for all the colonies, possessions, and trusteeships. The customary courts had jurisdiction over disputes in the various ethnic communities.

The African employees in these courts played major roles on behalf of both the government and the masses. The prominent positions they held included those of interpreters, clerks, and intermediaries. Only the clerical personnel weathered the storm of Africanization, and their numbers even increased, with additional courts, during the postcolonial era.

The Postcolonial Courts

Court reform was driven by the commonly shared theme of legal integration in the former British colonies. In Kenya this meant doing away with the customary courts and thereby further expanding the jurisdiction of the high courts and magistrates' courts at the expense of the needs and problems of the masses. The Kenyan courts became elitist. The other development involved the elimination of the Privy Council of the House of Lords as the highest court of appeal; the country has its own called the Supreme Court.

The Court of Appeal is the highest court. Appeals to it come from High Court. The High Court has jurisdiction over civil, criminal, and constitutional matters. Eleven judges sit in it, with one of them being the president.

Subordinate courts are in two categories: resident magistrates' courts and the district magistrates' courts, with the latter being of a lower rank than its counterpart. Other courts include the kadhi's (Muslim) courts, the children's courts, the tribunals or quasi-judicial bodies, the industrial courts, and rent tribunals.

The resilient features of the customary law are limited to civil cases, and they vary from one ethnic group to another, particularly in rural areas. The major restriction imposed in these cases is that they not be in conflict with national or statutory law. Matters dealing with the settlement of personal litigation are within the jurisdiction of Islamic law and indigenous customary law.

Critics of the Kenya Courts

Independence of the judiciary is a universally held as well as practiced norm in the democratic societies in the world. In Kenya the Constitution does provide for it. On occasion it has been practiced during the postcolonial period. Without a doubt, the number of defense attorneys with long track records in challenging the Kenya authorities in the administration of justice has been increasing. Some of them are women lawyers.

The postcolonial courts in Kenya have tended to serve the interests of the government in power and the segments of the general public. Examples of the latter include the media, victims of crime, the defendants, and significant others such as court personnel. Corruption is associated with the latter.

Juvenile Courts

The juvenile courts in Kenya are one of the colonial legacies. They continue to be the equivalent of the adult magistrates' courts and to have jurisdiction over criminal cases, status offenses, and related social problems calling for "protection or discipline" of minors. Status offenses include being "incorrigible," vagrancy, truancy, and running away from home. Related social problems are exemplified by street children.

Presiding over the juvenile courts are the magistrates. They have legal authority to order juvenile offenders to be placed in remand institutions and approved schools in the Prisons Department, as an alternative to institutionalization in the Children's Department. Police lockup of children is under the jurisdiction of the police officials.

Some juvenile offenders under 18 years of age get housed in the adult prisons, thereby literally violating the law, which prohibits such action. Even more disturbing is the discovery that two of the existing reformatories have been underutilized.

The government departments with some jurisdiction over juvenile offenders include the Prisons Service, the Children's Department, and the Probation and After Care Services Department.

Punishment

Stipulated in the Kenya penal code are the following forms of punishment that are available for the courts to impose:

1. Death
2. Imprisonment
3. Detention under the Detention Camps Act
4. Corporal punishment
5. Fine
6. Forfeiture
7. Payment of compensation

Kenya inherited the colonial penal system with the Prisons Service as the core component. The alternatives to incarceration included probation, fines, and juvenile institutions; approved schools, borstals, and reformatories were also side components of the penal system.

Imprisonment brought with it physical punishments reminiscent of those in the early European civilization, including the use of corporal punishment for violation of prison rules and dietary restrictions. As in the case of the police and the courts, the penal system in Kenya was essentially a duplication of the British concepts and practices in penology. This occurred particularly at the central level of government.

The existing penological studies have raised issues pertaining to a variety of problems as follows:

- *Harsh prison conditions.* Harsh prison conditions abound in Kenya, as do reports about them. These conditions range from lack of basic dietary provisions to the death of the inmates.
- *HIV/AIDS in the prisons.* HIV/AIDS continues to be a major concern through Kenya and shows no signs of slowing down, especially in prisons. Homosexuality in the Kenyan prisons is perhaps the newest prison issue in the 21st century. The steps that the prison authorities have taken to address certain aspects at least suggest acknowledgement of its existence, but not necessarily of its causes and impact.

The Death Penalty

The death penalty continues to be one of the contested colonial penal legacies in the 21st century. The penal code stipulates its application for convicted offenders of murder, treason, and armed robbery. Relief from it often occurs upon presidential pardon or amnesty or successful appeal.

At the dawn of the 21st century, there were about 1,000 condemned prisoners locked up in Kenya's notoriously overcrowded maximum-security prisons The government in power entertained the notion of abolishing the death penalty, thereby seeking to join the bandwagon of the worldwide trade.

Probation and Aftercare Services

The Probation and Aftercare Department is a colonial creation dating back to 1943. It has grown and expanded since to become a large bureaucracy. The Office of the Vice President and the Ministry of Home Affairs have joint jurisdiction over it. Its subdivisions are as follows:

Probationers (offenders on probation orders)
Community service orders supervisees/supervisors
Justice agencies
Learning institutions
Civil organizations
The community

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Lesotho

Legal System: Common/Civil/Customary
Murder: Medium
Burglary: High
Corruption: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

Lesotho (formerly known as Basutholand) is a landlocked country entirely encompassed by the country of South Africa. In the 1500 and 1600s, the inhabitants of the land were called San Bushmen (a name given by the whites). The Bushmen were hunters and gatherers and lived that way until 1818. At that time, a king named Moshoeshoe (pronounced Moo-shway-shway) brought together nearby communities of different tribes who had survived raids by other African tribes, mainly the Zulu and the Matabele. Between 1818 and 1966, the land was governed mostly by the chiefs. The country gained independence in 1966 from the United Kingdom, and after 23 years of military rule, Lesotho is currently a constitutional monarchy. The Constitution was implemented in 1993.

Criminal law in Lesotho has retained, in part, the customary law that was once the ruling law in the country long before European colonization. In the late 19th century, the paramount chief (at that time, King Moshoeshoe) made a deal with the British colonists that in return for protection from the Afrikaner colonists, the Basothos (black Africans) would allow the land to become a British colony. The British government followed an amalgamation type of law that included both the Roman Dutch law and English law, with the Roman Dutch law consisting of influences by both the Roman law and Dutch customs.

The Sesotho customary law, as it is referred to in Lesotho, is run by what are deemed local and central courts. Most of the criminal law statutory offenses can be found in the Laws of Lerotholi. The Laws of Lerotholi are written in the form of a constitution to be followed by all native citizens of Basutholand (Lesotho). It states that the paramount chief—otherwise known as the king—is in charge of all natives of the land and that anyone who disobeys the laws of the land is liable to be punished.

Three major organizations provide policing and security in modern-day Lesotho. They are the Lesotho Defense Force (LDF), the Lesotho Mounted Police Service (LMPS), and the National Security Service (NSS). The prime minister in Lesotho has authority over both the LDF and the NSS, whereas the typical law enforcement responsibilities fall under the jurisdiction of the LMPS; however, because of the severe lack of resources, equipment, training, and raw number of officers, the police services are severely limited. It is even said that it is common for victims of crimes to be responsible for providing transportation for the LMPS to get to the scene of the crime. The LMPS is divided into three regions, which are further divided into districts in the country. Each region is led by an assistant commissioner of police, and senior superintendents head the districts.

The armed services in Lesotho have, in the past, been greatly influenced by politics and government. Despite efforts to bring the services under civilian control, the South African Development Community was forced to intervene in an army rebellion, for which they arrested LDF soldiers and disarmed the rest of the soldiers. This occurred in 1998, after Parliament (which consisted of 120 members in January 2004) had passed both the Lesotho Defense Act in 1996 and the Regulations for Military Justice in 1997. Both were designed to provide civilian control over the law enforcement agencies. The rebellion was a reaction to Parliament's attempt to take control away from the politicized armed services. Fifty army personnel were then charged with the capital offense of mutiny and high treason in 1998, providing the first instance in which a court-martial prosecuted LDF soldiers for disobeying the Defense Act. All three services are still currently undergoing restructuring, especially since recent allegations of human rights abuses by the security forces.

There are many reports of corruption in the police forces and the government; however, in recent years, action has been taken against it. It had been confirmed that some police officers were accepting bribes to overlook some traffic and other minor offenses. In addition, the police and army were suspected of being involved in a string of robberies, for which one police officer was sentenced to eight years' imprisonment. Human rights abuses allegedly perpetrated by the security forces include torture, excessive force with detainees, and long delays in trials. There are also no laws prohibiting the monitoring of telephone conversations, and there is no requirement for a search warrant to search persons, vehicles, and homes, through the 1984 Internal Security Act.

Crime

The age of criminal responsibility is 18. Juveniles are afforded rights such as special treatment, including the prohibition on children being sentenced to death and the rules that children must be separated from adult offenders, that the state must monitor the treatment of the children, and that the imprisonment of a juvenile should be avoided at all possible instances, with alternative sanctions provided.

Crimes that are a particular challenge to the area include theft, home invasions, armed robbery, physical and sexual assault, and homicide. It is interesting

to note that homosexual acts and photography of government buildings are also both considered illegal in Lesotho. In the 1940s and 1950s, a unique practice called medicine murder was becoming a large problem for the country. These murders involved the removal of a person's flesh, before death, and using the flesh (called *diretlo*) to make protective medicines for the native people. These killings were always said to be premeditated, and a group of people worked together to obtain the flesh. Upon completion of the murder, the body was hidden and the death made to seem like an accident or suspicious death. With so much political conflict occurring, the native Sothos felt as though this *diretlo* would provide the medicine they needed to retain their power in the land.

Traditional crimes, or customary rulings that result in the punishment of natives if disobeyed, that are interesting and specific to Lesotho are written in the Laws of Lerotholi. One is that the chief may take away land that has not been cultivated properly because of absence or insufficient reason, and another is that fines can be imposed on individuals who fail to properly cultivate their land.

There is a large deficit of information regarding drug offenses in Lesotho. The International Narcotics Control Strategy Report of 1995 reported that there was little production or consumption of illegal drugs in Lesotho. It also stated that the two major problems are with cannabis (marijuana), which is cultivated as a cash crop, and the transport of Mandrax through the country (although it is not produced or largely consumed there). Lesotho's Drugs and Diamond Smuggling Unit cooperates with South Africa's police force to intervene in the smuggling of Mandrax, but it is ill-equipped to work on its own.

In 2001, Lesotho drafted the Drugs of Abuse Bill, which outline crimes and punishments that pertain to drug trafficking. Specifically, the bill intends to provide punishment for those who disobey drug laws and to deter potential perpetrators from committing such crimes. Another goal of the Drugs of Abuse Bill is to bring Lesotho into line with the recommendations drawn from international drug conferences, including the 1961 Single Convention on Narcotic Drugs and its 1962 protocol, the 1971 Convention against Psychotropic Substances, and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. One of the suggestions of the bill is that a narcotics commission or unit should be created in Lesotho's government. This unit would have responsibilities such as conducting research on the prevalence and rate of drug use, growth, and trafficking in the country, which would provide information for policy makers to combat the problem. The bill also provides suggestions concerning the funding of the unit. One includes the creation of a Lesotho Fund for Prevention and Control of Drug Abuse. This fund would raise money to provide institutions for those with substance abuse problems, to provide law enforcement agencies with proper resources to carry out the investigative and adjudication processes of the bill, and to create "controlled delivery" practices. This is somewhat comparable to informants in other countries, and it involves an illegal trafficker participating in an assignment of trafficking drugs under the supervision of law enforcement to catch other perpetrators. The bill was passed in 2007.

Specific crimes are defined in Kasozi's *Introduction of the Law of Lesotho: A Basic Text on Law and Judicial Conduct and Practice, Volume 1.* Murder in Lesotho was defined in 1980 during the judgment of the court case of *Rex v. Mota Phaloane* as the purposeful and illegal killing of another human being. The specifics regarding murder are that the deceased must be a human who has taken at least one breath (therefore ruling that abortion is not murder). Lesser charges include negligent homicide and involuntary manslaughter.

The Roman Dutch and English law applied in Lesotho concerning rape consists of three elements: evidence that shows that the woman was violated in a sexual manner, that the accused was the perpetrator, and that the victim did not give the accused her consent. To be classified as theft, a crime must include the intent to steal something that actually can be stolen. When this act of thievery is combined with force, it then becomes robbery. There is a crime titled assault with intent to do grievous bodily harm.

Crime Statistics

The most recent statistics available regarding serious crimes in Lesotho come from 1999 INTERPOL data. The murder rate was 50.41 murders per 100,000 people; 55.54 people per 100,000 were raped; robbery rates came to 64.82 per 100,000 people; aggravated assault came to 156.88 per 100,000; the burglary rate was 250.35 per 100,000; and the motor vehicle theft rate was 30.76 per 100,000 people. There was reportedly an average of 15.5 serious drug offenses per 100,000 people in the years 1990–2000.

In rural areas, most literature focuses on the extreme lack of adequate roads and highways, leading to carjackings. Travel sites give advice on how to avoid such dangerous criminal activity while driving in rural Lesotho, and such tactics include driving in the middle lanes, keeping windows rolled up, keeping a watchful eye on all mirrors, not returning to the hotel if being followed, locking the car doors, and not stopping at roadblocks.

In urban areas, such as the capital, crime mainly consists of "petty street crime," but these are often accompanied by AK-47 rifles. It is said that it is common for this petty street crime to include criminals attempting to steal money, cell phones, or other valuables and utilizing knives or handguns to do so.

Finding of Guilt

According to the Constitution, the accused have the right to a speedy trial; however, the lack of resources in the criminal court system in Lesotho often results in a backlog of cases. For instance, the Royal Lesotho Mounted Police (RLMP) members who were charged with treason (for the previously described army rebellion that occurred in 1998) remained in the maximum-security prison for 18 months without any real progress with regard to finishing their trials.

Lesotho does not follow simply one code of law but rather follows several, including the Constitution, legislation, common law, judicial precedent, customary law, and authoritative texts. Legislation includes laws that have been passed by both houses of Parliament and acknowledged by the king. Precedent, many times, comes from South African courts, but magistrates' court decisions are not considered precedent because they are lower courts.

The prosecution of cases in Lesotho criminal courts is run by the director of public prosecutions (DPP). He or she can personally exercise this authority or can delegate these powers to subordinate legal officers. In any instance in which a charge has been brought forth upon a person, the Constitution provides the DPP with the power to prosecute that person. In addition, if a trial is already taking place, the DPP has the authority to overtake the proceedings at any time. The DPP has the burden of proving beyond reasonable doubt, using evidence and witnesses, that the accused committed the crime. The trials and criminal courts in Lesotho do not utilize juries, and the trials are public.

The courts in Lesotho are split up into (ranking from highest to lowest) the Court of Appeal, the High Court (and a Labor Court), subordinate courts and courts martial, and "tribunals" designated by Parliament to act with judicial functions. The Court of Appeal has the authority to supervise and review all other courts. The High Court generally hears cases that pertain to constitutional issues, and it has no limit on the jurisdiction of its cases in criminal or civil matters. The Labor Court is equal in power to the High Court but hears only cases with issues of industrial and labor matters. Magistrates' courts (which are included under the subordinate courts) follow the High Courts, and local courts deal with customary law.

The Court of Appeal in Lesotho contains a president, justices of appeal (as many as Parliament prescribes), and the chief justice and *puisne* judges of the High Court (see later description). The president is appointed by the king with aide from the prime minister, and the justices of appeal are also appointed by the king, but with assistance from the Judicial Service Commission and the president. The Judicial Service Commission is constituted by the chief justice, as chairman; the attorney general; the chairman of the Public Service Commission (or someone whom the chairman appoints); and an

appointed member (appointed by the king with advice from the chief justice) who has held a high judicial office.

The High Court consists of a chief justice and several other judges (referred to as *puisne* judges). The chief justice is appointed by the king, and all subordinate judges are appointed by the chief justice, as he sees fit. The same qualifications as exist for justices of appeal apply to the *puisne* judges, except that the *puisne* judges are only required to have five years' experience in specified qualifications.

The Constitution of Lesotho clearly states that each defendant has the right to be provided legal aide; however, many times, defendants are not read their rights and are not aware that this is a basic right. In addition, lack of resources makes it difficult for any organizations to provide such aide. There are nongovernmental organizations whose goal is to provide aid to indigent defendants, but they are very few, and they rarely have the necessary resources to achieve their goals. Defendants are detained before trials, but bail is often granted (on a reportedly fair basis). The largest problem with pretrial detainment is the huge backlog of cases, resulting in long waits for the detainees who are not offered bail.

Obviously, the advantage of having legal representation is the aid received in deciphering complicated criminal statutes and precedents and forming a defense around them. The defenses that defense attorneys can use include youth (described previously), insanity, intoxication, provocation, mistake of fact, mistake of law, necessity, defense of property, self-defense, compulsion, superior orders, and consent. Kasozi's *Introduction to the Law of Lesotho* outlines these. Insanity includes the inability of the perpetrator to reason. Intoxication can also be said to diminish the capacity of the defendant to reason and therefore can be used as a defense. In addition, provocation can be used to convert a charge of murder to a finding of culpable homicide, if it can be proved that the defendant was provoked in "the heat of passion." Necessity is used in self-defense defenses, and defense of property is just that. Compulsion includes acts that the defendant is coerced or pushed into committing; superior orders refer to those instances in which the defendant was ordered by someone with authority over him or her to commit an act, but the act must not be known to be illegal to the defendant. Lastly, consent is a defense that involves civil law, in situations where the complainant provided consent to the defendant for the act in question.

Punishment

From the time that the Constitution was drafted in 1993, crimes were punishable by prison sentences, fines, or death. However, to address the growing problem of overcrowding in prisons, new attempts to implement sanctions such as probation, judiciary supervision, and community service have been implemented in the sentencing of criminals in Lesotho. Two other new punishments are verbal sanctions and reprimand. The director of probation service in Lesotho, Ntsi'keng Qhubu, is considered the initiator of restorative justice in Lesotho. She has worked in the probation department in Lesotho since 1989. "Restorative justice" was originally coined with regard to juvenile justice; however, it has recently been implemented in adult criminal justice as well. Two villages in Lesotho have taken on restorative justice programs as trial runs, and they deal with such offenses as domestic violence, faulting on rent payments, child abuse, minor conflicts among neighbors, petty theft, and paternity issues involving young girls who became pregnant out of wedlock. Restorative justice advocates and probation advocates came across some difficulties, however. The first was that many traditional leaders, and their followers, did not trust Western law; therefore, they continue to handle criminal activity within their communities, restorative or not. In addition, both prosecutors and magistrates were reluctant to implement restorative justice policies. More recently, prosecutors and magistrates have recognized the importance of probation and restorative justice, partially through conferences and sensitivity training.

When discussing typical punishments for certain crimes, it is important to take into consideration the difference between customary law and the more

recent English and Roman Dutch law. In customary law, most often and for most crimes, a verbal apology is the sentence for the defendant. The perpetrator is expected to show remorse, and there is no guilty plea—if a crime is committed, it is expected and assumed that the perpetrator admits guilt and attempts to "fix" his or her wrongdoing. Historically, even passersby were allowed to participate in the deliberation of the punishment for the offender. For murder, a common punishment in traditional villages was the payment of 10 cattle from the family of the perpetrator to the family of the victim. Other serious offenses resulted in the payment of goat or sheep. A punishment that was said to be harsh was community service in the community. The basic understanding in traditional law, however, was that everyone parted ways peacefully once the punishment was handed down.

The punishment in customary law for seducing a girl under the "apparent" age of 16 or any mentally challenged girl is a fine no more than 50 pounds (approximately $70) or imprisonment no longer than 12 months (or both). And any native who refuses or fails to pay his fine may be fined 1 extra pound and a month of imprisonment. The perpetrator has 6 months from the time he is sentenced to a fine to pay it. In the instance that stock is stolen or killed, if the number of stock stolen or killed was between 1 and 10, the debt owed to the victim is 1 stock. If there were 11 to 20 stock stolen or killed, 2 stock are owed to the victim. Lastly, if there were over 30 stock killed or stolen, 3 are owed to the victim.

In terms of drugs, the laws of Lerotholi prohibit the possession, growth, or use of dagga (marijuana). Any person who disobeys this law is required to pay a fine of no more than 25 pounds or is subject to imprisonment for no more than six months, or both.

The death penalty still exists in Lesotho and is used as a sentence for crimes such as murder, treason, and rape. The kind of rape that warrants the death penalty, however, is specific: the death penalty is given only when the perpetrator is aware that he or she is infected with HIV/AIDS. Not all murder, treason, and rape cases result in the death penalty, and this is because they are used only when there are no extenuating circumstances in the case. Hanging by neck is the method of execution used, and for the last execution (which was in 1996), a professional hangman had to be brought in from another country to execute the perpetrator. The death penalty has not been utilized since 1996. Some suggest that this is because all of the Court of Appeals judges but one are from South Africa, where the death penalty is no longer a legal punishment. Therefore, they are likely to find extenuating circumstances in the cases. There is no death penalty sentence for juveniles or pregnant women. Previous statistics show that between the years of 1992 and 1998, six death sentences were handed down to criminals. Three of these, however, were commuted to prison sentences, ranging from seven years to life. There is a unique process for appealing for clemency or pardon for the death penalty, and that involves the perpetrator appealing to a Pardons Committee established through the Constitution. This committee views presentations made by the defense counsel, the accused, the director of public prosecution, judges from the High Court and Court of Appeal, and the district secretary. The main function of the Pardons Committee is to provide the king with advice on giving out clemency to appellants, after the presentations have been made. The reason that the death penalty remains a legal sanction for heinous crimes is because it is considered a deterrent.

Outside of the death penalty, the typical punishment for murder is a lengthy prison sentence. Depending on the severity of the crime, and the extenuating circumstances, these sentences can range from approximately five years to life. Although there is the possibility of parole in Lesotho's correctional policy, little is available in existing literature. In July 2008, however, nine prisoners were released on parole from Teyateyaneng Prison. They were convicted of crimes such as robbery, theft, malicious damage of property, assault, and other offenses. The nine parolees had served at least half of

their sentence and were released on positive behavior in prison.

Prison

There are currently 12 prisons located throughout Lesotho, which accommodated 2,924 inmates in January 2007. There is debate over whether to privatize these 12 prisons into one, large institution. The proposal's argument is that this would alleviate the overcrowding and poor conditions that are plaguing the country's existing prisons. Other reported conditions have included lack of sanitation and bedding and poor nutrition, and although it is stated that pretrial detainees and convicted inmates should be housed separately, this is often not the case. In addition, reports abound that corrections officials are abusive toward the prisoners. For example, in Mohale's Hoek Prison, there were reportedly two deaths of inmates in 2004, following a long period of solitary confinement in which they were stripped, soaked in cold water, and beaten. One of these prisoners suffocated himself with his own handcuffs while the cause of death for the other prisoner proved to be the swallowing of nails.

The ombudsman, an official given the authority to conduct inspections on the prison conditions, reported that between 2002 and 2003, the prisons were overcrowded and unsanitary and provided the inmates with no facilities with which to wash themselves and no activities. Three years later, during the follow-up inspection, the ombudsman reported that some improvements were made in the areas of bedding, blankets, and feeding, but there was very little, if any, improvement in overcrowding, accommodations, transportation for officers, washing stations, and the length it took a detainee to be brought to trial.

The largest prison in Lesotho is Maseru Central Prison, located in Maseru, the capital city of Lesotho. Recently, this prison has come under attack for the poor living conditions and especially the high rate of sodomy, causing HIV/AIDS rates to increase among the inmates. Because of the high rate of sodomy, the International Committee of the Red Cross traveled to Maseru to observe the problems and advise authorities on how to alleviate them. Suggestions included HIV/AIDS education, better access to treatment, and the release of the terminally ill; upon conclusion of the briefing, officials in Maseru Central Prison began distributing condoms and working toward simplifying the process of releasing terminally ill inmates. Another major problem in Maseru Central Prison is overcrowding, and in 2005, the prison (which has a capacity to hold 700 inmates) was housing 1,000.

Inmates who are detained prior to a trial are afforded basic human rights, as well as the right to obtain their own food through family, friends, or other outside sources; the opportunity to work (with payment); the opportunity to communicate with their families; the right to be "tried within reasonable time"; and the right to have legal aid free of charge. During the Lesotho Justice Sector Conference, it was stated that females were to be afforded the same rights as male prisoners. The law of Lesotho provides prisoners with the right to receive visitation from families, but many times, the police do not abide by this law.

Chelsea Diem

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Liberia

Legal System: Common/Customary
Murder: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: Yes

Background

Liberia is a relatively small nation located in western Africa. Bordered by the Atlantic Ocean to the west, Liberia is bounded by the nations of Côte d'Ivoire and Sierra Leone, covering an area of approximately 43,000 square miles. The nation's population was nearly 3.5 million in 2008. Liberia is a republic built around three branches of government: the executive, the legislative, and the judicial. The executive branch of the Liberian government is commanded by the president/chief of state elected to a maximum of two terms of six years by popular vote. Liberia has a bicameral legislature with a Senate and House of Representatives. Each of these senators is elected by popular vote to serve nine-year terms. The judicial branch's primary body is the Supreme Court. The high court consists of one chief justice and four associate justices, each nominated by the president and confirmed by the Senate. They commonly serve until retirement or death, though there is a mechanism for removal through impeachment. The Supreme Court of Liberia holds original jurisdiction over cases of constitutional consequence. It is also the adjudicator of those cases involving ambassadors, ministers, or countries as a party.

Crime Statistics

Precise crime statistics are difficult to obtain. Instead, the records of international observers and foreign embassies in Liberia are relied on to generalize crime occurrence. And in general, crime in Liberia is high, likely exacerbated by extremely high unemployment rates. This is true in both the rural and the urban areas of Liberia. Theft, assault, burglary, child abuse, rape, domestic violence, and murder are existing problems of concern in both rural and urban areas.

Rape is especially rampant, even among children. This is, in part, a remnant of Liberia's recent and dark past. So prevalent was rape during the country's 14-year civil war that it is now thought of as commonplace, ranking only as a petty offense to many citizens. So minor is attention to rape now that only five convicted rapists are serving time in the country's largest prison.

The circumstances surrounding the country's murder problem are of special interest too. Aside from the common motivations, Liberia has also experienced murders as a result of land disputes, mob violence, and ritualistic killings. This last occurrence is especially troubling. Occurring with some regularity, these murders happen when body parts are severed as part of a traditional indigenous ritual. The exact number of these ritual killings is, like other Liberian crime statistics, difficult to determine because the police regularly miscategorize these killings as suicides or accidents. This has been true even when body parts were missing. As a consequence, there were no prosecutions of ritual murders in 2008.

The drama of rape and murder aside, most crime in Liberia is opportunistic theft. Weapons used in the commission of theft commonly include knives and machetes, but some thieves have also acquired firearms. Other Liberians are the most common targets and victims of theft; however, relatively wealthy foreign visitors present an enticing target to these thieves as well.

Police

Following years of civil war and political instability, much of Liberia is being rebuilt. That statement extends to its police force as well. As it stands today, the Liberian police do not even have primary security responsibility. Since the 2003 peace agreement, those duties have been mostly assigned to the 15,000 United Nations Mission in Liberia (UNMIL) peacekeepers and United Nations international police

Three men convicted of the rape of four young girls are photographed at the prison in Monrovia, Liberia, on June 2, 2007. According to the girls, the three men, members of the "Never Die" Church, kept them captive and abused them for years until they were able to escape. The men are among the first rapists convicted under the country's revised penal code, a turning point in what people here call a "war on rape." (AP Photo/Rebecca Blackwell)

(UNPOL). This is likely just as well because Liberian police and security personnel carry no weapons because of a 2003 disarmament program.

As part of their mission in Liberia, UN forces are also providing reform, restructuring, and training to the "new" Liberian National Police, a measure prescribed in the now highly influential 2003 Accra peace accord. Established in 1956, the "old" Liberian National Police were found to have lagged in their commitment to and effectiveness in achieving their mission of protecting life and property; maintaining law and order; preventing, detecting and investigating crime; and preserving and enhancing internal security. As part of this restructuring, several thousand "old" LNP officers were dismissed, having not met the new, more stringent standards established by UN forces. This restructuring began in earnest in May 2004 with the recruitment of new officers, with an eventual target of 3,500. Training commenced in July of that year with the reopening of the National Police Academy. By November, the first class of 132 new officers was being deployed to their respective counties. Since then, according to a United Nations report, more than 2,000 more trained officers have followed.

As a result of the new LNP and the UN presence, the security situation in Liberia has improved since 2003 but still remains volatile. International observers still find that the LNP have limited capabilities to prevent crime or provide emergency response. This does vary slightly depending on location according to some reports. Within the capital, Monrovia, services are slightly better but still below acceptable levels. Outside the capital, though,

security forces are in near total absence. As a result, many foreign consulates recommend that visitors not even venture outside the capital because of the security situation.

The continued ineffectiveness of the police likely stems from two pressing issues. The first is that, like many other West African nations, Liberian police are resource-poor. The police there have extremely limited logistical, communication, and forensic capabilities, among other things. This severely impacts their ability to successfully investigate crimes of any nature, including murder. Were the LNP even able to investigate adequately, there remains some question about whether they would. As in other areas of the Liberian government, corruption runs rampant through the police too. The situation has improved over recent years, but there are still accounts of bribe solicitation and abuse of citizens by the police. Low and irregular LNP pay has likely contributed to this persistent corruption.

Courts

The judicial branch's primary body is the Supreme Court. The high court consists of one chief justice and four associate justices, each nominated by the president and confirmed by the Senate. They commonly serve until retirement or death, though there is a mechanism for removal via impeachment. Below the Supreme Court there is a system of 15 circuit courts, one in each of the country's 15 counties. These courts are presided over by rotating circuit judges who sit in quarterly sessions. The rotation itself is set by the Supreme Court's chief justice. At the lowest level of courts are a variety of specialized courts. Specialized courts include labor, debt, tax, probate, and juvenile courts as well as others. This is also the level on which courts of first instance such as magisterial and justice of the peace courts exercise their limited jurisdictional authority.

The Liberian Constitution prohibits arbitrary arrest and detention. This is not always observed in practice though. Neither is the constitutional requirement of arrest warrants and prompt appearance before a magistrate. Instead, warrants often have been based on insufficient evidence, and those without the means of hiring an attorney were often held for more than 48 hours before arraignment. At arraignment, Liberian law does provide for bail with the exception of cases involving rape, murder, armed robbery, and treason. If denied bail, detainees must also have prompt access to counsel, familial visits, and a court-appointed attorney in the case of the indigent. Again, these rights are not always observed in practice. This is especially true of court-appointed attorneys. There is no public defender's office established in Liberia, and the indigent rely on the altruism of local attorneys. These attorneys are not required to serve and are not punished for failing to. Consequently, many pretrial detainees languish in jail for long stretches of time. Were the detainees' case to finally proceed to trial (convictions are rare in Liberia), they would find several more constitutional rights. Beyond a presumption of innocence, defendants also have the right to confront or question witnesses against them, to access state-held evidence relevant to their case, to present evidence and witnesses on their own behalf, and to appeal adverse decisions. But because of the corruption present, even in the judiciary, these rights are often denied if a defendant is unable to pay a bribe to the judge.

These wavering rights contribute to a court system that remains barely functional. In addition to endangering the liberty of citizens, the corruption present in the court system has led to inconsistent and unpredictable application of the law. Like the police, the court system suffers from low pay and shortages of all kinds. In personnel shortage terms, the law requires that all magistrates be lawyers. But the relative paucity of the legally trained in Liberia has meant this is not always the case. There are only 22 judges in Liberia. Even when a qualified person is found, the judge often cannot hold court because of a lack of security, supplies, equipment, or even a courthouse. This inability to hold court, whatever its cause, has led to a severe backlog of cases. This backlog now means it might be years before a case is heard. To make matters worse, Liberia's penal code has been out of print since the 1950s. Judges must now rely on blurred photocopies of the statutes during sentencing.

Alongside the Anglo-American system described here is another parallel system of mostly unwritten customary laws practiced within Liberia's indigenous population. Of particular interest is this system's continued use of trial by ordeal in spite of its prohibition by the Supreme Court. This process of physical examination, brutal by Western standards, commonly involves either the ingestion of a substance meant to cause illness or the application of a fire-warmed machete to the legs of the accused. The belief is, essentially, that the innocent will be unharmed by these trials, whereas the guilty will obviously suffer from them. This suffering can and has varied from slight discomfort on up to and including death.

Punishment

Conditions within Liberia's correctional facilities have been generously described as harsh by various sources. In many ways the conditions can also be life-threatening. In spite of having been established over 30 years ago, the correctional system is still in its early stages of development. As it currently exists, the system is overcrowded, underfunded, and plagued by deplorable conditions.

The most prominent issue facing Liberia's correctional system is overcrowding. To illustrate this, the official capacity of Liberia's 15 prison facilities is only 750. But at the end of 2008, they held 1,624 according to the Bureau of Rehabilitation and Corrections. On an individual facility level, the problem is just as grave. Liberia's largest facility, Monrovia Central Prison, has a stated maximum capacity of 150 but regularly houses more than 500, causing single cells to hold 12–15 individuals each. This overcrowding has led to other unfortunate consequences, besides the personal discomfort of inmates. The first is the mixing of different inmate categories. This intermingling exists between genders, ages (juvenile and adult), and status (pretrial and convicted). And because of the vast numbers of inmates and a limited budget, there exists a serious shortage of guards and correctional staff to adequately oversee the prison population. This imbalance was partially to blame for the December 2008 escape of 200 inmates from Monrovia Central Prison. And because of the ineffectiveness of the police, 165 of those inmates have evaded capture. Thankfully, there are renovation and expansion efforts underway at select facilities. Monrovia Central itself is in the process of constructing a new 100- to 150-inmate cell block funded by the U.S. government.

A large part of the overcrowding issue comes from a ripple effect that begins in the courts. Because of the backlog in the courts, cases are not heard in a timely fashion. This has created a large population of pretrial detainees, a population so large it accounts for 97.3 percent of those held in Liberia's correctional facilities. There is also the chance that nearly 4 percent of the prison population should not be there at all according to the law—4.3 percent of Liberia's prison population is under the age of 18, and many magistrates are unaware that many juvenile offenders should not be in prison. Both of these court system factors have contributed strongly to the present overcrowding.

The corrections system, like the police and courts, suffers from lack of funding. This underfunding has led to an insufficient staff and heavy reliance on foreign aid for operating expenses. If not for this foreign aid, many inmates would likely go without medical care. Of even more concern is that if it were not for the World Food program and various nongovernmental organizations, some inmates might not even receive sufficient nourishment.

Similar to the police and courts, the corrections system is showing signs of progress. Juvenile justice, for example, is beginning to receive attention. There still remains no formalized juvenile justice system in Liberia, stop-gap measures do exist. Monrovia's Don Bosco Children's Centre, a pseudo-rehabilitation home, is one such attempt, at least in cases of less serious juvenile crimes such as theft. And in the case of formal detention, there are efforts being made to ensure that children have cells separate from their adult counterparts, though interaction with adults in common areas is still unaddressed.

The adult convict is also finding new, progressive options. Rather than simply prison, the Liberian Bureau of Rehabilitation and Corrections has

recently instituted some rehabilitation programs in a number of its facilities. At their core, these new programs look to recruit and train convicts in fields including rice farming, cloth weaving, brick making, soap making, and rabbit farming. Officials hope that if these convicts are trained in a needed skill, their post-release reintegration into society will be more successful. Because the program only began in 2008, no results have been obtained at current date.

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Madagascar

Legal System: Civil/Customary
Murder: Medium
Corruption: Medium
Human Trafficking: Low
Prison Rate: Medium
Death Penalty: Maybe

Background

Madagascar, also known as the Republic of Madagascar, is a southern African country located in the Indian Ocean. It is the world's fourth-largest island, and according to the Central Intelligence Agency's World Factbook, Madagascar had a population of approximately 19,448,815 million people as of July 2007. The people of Madagascar are mostly of Malagasy nationality with cultural ties to Africa and Asia; however, the country was once under the control of France and eventually gained independence in 1960.

The legal system of Madagascar is a mix of civil and customary law. It is based on both the French civil law system and traditional Malagasy law. Therefore, it focuses more on codified law than case law and precedent, as is typical of the common law system. It also uses a traditional *dina* system, which was in use in the country prior to colonization to control resource use, community behavior, and property rights in isolated areas of the country.

Police

The police force in Madagascar has a rich history with roots in the military. While under the control of France, Madagascar fought in many wars for its colonial masters. As such, the armed forces and some state security services still reflect French practices today.

Besides the FAP, or the Forces Armees Populaires, there are five state security services: the National Gendarmerie, the Republican Security Force (FRS), the Civil Police, the Civil Service, and the Antigang Brigade. All of these groups are outside the FAP command with the exception of the National Gendarmerie. The National Gendarmerie has 7,500 members and operates within the Ministry of Defense. There are units of the National Gendarmerie stationed throughout the island, to maintain public order, maintain security in the villages, pursue criminals, protect government buildings, and even prevent cattle thievery. These units are also assisted in some areas by regular army units in operations against bandit gangs and cattle thieves. The gendarmerie has automatic weapons, armored cars, and even aircraft at its disposal. In addition, it operates a maritime police force.

Madagascar police and army patrol the streets before the start of an antigovernment rally in Antananarivo, Madagascar, on January 31, 2009. About 4,500 people joined the rally, called by the capital's mayor after a week of violence in Madagascar left at least 43 people dead. (AP Photo/Jerome Delay)

The Civil Police are also enforcers of the law in Madagascar. Their 3,000 members' presence can be felt mostly in island cities. The Civil Police fall under the jurisdiction of the Ministry of Interior. However, just like the National Gendarmerie and other security forces, the police force tends to overreact during times of civil strife, which has provoked many opponents and protestors. In addition, the Civil Service is a paramilitary force, which is a type of reserve force. Its operations are nonmilitary and involve work in rural and social development programs.

Finally, the Antigang Brigade was established with the help of the French in 1989. This unit also reports to the Ministry of Interior and is used for combating hijackers, terrorism, and dangerous criminals. Moreover, the brigade is trained by French security, as are many other security forces in the country.

The state secretary of the Ministry of Interior for Public Security and the national police are accountable for law and order in the capital city, Antananarivo, and other large cities in the country. In addition, there are traffic police and village-level law enforcement groups that enforce local traditional laws called *dina.* These enforcers are especially prevalent in areas where the government's presence is weak. However, the resources available to these local police services are limited because the majority of the population live in poverty. Therefore, police responsiveness to citizens' calls is, at times, inadequate and ineffective. Crime responses are slow or nonexistent for the average citizen, even in the larger cities. For example, in the capital of

Antananarivo, a district police office will have only one to two police cars available to respond to citizens' calls and crimes. In general, even though the police are mostly capable and professional, a lack of training and equipment, low salaries, and corruption are still apparent within the nation's law enforcement.

Overall, there have been and continue to be reports that police, gendarmes, and *dina* authorities are corrupt and have committed human rights abuses. However, the country and its administration have acknowledged this and have been making strides to try to reduce these acts of misconduct.

Crime

Despite its impoverished economy, the capital city, Antananarivo, has seen a decline in violent crime. The vast majority of crime in the capital is petty street crime, such as pickpocketing and "grab and runs." These crimes of opportunity are the most prevalent; however, other serious offenses do occur.

Classification of Crimes

Crimes in Madagascar are classified as misdemeanors and felonies. Felony crimes include murder, assault, rape, and those of rebellion against the state. Other offenses, such as cattle theft, pickpocketing, and other petty street theft, are considered misdemeanors. However, to be charged with any of these crimes, an offender must be 13 years old, which is the minimum age of criminal responsibility in Madagascar.

The country has recently turned its attention toward the crime of human trafficking. There have been reports of trafficking in women and girls for prostitution between Madagascar and the neighboring islands of Mauritius and Reunion. Children also have been trafficked from rural areas to work as prostitutes in urban areas. Although human trafficking and prostitution are not specifically prohibited, in 2000 the law prohibited pedophilia and sexual tourism. Therefore, traffickers may be prosecuted under the provision that outlaws pedophilia or under laws that prohibit child labor. The trafficking problem is a serious one for the country. In 2005, the government also passed a new adoption law, in part so that children could not be trafficked under the excuse of adoption. However, the lack of resources makes it difficult to combat human trafficking effectively. There are also reports that trafficking is initiated individually and does not involve coercion, force, or fraud. There were reportedly 700–800 child prostitutes in the city of Nosy Be and 2,000-plus in the city of Toamasina in 2005.

In addition, Madagascar law prohibits domestic violence. However, it has been reported by the State Department of the United States that 50 percent of women have experienced domestic abuse. Even so, when women do report domestic violence, the police generally intervene.

Another pervasive problem within the country is theft. Incidents of cattle theft are common. There are special courts to deal with those charged with cattle theft. Agriculture is also a huge component of the country and its economy, so theft of certain crops is an issue. Pickpocketing is also common, especially targeting Westerners who visit. Thieves will steal from unlocked cars as well. Some more serious types of stealing deal with criminal gangs made up of foreign felons, ex-military personnel, and police from former regimes who are known to commit home invasions and kidnapping. These organized gangs patrol areas where they think the wealthy, foreign visitors congregate. Burglary does happen outside the capital as well, but the threat of confrontational crimes is less prevalent in those rural areas.

In Madagascar the prevalence of illicit drugs has been growing in recent years according to the government. Cannabis is a ubiquitous drug in Madagascar. The country is a producer of cannabis, but most of it is used for domestic consumption, and thus, there has been an increase in cannabis use in remote areas. In addition, the country has experienced increasing numbers of people using cocaine, heroin, and Ecstasy, especially among high school–aged youth. Madagascar is also used as a transshipment point for heroin.

Crime Statistics

The only available data relating to the incidence of Madagascar crime were from 1995 INTERPOL data for Madagascar. According to the INTERPOL data, for murder, the rate in 1995 was 1.75 per 100,000 population; rape in 1995 was 1.19; robbery was 3.24; aggravated assault was 21.45; burglary was 16.52; and larceny was 1.24.

Finding of Guilt

The Malagasy penal code affords those accused of crimes with most of the rights and protections granted under French and Western law. The Constitution provides for due process of those people accused. There is a presumption of innocence until proven guilty under the country's penal code. Trials are public, and the accused has a right to attend the trial. The accused also has a general right to an attorney and to be informed of the charges against him or her. However, the government is required to provide counsel only in cases where an indigent defendant is being charged with a crime that carries a punishment of a prison sentence greater than five years. In addition, the rights to confront witnesses and to present evidence are also present in the country.

The law also requires that state agents use warrants unless they are in hot pursuit. However, many citizens are detained and jailed solely on accusations made by others. Therefore, despite legal safeguards, infringement of a person's rights and arbitrary arrest and detention do occur.

Bail exists in the country's criminal justice system; however, in practice, it is not available to many defendants. Because bail is often rejected, it is rarely requested. Instead, the country uses a retaining writ (*mandat de depot*), and the defendant is held in detention during the entire pretrial period. This long pretrial detention is a serious problem. In addition, a crime suspect is to be charged or released within 48 hours. However, this is not always the case in Madagascar In practice, investigative detention often exceeds one year, and many detainees spend longer periods in investigative detention than they would have spent in incarceration for the maximum sentence for what they were charged. Therefore, this lengthy investigative detention is a problem within the country and results in the denial of a person's due process. Poor record-keeping and a lack of resources are also part of the cause of this. The Ministry of Justice has tried in recent years to reduce this excessive pretrial detention through case reviews and expedited judgments. However, the backlog of cases still remains a problem.

Jurisdiction under the Ministry of Justice has three levels. There are lower courts called the courts of first instance that hear civil cases and criminal cases carrying limited fines and sentences. There is a Court of Appeals, which is also the criminal court of first instance for cases with sentences greater than five years. The Supreme Court hears appeals from the Court of Appeals. A fourth separate and autonomous court, the High Constitutional Court or *Haute Cour Constitutionelle,* reviews the constitutionality of laws, decrees, ordinances, and electoral disputes.

There are also specialized courts that handle matters such as cattle theft and cases that deal with civil disputes within and between villages. These courts deal with traditional *dina* laws, such as property issues. However, in practice, they also address criminal cases, given the isolation of many rural areas and the ineffective police and judiciary outside of the cities. The decisions based on *dina* are not subject to codified safeguards for the accused; however, there are instances where they can be challenged at an appeal court level.

Additionally, there are special military courts that handle all cases involving national security. The defendants in military courts have an appeals process as well. Also, it should be noted that Madagascar accepts compulsory International Court of Justice (ICJ) jurisdiction only with reservations. The ICJ is a court of 15 judges elected for nine-year terms by the United Nations General Assembly and Security Council. Its purpose is to settle legal disputes submitted to it by the member states, such as Madagascar, and to give advisory opinions on legal questions submitted to it.

There is a special Tribunal for Children, which is situated at the first instance courts. If a person accused of committing a crime is 13 to 18 years old, the juvenile judge may decide whether or not to charge the youth. These juvenile judges for the courts are chosen from the courts of first instance depending on their interests and aptitudes in the area. There is also a magistrate designated by the attorney general whose job is to follow children's cases and offer measures to improve their safety. In addition, in Madagascar, a juvenile's name cannot be revealed to the public. However, in practice, the juvenile justice system, like other entities in the criminal justice system, is lacking in resources, judges (there are approximately 50 in the country), specialized training among judges, and social workers to assist the judges. Instead, many juveniles are sent to residential centers without a judge being involved.

The judiciary officials are appointed and elected along with other public officials. For example, the first president is elected by the Superior Council of Prosecutors and General Assembly of the Supreme Court, holds a three-year term, and can be reelected once. The general prosecutor is appointed by the president of the republic acting in the Council of Ministers from a list nominated by the Supreme Council of Prosecutors. This position also holds a three-year term, and the official can be reelected once. The High Constitutional Court has nine members who each hold one six-year term. Three of the members are appointed by the president of the republic, two by the National Assembly, one by the Senate, and three by the Superior Council of the Magistrates.

However, the country's judiciary has lost much trust from its citizens because of the pernicious corruption within the system, and even though the law provides for an independent judiciary, it is susceptible to executive influence. According to the 2007 Transparency International Corruption Perception Index, the country ranked 94th out of 180 countries in amount of corruption.

To combat the corruption, the Malagasy government established an Anti-Corruption National Council in September 2002. In May 2004, an Anti-Corruption Judiciary Unit (CPAC) was established in Antananarivo, which consists of magistrates, public prosecutors, and judges trained in corruption matters. They have offices separate from other judiciary offices to help ensure their impartiality and trustworthiness. The judiciary is one sector affected by corruption because of low salaries, lack of training, and complex judicial proceedings that require a long series of steps before a resolution can be reached. Therefore, bribery can offer an expeditious resolution to a case. Along with the Anti-Corruption Independent Bureau (BIANCO), the CPAC has uncovered and prosecuted many corruption cases. Most tend to be petty corruption within the police and judiciary. These include abuse of power, solicitation of bribes, and extortion. In 2003, 12 magistrates were suspended for corrupt practices, and in September 2005, a judge was suspended for one year for having taken an eight-dollar bribe from the family of a detained prisoner. BIANCO is continuing to battle this low-level corruption by using ethics forums.

Punishment

In Madagascar, punishments for crimes can vary from fines and hard labor to imprisonment and death. Imprisonment is one of the areas in most dire need of improvement.

Types of Punishment

The types of punishment used in Madagascar vary. The country uses fines, probation, prisons, and hard labor. The most severe punishment is death by firing squad, although it is rarely administered. Forced exile is also available as a type of punishment, but there are no cases where it has been used.

Punishments for murder normally range from forced labor to imprisonment. The punishment for rape is usually 5 to 10 years in prison. Rape of a child or a pregnant woman is punishable by hard labor. Punishment for cattle theft tends to be monetary fines when coming before the local-level judiciary, which is limited to monetary damages.

Juvenile punishments vary from adult punishments for the most part. Because the minimum age

of criminal responsibility in Madagascar is 13, if juveniles under 13 commit a misdemeanor, they receive a police warning (*admonestation*), and if they commit a serious act, educative measures are taken, such as being returned to their parents. If 13- to 18-year-olds are found guilty of misdemeanors, they are given fines or probation. If the juvenile is 13 to 16 years old, the excuse of being a minor can have the sentence reduced to half that of an adult. For a serious crime, the excuse of being a minor is still retained and can reduce the sentence. If the crime comes with a sentence of death, forced labor for life, or deportation, the juvenile will get 10 to 12 years' imprisonment. If the crime comes with a sentence of forced labor or detention, it is cut in half. If a 13- to 16-year-old is found not responsible for the crime, educative measures are used, and they can be sent to re-educative centers up until they 21 years old. There are two of these centers run under the Ministry of Justice and three that are private. However, judges can reject the juvenile defense of 16- to 18-year-olds and sentence them as adults, with the exception of the death penalty, which is restricted to only adults.

Additionally, in 2001, it was decided that persons accused of rebellious acts could be detained incommunicado and could be subject to indefinite detention if deemed necessary by the government.

Prison

Madagascar has 97 prisons, holding approximately 17,495 prisoners as of December 2006 according to its National Prison Administration. The country has a nationwide prison system, with each of the six provinces in Madagascar having a central prison for inmates serving sentences of less than five years. There are also at least 25 lesser prisons for individuals serving less than two year terms and those awaiting trial. Courts at the local level (subprefecture) maintain jails for lesser offenders serving time for less than six months.

Nevertheless, with all the facilities, the country's prisons still suffer from overcrowding, and according to nongovernmental organizations (NGOs), some prisoners have to be held in storage warehouses. One prison in Ambositra had a capacity of only 80 inmates but actually held 400. Another, Tsiafahy Detention Center, usually reserved for the serious criminals, held up to 620 inmates even though its capacity was supposed to be 200. The reasons cited for the overcrowding include all of the arrests following the political crisis in the country and all of those inmates being held for lengthy pretrial detention. These pretrial detainees make up 64.7 percent of all prisoners. However, the country's overcrowding also stems from the fact that many of those who are tried before a court are expected to pay a court fee before they can receive their judgment. If they cannot pay the fee, they are then returned to jail. Overall, the official capacity of the Madagascar prison system is 13,462; however, the occupancy level was at 130 percent as of December 2006. This was even after the government granted 7,279 pardons to reduce overcrowding.

According to the International Centre for Prison Studies, 3.3 percent of the total prisoners are female. Women prisoners who are sent to serve long prison sentences are usually sent to the Central Prison (*Maisono Centrale*) in Antannarivo. Rape is not an uncommon occurrence for females in prison. In addition, female prisoners are found to engage in prostitution in collusion with prison guards. Gender segregation is not absolute. There have been some reports of rapes committed by other prisoners. Sometimes preschool-aged children are put with their mothers in cells and end up abused as well.

In addition, juveniles are not always held separate from the adult prison population. Those under 18 years of age make up 2.4 percent of the prison population. The pretrial detention inmates are also not always held separate from the general prison population either; 0.1 percent of the total prisoners are foreign.

Besides the overcrowding and mixing of various prison populations, the harsh prison conditions are also life-threatening. Prison cells allow for less than one square yard of space per inmate. Cells built for one inmate can at times hold up to eight, and inmates have to take turns to sleep. A prisoner's diet is usually 100 grams of cassava or rice per day. Usually families or NGOs such as Catholic Prisoners

Chaplain will supplement the food for some of the inmates. Therefore, those inmates lacking relatives can go several days without food. Those prisoners who are brought to the capital to be tried, especially during the times of political turmoil, can go days without food because their families may not be able to afford to travel to see them. The prison cells can also contain several people with only one toilet, no running water, and no electricity.

The medical care is also inadequate. From January 1, 2005, to September 30, 2005, 144 prisoners died from malnutrition, diseases such as malaria and tuberculosis, and neglect. These deaths occurred even though the International Committee of the Red Cross (ICRS) and the Ministry for Health and Family Planning provided disinfection services to help prevent outbreaks and epidemics of disease. A study published in the *Journal of Research in Microbiology* found that the incidence of tuberculosis was 16 times higher in the Antananarivo prison than in the general population.

Rape is commonplace in Madagascar prisons as well. It is used by guards and other inmates to humiliate prisoners. Inmates also can be used as forced labor. The lack of resources makes it difficult to have any type of prison program. However, there have been organizations dedicated to restorative justice in the country's prisons. The Prison Fellowship International has an entity called Fraternite des Prisons au Madagascar. Its aim is to work with prisoners to help heal broken relationships, repair the damage done by the crime, and restore the offender to a productive role in society. This initiative has 50 volunteers in the country who have been involved in restorative justice with 11 Madagascar prisons, working with 7,500 prisoners.

Raquel Hutts

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Malawi

Legal System: Common/Customary
Murder: High
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

Formerly known as Nyazal, Malawi is a landlocked country bordered by Tanzania to the north and west and Mozambique to the south. With an estimated population of over 12 million (2003), it is one of the most populated sub-Saharan countries. Colonization introduced new frontiers in the sociopolitical context to the extent that all the indigenous people had to relate to the British rule—politics, law, crime, policing order, judicial process, and punishments or penal system. Prior to colonial rule, there existed forms and practices of crime and punishment in Malawi that the British authorities called Nyasaland. Response to crime was handled in communal ways under the supervision and coordination of the heads of the clans and villages. These were the practices that had to be abrogated or realigned so that the resilient elements coexisted along those of the colonial authorities. Since becoming independent in 1964, the primary goals of the multiparty system have been democracy, rule of law, and human rights.

Crime

Crime Statistics

Crimes and other social problems appear to have been a major concern to the people of Malawi since the mid-1990s. Additionally, a variety of social

problems plague Malawian society, including poverty, environmental crime caused by rising human encroachment on the wetlands, and the high rate of HIV/AIDS infection.

Though crime data are not easily available in Malawi, data from the International Crime Victim Surveys (ICVS) suggest fairly high victimization rates among the respondents. In a United Nations survey of 2,984 respondents, 44 percent reported that they were victims of crime between May 2002 and May 2003. The most reported victimization related to theft of crops, livestock, burglary, personal property, and bicycles, suggesting the agrarian background of the victims. Violent crimes such as assault, robbery, murder, and sexual assault were less common; however, for the period August 2000 to July 2002, the police recorded 789 cases of crimes involving small arms.

Illegal Firearms

Malawi has a serious social problem of illegal firearms. According to the Malawi police, a total of 318 illegal firearms were seized between 1996 and 2001 and 105 illegal firearms in the first quarter of 2002. These firearms, which were seized mostly from organized crime syndicates, included AK-47 assault rifles and pistols.

Border Crimes

Malawi's porous borders with Mozambique, Tanzania, and Zambia have been a source of major concerns over border crimes. These concerns have led to at least joint public displays of bilateral and even multilateral courses of action. Perhaps the most ambitious of these courses of action involves completion of the extradition treaty between Malawi and Zambia. The work on this treaty started in 2004.

Trafficking of Women and Children

Although there has been public discourse on trafficking of women, a numerical account of the extent of the problem is unavailable. The discourse circulates around government circles and NGOs. Police actions or those of the military have been ad hoc at best.

Malawi is considered by many observers to be a country of origin as well as transit for trafficking of women and children, both for child labor and for sexual purposes. South Africa is one of the destination countries in this business. Until recent years, there was hardly any documentation of trafficking of women and children. Activities for enhanced documentation are now being carried out by the Center for Social Concern and Center for the Protection of Trafficked Persons. There are several provisions in the penal code with respect to prostitution and indecency. One of the provisions involves imprisonment on conviction.

Juvenile Delinquency

This is an umbrella concept that incorporates a variety of antisocial (or deviant) behavior, on one hand, and legal violations on the other. Youth legal violations include those behaviors for which adults often get prosecuted and those violations for which only persons under 18 years of age get taken to court. An example of the latter is truancy or running from school as well as home. A number of both international and national NGOs have stepped up their efforts to deal with the needs and problems of the street children in Malawi. The national NGOs include the Scouts Association of Malawi; the Street Children's Ministry based in Blantgre, Malawi; and the Chisomo Children's Club.

Corruption

Corruption is probably the most talked about social problem in the circles of the African stakeholders. Data from the International Crime Victims survey (ICVS) suggest that public experience with officials is fraught with problems and concerns. Of a total sample of 2,984, nearly 6 percent (N = 384) noted that they had been asked for money to perform a service that was legally required of officials to conduct.

Despite the crime problems, the number of victims reporting crime to police is relatively low. The ICVS data suggest that the two most common crimes that victims report to police are theft of crops and livestock, though the highest degree of victimization

was for housebreaking (32.6%) and theft of personal property (37.5%). Some of the reasons for this include a general perception that the crime was not serious enough to warrant reporting to the police; the victims' sense that they do not have enough evidence to report the matter to police; and the knowledge that stolen property rarely if ever gets returned back to the owner.

Police

The Malawi Police Force (MPS) was first established in 1921 under the Ministry of Justice. It had its headquarters in Zomba along with the regional headquarters to which two dozen or so district commandants reported. As in the other British colonies, the top policy makers and administrators were British, and the Africans occupied the lowest echelons. In terms of organizational structure, there were several divisions aside from the central administration. Examples include Criminal Investigation, the Special Branch for Intelligence, the Immigration Service, the Police Mobile Service, the Police Mobile Force, and Training School. In 2003, there were 7,915 staff with the Malawi police service; a majority of them (61%) are young, between the ages of 18 and 35, with men outnumbering women by a ratio of 5:1. Some estimates indicate that the current strength of the police force is not adequate to carry out the tasks and that an additional 4,625 personnel are needed to reach its strategic goal of 1 police officer for every 1,000 Malawians.

Organizational Structure of the Police Service

The police service is currently one of the major components of the Ministry of Home Affairs. The inspector general of police heads the police service and reports to the minister of home affairs, a concept that also is reflected in the other southern African countries other than South Africa.

Citizens' Complaints

Citizens' complaints against the police, as well as other legal or criminal justice authorities, have a place in a democratic society. Malawi now claims such a society. The previous regime, of Hastings Banda (1961–1994) had notorious young pioneers as a youth branch of its political party. They were involved in conducting dirty tricks against Banda's real as well as imagined political opponents. To bolster citizens' confidence in the police, the Malawi Community Safety and Firearms Control Project (MCSFCP) was implemented through community policing programs that were originally established to deal with crime problems.

Police Reform

By African standards, Malawi joined the ranks of progressive countries in police reform in the dawn of the 21st century. The categories of its police reform include the mission, organizational structure, administrative management, and organizational culture.

For purposes of improving the professional standards of the police, the starting point is the collection and publication of comprehensive crime and policing data. Data should be made available not only for new and emerging crimes but also for those crimes that are traditional in any country, such as homicide, assault, and theft.

Finding of Guilt

Courts

The court system consists of the superior (Supreme Court and the High Court) and subordinate courts (magistrates' courts). Criminal cases are grouped by the seriousness of the offense, in which case serious offenses include murder, armed robbery, and treason. Only the superior courts have jurisdiction in these offenses. The courts are also categorized by their time frames for resolving cases. For example, subordinate courts are essentially the courts of origin for minor or less serious crimes. The higher courts for appeal are structured to start with the High Court, with the Court of Appeal as the equivalent of what in some countries is called the Supreme Court. This appellate court has been considered the most important institution per recent judicial rulings because its judicial interpretations have been palatable

to the international community, including Amnesty International and Human Rights Watch. It is also distinguished from the High Court in two respects; it has multiple judges and does not use a jury.

The magistrates' courts and other subordinate courts handle the bulk of the cases at the trial level. After all, they are spread all of over the country and are most accessible to the average citizens at minimum litigation costs. In contrast, the High Court is aloof from the citizens. The Constitution provides for the independence of the judiciary, which was not the case during the Banda regime and to some extent of the immediate post-Banda regime. There have been two major revisions of Malawi's Constitution in recent years. The first one was carried out in 1994 and the second in ~~1966~~ 1998.

Trial by Jury

As is the case in most former British colonies, in Africa, trial by jury is a special provision of the penal code, but it is reserved for trials of murder cases only. In this case, the High Court makes use of 12 persons. As of mid-1996, there were 1,000 murder suspects awaiting trial. On August 28, 1996, the Inter Press Service English News reported a call by legal reformers to abolish the country's jury system. They suggested replacing it with singular acts of the judge. The difficulty of engaging juries in the criminal justice process has been marred by political interference.

Delays and Other Problems of the Courts

Court delays in democratic societies are publicly condemned. The Malawi courts did not escape the traumas of the economic downturn at the dawn of the 21st century. To make matters worse, the judicial staff went on strike in August 2002. Their leadership accused the members of Parliament of double standards: they gave themselves pay raises while the average workers' demands were rejected.

Legal Reform

The achievements of the post-Banda government regimes in Malawi include legal reform in general, police reform, and penal reform, all of which have helped develop the rule of law and a culture of shared values through participatory discourse.

One of the desired goals of legal reform has been attainment of judicial accountability. This achievement does not come out of the blue; it requires the court policy makers and top administrators to assume primary responsibilities, for which they should be assessed for their performance. The Malawi Law Commission, Parliament, and the police service; the British Home Office and Department of International Development; and nongovernmental organizations such as London-based Amnesty International, the Kenya-based International Resources Group, and the South Africa–based Institute of Security Studies have all contributed to this evolving process. One significant reform in establishing governmental accountability has been the establishment of the Office of the Ombudsman. The aim has been to prevent inconsistent and arbitrary actions reminiscent of the situations in Hastings Banda's regime.

Provisions of the Penal Code

The penal code not only defines crimes but also stipulates their corresponding punishments. The punishment for murder was death by hanging until April 27, 2007, when the judges of the High Court ruled against the imposition of the sentence. By the same token, the death penalty applied to conviction for rape and armed robbery. Malawi has an established Law Commission, which has a major responsibility of periodically reviewing the penal code. It was originally set up to recommend that unprotected sex that spreads HIV should be a criminal offense.

Punishment

The penal system is composed of the prisons, probation, fines, and related penalties. The colonial authorities introduced three major categories of prisons, namely maximum-security prisons, medium-security prisons, and minimum-security prisons. The one maximum-security prison was located at the

headquarters in Zomba, whereas there were three medium-security prisons. The open prison farm constituted the minimum-security prison.

The Malawi Prisons Acts

The basic documents that guide the administration of the prisons are the result of three legislative acts: the Prisons Act, the Prisons Regulations, and the Prisons Standing Orders. The prisons in Malawi perform multiple roles, ranging from inflicting pain to so-called rehabilitation. The prison conditions are described by United Nations Commission on Human Rights and other observers as horrible, punctuated by overcrowding, sexual abuse, and physical abuse including torture. On December 3, 2007, there were 10,830 prisoners in Malawi, including pretrial detainees, representing a 173 percent occupancy rate. These conditions continue notwithstanding the provisions of the penal code that call for damages upon successful litigation against prison authorities. In regard to HIV/AIDS in prisons, the proposal by some lawmakers in the National Assembly to provide condoms to inmates has received mixed response.

The Death Penalty

On April 27, 2007, the Malawi judges of the High Court unanimously agreed that the mandatory death sentence for murder was unconstitutional, thereby rendering invalid article 210 of the penal code. This ruling was greeted with cheers by the opponents of the death penalty. On the other hand, there continue to be segments of Malawi society that want to retain the death penalty. Furthermore, this ruling does not as yet mean that the death penalty is abolished, which will require legislation.

Penal Reform

Building more prisons to ease overcrowding has been in the works since the dawn of the 21st century according to the reports from prison policy makers and administrators. Apart from seeking to ease overcrowding, a related goal is to deemphasize punitiveness, on one hand, and emphasize rehabilitation on the other, according to the *People's Daily Online* (2007). At stake are the issues of not only inadequate but also sporadic budget allocation and other related infrastructure to meet the needs and problems associated with teenagers and young men, whether they are in detention or not. Lack of quality education is the centerpiece of the criticism. In this regard, transfer of the Approved School (institutions of detention for juveniles) to the Ministry of Education has been proposed. Several African countries including Malawi have, through legislation, prioritized making community service an alternative to imprisonment.

One of the service areas in which Prison Reform International been working is the provision of paralegal assistance. It is a borrowed concept from the West geared toward the broad theme of social justice via the provision of inmate legal services, including the availability of law books in the prisons and even the larger jails. Prison Reform International has introduced paralegal assistance as a pilot project in Malawi's four prisons, thanks to funding by the British government's Department for International Development. The project entails, among other things, the coordination and monitoring of selected areas of application of law in real life within the legal or criminal justice system. Paid paralegal assistants are utilized. Already selected prisoners' receipt of bail or bond has been considered a positive outcome of this program.

Reform of Juvenile Justice

Reform of juvenile justice has been underway thanks to the cooperative efforts between UNICEF and the Malawi government. One example of the reform involves establishment of child-friendly courts designed to divert juvenile offenders from adult prisons, a result of the assistance of the British Department for International Development.

A review of the functions and purposes of reformatory schools in Malawi was commissioned by UNICEF and completed in August 2001. The report mentions several major problems dating back to the establishment of the reformatory schools and continuing through their plight in the

21st century. It has been recommended that the government (a) build additional reformatory institutions, (b) institute separation of adult offenders from juvenile ones, (c) provide adequate funding for the reformatory institutions, and (d) provide adequate staffing.

The Office of the Ombudsman

The country's new Constitution provides for the creation of the Office of the Ombudsman. It is to be an independent office with powers of authority to conduct investigations as well as subpoena targeted persons and to render appropriate remedies following findings. The remedies may be administrative and/or legal. There are constitutional grounds upon which the ombudsman may be subject to removal from office.

Aside from the Office of the Ombudsman, the National Juvenile Justice Forum, the Law Commission, and the Human Rights Commission, there are other long-standing constitutional instruments to ensure checks and balances in government. They include the Judicial Service Commission, the Police Service Commission, the Prisons Service Commission, and the Inspectorate of Prisons.

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Mali

Legal System: Civil/Customary
Murder: Low
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Maybe
Corporal Punishment: No

Background

The Republic of Mali (henceforth Mali) is a country in West Africa with an estimated (2006) population of 12.5 million. Mali is the largest country in West Africa, occupying an area of 1,240,278 square kilometers, and shares borders with seven other countries: Algeria to the north; Ivory Coast and Guinea to the south; Burkina Faso to the southeast; Mauritania and Senegal to the west; and Niger and Senegal to the east. The capital of Mali is Bamako, with a population of about 1 million.

Mali is a multiparty democracy and has operated under a presidential system of government since becoming independent from France in 1960. The head of state and commander in chief of the armed forces of the country is the executive president. The prime minister is the head of the government. It has a national assembly that has the sole responsibility of making laws in the country.

Police and Crime Data

Mali has about 1,000 police officers. The Ministry of Internal Security and Civil Protection oversees police functions. The gendarmerie is supervised by the Ministry of the Armed Forces. The maintenance of law and order in the urban areas is the responsibility of the police. However, the police and the gendarmerie are responsible for the internal security of the land. The police authority and

administration is decentralized, with the commissioners being responsible for the districts. The police commissioners who are in charge of the districts are answerable to the national headquarters. The local police forces are under the Ministry of Security and Civil Protection. The gendarmerie is under the Ministry of the Armed Forces. The police and gendarmes share responsibility for internal security, and the police are responsible for the urban areas only. The police force is decentralized to the district level, with each district having a commissioner who reports to the national headquarters. Available records show that the Malian police are relatively effective despite concerns the corruption in the police force and the criminal justice system. There have been reports of the police collecting bribes at road checkpoints. Other problems plaguing the police include inadequate training and equipment. Despite all these challenges, Mali's crime rate remains relatively low.

Complementing the efforts of the state police are those of the traditional police known as *jeliw* (griots or bards). The *jeliw* employ African principles of justice and conflict resolution to resolve conflicts that arise in the community. This traditional police system is quite effective in maintaining law and order because of its strong ties to the community. They assist victims in restoring their losses and work to reintegrate offenders into the community. Their goal is the restoration of peace and harmony in the community. Just as *jeliw* use shaming as a mechanism to administer justice, they themselves are subject to shaming when they are exposed to abuse and forced to "humble themselves" to keep the respect from the disputing factions.

Crime data are limited and sparse. The incidence of violent crime is low, and the most frequently reported crimes are pickpocketing and theft. According to INTERPOL, data from 1998 (most recent available) reveal the crime rates per 100,000 population as follows: murder, 0.71; rape, 0.46; robbery, 0.05; aggravated assault, 1.45; burglary, 0.77; larceny, 0.94; motor vehicle theft, 0.34. One of the explanations of low crime rates according to researcher A. B. Chikwanha in 2008 is the country's reliance on traditional policing and justice mechanisms, as well as extensive reliance on restorative justice. However, corruption in government remains a big issue. There are many cases of financial mismanagement, corruption, and fraud. Many wealthy individuals and corporations have also been found to evade taxes. The auditor general of the country reported that in 2006, more than US$218 million was lost to corruption and fraud by government officials. Again, about US$15.5 million was lost in the same year to tax evasion.

Domestic violence is widespread in the society despite the fact that assault in marriage is a crime. The police are reluctant to prosecute rape and domestic violence cases because of the prevailing cultural attitudes that condone rape and domestic violence. However, a lot is being done to address the issue, including raising society's awareness of the dangers of domestic violence and rape. Collective efforts by both government and nongovernmental organizations to sensitize the people to the prevalence of rape and domestic violence and also educate women on their rights are currently underway in the country. Women are also receiving education on how to access the justice system and defend their rights.

The problem is further compounded by the definitions of crime. For instance, female genital mutilation is defined as a crime, but women do not report this crime. Additionally, higher illiteracy among women further aggravates their problems. In this patriarchal society, women are poorer than men, and efforts to encourage education for women are frowned upon.

In Mali, the age of legal responsibility varies depending on whether it is a criminal, civil, or social matter. The Constitution stipulates that the age of criminal responsibility is 18 years. However, depending on the crime, minors between the ages of 13 and 18 can be held criminally liable if the court can establish that they knew what they were doing. In civil matters, the Constitution stipulates 21 years as the age of legal responsibility. However, girls 18 years and over can make decisions to marry without parental approval. There have been many documented cases of child trafficking in Mali to other African countries, especially Côte d'Ivoire.

Courts

Mali's legal system is based on the French civil law system and the African customary laws. The Constitution provides for an independent judiciary. In addition to legal responsibilities, the Malian courts also exercise judicial review over legislative acts. The Malian Constitution protects its citizens against arbitrary arrests and detentions. It also guarantees the right to legal counsel for indigent suspects. Citizens' rights to free speech, press, assembly, and association and to practice any religion of their choice are protected by the Constitution. All trials except those involving minors must be held publicly. And defendants are considered innocent until proven guilty. Mali's Supreme Court, which was established in 1969, is the apex court of the land. The Supreme Court has 19 members, including its president and vice president, and they are appointed for five years by the prime minister and the Superior Council of the Magistry. The court performs both judicial and administrative oversight over the three civil chambers and one criminal chamber over which it has jurisdiction. The Supreme Court's primary function is the hearing of appeals from the lower courts.

The Malian Constitution also makes provision for the establishment of the appeals courts. There are three appeals courts located in Bamako, Kayeds, and Mopti. appeals courts have many jurisdictions, including civil, commercial, labor, criminal, and prosecution functions. The appeals courts hear cases from the lower courts. The Constitution also provides for a High Court of Justice, which hears cases of corruption and abuse of office against the president, ministers, and other members of the National Assembly. Other cases of treasonable felony, national security matters, and constitutional violations are also heard in the High Court of Justice.

There is also the Constitutional Council (or Court), which hears cases pertaining to the Constitution. It reviews the constitutionality of laws before they are enacted. It also reviews the decisions of the National Assembly to make sure they do not violate the Constitution. It also provides opinions and advice on the constitutional implications of conflicts between the various arms of government and also the constitutionality of electoral votes. It consists of nine members. The prime minister, the president of the National Assembly, and the Superior Council of the Magistracy each appoint three members to the Constitutional Court. The president of the Constitutional Court is elected by the members of the court. There are also established customary courts that deal with matters relating to African customs and Islamic traditions. However, these courts are in the process of being abolished.

There is a strong emphasis in Malian culture on relying on informal justice, with an active role for the *jeliw,* who strongly discourage the community from reporting to formal procedures of justice. Chikwanha noted that the *jeliw* often mediate over disputes over such issues as trading spaces, money, and other business-related matters. There is another informal justice mechanism called the jokers, who intervene in cases that mostly relate to assault. They use joking relationships (*anankun*) and cause embarrassment to parties involved in conflict to encourage them to resolve the matter informally.

Punishment

The prison population rate is about 35 per 100,000, and there is a history of degrading and dehumanizing prison conditions. Prisons are overcrowded with minors and adults put in the same prison although in separate cells. Conditions in some of the prisons are quite deplorable. The female prison population is just about 2 percent of the total prison population in Mali. Partly accounting for the low incarceration rate is the stigma that prison attracts in the society. Again, judges are aware that family members also suffer when their breadwinner is locked up. Efforts have been made to address overcrowding in prisons. As a result, two prisons were built in 1991, one for youth and the other for women. Clearly, it has not done much to the overcrowding problem. A 2003 report noted that there were 4,000 prisoners in Malian prisons.

Mali has been applauded by Amnesty International for being one of the few countries in the world without a political prisoner. However, there are many cases of suspects remaining in detention for up to 10 years without trial, an estimated 5,000 in 2003. The

Constitution provides for access to justice for prisoners, but this does not occur. Furthermore, some pretrial detainees are sometimes housed with convicted offenders, and there is no probation or parole.

In addition to formal punishment and restorative justice by the *jeliw*, there is collective punishment where the entire clan can be fined because of one community member's crime. Juveniles are often treated as adults at the time of trial and punishment. They do have their own tribunals and special courts, but the way they are treated is more traumatizing than helpful.

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Mauritania

Legal System: Civil/Islamic
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Maybe
Corporal Punishment: Yes

Background

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The Islamic Republic of Mauritania (Al Jumhuriyah al Islamiyah al Muritaniyah) is located in northern Africa on the North Atlantic, between Senegal to the south, Western Sahara to the northwest, and Algeria and Mali to the west. The estimated population in 2009 was a little over 3 million. The country is divided into 12 regions and 1 capital district and capital city, Nouakchott. Arabic is the official language, and more than half the population relies on agriculture and livestock.

The executive branch consists of the head of state, the president who is elected for five-year terms. The head of the government is the prime minister, who has a council of ministers as his cabinet. The legislative branch consists of 56 seats of senate, or Majlis al-Shuyukh, out of which 53 are elected by municipal leaders to serve six-year terms. The national assembly, or Majlis al-Watani, consists of 95 seats, with members elected for five-year terms by popular vote. Finally, the judicial branch consists of a three-tier system with the Supreme Court as the apex court, plus appeals courts and lower courts.

In the early 1960s through the 1970s, Mauritania's legal system was influenced by the French legal and judicial system, and as the amount of legal cadres rose, so too did attempts to reconcile secular and Islamic laws. Islamic courts coexisted with secular courts that were based off French models with no appellate courts and no constitutional jurisdiction. The Constitution dictated that French laws were to hold fast until they were amended or repealed, as was also the case with French civil, commercial, and penal codes. Until 1965 there was no Supreme Court, and it was not until the early 1970s that new nationality and labor codes were adopted alongside new penal, civil, commercial, and administrative procedures after so many years under French laws and jurisdiction. Moktar Ould Daddah was the country's first president and served from the nation's independence until he was ousted in what was termed a bloodless coup on July 10, 1978; immediately following, the country came under military rule, which lasted until 1992, when the first multiparty elections were held following a referendum of a constitution.

Sharia Islamic code was instituted in 1980 and served as the law of the land in civil matters, with

Mauritanian troops pursue a man during a demonstration protesting an army coup in the city of Nouakchott, on August 8, 2008. (AP Photo/Candace Feit)

an exception being "modern areas" such as nationality law and litigation that involved corporations, automobiles, and aircraft. The code also covered areas of public law such as theft and murder. As with French law, no one was presumed innocent, and therefore, an inability to convince the sitting magistrate that the charges were erroneous in itself constituted proof of guilt; firsthand testimony from a witness or codefendant was viewed in the same light. Defendants were granted the right to counsel and could also appeal a verdict to the Supreme Court so long as it was completed within 15 days. As was the case in the secular courts, circumstantial evidence was not admissible as proof of guilt, and plea bargaining was common.

Today, Mauritanian laws guarantee an expeditious arraignment and trial; however, the judicial system's inadequate funding results in slow and long pretrial detentions. Furthermore, legislation was approved by then-president Daddah just prior to the 1978 coup declaring the authority to detain without trial or appeal anyone who was judged to be a threat to national security.

Currently, the police in Mauritania, known as the national police, are under the direction of the Ministry of the Interior and are responsible for law enforcement and maintaining order in urban areas. The National Guard, also under the Ministry of the Interior, performs security functions in the areas of the country where city police are not present. The gendarmerie, a specialized paramilitary group under the Ministry of Defense, is responsible for maintaining civil order in and outside metropolitan areas. The police have been viewed as unprofessional

and unwilling to handle and investigate minor complaints if those making the report or claim are not politically well connected. The police have also been found lacking in equipment and proper training and to act in a manner that is corrupt. Examples of these behaviors have occurred in various regions where former criminals were rearrested and then bribed for their release, and others were just released prior to their trial, with no explanation. The government has often not held security officials accountable, nor have they been prosecuted for abuses.

Crime

The country of Mauritania has no public reports of criminal statistics since 1996. INTERPOL held a conference in 2007 where the need for allocation among African countries was discussed, especially pertaining to drug crimes in Mauritania. Other than this information, it appears that there are no credible recent sources available for Mauritania. The most recent INTERPOL data of crimes recorded by police are for the year 1996, which are as follows:

Homicide/murder	27
Rape	36
Serious assault	989
Robbery and violent theft	347
Aggravated theft	542
Breaking and entering	195
Motor vehicle theft	177
Other thefts	138
Fraud	33
Counterfeit currency	1.0
Drug offenses	81

The U.S. Department of State details potential threats to tourists to be pickpocketing, theft of valuables left in plain sight, and kidnapping. Some information presented on the U.S. Department of State Web site indicated that some trafficking of children for purposes of labor occurs; however, there were no substantial statistics, nor was any follow-up information available.

A problem in reporting crime statistics could stem from the overly large nomadic population. With citizens of Mauritania constantly moving throughout the country and into other neighboring countries, the possibility of crimes occurring and going unnoticed for a period of time because the perpetrators have fled the scene does exist. There is a great amount of land in Mauritania that is underdeveloped, and thus, "bandits" or nomads are able to operate more extensively than in the more controlled parts of the country.

Finding of Guilt

For those accused of a crime in Mauritania, the Constitution and law currently provide for judicial independence, and the judiciary exercises greater independence than in previous years, particularly in acquitting persons of terrorist charges in light of the many alleged police abuses in the process of collection of evidence according to the U.S. Department of State's human rights report of 2008. The executive branch continues to have a significant influence over the judiciary via the ability to appoint as well as pressure judges, many of whom have been found to be poorly educated and trained and thus made susceptible to social, tribal, and financial pressures. The government has continued to work on judicial reform, to incorporate more thorough training of judges, prosecutors, and police/law enforcement entities on correct procedures for application of laws, particularly those that concern human rights, antislavery, money laundering, and trafficking in persons. There has also been an effort to add a layer of professionalism to judges by calling for the hiring of judges from academic circles and by having more advanced training for prosecutors and judges to increase efficiency.

According to the U.S. Department of State, there is a single system of courts consistent with modified principles of sharia law. Departmental, regional, and labor tribunals are the courts of first instance at the lower level, with 53 departmental tribunals, composed of a president and magistrates with traditional Islamic legal training, who hear civil cases that involve sums less than $37 (10,000 ouguiya) and family issues, which include domestic issues, divorce, and inheritance cases. A total of 13 regional tribunals accept appeals in commercial and civil

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matters from the departmental tribunals and hear misdemeanor cases. Next is the middle level, consisting of three courts of appeal, each having seven chambers (civil, commercial, administrative, and penal chambers, as well as criminal, minors, and labor courts) that hear appeals from the regional courts and have original jurisdiction for felonies.

The Supreme Court is appointed by the president and is subject to annual review; it is nominally independent and reviews decisions and rulings that were made by the courts of appeal to determine their compliance with the law and procedure. The Supreme Court conducts an annual review to determine whether the lower courts have applied the laws correctly and followed protocol. These types of review also serve as a baseline for evaluating the reform process and in reassigning judges based on their individual qualifications.

The current Mauritanian law provides for due process; that is, defendants have a right to a public trial, but juries are not used for all defendants. Regardless of which court and of their ability to pay, defendants have the legal right to representation by counsel during the proceedings. Much like a good portion of the Western world, if the defendant lacks the ability to pay, a court-appointed attorney from a list prepared by the National Order of Lawyers will provide a defense free of charge. There is a presumption of innocence and the right to appeal. Based on the legal principles of sharia, which provides the law and legal procedures. the courts traditionally have not treated women as equals of men.

There is a special court that hears cases for children who are under the age of 18; typically those appearing receive a more lenient sentence than adults, and greater consideration is given to extenuating circumstances in juvenile cases. The minimum age for children to be tried is 12; those between the ages of 12 and 18 are tried, and if convicted, they are sentenced to time in the juvenile detention center. Rape, including spousal rape, is illegal in Mauritania, as is domestic violence; however, several NGOs have reported that the incidence of unreported rape is high. Despite several rape cases being reported, it is also known that wealthy rape suspects have avoided prosecution or, if prosecuted, prison time.

Punishment

There is a paucity of information available regarding the types of punishment that are dealt to offenders who are convicted in Mauritania. There have been reports that the death penalty does exist in Mauritania, but this information could not be supported by credible sources.

Prisons

In June 2008, a new central prison was built in Nouakchott with the design to hold 800 prisoners and to replace the former Nouakchott prison that housed only 250. At the end of 2008, there were 650 prisoners incarcerated in this new prison. It is not known how many other less centrally located prisons there are in Mauritania. The U.S. Department of State reports that there have been serious overcrowding and inadequate sanitation facilities in some of the other prisons, and there have been reports that this has contributed to the spread of diseases such as tuberculosis, diarrhea, and dermatological ailments. Medical supplies, mainly provided by an international nongovernmental organization (NGO), remained insufficient in all prisons. The country's budget allocations to improve prison conditions have remained insufficient in all prisons; those prisoners with high-level connections or status and with families to bring them food, medicines, and reading material as a result have typically fared better than their less privileged counterparts and citizens of other countries. The prison security, known as guard force management, generally enforces the regulations against beatings and torture inside and outside prison cell walls; however, there continue to be credible reports of beatings and abuse in police detention centers and several prisons throughout the country. The children of female prisoners remain with their mothers, or the Ministry of Justice gives temporary custody to other family members. The Noura Foundation, an NGO, works in the women's prison and provides education and vocational training to female prisoners. The Noura Foundation also works with the Catholic charity Caritas to provide education, sports, and vocational

services to juvenile offenders. Pretrial detainees in all detention facilities are frequently held with convicted prisoners as a result of overcrowding.

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Mauritius

Legal System: Civil/Common
Murder: Medium
Corruption: Low
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: No
Corporal Punishment:Yes

Background

Mauritius, along with the other islands of Rodrigues, Agalega, and Cargados Carajos Shoals, is situated in the Indian Ocean, about 559 miles east of Madagascar and 1,250 miles off the nearest point of the African coast. Mauritius became independent in 1968 from the U.K. and has since been a stable democracy with a current population of about 1.1 million inhabitants who mainly speak English in addition to French, Creole, Chinese, and a host of other Indian languages. Mauritius is a republic with a presidential democracy, and the president is head of state and commander-in-chief. The prime minister is the head of government and has full executive powers. Legislative power rests with a unicameral 62-seat national assembly, which is elected by universal suffrage for a five-year term. The country has nine districts and three dependencies.

Legal System

After taking over Mauritius from the French in 1810, the British set in motion the reform of the judicial system. In 1845, it was ordered that French be abolished as the ordinary language used in court. In 1851, a bill was passed that abolished the la Cour de Premiere Instance and established a Supreme Court. The right to appeal to the Judicial Committee of the Privy Council was maintained. This left Mauritius once again with a one-tier jurisdiction. Over time, Mauritius returned to a two-tier jurisdiction when the Bail Court, presided over by one judge of the Supreme Court, was established. Also, district courts were presided over by a magistrate with a right to appeal to the Bail Court. Later on, the Intermediate Court and the Industrial Court were established.

Italiciize?

As a parliamentary democracy, Mauritius exercises separation of powers between the three branches of the government, namely, the legislative, the executive, and the judiciary. Consistent with the British legal system, it practices the accusatorial system of law by guaranteeing the principle of presumption of innocence and the reasonable legal protection of the accused. The independent republic of Mauritius has a hybrid legal system. The criminal and civil litigation is drawn from the English legal system, and the substantive law is mainly drawn from the French Napoleonic code.

The legal system is composed of the Supreme Court and the subordinate courts. The Supreme Court is the "principal court of original criminal jurisdiction" with criminal trials for serious offenses (e.g., murder and manslaughter) held before a presiding judge and a nine-person jury. Provision is also made for the prosecution of certain offenses such as drug trafficking under the Dangerous Drugs Act, before a judge of the Supreme Court without a jury.

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The death penalty was abolished in 1995, but the Supreme Court may inflict sentences of penal servitude for life or sentences for terms not exceeding 60 years.

The Supreme Court has various divisions, with jurisdiction over the Bankruptcy Court, the courts of first instance in civil and criminal matters, the Court of Appeal, the Court of Civil Appeal, Court of Criminal Appeal, and 10 district courts. The final appeals from decisions from the Court of Appeal of Mauritius go to the Judicial Committee of the Privy Council in London. Mauritius has 12 judges and 40 subordinate court judges called magistrates. The subordinate courts are made up of the Court of Rodrigues, the district courts, the Intermediate Court, and the Industrial Court. The legal system has provisions for fair public trials with criminal defendants having the right to counsel and indigents having court-appointed counsel. The president, in consultation with the prime minister, nominates the chief justice and then, with the advice of the chief justice, also appoints the associate judges. The president nominates other judges on the advice of the Judicial and Legal Service Commissions.

Role of Police

The Mauritius Police Force (MFP) has a long history that reaches back to the early French colonial period. The French Royal Government of Louis XVI introduced the first formal police institution after a contingent of the French National Troupe arrived on the island. Its modern state has evolved since then, and it is now a highly structured and well-organized organization. The department is headed by the commissioner of police, who oversees all activities and divisions within the organization. Underneath the commissioner are 10 branches. They include the Anti-Drug and Smuggling Unit, the Central Investigation Division, the Helicopter Squadron, the National Coast Guard, the Passport and Immigration Unit, the Rodrigues Police, the Special Mobile Force, the Special Supporting Unit, the Traffic Branch, and the Western Division. In 2002, the Mauritian police force comprised 10,576 members, with 531 of them being women police officers and with an overall ethnic distribution representing the total population, with 1 officer for 19 citizens. Of these police personnel, 2,876 were nonuniformed, with an additional 780 civilian personnel to take care of administrative duties. The 2004 data suggest a slight increase in the employment, with the police force consisting of 11,137 individuals (10,595 men and 542 women). The country then had a total of 93 police stations and posts.

The Criminal Investigation Division (CID) handles sensitive cases and cases involving the larger public interest. It handles all cases of bribery, fraud, and homicide. The CID has various units: the Fraud Squad looks into cases of fraud concerning immovable property; the Major Crime Investigation Team inquires into all cases of homicide, suspected homicide, and sexual assault; and the Technical Support Unit is made up of draughtsman, photographers, and crime scene officers. The latter are the first to visit the scene of a crime and are responsible for preserving evidence.

The National Coast Guard was earlier known as the marine wing of the police force. In the past, their main role was limited to search, rescue, and coastal patrol. In 1987, the cabinet approved the new structure of the department, and the National Coast Guard came into being as a specialized unit of the Mauritius Police Force. Similarly, the Special Mobile Forces is a paramilitary force that follows training based on conventional military tactics, with an emphasis on internal security operations. Their main function is to ensure the internal and external security of the island. They are organized as a motorized infantry battalion with five companies, an engineer squadron, and a mobile wing that contains two squadrons equipped with armored vehicles. With Mauritius having no regular military force, the Special Mobile Forces plays a critical role for the nation.

The Special Supporting Unit has the primary goal of assisting the regular police in controlling civil unrest when the situation escalates beyond control. They support the regular police in a variety of ways, including providing security at sensitive and vulnerable points, managing crowd control,

conducting searches for missing people, tracking criminals, and escorting dangerous prisoners. They are essentially a backup to the regular police to effectively deal with problems associated with maintaining order on the island.

The Western Division and the Rodrigues Police are branches also under the commissioner of police. These two large branches have their own internal subdivisions to control crime in their territories. The last branch under the commissioner of police is the Traffic Branch. This agency is responsible for issuing and controlling driving licenses, both domestic and international. They also maintain a record of convictions of drivers for offenses under the Road Traffic Act.

Technology

The Mauritius Police Force has taken major steps to update and modernize its systems, equipment, and computers to bring themselves to the same level as other modern societies. In 1999, the force launched the Automated Fingerprint Identification System (AFIS) to use as part of the crime records. The AFIS system also stores personal and family information on all convicted criminals, which helps police to generate a suspect list in a matter of minutes when investigating a crime.

In 2000, an information technology unit was created in the Mauritius Police Force to coordinate all information technology activities, identify new projects, and expedite ongoing projects. They also organized and coordinated the training for all members of the force, with the goal of having most policemen computer literate by the year 2005. Another part of this upgrade involved networking AFIS to all the police stations and units. This networking was completed in 2001. The networking of AFIS allowed for the sharing of information regarding wanted criminals, lost and found motor vehicles and other valuable properties, and lost and found persons and firearms. This overhaul of the system allowed the Mauritius Police Force to end the use of paperwork and a large amount of manual entries of information.

Crime

Classification of Crime

Mauritius's Criminal Code Act classifies offenses as crimes, misdemeanors, or contraventions. Crimes are offenses punishable by (a) penal servitude and (b) a fine exceeding 5,000 rupees (approx. US$155). Examples of crimes include crimes against a person such as murder, manslaughter, and abortion; crimes against property such as larceny, extortion and arson; fraud and dishonesty such as forgery, counterfeiting, and embezzlement; offenses against morality such as rape, sodomy, and sexual intercourse with a female under 16; and crimes against the Dangerous Drugs Act.

Misdemeanors are offenses that are punishable by (a) imprisonment for a term exceeding 10 days and (b) a fine exceeding 5,000 rupees. When imprisonment is imposed, the court has the option to mandate punishment with or without hard labor. Examples of misdemeanor offenses are offenses against a person such as wounds and blows not classified as a crime, involuntary homicide, and involuntary wounds and blows; offenses against property such as bicycles and automobiles and other simple larcenies against property; offenses such as disorderly conduct, riots, breach of the peace, poaching, public mischief, and escape from lawful custody; and offenses against the Firearms Act.

Contraventions are, generally speaking, very minor offenses. They are punishable by (a) imprisonment for a term not exceeding 10 days and (b) a fine not exceeding 5,000 rupees. Examples of contraventions are traffic offenses, distilleries/liquor offenses, gambling and public lotteries, drunkenness, and disturbance.

Traffic Offenses

Traffic-related offenses were the most common offense, accounting for 72.8 percent of the offenses, during 2003. Of all offenses, 7.5 percent were property-related, 6.8 percent were offenses against persons, 1.8 percent were license law–related offenses, 1.8 percent were drug-related offenses, 0.2 percent

were morality-related offenses, and 8.3 percent other smaller categories. Larceny, breaking and entering, larceny of cellular phones, larceny from motor vehicles, and auto motor larceny are among the most common occurrences.

Drug-Related Offenses

Perhaps the most pressing issue in crime facing Mauritius today is the increase in drug-related offenses. Contraventions under the Dangerous Drugs Act (CDDA) have shown a sustained increase over recent years. As more drugs are captured and offenders arrested, more continue to flow in. The police are in a constant battle to keep drug trafficking and use under control in Mauritius.

The CDDA takes a hard stance on drug use and drug consumers. The act has clear guidelines about possession and dealing of drugs as well. The most common drug is gandia, or cannabis, followed by heroin. Gandia is often illegally cultivated in the mountains, the forest, and cane fields. Heroin is a derivative of opium, and the type available in the open market of Mauritius is known as "brown sugar." It is smuggled mainly by human courier, concealed in suitcases and other carrying devices. It is most in demand in the urban areas. The next most prevalent drugs are psychotropic substances that are legal pharmaceutical products but that are acquired illegally and taken in an abusive manner.

Crime Statistics

The UN Crime Survey noted that from 1990 to 1997, the crime rate per 100,000 population increased from 2,761 to 3,392, representing a nearly 60 percent increase. However, a more comprehensive crime survey was conducted in 2004 by the Mauritius Police Force and Safer Africa, an independent NGO. Though there have been some increases since 2002, the rate of increase in crime was not as dramatic as noted by the UN data in the 1990s. Overall, the rate of violent crime in Mauritius is low. In 2001, there were 27 murders on the island, followed by 24 in 2002 and 26 in 2003. This is a relatively low figure with a rate of only 2 murders per 100,000 people.

Mauritius saw an overall increase in crimes against morality between 2001 and 2003. The number of rapes increased 18 percent during this time span. There were 41 reported rapes in 2001, 37 in 2002, and 50 in 2003. Rape is a crime that has always been difficult to obtain an accurate measurement of because of the underreporting of the offense. One cause for the increased level of reporting could be the domestic violence legislation and elevated awareness created around the need to report crime. The Ombudsperson of Children and the Police Family Protection Unit have also taken a strong stance and have seen positive results in encouraging victims to report crimes of this type. The majority of crimes such as rape take place in private, making proactive policing difficult.

Property offenses constitute the second-largest type of offense in Mauritius. There are 24 types of property offenses, which are divided into crimes and misdemeanors. Crime categories include 13 offenses, about half of which decreased and half of which increased over the 2001–2003 period. A similar pattern of decrease and increase was evident for the 11 misdemeanor offenses. The most frequent type of property offense was larceny from motor vehicles. There were 583 offenses reported in 2001; 1,020 reported in 2002; and 1,172 reported in 2003. This is clearly a major problem that the Mauritian Police Force is working to get under control. The force has implemented more aggressive and frequent patrolling. This includes increased after-hour patrolling by traffic police, roadblocks carried out by the special support unit, stop and search operations, and stronger partnerships between the police and public.

Contraventions against the Dangerous Drugs Act had steady increases from 2001 to 2003. There were 2,966 offenses in 2001; 3,022 in 2002; and 3,361 in 2003, suggesting a sharp increase in those years. Based on the numbers for 2003, Mauritius has a rate of 275 drug offenses per 100,000 people. Fighting the drug problem is a top priority of the police force as well as the government.

Crime in Mauritius occurs throughout the entire country. However, the rural areas are known for the production and growth of illegal drugs. They use the farmlands and forest to cultivate these products for sale. The urban areas tend to have higher instances of property thefts. Larceny is a major problem, and concentrated numbers of people in urban areas create more opportunities for thieves.

Finding of Guilt

Mauritius's Constitution has explicit provisions that offer legal protections and access to legal support. The Constitution prohibits arbitrary arrest and detention of citizens. The Constitution also stipulates that warrants must be obtained for arrests. When this is done, the accused must be read his or her rights. These include the right to remain silent and the right to an attorney. The accused must then be brought before the local district magistrate within 48 hours. The U.S. Bureau of Democracy, Human Rights, and Labor looked into the practices of the Mauritian government and found that the government generally respects these rights. However, in some cases, police delayed suspects' access to defense counsel. They also found that minors who did not know their rights were less likely to be provided with immediate access to an attorney. Those who are not able to afford an attorney are provided one at the expense of the state.

A suspect can be detained for up to a week before bail becomes an issue before the magistrate. However, on police consent, the accused person can be released on bail the same day as the arrest. Those charged with drug trafficking can be detained for up to 36 hours without access to legal counsel or bail. The court system in Mauritius is clogged because of the slow judicial process. The Bureau of Democracy, Human Rights and Labor found that occasionally prisoners were held in waiting for up to four years before they were tried. Time served in waiting did not apply to the later sentences. In 2006, approximately 22 percent of the prison population consisted of pretrial detainees.

Mauritius does not have a separate system for juveniles, but under the Juvenile Offenders Act (JOA), a juvenile is generally considered to be a person below the age of 17. The JOA, which was enacted in 1935, is old and has not been revised in almost 60 years. Save the Children, an NGO, in a report in 1999 called attention to the fact that the government missed an opportunity to bring the JOA in line with the Convention on the Rights of the Child (CRC) when it enacted the Child Protection Act through the national assembly.

The minimum and maximum ages of criminal responsibility for youth in Mauritius are 11 and 18 years, respectively. There are no special judicial arrangements regarding offenses committed by children under the age of 14. According to the national law, minor detainees below 14 appear before a magistrate in chambers, and the proceedings are held in camera and in the presence of a responsible party. Juveniles adjudicated as offenders are sent to a reform institution, rehabilitation center, or probation hostel as decided by the magistrate. No child, however, is deprived of his or her liberty unlawfully or arbitrarily, nor is he or she sentenced to capital punishment or life imprisonment.

There are no juvenile courts, and the magistrates do not have any special training in cases involving young offenders. Convicted minors placed on probation are sent to a rehabilitation youth center or correctional youth center. So-called probation hostels for boys and probation hostels for girls also exist. Convicted juveniles ages 11 and above are sent to correctional youth centers, and those with minor offenses are sent to the rehabilitation youth centers.

Punishment

Types of Punishment

The typical form of punishment is a fine, imprisonment, or a combination of both. The offenses of murder, rape, serious theft/burglary/robbery, and serious drug offenses are all considered crimes under the Mauritian criminal code. Under the sentencing guidelines of a crime, those who commit these acts

are subject to a prison sentence and a fine exceeding 5,000 rupees.

The Mauritius government used to practice capital punishment, but in 1995, the country abolished the use of capital punishment. Serious crimes such as murder that carry the possibility of life imprisonment are sent to the Supreme Court for hearing. Medium-level severity offenses are sent to intermediate courts, and lesser crimes are heard in the district courts.

Prison

Mauritius has nine prisons. For adults, there are five prisons for adult males (two maximum-security prisons; a high-security prison; a medium-security prison; and an open prison); one prison for females; and three for juveniles (one correctional youth center, two male/female rehabilitation youth centers, and one prison for Rodrigues Island). The prison system is administered by a commissioner and a deputy commissioner of prisons. As part of the community-based corrections, a Probation and Aftercare Service was formed in 1947 for probation and other related community care services for sentenced and post-release offenders.

The prison population in Mauritius is large and continues to grow. According to the Mauritius Prison Service, as of April 10, 2008, Mauritius prisons had 2,233 inmates. Of these inmates, 1,566 had already been convicted of crimes, but 667 of the inmates were in remand and waiting for their trial. This large number of inmates has caused overcrowding in the Mauritius prisons. The Central Prison, which has a capacity of 677, held more than 1,000 prisoners in 2006. However, despite the overcrowding, inmates remain relatively safe. Prisoners are separated based on danger level, with the most dangerous inmates going to high-security prisons. Behavior of the prisoner rather than the conviction or sentence determines the placement of the prisoner.

The Richelieu Open Prison is unique because it lacks physical barriers. It is bounded only by a thin metallic fence. The low-security prison is designed with a focus on rehabilitation based on self-discipline and the development of the detainees' sense of responsibility. At Richelieu, detainees have the opportunity to learn and work different jobs. There is also a farm where they can learn basic knowledge of cattle and pig breeding.

The Grand River North West Prison was built in 1995. It is a maximum-security prison that can accommodate 325 inmates. In 2006, there were about 171 detainees there awaiting trial and only about 40 convicted inmates. They perform minor work duties. The Phoenix Prison is also a high-security prison; it opened in 1980 and can accommodate a maximum of 25 inmates. This is a special prison for those inmates who commit aggravated prison offenses and for those who either are considered unable to be reformed or are having a bad influence on the other inmates. The New Wing Prison is another high-security prison and was built in 2003. It can accommodate 248 inmates. Another specialized prison is the women's prison. This prison opened in 1951 and can accommodate a maximum of 146 female inmates. Before this women's prison was created, they formally had only a small yard reserved for them at another male prison.

The Petit Verger Prison is a medium-security prison that can hold 416 inmates. This prison gives inmates daily routine work, but they also have the possibility to be trained in cattle, sheep, and goat rearing as well as in agriculture. Many of the inmates also work in the on-site brick factory.

The correctional youth center is a special prison for young male offenders from 16 to 21 years of age. The youths, because of their criminal tendencies and association with antisocial elements, are put under constant supervision and given instruction and discipline to reform their behavior. The system of training used aims at strengthening character and is based on progressive trust toward the development of self-discipline and self-responsibility.

The rehabilitation youth center is divided into two sections, one for boys and the other for girls. These centers accommodate boys and girls below 16 and 18 years old who are found guilty of criminal tendencies and association with antisocial elements or of being

involved in deviant behaviors. Also, children who no longer submit to parental authority are sent there on the advice of the probation service. Once the child is released, the probation service provides supervision over the juvenile delinquent to facilitate his or her integration into society. They participate in vocational activities as well as activities that help them acquire a sense of responsibility and self-discipline.

Those incarcerated are allowed to have visitors see them while in prison. Convicts are allowed to have visitors once every 28 days. They are allowed a maximum of three persons. They can be visited on Monday, Wednesday, Friday, or Saturday during the hours of 9 A.M. to 3 P.M. Those in prison on remand are allowed visitors once weekly. The maximum number of visitors is three persons. They are allowed to visit on Tuesdays or Thursdays from 9 A.M. to 3 P.M.

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Mayotte

Legal System: Civil/Islamic
Prison Rate: Medium
Death Penalty: No
Corporal Punishment: No

Background

Since 1974, when Mayotte voted against independence from France, unlike the other three islands of the Comoros, there has been a social and political rift dividing the small island from the island chain known as the Comoros Islands. The small 374 square kilometer country of Mayotte has a population of approximately 209,000 people, 97 percent of which are Muslim and follow, in their own way, the Islamic codes of justice, though the extent to which such codes override French codes is unclear.

Political and Social Context of the Justice System

When the Comoros Islands were split during 1974, a cultural and political rift began to form between the three Comoros Islands and Mayotte. This rift has grown into a general divorcing of all things Comorian by Mayotte, to include languages, dress, national identity, and general cultural characteristics. This shedding of Comorian ways is still ongoing in the justice system of Mayotte, as the Mahorias attempt to rid the country of all customary and Islamic legal practices and use solely the civil legal system of France. Following its independence, there were 19 coups d'états or attempted coups, out of which four were successful, with the last abortive coup taking place on March 21, 2000. Unfortunately, it is not currently known how much of these customary and Islamic legal traditions are used in Mayotte, and therefore, it is difficult to know just how extensive the departmentalization of the country's legal system has become.

Role of the Police

Many of the details surrounding the justice system in Mayotte remain a mystery from tourists and

comparative criminologists alike. As a departmental collectivity, Mayotte has cultural independence while still under the ultimate authority of France. These aspects combined with the fact that Mayotte is largely populated by Islamic people and with its unusual loose association with Comoros make understanding exactly what system of justice is practiced in Mayotte extremely challenging to pin down. The CIA World Factbook (2008) states that Mayotte uses French law where applicable, but the highly unpublicized functions of the Mahorian police remain only at the level of speculation. If Mayotte used the law enforcement strategy implemented in France, there would be a centralized system of police, including a national police force responsible for large cities and a national gendarmerie operating in small towns. Because Mayotte has only one major city, Mamoudzou, it is difficult to know whether the French divisions of police forces are used or whether only the Gendarmerie Nationale enforces laws within the borders of Mayotte. It is also possible that Mayotte uses a law enforcement assembly similar to the Comorian Defense Force (CDF) used on the Comoros Islands, which is responsible, along with the gendarmerie, for internal security.

Crime

The breakdown of crimes in Mayotte in terms of lesser and more serious offenses is largely unknown. The assumption is that Mayotte largely follows the legal codes of France with possible additions or changes resulting from its adherence to Islamic law. In Mayotte, the age of universal suffrage for citizens is 18, and in France, 18 is considered the age of majority, even though at 16 and 17, juveniles can be tried as adults. Within France, the seriousness of the crime is an important factor because it determines which court the trial will be held in, as well as distinguishes between serious felonies, less serious felonies, misdemeanors (delit), and violations (contraventions) and determines what punishments will be used in each given situation. In addition, the French penal code is based on five books that give extensive details in terms of sentence lengths, types of punishments, characteristics of certain criminal activity, and attempted versus completed crimes.

Finding of Guilt

The French legal system applies to Mayotte as part of its coverage of all overseas territory in the application of the civil law system, the finding of guilt, and all other aspects of criminal justice. The initial stages of guilt begin with an arrest, which is immediately followed by a period of time spent in jail while the arrestee is questioned by officials called the *guard a vou.* Questioning of suspects can last up to 96 hours without their being formally charged and could vary in duration and intensity in Mayotte.

Where representation is concerned in French law, immediate assignment of an attorney is granted for all defendants except those who are being held on suspicion of terrorism; however, because there are no overt terrorist dealings within Mayotte, this may or may not be the case there. Within French civil law, those accused of crimes are afforded certain rights, including the right to remain silent, the right to retract pretrial confessions, and the right to a fair trial and the ability to make statements while in trial proceedings without being under oath. It is assumed that these procedures are adhered to by Mayotte.

After the investigation is completed by the police in misdemeanor cases or by the felony pretrial process, and the preliminary court proceedings are finished, the findings of the investigation are sent from the *juge d'instruction* to the indicting chamber, where it is determined whether a trial is necessary. The lengthy and detailed pretrial process, though in place to ensure the accused are not falsely accused, can create long stays in jail awaiting the trial. In more serious and felony cases, the judge (or president) presides over the courts of assize and interacts with the jury throughout the proceedings. Along with the president, there are also two other judges (assessors) who can question witnesses and can have investigations increased for more factual evidence.

Alternatives to trials are rare in civil law nations such as Mayotte and its mother country of France because civil law operates under the presumption of

Would-be immigrants trying to reach Mayotte are intercepted at sea by the Gendarmerie Nationale on May 6, 2009. (AFP/Getty Images)

innocence, there is little to no desire to entice prosecutors or court officials to settle cases without trials. A practice called the *ordonnance penale* is used in France as a tool similar to plea bargaining that primarily functions to expedite portions of the investigation and trial process. However, the traditional process of arrest, investigation, indicting chamber, trial, verdict, and sentence is the most common form of the finding of guilt in France and quite possibly Mayotte. Juvenile processes are different in that one judge is responsible for the case from beginning to end, and the parents of the young offender are also required to attend hearings. Restorative and rehabilitative measures are attempted in French juvenile courts through the use of diversion programs as well as special police units aimed at policing juveniles.

Punishment

Types of Punishment

In Islamic countries, there is a tendency by authorities to restrict the number of convicts who are sentenced to prison sentences. Instead, Islamic law leans more toward sentences of corporal punishment, and given that Mayotte is so highly concentrated in followers of Islam, this is highly possible. Typical punishments in Islamic-led nations are determined by the reading and interpretation of the sharia, which relies on the interpretation of the law to administer the punishment that fits the crime. Three main levels of crimes can be committed under sharia, and the breakdown is similar to that of crimes in Western systems: *hadd* crimes are the most serious

offenses, *ta'azir* crimes are less serious, and *qesas* crimes are crimes of revenge or restitution. Crimes that fall under the *hadd* category include the most reprehensible offenses according to Islamic law and include murder, theft, robbery, adultery, and partaking of illegal substances. For these crimes to be fully prosecuted and for the defendant to be sentenced, there must be several eyewitnesses who can attest to the fact that the crime was committed, among other things, and although the punishment for these crimes is harsh, there is usually not enough evidence, and the judge refrains from sentencing to the full extent possible. For the offense of theft and robbery, the punishment according to the sharia is for the offender's hand to be cut off at the wrist, and for the offense of drinking or drug use, striking the user with a whip or lash is the prescribed punishment. Capital punishment is also used liberally in Islamic nations. Mayotte, however, has moderated its Islamic punishments under French influence.

Unlike Islamic law and the sharia, French law is based on the civil law system, which uses a very different basis for determining the punishments necessary for certain crimes. The most common and widely used punishments in the French legal system include probation, community orders, fines, day fines, imprisonment, and other alternative punishments. For minor contravention crimes such as assaults and noise violations, the penalty is usually fines, as opposed to delit crimes such as theft, fraud, and manslaughter, which carry a punishment of 6 months to 10 years in the prison system. The most serious crime category includes murder, rape, robbery, and abduction, and these crimes are usually punished with 10 years to a life sentence in prison. Another contrast between the Islamic legal system and the French system is that there is no death penalty in France; this practiced was abolished in 1981 by the French government. These common provisions apply to all French overseas territories.

Mayotte officially became a French overseas department on March 29, 2009, and thus the penal system and laws are in transition. As noted previously, some of the laws have been inspired by Islamic law, which is allowed under article 75 of the French Constitution. The July 11, 2001, law guarantees a local law that differs from the French civil and common law. Customs such as polygamy and inequality of the sexes concerning inheritances are still in effect; however, now that Mayotte's status as a department makes it a part of the French government, all French laws will be in effect in the immediate future. The penal law in Mayotte will therefore become similar to the French. Therefore, such punishments as the death penalty and corporal punishment, which have been in principle allowed in Mayotte, will no longer be legal.

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Mozambique

Legal System: Civil/Customary
Murder: High
Burglary: High
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: Maybe

Background

The Republic of Mozambique, or Mozambique, is located on the southeastern coast of Africa and has a tropical to subtropical climate. It is bordered by

Tanzania, Malawi, Zambia, Zimbabwe, Swaziland, and South Africa. Mozambique has an estimated population of 21 million, and the official language of the country is Portuguese. Maputo is the capital city of Mozambique.

From 1505 to 1975, Mozambique fell under colonial rule by the Portuguese. During the 1960s, anticolonial sentiment emerged in response to the lack of fundamental opportunities, such as education, which led to the establishment of the Front for the Liberation of Mozambique (FRELIMO), a socialist movement. Following a decade of armed conflict, Mozambique achieved independence on June 25, 1975, and a one-party government was instituted. Political and religious freedoms were subsequently abolished under Marxism. Civil war (1977–1992) ensued between the Mozambican National Resistance (RENAMO), the opposition, and FRELIMO, which resulted in social and economic unrest, population displacement, and mass casualties. In November 1990, a new constitution was ratified with a multiparty, democratic form of government.

With its origin in the Portuguese civil law system, the new constitution provided greater freedoms and liberties for citizens, including the rights to life, property, education, and health care; the right to counsel; freedom of expression; and equal rights protection. In addition, the death penalty was rescinded. Civil rights were later expanded in the 2004 Constitution regarding habeas corpus, legal assistance, preventive detention, and punishment. Separation of powers between the executive, legislative, and judicial branches was established, although the realization of legislation has been hindered by financial difficulties.

There are three departments responsible for law enforcement and security in Mozambique, which are under the jurisdiction of the Ministry of the Interior. They include the Mozambican Police Force (PRM), the Criminal Investigative Police (PIC), and the Rapid Reaction Force (PIR). The PRM has about 18,000 officers, and the PRI has several thousand officers. Additional units have been designated to address organized crime, border protection, and drug trafficking.

Proper training of police (as well as judges and prosecutors) could enhance effectiveness and public perception. In recent years, ethics and professionalism have been incorporated into law enforcement agencies with some success. However, corruption is widespread, and citizen confidence and satisfaction with police is low. In response, a series of public lynchings of known criminals occurred. Allegations of abuse of power, complacency in crime, and torture and summary executions by police have prompted investigations by international human rights organizations. The ratio between police officers and civilians is low, and, according to Deputy Minister of the Interior Jose Mandra, about 1,000 officers are dying each year as a result of AIDS. Police community councils were implemented in 2001 to improve community relations and public safety; however, ordinary citizens with inadequate training possess the authority to address crime and disorder.

Crime

The Mozambican Civil War had a tremendous impact on the criminal justice system. As may occur in newly created democracies, crime rates increased before eventually leveling off. More recent statistics suggest that crime is rising, although it is difficult to ascertain the reliability of crime data or distinguish between the various types of offenses committed. Nevertheless, between 2006 and 2007, crime increased by 16 percent, according to Attorney-General Augusto Paulino. According to Afrik.com, in 2007 there were 26,350 property crimes, 10,161 crimes against persons, and 5,391 public disorder incidents. Other regions have experienced notably larger increases. The majority of offenses are property crimes, followed by crimes against individuals and public disorder.

Organized crime has swelled in Mozambique. Although the extent of transnational crime is unknown, criminal networks have been linked to South Africa, Portugal, Pakistan, Russia, Dubai, and other countries. Crime syndicates may be engaged in drug and arms trafficking as well as motor vehicle theft, human trafficking, and money laundering.

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The most common forms of illicit substances smuggled from Mozambique to other destination countries (e.g., Europe and the United States) include cocaine, hashish, and heroin. Moreover, organized crime groups have become more sophisticated and increasingly violent compared to traditional street gangs. Members of law enforcement have systematically been targeted by organized crime groups. One report estimates that between 2006 and 2008, more than 25 police officers were killed or assassinated.

Mozambique is predominantly a source country for trafficking in persons. Poverty, high unemployment rates, and other sociocultural factors contribute to the propensity for human trafficking. Individuals are trafficked to neighboring African nations, Europe, and the Middle East for sexual exploitation, organ removal, compulsory labor, slavery, or indentured servitude. They are also trafficked within Mozambique. Furthermore, border police have been accused of bribery by traffickers. In 2007 and 2008, Mozambique was placed on the Tier 2 Watch List for noncompliance with international standards regarding human trafficking. However, police training and increased efforts have led to the apprehension of human smugglers. In one case, police intervention resulted in the liberation of more than 200 children in transit from Mozambique to South Africa, according to the U.S. Department of State. In 2009, Mozambique was removed from the watch list because ~~they~~ had adopted additional security measures to cope with the problem.

Women and children are particularly susceptible to victimization. Gender discrimination is rooted in traditional social and cultural views toward women in society. Little information exists regarding the extent of interpersonal or intimate partner violence. This may be due to an absence of legislation regarding domestic violence and sex crimes. Although safeguards for the protection of women and children have been implemented by police, domestic violence provisions and education are needed.

Finding of Guilt

Several courts make up the judiciary in Mozambique. The judicial courts consist of the Supreme Court as well as 93 district and 11 provincial courts. The Supreme Court serves as an appellate court and hears cases pertaining to crimes involving high officials or members of public office. Judicial courts handle both civil and criminal cases. Crimes involving punishment up to eight years in prison and civil cases of 30,000 ~~MTn~~ (around US$1130.00) or less fall under the scope of district courts (first or second class, depending on value and length of sentence). District courts may also hear juvenile cases, and recently, a juvenile court was established in Maputo. The age of criminal responsibility in Mozambique is 16. In 2008, Parliament passed a bill regarding court jurisdiction and crime prevention for minors under the age of 16.

In contrast, provincial courts assert jurisdiction for all other criminal and civil cases that exceed 30,000 ~~MTn~~ or carry a sentence of more than eight years in prison. The Constitutional Council is responsible for electoral and constitutional questions. The administrative court, housed in the capital city, has authority over regulatory and financial issues. Community courts located throughout the country are most commonly used by individuals seeking redress for minor offenses or civil infractions, such as housing disputes. Although the Constitution outlines additional court structures for specialized matters (e.g., appellate, administrative, maritime, and labor), budget constraints have impeded their development. Finally, although not recognized by the Constitution, local chiefs may administer traditional forms of justice for dispute resolution.

As previously discussed, the constitutional revisions of 1990 and 2004 broadened the rights of the accused. Despite this, many citizens are unaware of their legal rights. The Public Prosecution Service oversees the PIC, which investigates crimes. Individuals are afforded the right to counsel throughout the legal process, and those who cannot afford an attorney are entitled to free legal assistance provided by the government. However, costs associated with judicial proceedings may be prohibitive for many citizens, and courts are not easily accessible for those residing in rural areas. Suspects may be confined in jail for a maximum of six months prior to formal charges; bail is not typically ordered. The

judicial system suffers from inefficiency and is overwhelmed with thousands of cases awaiting trial.

Punishment

Both the criminal procedure code and the criminal code delineate punishment for crimes. However, the availability of public information regarding penalties for specific crimes, such as murder, rape, or robbery, is limited. Fines are often associated with regulatory infractions and minor criminal offenses. Mozambique classifies crimes into three categories: those that may be punishable (1) for up to 1 year of imprisonment, (2) for between 1 and 2 years' imprisonment, and (3) for 2 to 30 years' imprisonment. Community service is not recognized as a form of sentencing. Drug traffickers and individuals convicted of drug crimes face severe penalties, including up to 30 years' confinement. Convicted criminals may also serve consecutive sentences.

Despite high crime rates, incarceration rates are low. In 2006, the National Prisons Services (SNAPRI) was established to maintain custodial oversight, which replaced a previous, bifurcated system that was deemed ineffectual. There are various types of correctional facilities, including central, district, and provincial prisons, penitentiaries, and open prisons. Security levels vary depending on type of offense. Although a women's prison exists, human rights groups have reported that females and minors are often housed with adult male offenders as well as those awaiting trial, a violation of the UN Standard Minimum Rules on the Treatment of Prisoners.

The conditions in Mozambican jails and prisons are extremely poor. Severe overcrowding, food and water shortages, and lack of basic necessities are common problems, according to the Open Society Foundation. During a visit to the Maputo Central Prison, the largest in the country, the Mozambican Human Rights League found that capacity was exceeded by over 200 percent. In addition, penal institutions suffer from lack of repair and routine maintenance. Infirmaries are often ill-equipped to provide adequate medical care for widespread diseases that afflict the prison population. There is some evidence suggesting that HIV transmission is escalating among inmates, which has prompted the introduction of preventive measures, such as condom distribution. Furthermore, there have been allegations of torture and abuse among prison officials. Suspicious deaths of prisoners have also been reported. A notorious case which made international headlines involved the deaths of 93 inmates from asphyxiation, who were held in a jail cell in Montepuez for their activities during a political rally. Although the current situation appears grim, efforts are underway to improve the status of prisons in Mozambique.

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Namibia

Legal System: Civil/Common
Murder: Medium
Burglary: High
Corruption: Medium
Prison Rate: Medium
Death Penalty: No
Corporal Punishment: No

Background

Located in southwestern Africa, Namibia's land mass consists of 823,145 square kilometers (320,827 square miles) and shares borders with Angola,

Botswana, and South Africa. Windhoek, its political capital, is also Namibia's principle city and most populous. Namibia's population is estimated around 2 million. A former colony of Germany, Namibia in 1990 became an independent nation.

A unitary democracy, Namibia's government is composed of three branches: the executive, the legislative, and the judicial. The executive is headed by the current president, who shares executive power with his cabinet of prime ministers who can serve only two five-year terms. The legislative branch is embodied by Parliament, which consists of a 72-member National Assembly and a 26-member National Council. Members of the Assembly are elected by registered voters using direct, secret ballots and serve five-year terms. The Namibian judiciary is headed by a Supreme Court that hears appeals from the lower High Court. The Supreme Court itself is made up of justices appointed by the president on the recommendation of a Judicial Services Commission. Beneath the Supreme Court is a High Court that acts as the first appeals court. At the bottom of the judicial system are 30 magistrate courts that act as routine trial courts. Military courts also exist, but they try only military members.

Crime

Namibia's climate and location on Africa's west coast makes it a target for illicit drug growth and transshipment. Correspondingly, criminal penalties for possession, use, or trafficking of illegal drugs in Namibia are severe, and convicted offenders can expect long jail sentences and heavy fines. The same can be said for those dealing in diamonds illegally; those convicted may be fined as much as US$20,000 and may be incarcerated for as long as five years.

Domestic violence is illegal under Namibian law, including beating and spousal rape. Penalties for rape convictions can range from 5 to 45 years' incarceration. The abuse of children, in many forms, is also illegal. Child rape and incest are both of particular prosecutorial interest. Criminal laws are also in place to deter clients and pimps from exploiting children under age 18 through child pornography or prostitution. Trafficking of persons, including children, is illegal. Kidnapping, forced labor, and slavery are all fiercely prohibited. This applies to trafficking both inside Namibia and between Namibia and other nations. If convicted, traffickers may face a sentence as high as US$98,907, 50 years' imprisonment, or both.

Among those activities that are not outlawed are some common sexual activities. Prostitution is legal in Namibia, as is homosexuality, though the latter is frowned upon by mainstream society, and the act of sodomy between males is still illegal. Evidence of this legality but intolerance can be seen in the regular police shutdowns of Windhoek's only gay bar (the Ceibas Café).

Crime Statistics

Detailed crime data are not available for Namibia. The most common crimes in Namibia are nonviolent crimes that include pickpocketing, purse-snatching, vehicle theft, and vehicle break-in (particularly at service stations), all crimes of opportunity. Violent crimes by comparison are far less frequent, but the number of violent incidents has risen in recent years. This prevalence is seen in the widespread occurrence of domestic violence and rape. Though normally underreported, there were 1,100 cases of rape reported in 2008.

Police

The internal security of Namibia falls mostly to two bodies: the Namibian Police Force (NAMPOL) and the Namibian Defense Force (NDF). Despite their shared missions and comparable sizes (12,000 NAMPOL, 16,000 NDF), these two bodies are answerable to different ministries. The NAMPOL is under the Ministry of Safety and Security, and the NDF is under the Ministry of Defense. Most of what is considered police work, though, falls to the NAMPOL. Within the highly centralized structure of the NAMPOL is also a paramilitary unit called the Special Field Force. Approximately half of the NAMPOL's overall 12,000 personnel belong to this unit, which itself is composed mostly of former People's Liberation Army of Namibia soldiers. These former soldiers are normally responsible for

guard duties, checkpoints, and general order maintenance. The NAMPOL can be further subdivided into a number of specialized units. These include a crime investigation unit, a drug law enforcement unit, a motor vehicle theft unit, a commercial crime investigation unit, a protected resources unit, a serious crime unit, a special branch, a women and child protection unit, a scene of crime unit, a criminal record center/fingerprint unit, a dog unit, an INTERPOL (Criminal Intelligence Bulletin) unit, a stock theft unit, and an explosive unit.

NAMPOL faces a number of issues. Among these are a string of human and civil rights abuses. In recent years, there have been reports and charges of excessive force, prostitute extortion, and arbitrary arrest, though these tend to be the exception rather than the rule. In general, Namibian authorities respect the rights guaranteed in their Constitution, and Namibia has been lauded as one of the best-performing countries on human rights in Africa. However, this achievement in human rights does not fully translate to other areas of policing. Due to a shortage of personnel, training, and resources, the NAMPOL is routinely ineffective in deterring or investigating street crime. These shortages have not led to as much official corruption as has been seen in some other parts of Africa. Part of this is due to the "zero tolerance" policies of the Namibian government. This policy has been official law since May 2003, when Namibia's Parliament passed the Anti-Corruption Act. Beyond making a new law, the act also created an Anti-Corruption Commission, the body today tasked with enforcing Namibia's zero-tolerance corruption policy.

Finding of Guilt

The Namibian Constitution provides for a number of civil rights that begin at arrest. These include charges being read to the arrestee, appearance before a magistrate within 48 hours, and arraignment. Bail exists as an option though many remain in detention following arraignment. Lengthy pretrial detentions are a concern in Namibia because though trials are required to begin in a "reasonable amount of time," they often do not. The reasons for this include lack of qualified magistrates, the high cost of legal aid, and the glacial pace at which police investigations regularly move. As a result, it can often be years between arrest and trial. This issue is now to such a point that a full 8 percent of the prison population are those awaiting trial. In addition, 50,000 cases languish on court dockets unresolved. Those who do progress to court enjoy a number of rights. The first is a public trial, though that trial is not decided by jurors. The second is legal counsel. If the defendants cannot afford their own counsel, they are provided counsel at public expense. But because of a shortage of public defenders, this right is not always absolute. Something that is absolute is a presumption of innocence. The defendant also has the right to be present at trial, to consult with an attorney in a timely manner, to access government-held evidence, to confront witnesses, and to appeal the court's decision.

Punishment

Modern-day Namibia's correctional system traces back to 1990 and the passage of the Namibian Constitution. That document provides for the correctional system's head, the commissioner of prisons. Appointed by the president, the commissioner acts as the chief administrator of Namibia's 13 prisons and their 4,400 inmates, according to the Namibian Prison Service. Those 13 facilities, found in 9 of Namibia's 13 regions, cover a large range of ages and needs. The ages of these different facilities vary widely, with Swakomund Prison, built in 1909, as the oldest and Oluno Prison, built in 1996, as the newest.

Maximum-security prisons are located in Windhoek, Hardap, Walvis Bay, and Oluno. These prisons offer programs to develop trade skills. Proximity to population centers helps placement in jobs after release as well as greater contact with family.

Namibia's open prison farm is located at Divundu in the Kavango region and houses inmates who are serving sentences of fewer than three years and who are generally first-time offenders.

At Luderitz, Keetmanshoop, Gobabis, Omaruru, Grootfontein, and Swakopmund are somewhat transitional facilities designated as district prisons. Capable of serving as maximum-security prisons, these locations instead serve mostly as reception centers for the larger corrections system. Those commonly housed here are pretrial detainees, those in transit to other prisons, and inmates serving sentences of less than two years. However, the use of district prisons for pretrial detainees is expected to decrease as Namibia moves forward with the development of specialized "remand" prisons. Also available for temporary incarceration are prison camps. Small facilities, these prison camps are built to stand only briefly for a specific purpose determined by the commissioner of prisons. Those housed in these temporary prisons are of a specific type and serve inmates who have no more than one year to serve before their release.

This stratification of prisons belies Namibia's progressive attitude toward corrections. So too does the country's juvenile rehabilitation center. Acknowledging the necessity of separating juveniles from adults in prisons, corrections officials have made efforts to ensure that cohabitation does not occur. Currently operating is the Elizabeth Nepemba Juvenile Centre near Rundu. Officials hope to expand these efforts as well.

Namibia abolished capital punishment upon independence and today offers many rehabilitative skill-development programs. Among these are in-house literacy programs, construction education, and self-sustaining agricultural programs. Vocational programs are also offered by domestic nongovernmental organizations such as Criminals Return to Society. Many of these have come about as a result of Namibia's close international partnerships, first with South Africa and increasingly today with the Canadian Prison Service. On the diversionary front, Namibia has shown a degree of innovation by implementing a community service pilot project for those convicted of petty crimes. Latest reports indicate this project is active in 4 of Namibia's 13 regions. For youth offenders, there also exists a pilot prison diversion program utilizing shelters and foster homes.

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Although Namibia has made laudable strides in the area of corrections, it is plagued by resource scarcity. For instance, only one medical officer serves the entire prison population. This medical understaffing has led to a number of medical maladies among prisoners. Hypertension today prevails as the most common ailment, and HIV/AIDS is the leading cause of prisoner mortality. Overcrowding is a major problem and can be attributed to two factors. The first is the generally antiquated designs of Namibia's prisons characterized by large walls, tall fences, barred windows, and looming watchtowers. Second, Namibia's incarceration rate is high. In 2004, that rate stood at 264 per 100,000 inhabitants, reflecting a general increase in the corrections population. In 1992, the population stood at only 2,711. By 2001, it had risen to 4,727 before leveling off. All of these factors have led to system-wide issues, with prisons running at anywhere from 130 to 210 percent capacity. Windhoek Central Prison alone generally runs at 155 percent of capacity. In response to these conditions, Namibia is now attempting to divert petty criminals away from incarceration.

The existence of prison gangs presents another issue facing corrections officials. This is especially true at the Windhoek Central Prison, where multiple gangs operate. Notable gangs include Group 26, a gang affiliated with a South African prison gang of the same name, and Group 28, a group known for its facilitation of homosexual sex. Oddly enough, the existence of these gangs does not coincide with the existence of illicit drugs, a common means of finance and trade inside prisons elsewhere. Indeed, the consumption and smuggling of drugs is not noted as a large problem in Namibia's prisons. Most likely displacing such drugs are a variety of fermented fruit drinks that enjoy far greater popularity inside prison walls.

The inmates themselves are mostly males and between the ages of 18 and 35. Only about 2 percent of Namibian inmates are female. In light of this, there are no women-only prisons, but men and women are housed in separate units within the prisons.

Michael Galezewski

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Niger

Legal System: Civil/Customary
Murder: Low
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Maybe
Corporal Punishment: Yes

Background

Niger is located in western sub-Saharan Africa. Prior to French occupation in the 19th century, Niger was an economic crossroads and the home of numerous empires. Niger was not subject to the same levels of exploitation and intervention as other colonies as long as it paid its taxes and enacted French policies. It gained its full independence from France in 1960 and since then has struggled to sustain a stable democracy. The 1991 democratically elected government established a new constitution and ruled for four years. A new government was established in its current form in 1999.

A cultural divide exists between rural and urban Niger. The French-influenced legal system, bureaucracy, and language are primarily an urban phenomenon. This divide is represented in criminal justice. Traditional dispute resolution typically holds sway in rural areas, whereas urban areas are subject to the westernized criminal justice system, but the lines between the two are blurred. Tradition affects proceedings in urban areas, and rural citizens utilize the police and prison systems if traditional mechanisms are not able to settle a dispute. Niger is a parliamentary democracy with shared power between a president and a prime minister.

The primary agencies responsible for the internal security of the country are the national police and the gendarmerie. The national police operate under the direction of the Interior Ministry and conduct law enforcement in urban areas. According to a report from the International Institute for Strategic Studies on Sub-Saharan Africa, there are approximately 1,500 national police officers. The gendarmerie is responsible for rural policing and operates under the Ministry of Defense. There are approximately 1,400 members. There are also 2,500 members of the paramilitary known as the Republican Guard. The Republican Guard anecdotally has been involved in law enforcement and dispute resolution in rural Niger. In total, there are 5,400 officers in the gendarmerie, national police, and Republican Guard, a rate of 1 member of law enforcement for every 2,314 persons in the population.

The U.S. State Department and Amnesty International indicate significant corruption and use of excessive force by law enforcement personnel. In 2006, the police were reportedly responsible for excessive force resulting in death and forcibly dispersing demonstrators resulting in injuries. The police are generally considered ineffective because of (1) limited supplies such as vehicle fuel, radios, uniforms, handcuffs, batons, and badges; (2) slow response time; (3) lack of weapons and other police training; and (4) lack of accountability. The gendarmerie is responsible for investigating complaints against the police, but these mechanisms are ineffective.

Law and the legal system in Niger are heavily influenced by the French. This influence includes the creation and application of customary law, placement

of control of the bureaucracy in the hands of urban educated elite, and contemporary legal system and criminal procedure. There are three different forms of law in Niger. Throughout this chapter, references will be made to traditional law, customary law, and the legal system. Traditional law is here defined as the ethnic and religious practices carried out in both rural and urban Niger. Customary law is the French codification of elements of traditional law and the creation of dispute resolution systems based on this law. The legal system is the contemporary Western criminal justice system that operates in urban Niger.

Customary law is the French interpretation and codification of some Nigerien traditions. It was created because the French did not want to allocate resources to fully develop a legal system. During this process, the French found that traditional cultural practices did not incorporate a centralized authority or fixed rules, and thus, they created the system of customary law and dispute mechanisms based on their perceptions of traditional society. They gave the traditional chiefs power to make decisions and handle disputes, power that they did not previously have. Customary law was put in place while Niger was a French colony, but its use continued after independence and is currently enshrined in the legal code. Contemporary Nigerien customary law relates to matters including divorce, succession, gifts, testaments, and some commercial contracts. It is similar to Western "civil" law, even though civil remedies through the legal system are also available. Customary law can be used by judges to resolve disputes, but it cannot be applied in criminal matters. The arbitrariness in the creation of customary law and its power structure created wariness among rural people about the use of a centralized legal system and political authority.

The French created a caste of elites known as Evolues, who were put in charge of government bureaucracy. They typically speak French and wear Western clothing. They lack an understanding of traditional practices, viewing those living in rural areas with contempt. The rural–urban divide is especially present in the legal system because those individuals were trained in French legal customs and often educated in France. The rural population relies on languages other than French.

Niger's legal system is a mix of customary and French civil code. The French civil code was fully adopted at independence, and any element of the code that conflicted with the Constitution of Niger was considered null. Systematic assessment to identify the statutory contradictions between the French civil code and the Niger's Constitution was not undertaken, creating significant confusion regarding the status and applicability of specific laws.

The government rewrote its penal code in 2001. The goal behind this revised penal code was to make the code comparable to current Western notions of crime and criminal justice. The code created penalties for sexual harassment, female genital mutilation, intentional HIV transmission, and crimes that damage economic progress. This revised code focused on the right of the individual and limited the traditional Niger custom of punishing a family for the crimes of its members. These revisions sought to make criminal procedures and sentencing more consistent and predictable and to limit the utility of traditional dispute-resolution mechanisms and findings of guilt. Although Niger is primarily a Muslim nation, it has not adopted any elements of Islamic law.

Niger's current Constitution and criminal code are similar to Western notions of human rights and criminal justice. But there still exists a significant schism between the legal code of Niger and the law and dispute resolution in practice. There is a distrust of the urban Francophone government and a divide between rural and urban Niger.

Crime

The crime problem in Niger is of both domestic and international importance. The lack of resources combined with the schism between traditional dispute resolution and the criminal justice system contributes to the crime problem in a number of ways. First, it makes it difficult to determine the extent of the crime problem. Second, it contributes to problems of international importance, such as slavery

Former slave Adidjatou Mani Koraou, center, is flanked by unidentified officials of the Slavery International NGO during her appearance at a court in Niamey, Niger, on April 11, 2008. In a landmark ruling with implications across the region, West African judges on October 27, 2008, fined Niger the equivalent of $20,000 for failing to protect the woman, who was sold into slavery at age 12. (Boureima HAMA/AFP/Getty Images)

and human trafficking. Third, it limits the ability of the police and the government to respond to crime.

Classification of Crime

Crimes are classified according to the extent they cause injury to the body. These include murder; rape; various forms of assault and violence, including castration and female genital mutilation; and threats of violence. Availability of classifications of crime, in terms of seriousness of offense and punishment, is limited.

Crime Statistics

Criminal statistics on Niger are limited. As a result of lack of resources, the rural and urban divide, and police corruption and inefficiency, crimes are often unreported to the police, and data are generally unavailable on investigations and arrests. The most

recent crime data available are from 1998 and available through INTERPOL. The number of crimes reported to the police were as follows:

Homicide	83
Sexual offenses	82
Serious assault	1,492
Theft (all)	4,731
Aggravated theft	547
Theft of motor vehicles	65
Other thefts	4,119
Fraud	473
Currency offenses	223
Drug offenses	325

The U.S. State Department indicates crime was at a high level because of thefts, robberies, and residential break-ins in Niamey (the capital) and in some rural areas in 2007. Thefts and petty crimes were common in both daytime and nighttime hours. Armed attacks were occurring at night and usually were committed by groups of two to four people. Instances of banditry have occurred in rural areas of Niger.

The exact extent of rural crime is unknown. The INTERPOL crime statistics described here not only are dated but also represent only crimes reported to the police. The reliance of many people on traditional dispute-resolution mechanisms limits the utility of these statistics. It is unlikely that crime in rural areas is reported to the police. The most common types of crime in rural areas relate to theft of property as well as land disputes, but these crimes are infrequent.

Niger has a number of crime problems of international significance. These include drug trafficking, domestic violence, female genital mutilation, slavery, and human trafficking. These problems are driven by porous and unpoliced borders, culture and tradition, the subservient status of women, an ineffective civil service, and a lack of resources. There have not been any reports of terrorist activity. The most well-known incident in the country related to terrorism relates to the supposed sale of Niger's uranium to Iraq.

Some research indicates that Niger may have a significant drug trafficking problem. According to Country Watch 2008 reports, in 2007, Niger's drug squad made 558 arrests for drug trafficking or use, and the majority of these individuals were residents of Niger. During the 1990s, approximately 4,300 mostly foreign drug dealers were arrested. Also seized during this same time period were significant quantities of marijuana, hallucinogens, and other narcotics. The government has indicated it is a transit point for drugs going to Europe and North Africa. But recent seizures in Niger have been minimal.

The U.S. State Department indicates domestic violence is widespread, but statistics are unavailable. Wife beating is considered common, and the law does not explicitly prohibit domestic violence. Though a wife has the ability to lodge criminal charges for battery, government attempts to enforce these laws are met with unknown success. Domestic violence is often dealt with informally and goes unreported.

Female genital mutilation (FGM) is also practiced by some tribal groups in Niger. FGM is the practice of removing or sewing up parts of the female genitalia. Approximately 5 percent of women had been victims of FGM in 1998 according to a report by the Inter-Parliamentary Union. This practice was more common in the Peul and Zarma ethnic groups. A recent report released by the government of Niger indicates that as of a 2006 survey, 2.2 percent of women were victims of FGM. If this finding is accurate, it would indicate a significant reduction in the prevalence of FGM. Reports indicate that the reduction is due to the severity of punishment for FGM.

Although outlawed in 2003, slavery still is a significant problem in Niger. Slaves are typically used for agriculture, animal rearing, and housework. Slavery is perpetuated in Niger for a number of reasons. It is more common in the rural areas of Niger, where the central government and the criminal justice system have less of a presence. Children born of slaves become the property of their master. A slave master has the right to decide on the education of a slave's children as well as decide whom a slave can marry. This limits the ability to stop slavery and the ability of slaves to gain their freedom.

A 2002 survey interviewed 11,000 slaves regarding their rights and conditions. This research revealed numerous human rights abuses including rape and torture. It is difficult to ascertain the total number of persons currently enslaved. Although the 2002 study indicates there were 870,363 slaves during that year, the same study also indicates this number is inflated. The U.S. State Department indicates a much lower figure: 43,000.

Slavery is outlawed and punishable, but Niger's desire to address the problem is inconsistent. The government acknowledged the problem of slavery and rewrote its legal code in 2003, but it has not implemented or enforced the law outlawing slavery. The trafficking of women and girls for sexual exploitation also occurs within Niger and to North Africa, the Middle East, and Europe. Niger serves as a transit point for the trafficking of persons to Benin, Nigeria, Togo, Ghana, Burkina Faso, and Mali. A 2005 survey found that 5.8 percent of households in Niger claimed at least one member of the household had been a victim of trafficking. Trafficking also occurs for use in forced labor. Boys have been indentured to Koranic teachers who would support their teachers by doing manual labor or begging.

Finding of Guilt

Niger has three systems of dispute resolution, which embody the divide between traditional and urban Niger. They consist of the urban system of police, courts, and corrections typically envisioned by Westerners, the customary dispute-resolution mechanisms created by the French, and the more rural and traditional dispute-resolution and guilt-finding procedures used in rural areas.

Legal System

Nigeriens have access to both civil and criminal remedies. The 1999 Constitution of Niger provides protections similar to those available in Western democratic nations. Niger's Constitution prohibits its arbitrary arrest and detention. Detention without charge for more than 48 hours is prohibited. A defendant has the right to a lawyer upon being detained by the police. Bail is available for crimes that carry a sentence of less than 10 years. Detainees have the right to a prompt trial where they are informed of the charges against them. There are also limitations on the time and scope of the criminal trial. Those wrongly detained have the opportunity for financial reimbursement.

Trials in Niger are public, and individuals are tried by juries. The Nigerien legal system is based on the inquisitorial model of the French. In the inquisitorial model, the judge is actively involved in investigating the circumstances surrounding a case; the judge is not neutral as in the English and U.S. legal systems. The defendant has the presumption of innocence. Defendants have the right to be present at their trial and to confront and have witnesses to support them. Defendants have the right to all evidence against them. Those found guilty have the right to appeal, first to the Court of Appeals and then to the Supreme Court. Defendants do have the right to counsel, and the government provides a lawyer to those who are indigent and facing punishments greater than 10 years. Minors are also provided council at public expense.

There ~~are~~ persist significant problems in ~~the~~ accessing these legal protections. Most law is written in French, and many citizens do not read or even speak the language. Bail is generally not used because of ignorance of the law or lack of money. Although lawyers provide counsel to indigents and minors when requested by the government, they are often not provided compensation for their services. Lawyers are not generally available outside the capital city of Niamey. There is 1 judge for every 80,000 people, and there are 77 practicing lawyers in the country. There are also indications of political interference in the legal system.

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Customary Law

Customary law and courts were systems developed by the French through interpretation of traditional law. Little is known about this system. Traditional chiefs are given the authority to act as mediators and counselors and have the authority to try cases. Customary

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courts can try noncriminal cases, relating to such things as divorce and inheritance. Women have a lesser status in customary courts than men. Disputes tried by chiefs and customary courts are not regulated by law, and defendants adjudicate their case in the legal system if they are unhappy with their verdict.

Traditional Law

Traditional Nigerien law is a mixture of spirit worship and Islam. Spirit worship is based on the belief that humans exist within a world where individual spirits control people's lives and where communication and interaction with these spirits is possible. Nigeriens generally follow the tenants of Sufi Islam; the rules of the Koran are seen as guidelines, and spirit worship is acceptable as long as prayers are only made to Allah.

Traditional law includes a collection of behavioral norms and moral obligations that exert social control over rural Nigeriens, relating to law rights, social ethics, and standards of appropriate behavior. It does not distinguish between private and public or criminal and civil law. There is both tension and redundancy between traditional dispute resolution and the legal system. This is a result of the early French colonial as well as the current government's efforts to implement a uniform legal code and limit traditional power. Criminal procedure laws are contrary to many elements of traditional Nigerien Law. They forbid collective responsibility and do not permit families and communities to resolve their own disputes, punishment involves removal from the community rather than reintegration, and they do not allow for the traditional spiritual methods of ascertaining guilt or innocence. Rural and urban people can access traditional dispute-resolution mechanisms and customary courts for noncriminal matters such as divorce in both rural and urban areas. Rural Nigeriens can access the criminal and civil remedies if they are unhappy with the results of traditional methods or have an uncooperative suspect who is not content to admit his or her guilt. Nigeriens tend to utilize the lowest level of dispute resolution. But there are indications that Nigeriens also choose dispute resolution mechanisms based on which one is likely to provide them with the best outcome.

Traditional law and the legal system are in contradiction. This contradiction is caused by a rural mistrust of the legal system and the imposition of these ideals on traditional practices. The legal system represents Western ideals of equality and due process, but it is difficult to access and is mistrusted by the population.

Punishment

Both the rationale and use of punishment in Niger continues to reflect the rural–urban divide. Little is known about the rationale or use of punishment in the customary legal system, though dispute resolution is probably used in rural areas. The criminal justice system utilizes both fines and incarceration. Rape is punished with 10–30 years' imprisonment; sexual harassment with 3–6 months' imprisonment and fines of $20 to $200; female genital mutilation with 6 months' to 3 years' imprisonment, or 10 to 20 years if death occurs; and castration with life imprisonment and death penalty if the victim dies.

The U.S. State Department indicates that crimes involving drugs are severely punished with heavy fines and long jail sentences; however, the actual extent of punishments for drug crimes is unknown. Niger does not currently utilize the death penalty. It retains the death penalty as a legal punishment but has not utilized the death penalty since 1976 and has generally established the practice of not carrying out executions.

Prison

According to the International Centre for Prison Studies, Niger has approximately 5,709 prisoners, an incarceration rate of 46 per 100,000. The prison population largely consists of remand prisoners. Remand prisoners are those who are awaiting trial and sentencing; they have not been officially found guilty or sentenced for their crimes. Remand prisoners are held with sentenced prisoners. The country has only a small percentage (3.2%) of female

prisoners. There are 37 prisons in Niger. The official capacity of the prison system is 8,850, and it is operating at 65 percent of capacity.

Despite operating under official capacity, conditions in Nigerien prisons are poor. The U.S. State Department describes the prison systems as underfunded, understaffed, and overcrowded. In Niamey (the capital of Niger) in 2008 there were 718 prisoners in a prison with a capacity of 350, of whom 550 were on remand. A 2008 U.S. Human Rights report noted that though sanitation was poor, and prisoners died of AIDS, tuberculosis, and malaria, prisoners were allowed to receive food and medicines from their visiting families. Prison staff is corrupt, and prisoners could bribe staff to leave for the day and serve their sentences in the evening or serve their entire sentences in the national hospital.

Beyond human rights reports from the State Department, little is known about prison conditions within Niger. The use of incarceration appears low by international standards, but considering the country's economic status, lack of resources, and corruption, the prison conditions are likely to be poor.

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Nigeria

Legal System: Common/Islamic/Customary
Murder: Low
Burglary: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

Nigeria is a country in West Africa. It is bordered on the north by the Niger Republic, on the east by the Chad Republic and the Republic of Cameroon, on the west by the Benin Republic, and on the south by the Gulf of Guinea. It has a total land and water mass of 923,768 square kilometers (356,700 square miles). Nigeria is Africa's most populous country, and in 2007, its population was estimated to be 135,031,164. Nigeria operates a federal government structure of 36 states and Abuja, the federal capital territory. The Constitution that came into effect on May 29, 1999, stipulates a presidential form of government and a bicameral National Assembly consisting of the Senate and House of Representatives. The Senate has 109 seats, three from each state of the federation, and one seat from Abuja, the federal capital territory, and the House of Representatives is composed of 360 seats.

The Legal System

As a former British colony, Nigeria's legal system is founded on the English legal system, especially the concept of the rule of law and the doctrines of equity. In addition, laws made by the English legislature and extended to Nigeria before October 1960, when Nigeria obtained its independence from

Britain, remain valid in Nigeria, unless the appropriate authorities in Nigeria have followed established procedures to repeal such laws. Other major sources of Nigerian laws include the English common law, the 1999 Constitution, sharia (Islamic law), and African customary laws. Sharia ~~(Islamic law)~~ is applicable only in the 12 northern states of the country, which are predominantly Muslim. The customary laws are based on African indigenous customs and belief systems and are mostly applicable in the southern states of the country. Customary laws are operational within the ethnic group where such customs are relevant and binding. Because customary laws are mostly unwritten, they must be shown in court to be admissible unless the facts are so commonplace that their applicability is self-evident.

Police

The Nigerian Police Force came into being in 1861 after the British Consul charged with the administration of the Colony of Lagos obtained permission from London to establish a Consular Guard comprising 30 men. This force had a military character and was recruited mostly from the Hausa ethnic group; hence, it was called the "Hausa Guard." The Lagos Police Force was created in 1896. In 1888, the British Colonial Authorities established the Royal Niger Constabulary with headquarters at Lokoja, geared toward the protection of its installations along the River Niger banks. In 1906, the police force and part of the Niger Coast Constabulary were reorganized to form the Nigeria Police Force. The Niger Coast Constabulary became the Southern Nigerian Regiments. These two police authorities continued to operate independent of each other until April 1, 1930, when they were consolidated to form the present Nigerian Police Force, under the authority of the Inspector-General of Police, with headquarters in Lagos.

Section 214 of the 1999 Nigerian Constitution renewed the police mandate to operate, with its headquarters located at the Federal Capital Territory, Abuja. There are 371,800 police officers in the country, and the police force is divided into 12 zonal commands. To enhance its crime control capability, the Nigerian police have further created other specialized units, such as an Anti-Terrorism Squad and Anti-Robbery Squad.

In addition, the National Drug Law Enforcement Agency (NDLEA) was established to deal with the challenges confronting local enforcement agencies in combating transnational crime. Arrest records both within and outside the country show that a significant number of Nigerians are involved in the various stages of drug trade, including the growing, processing, manufacturing, selling, exporting, and trafficking of hard drugs. Nigeria is considered a key transit point between the manufacture of cocaine in South America and its destinations in Europe and North America. Nigerians, according to the NDLEA report, dominate the drug market of sub-Saharan Africa. Nigerian drug traffickers are also involved in the export of marijuana to Europe and other West African countries. Marijuana is the only narcotic that is produced in Nigeria.

Another agency established to tackle a special crime problem is the National Agency for the Prohibition of Traffic in Persons (NAPTIP). This agency came into effect through Act No. 24 of 2003, known as the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act. This act makes it a crime and imposes punishment for any individual or groups of individuals involved in the trafficking of persons, particularly women and children, and other related offenses. The NAPTIP has the authority and responsibility for the investigation and prosecution of offenders as well as for the counseling and rehabilitation of victims of trafficking. Other responsibilities include providing protection for trafficked persons and informants and gathering other information as may be necessary during the course of any investigation related to the trafficking of persons. The agency is administered by a board whose chairman and 12 other members are appointed by the president and commander-in-chief of the armed forces of the Federal Republic of Nigeria for an initial term of four years. The chairman and members of the board are eligible for a second term of four years. The agency operates a secretariat headed by a secretary appointed by the

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president of Nigeria on the recommendation of the attorney general of the federation. The secretary, who is the chief executive, and the accounting officer of the agency are responsible for the day-to-day operations of the secretariat.

In line with the government's determination to root out international corruption and other financial crimes in the country and also improve its international image, the Economic and Financial Crimes Commission (EFCC) was established. This law enforcement agency is one of the best-known and most popular law enforcement agencies in Nigeria. Its popularity derives mostly from its involvement and success in the investigation, arrest, and prosecution of top government officials who use their offices in money laundering practices and in enriching themselves. The EFCC was established in 2003 and is empowered to investigate financial crimes, including advance fee fraud, popularly known as 419 fraud; money laundering; illegal bunkering; terrorism; capital market; cyber crime; banking fraud; and economic governance. Section 46 of the EFCC Establishment Act of 2004 empowers the agency to investigate, prevent, and prosecute offenders involved in various crimes that include money laundering, embezzlement, bribery, looting, and other forms of corrupt practices such as illegal arms deals, smuggling, human trafficking and child labor, illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes, and prohibited goods.

Crime

The data on crime in Nigeria suggest that over the period of 1994 to 2005, the reported crime slightly increased for some categories such as murder and armed robbery, while some other crimes such as assault, stealing, burglary, and store breaking decreased. Other crimes such as attempted murder, suicide, grievous harm, and wounding remained stable over time. Levels of crime for the most recent year available (2005) are as follows:

Murder	2,074
Attempted murder	11
Suicide	128
Grievous harm and wounding	22,858
Assault	33,991
Rape	798
Armed robbery	2,074
Burglary	4,907
Housebreaking	6,371
Store breaking	4,837

Courts

The judiciary is a separate and independent branch of the government. The country operates a dual court system with both the federal and state governments authorized by the 1999 Constitution to establish and administer their courts.

Federal Courts

The following are the federal courts in order of superiority:

- *The Supreme Court of Nigeria.* The Supreme Court is the highest and final appellate court in the country. The Supreme Court has original jurisdiction in conflicts between the federal government and the state government(s). It also has original jurisdiction in cases between state governments; otherwise, the court's primary function is the hearing of appeals from the Federal Court of Appeal. The head of the Supreme Court is the chief justice of the federation. The number of justices of the Supreme Court is prescribed by an act of the National Assembly but must not exceed 21. Currently, the number of Supreme Court justices seated on constitutional matters is seven; and five are seated on regular cases.
- *The Federal Court of Appeal.* The Court of Appeal consists of the president and 49 justices. At least three of the Court of Appeal justices must be learned in Islamic law, and at least three must be versed in customary law. The Court of Appeal has exclusive jurisdic-

tion to hear appeals from other lower courts as prescribed by law, including the State High Courts, the Federal Revenue Court, the Sharia Court of Appeal, and the Customary Court of Appeal.

- *The Federal High Court.* The Federal High Court consists of the chief judge and other justices, whose number is determined by an act of the National Assembly. The court has original jurisdiction in civil and criminal cases relating to taxation, currency, banking and foreign exchange, customs and excise duties, and so on.
- *The High Court of the Federal Capital Territory, Abuja.* The High Court of the Federal Capital Territory, Abuja, consists of a chief judge and such number of judges as may be prescribed by an act of the National Assembly. The court has original jurisdiction over procedural civil and criminal cases and others referred to it as a result of its appellate and supervisory jurisdiction. The court is duly constituted when there is at least one judge of the court presiding over a case.
- *The Sharia Court of Appeal of the Federal Capital Territory.* The Sharia Court of Appeal has appellate and supervisory jurisdiction over civil matters pertaining to Islamic personal law. The court consists of the grand kadi and such number of kadis (judges of Sharia courts) as prescribed by an act of the National Assembly.
- *The Customary Court of Appeal of the Federal Capital Territory, Abuja.* The Customary Court of Appeal of the Federal Capital Territory consists of the president and such number of judges as may be determined by an act of the National Assembly. The Customary Court of Appeal, in addition to carrying out other legal responsibilities delegated to it by an act of the National Assembly, has jurisdiction in civil matters relating to customary law.
- *Election tribunals.* The Constitution provides for the establishment of one or more election tribunals to be known as the National Assembly Election Tribunals. The tribunal hears petitions concerning the conduct of elections to the National Assembly. In addition, the Constitution stipulates the establishment in each state of the federation one or more election tribunals to be called the Governorship and Legislative Houses Election Tribunals. These tribunals review petitions concerning the conduct of governorship and State Assembly elections.

State Courts

The 1999 Constitution empowers the states to operate their own courts. The following are the courts administered by the states in order of superiority:

- *High Court of a state.* The High Court of a state consists of a chief judge and such number of judges as may be prescribed by a law of the House of Assembly of the state. The court hears appeals and also exercises a supervisory role over other lower courts in the state.
- *Sharia Court of Appeal of a state.* The head of the Sharia Court of Appeal of a state is the grand kadi. The court is also made up of kadis, with the number determined by the state House of Assembly. The court exercises an appellate and supervisory role on matters of Islamic personal law over other lower courts of the state.
- *Customary Court of Appeal of a state.* Similar to the Sharia Court of Appeal of a state, the Customary Court of Appeal of a state has no original jurisdiction on any matter. It has appellate and supervisory jurisdiction over the customary courts. The court is headed by a president and such number of judges as may be determined by the House of Assembly of the state.

Other courts that the states administer include the magistrate courts, the district courts, the customary courts, and the area courts. The magistrate courts are found in every state of the federation and have jurisdiction over civil and criminal matters. There are different classes of magistrate courts, related to the type of cases they handle. The district courts, on the other hand, exist mostly in the 12 northern states of the federation that have adopted the sharia

law. The customary and area courts deal with limited civil and criminal matters emanating from customary law. They operate mostly in the southern states of the federation.

Punishment

Crimes are classified in Nigeria according to their seriousness, namely felony, misdemeanor, and simple offense. The length of jail and/or bail amount is reflective of the seriousness of the crime. Accordingly, persons found guilty of misdemeanor offenses may receive fine and/or warnings. They can also be granted probation or ordered to undertake community service. On the other hand, persons convicted of felony offenses are sent to prison, which may be either a maximum-security or a medium-security prison. Those convicted of less serious felony offenses may be sent to either a minimum-security prison or a labor camp. Political dissidents may be sentenced to house arrest. Although there is no parole system in Nigeria, prisoners are frequently granted pardon by the president, governors, or even chief justices of the federation or states. Offenders convicted of treason, murder, or armed robbery may be given the death penalty. Public executions for those convicted of capital offenses are common. There are also reports of many people convicted of capital offenses being executed secretly. The two main forms of execution are public firing squad and hanging in the gallows within the prison institution.

In all cases, it is the judge or magistrate who determines the sentence to be imposed. Because there is no special sentencing hearing in Nigeria, the

S__ A man walks past an information board containing "details of prisoners committed" at the prison in Bauchi, Nigeria, on
E__ December 3, 2006. (AP Photo/George Osodi)
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judge or magistrate typically sentences the offender to prison immediately after the trial is completed. Generally, government-appointed psychiatrists and social workers play advisory roles in both the pretrial investigations and the administration of penalty.

Prison System

The first prison in Nigeria was established in today's Broad Street, Lagos, by the colonial authorities in 1872. Prisons were built in several regional administrative headquarters of the country by 1910, including Ibadan, Onitsha, Lagos, Degema, and Calabar, under the administration of the colonial authorities. In line with the indirect rule policy of the British colonial authorities, some prisons were operated by native authorities in the northern and western part of the country. This accounts for why Nigeria operated a dual prison system for more than half a century until 1968, when the federal and local prisons were consolidated. Following the amalgamation of the northern and southern protectorates in 1914 by Lord Lugard, the Prison Ordinance of 1916 and Prison Regulations of 1917 were promulgated. The governor acquired the power and authority from this ordinance to establish and regulate the prison administration throughout the country.

The Nigerian Prisons Service is part of the Federal Civil Service. The head of the Prisons Service is the comptroller general of prisons (CGP), who reports to the president of Nigeria through the office of the Minister of Internal Affairs. The NPS has six administrative units known as directorates, and each is headed by a deputy comptroller-general of prisons (DCG).

Prisons are located in the 36 states and Abuja, the federal capital territory. By 1999, there were 148 prisons and 83 satellite prisons or lockups in Nigeria. There were also 10 prison farms and 9 cottage industries scattered all over the country for the training and rehabilitation of prisoners. More than 80 percent of the prisons were built before 1950. By October 1999, the prison population was 44,797, although the prisons had a total capacity for 25,000 inmates. According to available records released in November 2000, the total Nigerian prison population was 42,298, with 24,953 (59%) of this figure awaiting trial. A total of 956 (2.3%) of the Nigerian prison population were females. According to a recent Associated Press report, in 2008, the Nigerian prison population was estimated to be 40,000, with about 65 percent of this figure constituting those awaiting trial.

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Réunion

Legal System: Civil
Murder: Medium
Prison Rate: Medium
Death Penalty: No
Corporal Punishment: No

Background

Réunion is an island located in the Indian Ocean off the coast of southern Africa, east of Madagascar. It has an estimated population of approximately 721,000. It is a quasi-independent department of France. The legal system in Réunion is inquisitorial. This trial system was introduced by the Ordonnance of Colbert in 1791, based on the Code of Penal Procedure written under Napoleon in 1791. It was officially implemented in Réunion after its attachment to France.

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Police

Two distinct agencies are in charge of law enforcement in France. The Police Nationale fills five main roles, including the protection of the safety of individuals, material goods, and institutions. The police also must control immigration movements and fight against illegal workers, organized crime, and drug trafficking. This agency is also in charge of the protection of the country against outside threats and terrorism and must maintain public order. There are 145,820 officers in the French national police. The national police branch in Réunion is called the Direction Departementale de la Securite Publique (DDSP) and is composed of 872 officers including 61 medium-ranked officers and 7 high-level managers. The national police force is composed of more than 12 different groups, including the *l'unite de coordination de la lutte anti-terroriste* (anti-terrorist team) and an antidrugs division (MILAD). All these groups can be represented in Réunion when certain events occur such as terrorist attacks or drug trafficking.

The other agency responsible for law enforcement in France is the Gendarmerie Nationale. This agency is under the Ministry of Defense authority and is composed of military personnel as well as civilians. This law enforcement agency is responsible for maintaining law and order in rural areas. The Gendarmerie d'Outre-Mer (the name in nonmetropolitan areas) is composed of 3,673 individuals, which includes 735 officers in Réunion. The Gendarmerie d'Outre-Mer has multiple specialized units, including naval, aerial, traffic safety, motorized, and search units. All officers belonging to this agency are military trained, except the civilian staff who are experts in administrative, scientific, and technical services. The gendarmerie groups in Réunion are also specialized in high-mountain rescue search and juvenile delinquency. In case of a military conflict, the military officers of the gendarmerie can be enrolled in the national army. Both the Police Nationale and the gendarmerie work often in cooperation so as to assure the safety of French citizens.

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Crime

Classification of Crime

Crimes are classified into five types of infractions: against individuals, against material goods, against the state, organized crime, and victimless crime. Infractions against individuals include rape, torture, and homicide. Infractions against material goods include theft and robbery. Infractions against the state include terrorism and treason.

Each infraction is also divided into three levels of seriousness. Crimes are the most serious infractions, which include murder, rape, armed robbery, and drug trafficking. Under article 131–1 of the penal code, crimes incur a minimum sentence of 10 years of imprisonment. *Delits* are the second type of serious infractions, which include theft and drug dealing. Under article 131–3 of the penal code, delits incur imprisonment of less than 10 years, fines, day fines, community service, and restrictions on the offenders' driver's license or hunting license, for example. Delits are the equivalent of misdemeanors. Finally, the least serious infractions are petty infractions, which include traffic violations. Under article 131–13 of the penal code, petty infractions incur only fines according to the seriousness of the infractions.

The age of penal responsibility is 18 years old. Juveniles under 13 years old are not considered responsible. Juveniles between the ages of 13 and 18 can be handled by the juvenile justice system. Juvenile delinquents who commit extremely serious crimes can be prosecuted by adult courts. However, most juvenile delinquents are sentenced to educational and vocational programs. Incarceration is used only as a last resort for individuals under 18.

Drug Offenses

Drug use and drug trafficking appear as particular challenges to the Réunion authorities. The use of psychoactive legal (alcohol) and illegal substances (Zamal/cannabis) is widespread in Réunion. Zamal (local name for cannabis), which was previously extremely popular in Réunion, is now being replaced by Ecstasy and cocaine, which are now viewed as

more attractive by the local youths. The production and distribution of stupefying substances are prohibited under article L 3421–1 of the Code of Public Health. Provocation to traffic incurs a maximum sentence of five years of imprisonment and fines up to 75,000 euros under article L3421–4 of the Code of Public Health. The use of stupefying substances incurs up to a year of imprisonment and a fine of up to 3,750 euros under article L3421–1 of the Code of Public Health. Possession of stupefying substances with intent to sell incurs a maximum sentence of 10 years and up to 500,000 euros in fines. Drug dealing incurs a maximum of five years of imprisonment and up to 75,000 euros fines under article 222–38 of the penal code. "Guetteurs," those who work with drug dealers as a lookout for police, may face the same punishment as dealers. The length of imprisonment doubles if drugs are sold to minors or in educational areas. The organization of drug trafficking results in prison sentences from 10 to 30 years and up to 7,500,000 euros in fines under article 222–34 of the penal code.

Crime Statistics

The total crime rate in the capital of Réunion, Saint Denis, was 56.16 per 1,000 inhabitants in 2006. The most typical crimes in the most rural area, the arrondissement of Saint Benoit with 101,804 inhabitants, were assaults. There were 284 assaults in 2005. The most typical crimes in the most urban area, the arrondissement of Saint-Denis with 236,599 inhabitants, were theft of two-wheel motor vehicles. There were 421 thefts of this kind reported in 2006.

In 2006, 44 murders were reported to the police and gendarmerie in Réunion, whereas in metropolitan France, 900 murders were reported. The murder rate in Réunion was four times higher, 5.6 per 100,000 inhabitants, than in France, 1.4 per 100,000 inhabitants. Such statistics may imply that Réunion is facing a challenge to reduce its high murder rate. There were 49 robberies and 3,405 burglaries. Out of 184 rapes reported, 124 were rapes of minors. The numbers of drug trafficking or selling reported were 25.The total number of infractions was 31,518, including 5,427 offenses against individuals. Finally, there were 18,452 thefts reported to law enforcement agencies.

Finding of Guilt

Preventive Detention

The office of judicial police can detain a person for up to 24 hours: this is the *garde a vue.* If authorized by the prosecutor, 24 hours can be added to the original detention period (article 63–62 of the code of criminal procedure). After the initial 24 to 48 hours, the prosecutor must release the individual, or further court proceedings must be initiated.

Rights of the Accused

Under article 63–1 of the code of criminal procedure, the accused must immediately be informed of the crimes or infractions for which the investigation is necessary. If the accused is unable to read or write or has a certain disability, an interpreter or a certain method must be found to communicate with him or her.

The individual detained is allowed to make contact with family members, the individual(s) he or she lives with, or his or her employer by phone during the first three hours of detention. (article 63-2 of the code of criminal procedure).

Article 63–3 of the code of criminal procedure guarantees the right of the accused to be examined by a physician. If the detention lasts longer than 24 hours, a second examination can be given at any time. The judicial police officer or prosecutor can also call a physician if deemed necessary. Article 63–5 of the code of criminal procedure also guarantees that body searches will be conducted only by physicians.

Upon detention, the accused has the right to have a self-obtained lawyer or a state-appointed lawyer (*avocat commis d'office*), under article 63–4 of the code of criminal procedure. The meeting is confidential and cannot last longer than 30 minutes. If the detention exceeds 36 hours, the accused has the right to ask for a second meeting with a lawyer.

Assistance Provided to the Accused

Legal aid. or *aide juridique,* is available through the public defender system to those who cannot afford legal advice or litigation under article 63–4 of the code of criminal procedure. The accused must present a lack of means based on monetary resources to the Bureau d'Aide Jurisdictionelle, composed of magistrates and counselors. This aid may cover the amount of legal representation partially or entirely. However, the aid does not cover additional expenses related to the trial or fines assigned to the defendant.

Alternatives to Trial

Individuals who were not considered mentally capable during the completion of their crime(s) may be referred to psychiatric services instead of a formal punishment. Article 122–1 of the criminal code declares the accused free from criminal liability if the court-appointed psychiatric experts declares that the accused suffered from mental illness during the commission of the crime. There are alternatives to trial for juveniles and drug offenders as well. However, the majority of crimes are resolved by trial. Plea bargaining, dispute resolution, and guilty pleas are not allowed.

Pretrial Incarceration

The accused may be kept under supervision if suspected of an offense related to a term of imprisonment longer than three years. In January 2007, 30.6 percent of the accused, 18,483 individuals, were incarcerated before trial. The average length of preventive detention in 2006 was four months.

Investigation

At first, the police lead an investigation to identify potential suspects and obtain a minimum of information. Prosecutors—or in serious cases (delits or crimes), *juges d' instruction*—seek to establish whether the prosecution of the accused is justified. All investigations are under judicial supervision.

The judges have tremendous powers and are required to investigate and obtain evidence and elements of the accuser's guilt. Those judges are *a charge et a decharge,* which means that they are responsible for finding any kind of evidence. These judges can seek evidence proving the innocence of the accused. Indeed, the defense is not allowed to conduct its own investigation in the name of the offender. The judge can transfer some of his or her judiciary powers to police officials using a *commission rogatoire,* which will allow law enforcement officers to investigate. The judge has the right to emit search and seizure warrants as well as arrest warrants, can meet suspects at any time, and can order preventive detention.

The Criminal Court: The Assize Court

The Cour d'Assises, also called the assize court, is composed of three professional judges: a president and two assessors. The judges are magistrates who received a law school education and passed three national exams. There is one assize court for each department in France, including Réunion (100 courts in total). The assize court in Réunion meets in the administrative capital of the department, Saint-Denis. The president of the court is the chief of the chamber or advisor at the appellate court. Assessors are magistrates working in department courts or are advisers at the appellate court. The court is held once every three months for a maximum of 15 days.

Juveniles

The French juvenile justice system was created under the law of February 2, 1945. Its primary aims are reinsertion and rehabilitation of young delinquents between the ages of 13 and 18. Juveniles are treated by special criminal courts with specialized judges. Also, there are specific incarceration and rehabilitation facilities for juvenile delinquents. The Cour d'Assises (assize court) also exists for individuals under 18 when they commit serious crimes. Juveniles can also be judged by adult criminal courts when their crimes are extremely serious and can be

incarcerated in adult correctional facilities. Each department is responsible for the creation of a support system for juvenile delinquents and their families. There is a juvenile court in Réunion.

Punishment

Types of Punishment

The types of punishments vary greatly, ranging from fines, electronic monitoring, suspended sentences, suspended sentences with probation or community services, probation, reparations, community service, postponement of sentence, incarceration, and half-imprisonment (day in the community, nights and weekends in the correctional facility) to expulsion from the French territory if citizenship cannot be proven.

The typical punishment for murder (article 222–1 of the penal code) is up to 30 years of imprisonment. If the murder follows or is committed during another crime, to facilitate another crime, to escape from controlled facilities, or to guarantee the anonymity of the offender or his or her accomplice, the sentence can be increased, up to life without parole. Premeditated murder is punished with life imprisonment (article 221–3 of CCP). If the murder is committed against a minor under 15 years old or is accompanied with rape, torture, or any barbarous acts, the offender must serve a minimum of 30 years in prison without the possibility of time reduction. Murder also results in life in prison if the individual killed his or her natural or adopted parents or attacked vulnerable individuals who are sick, disabled, or pregnant. The offender also receives up to life imprisonment if he or she murdered any public service official such as a lawyer, judge, or police officer during the exercise of his or her function. Finally, the murder of a witness in a criminal case is also punished by up to life in prison (221–4 of CP).

Rape is punished by up to 15 years of prison. According to article 222–24 of the penal code, offenders are punished with up to 20 years if the rape caused mutilation or permanent disability, was committed on a minor under 15, was committed on a vulnerable individual (disability, age, pregnancy) or known to the offender, was committed on a natural ascendant or individual over which the offender had authority, or was committed with the use of a weapon. Rape is punished by up to 30 years of incarceration if the offender's actions led to the death of the victim. If torture or barbarous acts preceded or followed the rape, the offender receives up to life in prison (article 222–25 of CP).

Theft is punished by up to three years of imprisonment and a fine up to approximately 46,000 euros (article 311–3 of penal code). It can be punished by up to five years of prison and 100,000 euros of fines if it is preceded or followed by violence on the victim (minor injury that does not have an impact on the victim's ability to work). Theft can be punished by up to seven years in jail and 100,000 euros in fines if two aggravating circumstances are present, such as violence on the victim(s) and degradation of personal or commercial property during the commission of the crime. If three aggravating circumstances are present, the offender can receive up to 10 years in prison and a fine of 150,000 euros. The offender can receive up to 15 years of imprisonment if the violence attached to the theft led to a permanent disability of the victim (article 311–77 of the penal code). If prohibited weapons are used or carried during the theft, the offender will receive a term up to 20 years and may receive a fine of 150,000 euros. Finally, robberies committed in group involving weapons lead to up to 30 years' imprisonment for all offenders involved.

The most serious drug offense is the direction or organization of a group that produces, fabricates, exports, transports, detains, offers, and/or sells illegal drugs. This offense leads to possible life imprisonment and up to 8,000,000 euros in fines (article 222–34 of penal code). According to articles 222–35 and 222–36 of the penal code, the production and fabrication of drugs results in 20 years of imprisonment if committed alone and up to 30 years in prison if committed by an organized group.

Suspended Sentence: Le "Sursis"

According to article 132–29 of the penal code, a suspension of punishment can be announced by a

court after the conviction of the offender. This is called a *sursis.* This suspension may be ordered when a defendant has not been previously condemned for a criminal act (article 132–30 of PC) and is applicable in particular circumstances (e.g., vehicular manslaughter). The suspension becomes void after five years of its application (article 132–35 of penal code). In case of re-offending, the offender will have to accept the suspended sentence as well as his or her new penalty, which cannot be merged (article 132–38). The convict will be placed under the control of a judge of application of punishments (article 730 of code of penal procedure). There were 146,000 individuals in January 2007 whose sentences were suspended. Most of them had suspended sentences coupled with penal measures such as probation, electronic monitoring, or community service.

The Death Penalty

The death penalty was abolished with law #81908, voted into law on October 9, 1981. Corporal punishment is not authorized either.

Prison

The total number of inmates in France was 58,402 on the January 1, 2007, including 2,152 women and 727 minors housed in 194 facilities. In Réunion, on November 26, 2007, there were a total of 1,293 inmates in three correctional facilities, including 296 men and 32 women housed at the jail of Saint-Denis, 211 men jailed at Saint-Pierre, and 754 housed at the Port. A new correctional facility was scheduled to open in June 2008, which would house 574 inmates, including 40 women and 40 minors.

The largest facility is located at Le Port and houses the most dangerous inmates. It was previously called the Centre Penitentiaire de la Plaine des Galets.

Education Programs and Rehabilitation

All of the Réunion prisons offer educational programs to their inmates, including auto-mechanic training (8 months), mechanic garden equipment formation (7 months), gardener formation (7 months), construction (8 months), and preservation of national monuments formation (2 months). Inmates are remunerated during their professional training up to 2.26 euros/day. In the correctional facility of Saint-Pierre, inmates can participate in workshops on writing and reading, which last for three months and have a capacity of 30 inmates. They can also participate in food production/hygiene and quality of food monitoring, which lasts three months and has a capacity of 16 inmates. At the facility of Le Port, inmates can be trained in construction, maintenance, and auto-mechanism. In general, 29.4 percent of inmates obtain a CAP-BEP (certificate program), 10.6 percent prepare for the French high school final exam ("le Baccalaureat") or university diplomas, and 60 percent of inmates prepare for the equivalent of the GED every year. Twenty-four percent of the inmate population participates in some school formation, and 10 percent of inmates obtain a diploma. Almost all of minors receive some type of educational training. Neither work nor educational programs are mandatory for inmates.

Incarceration Policies

Visiting days and schedules differ for each establishment. However, certain guidelines are applied by all facilities. Individuals placed on preventive detention are allowed a minimum number of three visitations per week. Inmates detained are allowed a minimum of one visit per week. To visit an inmate placed in preventive detention, visitors must obtain a visiting license obtained from the judge. Visitors of inmates detained must bring identification documents. French inmates have numerous privileges, including receipt of mail (except newspapers and packages), the keeping of personal items such as clothes and certain jewelry items such as ring and watch, smoking, participation in sport classes, watching television, and access to a library and to educational programs. Inmates can also work, and they and their families will receive social security benefits up to four years after incarceration. Finally, French inmates can vote during and after being imprisoned.

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Rwanda

Legal System: Civil/Customary
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: High
Death Penalty: No
Corporal Punishment: No

Background

The Republic of Rwanda is located in central Africa. It is surrounded by Burundi to the south, Tanzania to the east, Uganda to the north, and the Democratic Republic of Congo to the west. It has a total land mass of over 26,000 square kilometers and an estimated 2009 population of about 10.5 million. The majority of the population is Hutu (84%), and Tutsi constitute 15 percent.

Rwanda is a republic that became independent in 1962 from Belgium-administered UN trusteeship. It has a multiparty presidential system. The head of state is the president elected by popular vote for seven-year terms. The head of government is the prime minister, and the president appoints a council of ministers. The legislative branch consists of a bicameral Parliament of 26 seats, out of which 12 members are elected by local councils for eight-year terms. There are 80 seats for the Chamber of Deputies, out of which 53 are elected by popular vote to serve five-year terms. Another 24 seats are reserved for women candidates who get elected by local bodies, and the remaining 3 are selected by youth and disability organizations. The judicial branch consists of the Supreme Court as its apex court, high courts of the republic, provincial courts, district courts, and mediation committees.

Rwanda is dominated by a strong presidency. The predominately Tutsi Rwandan Patriotic Front (RPF) took power in 1994 and formed a Government of National Unity that functioned during the transitional period following the civil war. In May 2003, according to the U.S. Department of State, a country-wide referendum resulted in the approval of a new constitution, which provides for a multiparty system and nullifies the suspension of political activity, although it provides few protections for parties and their candidates. In August 2003, the country held its first multicandidate national elections since independence. President Paul Kagame was elected to a seven-year term in largely peaceful but seriously marred elections. It was in September 2003 that President Kagame's party, the RPF, won the majority of the seats during legislative elections and therefore remained the principal political force that controlled the government. The judiciary, which was not operational for most of the year as the country implemented judicial reforms, was subject to executive influence and suffered from a lack of resources, inefficiency, and some corruption.

The minister of defense holds the responsibility for external security and national defense, and the

minister of internal security is responsible for civilian security matters as well as supervision of the prisons and the Rwandan national police. The Rwanda Defense Forces (RDF) is responsible for maintaining external security, and the police maintain the internal security. After the formal withdrawal of all its troops from the Democratic Republic of the Congo (DRC) during 2002, the Rwandan government began to reorganize its military to provide a smaller, more suitable force for territorial defense, rather than for expeditionary actions abroad. It also has been noted that some members of the security forces acting independently committed serious human rights violations as the government authorities failed to exercise adequate control over security personnel.

In 2006, the government of Rwanda instituted a significant reorganization administratively, replacing the previous 12 prefectures with 5 larger multiethnic provinces intended to promote power-sharing and reduce ethnic conflict. The country's economy, adversely affected by the conflict of the early 1990s, continued to recover gradually. Recovery efforts were aided in 2006, when significant debt relief was granted by the World Bank and the International Monetary Fund, and in 2007, when Rwanda joined the East African Community, a regional trade and development bloc.

Crime

According to the United Nations, in September 1994, only 16 months after the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), the new government of Rwanda requested that the United Nations establish an International Criminal Tribunal for Rwanda (ICTR) to adjudicate the crimes of genocide, war crimes, and crimes against humanity that had been committed in the country. However, as negotiations over the terms for establishing an ICTR began, Rwanda objected to a number of provisions. Some of these original points of tension remain as issues that may tend to limit or at least to call into question the efficacy of the ICTR.

Police

Prior to 2000, there were three police organizations in Rwanda: The national gendarmerie, a paramilitary force established in 1973 under the Ministry of Defense; the communal police, which was established in 1963 under the auspices of the Ministry of Interior/Home Affairs; and the Judicial Police Inspectors, established to help with the large number of genocide cases and which reported to the minister of justice. In 2000, legislation was enacted to merge all three into one entity that reported to the minister of interior.

The national police is headed by a commissioner-general in charge of many directorates and divisions. One of these divisions is for community policing. In addition, there are a number of services, territorial and support units such as the medical services, the air wing, and an intervention force, as well as five specialized units such as traffic, air, and border police.

Many reforms have been initiated since the genocide. Included among them are greater inclusion of all diverse ethnic groups in the police force, demilitarization and civilianization of police force, and oversight and police accountability systems.

Crime Rate

There is limited information from the United Nations that directly relates to the rate of crime in Rwanda. The Overseas Advisory Security Council (OSAC) has stated that most crimes include automobile break-ins, pickpocketing, purse snatchings, and increasingly, muggings. Political violence in Rwanda has gone down since 2004 because the Democratic Forces for the Liberation of Rwanda (FDLR), which has been the primary source of past political violence, has diminished as a direct military threat and has not conducted any attacks or acts of violence within Rwanda since 2004. Other crimes reported during the genocide attacks in the early 1990s include rape and genital mutilation of local women during the severe and violent attacks.

Finding of Guilt

Rwanda is investigating the possibility of moving toward a common law system from the current Romano-Germanic system. Though similarities between the two systems exist in the areas such as presumed innocence until proven guilty, rights to legal representation, and fair trial, there are fundamental differences. The most important of them is the absence of the jury system.

The Rwandan judicial system is bureaucratic, and cases can be delayed significantly. The Gacaca (pronounced "gachacha") court is part of a system of community justice inspired in Rwanda by tradition and was established in 2001, in the wake of the 1994 attacks, where between 400,000 and 1,000,000 Rwandans, mostly Tutsi, were slaughtered at the hands of the Hutu. It was after the genocide that the new Rwandan Patriotic Front's government was struggling with developing just means for the humane detention and prosecution of the more than 100,000 people accused of genocide, war crimes, and related crimes against humanity. The court system needed a more prompt and efficient means of delivering justice, and thus Rwanda implemented the Gacaca court system, which has roots in the

Rwandan police guard Father Guy Theunis, right, who appears before a Gacaca court in Kigali, Rwanda, on September 11, 2005. The Belgian priest is accused of reproducing articles encouraging the killings of Tutsis by Hutu extremists. Gacaca courts are a new form of community justice that have been used in Rwanda since the Rwandan genocide. The system involves both victims and witnesses in an interactive court proceeding against alleged criminals. (AP Photo/Riccardo Gangale)

traditional, cultural, communal law enforcement procedures. The primary mission of this system is to achieve reconciliation, and it aims to promote community healing by making the punishment of perpetrators faster and less expensive to the state.

The Rwandan Supreme Court has a sixth court called the Gacaca Courts Department to coordinate and supervise the activities of the various courts as well as keep the national and international community informed about the Gacaca courts' activities. In 2002, the Gacaca Courts Department was replaced by the National Service of Gacaca Courts, so as to coordinate the Gacaca Courts activities and speed up this process.

The International Criminal Tribunal for Rwanda (ICTR) is an international court established in November 1994 by the United Nations Security Council to judge those people responsible for the Rwandan genocide and other serious violations of international law performed in the territory of Rwanda, or by Rwandan citizens in nearby states, between January 1 and December 31, 1994 (United Nations Resolution 955, 1994). The tribunal consists of 16 judges in four "chambers"—three to hear trials and one to hear appeals. In addition, there are 9 "ad litem judges," bringing the total to 25. At present, all 9 ad litem judges are assigned to chambers 2 and 3. There is an additional pool of 9 further ad litem judges who may be called on in the case of a judge being absent. The Office of the Prosecutor has an investigation section as well as a prosecution section.

The Registry, headed by the registrar and representative of the Secretary General of the United Nations, is responsible for the overall administration and management of the tribunal and provides judicial and legal support services for the work of the trial chambers and the prosecution. It also serves as the tribunal's channel of communication. The Registry has the Judicial and Legal Services Division and the Division of Administration. Additionally, there is a Witnesses and Victims Support Section consisting of two units: one for prosecution witnesses and one for defense witnesses.

The Gacaca system is representative of a model of restorative justice in that it focuses on the healing of victims and perpetrators, confessions, plea bargains, and reintegration to society. With these characteristics, it is a radically different approach from the retributive and punitive nature of justice of the ICTR and national courts. There has been great hope placed in the ability of restorative justice to contribute to reconciliation at the individual and community level. Overall, it would appear that Rwanda is in fact making a positive move toward having a court system that is effective in deciding the guilt of those brought before it. However, it is evident that the sheer volume of crimes committed has weighed down these courts considerably and that there is still a great deal of work to be done. It seems that moving toward a more Western way of trial by jury would be more effective in time, but now it would not be efficient with the large numbers of cases that have still not been heard.

Punishment

Punishing crimes in Rwanda is a difficult task given the vast number of crimes that occurred in a relatively short period of time, in a country whose laws and statutes are lacking. Those who have committed identical crimes are not necessarily dealt the same punishment, depending on the evidence presented. As discussed previously, there are four categories of convicts, categories in which punishments differ. The first category includes leaders and organizers of the genocide and offenders who committed ghastly murders or sexual torture. Other convicted of homicides are included in category 2. Category 3 includes those who are convicted of grave assaults, and finally, category 4 includes those engaged in property crimes connected with genocide. Category 1 offenses are punishable by death. All categories with the exception of category 1 received reduced sentences as part of guilty pleas. A greater reduction in punishment is available for those who plead guilty before the trial.

The distribution of defendants between the national and international fora has been an area of concern in the implementation of concurrent jurisdiction. Questions have has been raised about the appropriate distribution of defendants, which has

caused uncertainty and, at times, tension between national governments and the ICTR. The distribution of offenders has caused tensions between the Rwandan government and the ICTR partly because of miscommunication and more importantly because of a difference in agendas of each of the two groups. The biggest bone of contention came from the manner in which plea bargaining was administered.

The performance levels of the national justice system and of the ICTR remain to be seen, given that that the best form of justice that the ICTR or the national courts will be able to render will be justice delayed, for the reasons previously discussed regarding the large numbers of suspects on trial for crimes that were committed a great many years ago. It is not clear whether Rwanda would benefit more from utilizing international assistance or strictly adhering to the system currently in place.

Prisons

The U.S. Department of State Human Rights Report noted that conditions in prison and detention centers were harsh as a result of overcrowding from large convictions following the Gacaca hearings. The prison population in the 16 central prisons rose sharply from 87,000 at the end of 2006 to 98,000 in July 2007. However, the numbers went down to 58,598 toward the year's end because of a change in Gacaca sentencing structure. Consequently, 2 of the 16 decrepit prisons were closed down. With an increase in the government's interest in human rights in prisons, torture and inmate abuse declined sharply. Prison officials who were found violating inmates' human rights were relieved of their jobs. Conditions in prisons and detention centers remained poor with strong increases in inmate population. The government made strong efforts to improve health care as well as increase food budgets following the release of large numbers of inmates in the middle of 2007. Prison conditions for women prisoners were better relative to conditions in male prisons and detention centers.

Minimal food and water is given to those in prison, limited to a porridge for breakfast and a type of maize meal and beans for lunch. All incoming mail is read by prison officials prior to being handed out, and many inmates are expected to perform community service as part of their sentence. There are showers available for daily use, though they rarely have hot water available. The prisons have a high rate of HIV/AIDS and have few doctors able to treat this ailment. In comparison to the Western world, these conditions are substandard; however, without more substantial help from human rights groups, it seems as though the current conditions will remain.

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Saint Helena

Legal System: Common
Death Penalty: No
Corporal Punishment: No

Background

Saint Helena is a British overseas territory located in the South Atlantic Ocean, midway between Africa

and South America. The territory of St. Helena includes both the Ascension Islands and the group of islands of Tristan da Cunha. St. Helena is located about 700 miles southeast of Ascension Island and is over 1,000 miles to the nearest West African state. The Tristan da Cunha group of islands, considered the remotest archipelago in the world, lies over 1,500 miles to the south. St. Helena is a small island, about 10 miles by 7 miles, and the major city is James Town. There is no air link to the island, and all journeys are by sea, via Cape Town in South Africa, Ascension Island, or Walvis Bay in Namibia. Residents of St. Helena are fondly referred to as "Saints." St. Helena's population consists of a little over 4,000 residents, mostly European descendants. The Ascension Islands have about 3,000 in transient population, mostly American and British military personnel, and the Tristan da Cunha islands have about 300 inhabitants, mostly British. St. Helena's economy is mostly tourism, which has declined in recent years.

Queen Elizabeth II is the head of state and appoints a governor on the advice of the British government. Although responsibility for defense and foreign affairs remain with the United Kingdom, the unicameral legislative council consists of 15 members, 12 of whom are elected for four-year terms. The other three members are the governor and two ex officio members. The governor of St. Helena appoints administrators for both the Ascension Islands and Tristan da Cunha.

Legal System

According to the St. Helena Police Service, St. Helena's legal system consists of common law and statutes, supplemented by local statutes. The executive branch of government is composed of the chief of state, Queen Elizabeth II, and the head of government in St. Helena, the governor and commander in chief (Andrew Gurr as of 2007). The island's executive cabinet consists of the governor, three ex-officio officers, and five elected members of the legislative council. There are no elections because the monarch is hereditary, so the governor is appointed by the monarch. The legislative branch is a unicameral legislative council that holds 16 seats, including the speaker, three ex-officio and 12 elected members who serve a four-year term. Additionally, St. Helena's judicial branch consists of the Magistrate's Court, Supreme Court, and Court of Appeal.

According to the St. Helena Police Service, there is one local police department, which deals with all types of offenses (i.e., criminal, traffic, etc.). St. Helena uses a common law system, which means law and procedure are governed by laws and precedents. Their laws reflect the experience of practitioners, on a case-by-case basis, and the Supreme Court develops law. Truth-finding is limited by pleas and rules of evidence, which limits the fact-finding process as well. Grand and petit juries play a strong role, and there is an overall presumption of innocence until proven guilty.

Crime

Classification of Crimes

The role of the police in St. Helena is to deal with all types of crime, and the military defense of the country is left up to the United Kingdom. According to the St. Helena Police Service, the main legal classification of crime is indictable serious crime. The last criminal-related deaths in St. Helena were manslaughter in 2004 and murder in 1984. Drug offenses in St. Helena usually involve cannabis, which is the main drug there, and there has been one known case of Ecstasy. The most typical crimes in the rural areas of St. Helena are burglaries. The most typical of crimes in urban areas are alcohol-related offenses.

Offense categories for the overall crime rate in St. Helena are based on the following ordinances: assaults, burglaries/thefts, sexual offenses, drug offenses, firearm offenses, criminal damages, arson, and public order offenses. Violent crimes include assaults and disturbance of public order.

Crime Statistics

The St. Helena Police Service implements performance targets based on the criminal reports that

they receive. Respectively, each crime category is labeled as recorded, detected, and detection. "Recorded" represents the total number of crime reports received in a year. "Detected" is the number of crimes solved, and "detection" is the percentage of crimes solved. The following data were provided by the St. Helena Police Service for the last three years. Each table includes the number of crimes recorded (reported), the number detected (solved), and the percentage of detection (detected) from April 1 to March 31 of 2006, 2007, and 2008. These data show that, for the fiscal year of 2005–2006, St. Helena had 213 total crimes reported. Of those crimes, 8 were burglaries, 61 were violent crimes (assaults or public order), and 39 were committed by juvenile offenders. Of the 213 total crimes reported, 141 were solved; 2 of the 8 burglaries were solved; and 60 of the 61 violent crimes were solved. Data for the year 2006–2007 indicate that there was a reduction in overall crimes (184). However, the number of burglaries doubled from 8 to 16 from the previous year. Data for the year 2007–2008 show that the overall crime rate continued to decline, with the exception of a slight increase in the number of violent offenses.

Finding of Guilt

The judicial system consists of four courts: the Supreme Court, the Magistrate's Court, the Small Debts Court, and the Juvenile Court. The chief justice presides over the Supreme Court, which has jurisdiction over criminal and civil cases. Criminal cases are dealt with according to English procedure, as far as local circumstances permit, and the trial of the prisoner is by a jury of eight. The Supreme Court is located in the capital of Jamestown. The court also contains probate, admiralty, and divorce sections. However, the Court of Appeals is located in London. The governor has acted as chief justice in his absence. In the Magistrate's Court, the sheriff doubles as the magistrate and a justice of the peace. The Small Debts Court reviews civil cases not exceeding the amount of 50 dollars. The Juvenile Court is composed of three justices, and the only people allowed in the court are the justices, the police prosecutor, and the child's parents.

In 1990, St. Helena Police performed a search of a ship docked on the island and found five tons of cannabis. As a result, the captain and his crew (four Dutchman and three Ghanaians) were detained, and the ship was impounded. The biggest challenge was providing adequate legal counsel for the accused. Aside from the governor, the island had only one qualified lawyer, who was also the attorney general. A trial was conducted on July 8, 1991, and lasted nine days. After four and a half hours, the jury found the captain guilty of importing cannabis and four of the crew members of simple possession. The captain received nine years' imprisonment, one crew member received three years, and the remaining three received two years in prison.

Punishment

The superintendent of the police was also the superintendent of the prisons in 1973. The prison, located in Jamestown, has a total staff of three, the sergeant/warden, an assistant warden, and a matron. Male and female prisoners are housed in separate wings. In 1970, there were a total of 11 male prisoners. In 1971, this number increased to 20 male prisoners and 1 female prisoner. In 1972, the number decreased to a total of 5 male prisoners and 3 juveniles on remand. By 1973, there were a total of 8 male prisoners and 1 female prisoner. All of the prisoners were employed during their stay by way of carpentry and the use of certain power tools to perform tasks for the community. Corporal punishment is prohibited as a sentence for crime in St. Helena. It is also prohibited as a disciplinary measure in penal institutions.

According to the St. Helena government Web site, some of the key objectives for the prison services in St. Helena are to maintain prison staff without reliance on the police services and to develop rehabilitation programs that will aid inmates in their release back into the community.

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Sao Tome and Principe

Legal System: Civil/Customary
Murder: Medium
Corruption: Medium
Prison Rate: Medium
Death Penalty: No
Corporal Punishment: Yes

Background

The Democratic Republic of Sao Tome and Principe (STP) consists of two volcanic islands located in the Gulf of Guinea to the west of Gabon and to the south of Nigeria. Originally a colony of Portugal, STP is one of the smallest independent nations and continues to operate under a democratic multiparty system. There are approximately 160,000 people living in STP with 38 percent of the population geographically situated in urban areas and 62 percent located in rural areas. When STP gained independence in 1975, voters put into action a new constitution, which was subsequently ratified in 1990 following a national referendum and again in 2003.

STP's legal system is based on the Portuguese rule of law along with some customary laws. The Portuguese legal system in turn is based on Roman law and is considered to be in the civil or continental family of legal systems. The court system has three levels including a circuit court at the first level, a Supreme Court, and the Constitutional Court. The Supreme Court is the appellate court of last resort. The Constitutional Court is the court with the highest judicial authority and was only recently created, in 2006. In addition, the Constitution declares that all individuals are given the right to a fair public trial, the right to appeal, and the right to legal representation.

Despite the rights given to those accused and convicted of crimes, the current economic situation in STP has hindered the extent to which individuals are able to access legal resources. The poor economic conditions and limited availability of well-trained lawyers have impeded the right to a speedy trial because of an inability to train and hire judges. This has also led to judges being susceptible to bribery and corruption, decreasing the likelihood that one will receive a fair trial.

The judiciary in STP is designated as an independent entity not to be influenced by the executive branch of government. Based on this design, the judiciary is the only entity to make decisions regarding matters that are related to the constitutional rights of the nation's constituents. However, given that the executive branch controls the salaries of judges and police officers, the executive branch has the ability to influence decisions of judiciary and has reportedly done so in several cases. In response to corruption, amendments were made to the Constitution in 2003 to maintain an equal balance of power between the legislative and executive branches of the government. This entailed several mechanisms to be developed to prevent further manipulation by the executive branch. For example, the Constitution now requires that the executive branch undergo a reform following every election as well as the implementation of a tribunal whose duty it is to oversee the constitutionality of elections, political parties, and legislation.

Political and economic reforms have brought tension to the nation, which in turn has resulted in several challenges to STP law enforcement. Specifically, a recent shift from socialist to democratic rule along with insufficient resources and the recent discovery of oil-rich offshore areas in STP has sparked several liberal rights movements and increasing civil unrest. Several of these movements have come in

the form of coups. Police and military authorities have become more adept at dealing with such movements and have settled coup attempts with very little violence. However, three coups against the STP government were initiated by members of its own security forces as a result of discontent with poor working conditions and corruption.

The internal and external security of STP is provided by a 600-person force. Three hundred of these individuals make up the military force, and the other 300 are paramilitary, consisting mainly of part-time fishermen and farmers. In addition to the police and military, STP has both a coast guard and a presidential guard. The police and military force is supervised by the Ministry of National Defense and Internal Affairs and is spread out over eight districts.

The police force has been said to be ineffective in maintaining order, which may be a result of the excessive amount of corruption and impunity among police officers in STP. The police force has also been accused of abusing prisoners and using violent means to deal with peaceful demonstrators. There have been two incidents reported in which arbitrary and unnecessary lethal use of force by officers occurred. However, the STP police have recently combined training with Angolan police, enhancing their capabilities, especially in dealing with nonviolent crowd control. In addition, the lack of resources in STP has had a negative impact on police morale. In response, the government in STP recently increased police salaries and implemented better training strategies, which have both helped to curtail the extent of corruption and low morale among officers.

Crime

For the most part, STP is considered a peaceful nation with very little crime, which is apparent in the results from the seventh annual survey on crime reported by the United Nations (UN). This survey reports on those crimes for STP similar to index crimes recorded by the Federal Bureau of Investigations (FBI). However, the most recent year available that reports crimes for STP is 1994 (statistics on STP in recent reports is not available). According to the UN report, total crime in STP was 344.32 per every 100,000 inhabitants. Their equivalent to murder is intentional homicide, which was reported to be 6.22 per 100,000. Major assaults were 321.78, burglaries were 4.66, and theft was 11.66 per every 100,000 population. Prostitution is deemed illegal by law, but the police reported no incidences of such crimes. The rate for robberies, rape, and auto theft was not reported. Trend statistics from 1990 to 1994 show a consistent decrease in all types of crime with an overall decrease of 10 percent (382.62–344.32).

Both assault and rape against women are restricted by law, and these laws are highly enforced. The penalties for assault depend on the severity of the injury that the victim sustains. Severity is based mainly on the number of days that the victim loses work. Specifically, the law states that for every 10 days of lost work, the offender receives an additional 6 months in prison. Though not common, rape does occur in STP and is also highly punishable. Prosecutions in rape cases are usually successful when there is strong evidence of physical violence. Those convicted can receive anywhere from 2 to 12 years in prison depending on the extent of harm and the age of victim. Although the rate of rape was not noted in the UN report, violence committed against women was common in STP and sometimes included rape. The law specifically protects women from spousal abuse and assault in general; however, most women are reluctant to bring charges against their assaulter either because of ignorance of their rights or because of customs that restrict women from taking disputes outside the family. Laws also have been designed to protect children, specifically regarding child labor. The law states that employers cannot work children more than 35 hours a week or 7 hours a day. However, child labor is a reported problem in STP, yet no cases have been officially prosecuted.

Finding of Guilt

Criminal investigations are conducted by the police, and the law requires that for a suspect to be

apprehended, a warrant must be issued by an official who is authorized to do so. However, if an individual is caught by police while carrying out an illegal act, no warrant is necessary to detain the individual. Otherwise, authorities are given 48 hours to determine whether an illegal act has been committed and to charge the accused with the offense. Those accused of a crime are detained until the time of the trial unless able to make bail. The Constitution of STP requires that all defendants be provided with a fair and independent trial before a judge, by whom they are presumed innocent until proven guilty. A jury system is not used in STP. In addition, the Constitution gives those arrested for a crime the right to legal representation, and the state will provide counsel if the accused cannot afford one. Defendants are also provided with the right to confront accusers and witnesses and to view and access evidence against them, and they may also present to the judge witnesses and evidence favorable to their position.

The lack of resources in STP has resulted several legal rights not being honored. For example, there are few well-trained lawyers available to defendants. Although the exact number of judges in STP is not reported, long pretrial detention and docket backlogs are common because of a shortage of competent judges. STP also has a separate juvenile justice system, and this system has performed well compared to other African nations in making the nation child-friendly, according to the African Report on Child Well Being (2008). However, juveniles who have been convicted or are awaiting trial are detained and held with adult offenders.

Punishment

STP has recently taken steps to increase the level of humanity of the treatment that individuals convicted of crimes receive. STP is a signatory on both the International Convention on the Prevention and Punishment for the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although there has not been a recorded execution in the history of the nation, STP abolished the use of the death penalty in 1990 as a potential punishment. Despite these steps to make the legal system more humane, the prison conditions in STP are considered to be extremely harsh because of the lack of resources. Conditions in the prison facilities are described as poor, overcrowded, and unsanitary. Prisoners are also exposed to poor medical facilities and inadequate nutrition.

There is only one prison in STP along with an agricultural holding facility. The prison system is under the guidance of the Ministry of Justice, State Reform, and Public Administration. In 2002, there were a reported 160 prisoners, and between the two facilities, they had the capacity to hold approximately 300 prisoners. The prison rate for STP is 83 per 100,000 of the population, with 2.3 percent of the prisoners being females; 34 percent are pretrial prisoners, 6.9 percent are under age 18, and less than 1 percent is foreign prisoners. The prison rate in STP has steadily increased from 70 in 1992 to 82 in 2005.

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Senegal

Legal System: Civil/Customary
Murder: Low–medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: No
Corporal Punishment: Yes

Background

The nation of Senegal in located in western Africa bordering the nations of Guinea-Bissau and Guinea to the south; Mauritania to the north; Mali to the east; and the Atlantic Ocean to the west. Also along that coast is Senegal's largest city and political capital, Dakar. Senegal's population in 2009 was estimated at a little over 13 million. The vast majority of those who can read and write do so in French, Senegal's official language. A former French colony, Senegal gained independence in 1960 and adopted its own Constitution in 1963. Though it is primarily a single-party state, in 1974, a multiparty democracy was institutionalized.

A relatively small nation, Senegal is divided into only 11 administrative regions, each headed by a governor who is appointed by and responsible to the president. These regions are Dakar, Diourbel, Fatick, Kaolack, Kolda, Louga, Matam, Saint-Louis, Tambacounda, Thies, and Ziguinchor. The executive consists of three principle parts. The executive branch consists of the president with two five-year terms who appoints the prime minister, who in turn appoints a council of ministers in consultation with the president. The legislative branch consists of a bicameral parliament with two houses of government. In both houses, the legislators serve five-year terms.

The judicial branch is a collection of different appeal and trial courts with defined subject jurisdictions. The highest courts include the Constitutional Court; the Council of State; the Court of Final Appeals, or Cour de Cassation; and the High Court of Justice. Each of these courts, with the exception of the High Court of Justice, is made up of justices appointed by the president. These justices are typically senior magistrates or prominent attorneys or academics. In the case of the Constitutional Court, there are five justices, each assigned for a nonrenewable six-year term. This membership is refreshed as a rate of two new justices every two years, resulting in a completely new court every six years while assuring that the court never lacks senior leadership.

According to the Constitution of Senegal, the Constitutional Court rules on eight matters: the constitutionality of the rules of procedure of the assemblies; the constitutionality of the laws; the lawful character of the provisions of legislative form; the constitutionality of the organic laws; the admissibility of the private bills and amendments of parliamentary origin; the constitutionality of international engagements; the exceptions of unconstitutionality raised before the Council of State or the Supreme Court of Appeal and more generally; all the conflicts of competence between the Council of State and the Supreme Court of Appeal and between the executive power and the legislative power.

Juxtaposed against this relatively long list of jurisdictional areas is the Council of State, which rules on administrative matters. The Court of Final Appeal has jurisdiction over criminal and civil matters. Exceptional to these three courts, though, is the High Court of Justice. Composed of eight National Assembly deputies and one professional judge, this court rarely convenes. It only does so when a case arises against a senior government official (e.g., the head of state or a minister) for an act committed in his or her capacity as an official. When such a case does emerge, it must first gain three-fifths of the National Assembly vote for prosecution. If such a majority vote exists, the High Court may then meet. At the same time, a separate military court system exists for the prosecution of armed forces and gendarmerie members.

Crime

Criminal Law

Senegal's criminal code offenses are organized into three groups. Similar to Anglo-Saxon law with its infractions, misdemeanors, and felonies, Senegal has contraventions, delits, and crimes. The first is the least severe. Contraventions carry only a 1-month maximum incarceration penalty. Far broader, and encompassing the most offenses, are delits. These are punishable with a sentence ranging from 1 month to 10 years. Topping this scale are crimes, those offenses punishable by terms of incarceration greater than 10 years.

As a former French colony, much of Senegal's jurisprudence is based on French law. Like many of its neighboring nations, Senegal is facing an increasing problem with illicit drug transshipment along its coasts. Of special attention is the growth in Colombian cocaine shipments routed through Senegal. As a result, Senegal's criminal law provides severe penalties for possession, use, or trafficking in illegal drugs in Senegal, and convicted offenders can expect long jail sentences and heavy fines. The abuse of legal drugs in the form of driving while intoxicated is also severely punished with sentences including imprisonment.

The law also seriously addresses assault. Such acts can result in one to five years of imprisonment and a fine. Further, acknowledging the nation's problem with violence toward women, the law provides increased penalties (in both prison term and fine)

Police officers remove bags of drugs found in an underground cache in a villa south of Dakar, Senegal, on July 2, 2007. West Africa has become a hub for a drug-trafficking industry that threatens regional security. (Georges Gobeta/AFP/Getty Images)

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for assault when the violence is directed toward a woman. This stern treatment of assault convicts extends to domestic violence as well. In the event an act of domestic violence results in lasting injuries, that act is punishable with a prison sentence of 10 to 20 years. If it results in death, the law prescribes life imprisonment.

This structuring is reflected in rape statutes. Under Senegalese law, rape is illegal, though spousal rape is not. As with assault, rape is punishable by imprisonment. In general, rape can result in 5 to 10 years in prison. If rape escalates to the point of death, the penalty also escalates to life imprisonment. These penalties are not limited to rape. Several other sexual crimes have severe legal penalties too. The first is sexual harassment. A moderate problem, those convicted of sexual harassment can expect prison terms of five months to three years and fines of $100 to $1,000. Female genital mutilation (FGM), an issue throughout Africa, is similarly punished. If convicted, those directly practicing or ordering the practice of FGM can be sentenced to a term of imprisonment ranging from six months to five years. Even more resolute sentences are doled out for the sexual abuse of children. For that crime, sentences can range from 5 to 10 years' imprisonment. This crime is aggravated by the involvement of family members. If the perpetrator is a family member, the sentence begins on the higher end of the normal scale, near 10 years. In light of these penalties, unexpected sexual freedom is seen in the legality of prostitution. According to Senegalese law, the prostitute must be at least 21 years of age, must register with the police, must carry a valid sanitary card, and must test negative for sexually transmitted infections. In addition, pimping and soliciting customers are illegal practices. Paradoxically, although prostitution is legal (a liberal policy), homosexuality is legally forbidden (a puritanical policy). Much of this can be attributed to Senegal's strong Islamic roots and beliefs, which themselves speak of homosexuality in decidedly harsh tones. As a result, article 319 of Senegal's penal code prescribes a prison sentence of one to five years and a fine of $3,000 for those convicted of homosexuality or, as it is often coined, acts against nature.

Human trafficking remains a significant problem, and the legal code and Constitution outlaw it. The crime itself is more closely defined as the recruitment, transport, transfer, or harboring of persons, whether by means of violence, fraud, abuse of authority, or otherwise for the purposes of sexual exploitation, labor, forced servitude, or slavery. The seriousness of this offense can be seen in its penalties: 5 to 10 years in prison and a fine of $10,000 to $40,000. These punishments can quickly rise if the trafficking offense involves torture, barbarism, the removal of human organs, or the exposure of the victim to a risk of death or injury. In such a case, the prison term can reach 30 years.

Crime Statistics

Reliable crime statistics are difficult to come by in Senegal. More verifiable are the general trends and patterns of crime found there. And in general, street crime is the most prevalent, particularly in Senegal's cities. In larger cities, crimes such as pickpocketing and purse-snatching are exceedingly common and routinely committed by groups of criminals working in concert with each other. A routine scenario is the use of aggressive panhandlers, beggars, or street children to distract the attention of tourists in congested areas (e.g., Leopold Senghor International Airport and the restaurant areas of Dakar and St. Louis) while their accomplice commits the theft itself. Related to these low-level crimes is the regular occurrence of banditry. Contrary to the pickpockets and purse-snatchers, though, these bandits prefer to operate in the rural areas of Senegal, further from the threat of law enforcement. This motivation is further verified by the environment is which the bandits choose to operate, preferring to accost highway travelers under the cloak of darkness in the nation's central and eastern areas, both of which are far removed from the relative safety offered by police in Senegal's major cities, located along the western coast. Further inflaming this problem is the continuing low-level resistance fighting present in the Casamance region of southern Senegal despite a 2004 ceasefire agreement. Noticing these two crime trends, the Senegalese government has

acted. Recently a police unit was created with the expressed goal of addressing and ameliorating such tourist-centric crimes. But to date, no reliable information exists on the effectiveness of this tourist police unit.

Perhaps Senegal's best-known crime is fraud. With the explosion of the Internet's popularity over the past decade has also come an explosion of fraud, much of it originating in Senegal. These fraudulent schemes have a variety of forms. One of the most common begins with an unsolicited communication (i.e., e-mail) ostensibly from a conflict refugee or political leader's relative. Many such schemes have seized on the conflict in Sierra Leone to lend realism to their plot. In these communications, the writer promises quick financial gain to the receiver in return for his or her help in transferring large sums of wealth out of West Africa. At that point, one of two options is usually presented: advanced fees or bank account information. Under "advanced fees," the writer requests a sum of money from the receiver to pay either associated taxes or account fees, under the auspices of completing the transfer of the previously mentioned wealth. In essence, the e-mail recipient is led to believe that to collect his or her payoff, he or she must first advance the sender a set amount of money to complete the transaction. In reality, the payoff never existed, and the entire scam was constructed just for the sender to collect the advanced fee. However, if the e-mail's sender instead requests bank account information, the consequences can be worse. Such information is collected under the promise that the previously discussed wealth will be deposited into the receiver's account. Instead, all funds are withdrawn from the receiver's account.

Other crimes also remain problems for local law enforcement, some significant. These include burglary, pimping, underage prostitution, rape, spousal rape, domestic violence, child abuse, human trafficking, and FGM. On the last crime though, FGM, the Senegalese government has made important strides. Prosecution of FGM practitioners continues while the government also partners with nongovernmental organizations to educate the populace about the dangers and consequences of FGM. These efforts have shown progress as well. By one estimate, 1,679 of Senegal's 5,000 communities have abandoned the practice. Still, FGM remains widespread and is still often practiced openly with impunity. It is also of note that FGM and the other crimes discussed traditionally increase in occurrence immediately before religious holidays.

Police

Law enforcement in Senegal falls mostly into two broad groups: the police and the gendarmerie. The first group consists of 10 departments spread throughout Senegal and commanded centrally by the Directorate General of National Safety, which is housed within the Senegalese Department of Interior. These 10 departments are distributed such that each of Senegal's 11 administrative regions has at least one police station and one mobile safety brigade. A greater concentration of these police services is found in the capital and largest city, Dakar. Dakar has 15 stations. Within these stations, the personnel structure roughly mirrors that of American police with a chain of command and span of control. Similarly, ranks include officer, lieutenant, sergeant, and captain.

The second group of police is the gendarmerie, a military body tasked with many of the same responsibilities as the police discussed earlier. Under the authority of the Ministry of Defense, the history of the gendarmerie in Senegal can be traced back over 100 years. However, the modern-day gendarmerie mission came into definition more recently, on June 13, 1974, with decree 74–571. Since then, the gendarmerie has taken on a large, bureaucratic structure composed of numerous compartmentalized divisions, including criminal investigation, marine, and riot police. As a military group, the gendarmerie's ranks are fairly well known, including lieutenants, second lieutenants, warrant officers, and a large number of auxiliary gendarmeries who serve two-year terms of military service. The men and women (women becoming integrated beginning in 2006) who staff these ranks are relatively well-qualified given the recruit requirements laid out by the gendarmerie. Chief among these requirements

are Senegalese citizenship, an age of under 30 years at the time of candidacy filing, good physical health, acceptable vision, a certificate of education, and finally, proof of good reputation. Fulfilling these requirements, the gendarmerie candidate then attends the gendarmerie's training academy, the School of Formation of the National Gendarmerie. This process of recruitment and training, though beneficial in its selectivity, does pose an issue to the gendarmerie's stated objective of increased recruitment. As stated by the group itself, the gendarmerie would like to reach a level of 1 gendarme for every 1,000 inhabitants in rural zones and 1 gendarme for 10,000 inhabitants in urban zones. Currently there is 1 gendarme for every 12,000 inhabitants in rural zones and 1 gendarme for every 15,000 inhabitants in urban zones. In addition to this personnel objective, the gendarmerie is also in the process of technological modernization. Of special emphasis are the computerization of units and the modernization of the communication network.

Although the two groups responsible for policing Senegal have different histories and ranks, they share in common a number of powers, as well as vexing issues. Many of these vexing issues can be traced back to inadequate training and supervision, hopefully vestiges of a bygone era in Senegal policing. Today, new members of the police receive training in human rights protection, a step that is hoped to lessen abuse. However, this training has not taken effect just yet. According to the latest reports, abuse, rights violations, and corruption continue. Some of these problems are flamed by the vast power vested in the Senegalese police. An example of this power is visible in the simple order to provide identification. In Senegal, an officer may request identification from a citizen without cause. Failure to provide this identification may result in detainment. Further, police may detain a suspect without filing formal charges for up to 48 hours following arrest and up to 96 hours if so authorized by a public prosecutor. Further, police may detain someone for up to 192 hours in the case of a threat to state security. Power such as this is susceptible to and often responsible for police corruption, an ongoing problem, with officials often attempting to solicit bribes from tourists and others. This corruption extends to questionable investigations and inappropriately long pretrial detentions. These detentions also included abuses ranging from forcing detainees to sleep on floors without bedding to directing bright lights at detainees' pupils, beating detainees with batons, and housing detainees in cells with minimal access to air.

Contrary to this brutal treatment, journalists in Senegal have operated largely free of police harassment. This is expected because Senegal's Constitution provides for freedom of the press. In contrast to that, though, are a number of existing laws that allow the police to curtail that freedom. Such pliable laws prohibit offending the head of state, publishing false news, and threatening public order. In addition, libel is a criminal offense rather than a civil one. All of these have been used by police in the past to limit journalistic freedoms in Senegal. In most cases, the limitation comes in the form of self-censorship. Other times, it is more overt. One recent incident occurred in March 2008 when a Dakar reporter covering a violent antigovernment protest was assaulted by police. Later, police raided the reporter's office and demanded the reporter's materials.

Finding of Guilt

The Constitution of Senegal provides for an independent judiciary. But as with many other aspects of Senegal's criminal justice system, the ideal codified letter of the law does not always come through in the actions of the government. Here corruption and inadequate resources remain a persistent problem. The scarcity of resources has reached such a point that judges have begun to publicly voice their frustration with mounting caseloads, insufficient facilities and transportation, and understaffed offices.

Those issues aside, the legal system itself is complex and difficult to maneuver through without an attorney. These maneuvers, for the typical Senegalian, begin with the first 48 hours of detention following arrest. During these two days, the detainee does not have access to an attorney. Instead, the detainee is allowed a medical examination and,

in some cases, access to family members. Finally, after 48 hours of detainment, the detainee may access an attorney, but only at his or her own expense. It is not until the prosecutor has presented its case that the indigent is appointed publicly funded legal counsel. At arraignment, bail also becomes a possibility, though it is rarely used.

If the case is carried through to court, the defendant is typically tried before a panel of judges, not a jury, in civil and criminal cases. Only if the offense is serious, such as murder, does a defendant have a right to a jury trial. Though a jury trial is not assured, a public trial is. Along with this comes a presumption of innocence and the right to be present in court, to confront witnesses, and to present evidence. Also, if the verdict does not go in favor of the defendant, there exists a right to appeal. This right applies to all courts with the exception of the Cour d'Assises and the High Court of Justice.

Punishment

Many NGOs describe Senegalese prison conditions as poor, characterized by overcrowding, lack of medical care, and decaying infrastructure. Given that spending is $0.66 per prisoner per day, these conditions are unsurprising. The overcrowding issue is due in part to a lack of capacity, given that Senegal has not constructed a new prison since 1960. Instead, many of Senegal's current facilities are repurposed office buildings, modified to hold inmates. Dakar's Central Prison was designed to house 500 prisoners. It now holds 1,500. Another facility in Dakar, a penal camp, is currently operating at double its designed capacity of 400. This overcrowding has reached such a point that detainees are not even guaranteed a mattress (there is one for every five inmates), no less indoor housing. Indeed, in Diourbel, detainees were being housed outside in a horse stable, some for as long as two days. The overcrowding has also led to understaffing, with a handful of guards being responsible for the monitoring of hundreds of prisoners. Such was the case in September 2006 when 52 prisoners escaped from the Thies Prison. At the time of the escape, 3 guards were responsible for the prison's 668 inmates. The understaffing problem extends beyond the guards to the medical personnel. At this writing, there is only 1 doctor per 5,000 inmates. As a result, many prisons lack doctors at all. And when doctors are on-site, they often do not have adequate medicinal supplies, forcing those prisoners in need of medical treatment to be evacuated from prison.

Many of Senegal's purpose-built prisons suffer drainage problems during the rainy season and oppressive heat the rest of the year. Weather aside, human conditions inside are poor year-round. As a result of insufficient training and supervision, prisoners have been subject to cruel and degrading treatment by officials. The lack of supervision has also caused a partial failure of Senegal's separation regulations. Under those regulations, pretrial detainees are to be held separately from convicts, and juveniles are to be segregated from adults. But because of overcrowding and little supervision, these regulations are often broken. However, women detainees are regularly held apart from men under the supervision of female guards, as mandated by correctional regulations.

Senegal is not an altogether punitive society, though. In fact, a relatively well-established rehabilitation scheme is in place. This scheme is based on transcendental meditation (TM). Began in January 1987, TM was first introduced by Maharishi Consultants International to a population of 11,000 prisoners in 31 prisons. Since then, the program has reported astonishing improvements. Before the introduction of TM, Senegal prisoners had a 90 percent recidivism rate, in the convicts' first month of release. A study conducted after TM's introduction found that the rate had dropped significantly: Of the 2,400 prisoners released in a June 1988 amnesty, only 200 recidivated during the six-month follow-up. Of those who did recidivate, 80 percent had not practiced TM (though there is no comment on what percentage of the initial 2,400 practiced TM to begin with). As a result of the drop in recidivism following TM, Senegal closed three prisons and idled eight others dramatically below their capacity—

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decisions that, given today's overcrowding issues, may not have been advisable.

Michael Galezewski

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Seychelles

Legal System: Common/Civil
Murder: Medium
Corruption: Medium
Prison Rate: High
Death Penalty: No
Corporal Punishment: Maybe

Background

The Seychelles legal system is based on English common law, Napoleonic civil law, and customary law. The English common law deals with criminal matters. The Napoleonic civil law, inherited from Seychelles' colonial past, deals with tort, contract, and civil matters.

The first police force was created in 1775 when 15 soldiers were sent to perform security duties in Seychelles, which was then a dependency of Mauritius and France. In 1802, a small police force was established, which was composed of policemen and soldiers sent from the United Kingdom. Police presence increased exponentially until 1903, to reach the number of 79 officers based in 12 different stations in the territory. The force did not sustain dramatic changes until 1964, when a Special Force Unit was created to assist police officers with civil unrest fueled by political changes. The police force continued to endure changes until 1971, with the establishment of an airport police force and a training center. The independence of the colony, obtained on June 28, 1976, did not lead to substantial changes in the administration. However, real changes occurred after Rene's supporters' coup on June 5, 1977, during which police weapons were used by opponents of the ruling party. The corruption of police officers and their possible role during the coup highlighted the need for a complete separation between law enforcement and political movements. The police have since then continued to evolve toward a more innovative and modern approach to policing.

Current Police

The national police practices are based on British practices, and police forces are commanded by a commissioner appointed by the president. The president is at the head of the security apparatus composed of the Seychelles People Defense Forces (SPDF), the National Guard, the Presidential Protection Unit, the Coast Guard, and the police.

The current police force is made up of 500 officers assisted by a 60-member Paramilitary Mobile Unit. Also, a Presidential Guard composed of 300 highly trained members, including European mercenaries, is responsible for the presidents' safety.

The Seychelles police force has been dramatically restructured and reorganized since 2004 to face increasing criminal activities. The commissioner in charge of police forces has created the position of "performance audit officer," who is responsible for counteracting negative events that could impact the public's trust in the force. Also, this officer is in charge of monitoring officers' performance and may make recommendations to improve the quality of policing. The Seychelles police force is now divided into seven divisions: the

Operation Division; the Criminal Investigation Division, which includes the Scientific Support and the Criminal Record Bureau; the Seychelles Police Academy Division; the Special Support Division; the Special Branch Division; the Administration and Finance Division; and the Transport Security Division. The creation of such units now highlights a step toward the modernization of the police force.

The previous decentralized regional policing model was replaced by a Centralized Command Operation System based in the police headquarters in Victoria. The centralization of the police force is a major element of the reform affecting the department, which now holds as key principles of the policing the implementation of higher standards of performance, improved training at every level, better use of the civilian support staff, a more flexible reward system for officers, more effective use of technological advances, and a stronger partnership between the police force and other governmental agencies.

The Seychelles police force is a member of the Eastern Africa Police Chief Association formed in 2000. The Seychelles police have also been cooperating with the U.S. government to prevent possible terrorist attacks.

Crime

Classification of Crime

Crimes are generally classified into three types of offenses: against the person, against morality, and against property and the economy. Offenses against the person include murder, manslaughter, infanticide, abortion, and assaults. Offenses against morality include rape, indecent assaults, and prostitution. Finally, offenses against property and the economy include theft, burglary, robbery, and traffic offenses.

Crime Statistics

In 2006, 9 murders, including 2 manslaughters, were reported to the police. There were 119 robberies and 765 burglaries, which included 138 burglaries, 384 cases of housebreaking and stealing, and 243 cases of breaking into buildings and stealing. Out of 105 sexual assaults reported, 25 were cases of sexual interferences with child. The number of reported cases of drug trafficking or selling was 19. There were 5,669 crimes against individuals reported. Finally, there were 1,321 thefts reported to law enforcement agencies, including 44 thefts from dwelling houses, 3 thefts from hotels, 135 thefts from beaches, 65 thefts from persons, 35 thefts committed by servants, 151 thefts from motor vehicles, and 894 other type of thefts.

Drug Crime

The possession of controlled drugs has become a widespread challenge in recent years. In 2002, 222 cases of illegal possession were reported to the police, and in 2006, the number increased to 492. Drug trafficking has also increased, from 7 cases to 19 cases in 2006. Cannabis seems to be the most common illicit drug. Indeed, of all the individuals treated for drug addiction in 2005, 36 were treated for addiction to cannabis, 28 were treated for addiction to opiates, and 1 individual was treated for the use of amphetamine-type stimulants. The efforts to combat drug problems have led to the replacement of the Anti-Drug and Marine Squad by the National Drug Enforcement Agency. This agency comprises police, immigration, customs, and revenue officers. The legislators have also enacted the Anti-Money Laundering and Proceeds of Crime (Civil Confiscation) Law to support the fight against drug-related incidents. This law enables the state to confiscate property obtained from the profits of drug trafficking. The U.S. government has also joined the nation's efforts in the war against drugs, sending two experts to from CARE—the Campaign for Awareness, Resilience, and Education against Substance Abuse—to train social workers and police officers. CARE focuses on prevention of illicit drug use and provides educational programs to youths. The members of this program also collaborate with the police in the community to support citizens who wish to report cases of drug trafficking.

Finding of Guilt

Preventive Detention

If authorized by a court order, the accused may be held in detention without being charged for up to seven days. A magistrate or judge sets bail for the accused to secure his or her appearance in court. The office of the attorney general of provides relevant information on the accused to determine whether bail should be granted to the offender. Individuals who are unable to pay their bail must remain in custody during pretrial detention. Courts provide bail in most cases.

Rights of the Accused

The rights of the accused cannot be infringed based on a fundamental principle of innocence until proven guilty. The accused must be brought before a magistrate within 24 hours of the arrest, allowing for boat travels from distant islands. Accused individuals are also allowed to make phone calls during the detention. Although the Constitution guarantees the release of prisoners after six months of pretrial detention without any hearing, the inefficiency of the judicial system often prolongs pretrial detention, which causes serious ethical problems. It is not uncommon for prisoners to wait up to three years for trial or sentencing.

Assistance Provided to Accused

The accused can easily obtain defense lawyers in Seychelles because of the high ratio of lawyers in the population. Although free counsel is not a guaranteed right, legal aid is often provided to the accused, including those who are involved in civil cases based on the Legal Aid Act (cap. 110).

Arrest

Police officers in Seychelles are able to make an arrest with or without an arrest warrant, which is issued by the court. To seek an arrest without warrant, the police officer must reasonably suspect that a cognizable offense has been committed. A cognizable offense is defined as when an individual commits a breach of peace in the presence of an officer, obstructs an officer while he or she is on duty, loiters, or possesses housebreaking tools. A civilian can also make an arrest if a suspect commits an offense against an individual or his or her property.

Judicial System

The judicial system in the Seychelles is led by the chief justice of Seychelles. The judiciary is a three-tiered system composed of the Court of Appeal, the Supreme Court, and the other subordinate courts and tribunals. Juries hear cases of murder and treason. The Seychelles Court of Appeal, which is made up of five justices including the president, hears both civil and criminal appeals from the Supreme Court. The right to appeal to the Court of Appeal may be obtained from a judgment, direction, decision, declaration, decree, writ, or order of the Supreme Court. Upon the recommendation of the Constitutional Appointments Authority, the president appoints judges and justices of appeal for terms of seven years.

The Constitution deems the Supreme Court as having an original jurisdiction in issues relating to the application, contravention, enforcement, or interpretation of the Constitution. This court also has supervisory jurisdiction over subordinate courts, tribunals, and adjudicating authority. The Supreme Court is composed of the chief justice, the deputy judges, and the master of the Supreme Court.

The magistrates' courts, comprising one senior magistrate and two magistrates, have jurisdiction in suits for goods seized in execution of judgment or traffic offenses. These courts also treat civil cases, if the amount claimed or valued by the subject does not exceed 25,000 rupees. The Rent Board handles cases that fall under the Control of Rent and Tenancy Agreement Ordinance (cap. 166 of the laws of Seychelles).

Alternatives to Trial

Plea bargaining is a common practice in Seychelles. The accused may enter a plea of guilty after an agreement has been reached between the prosecutor

and the defense lawyer. In many less serious cases, plea bargaining occurs at the arraignment stage. The plea bargaining process is an essential tool to assure the swift disposition of cases. The offenders who are deemed incapable of standing trial because of insanity can be sent to a psychiatric facility instead of being incarcerated with the general inmate population.

Juveniles

The minimum age of criminal responsibility is 12 years old. However, criminal prosecution of children between 8 and 12 years of age is still possible under certain conditions. A juvenile under the age of 7 years old cannot be considered criminally responsible. The penal code (section 15) states that a juvenile under the age of 12 years old cannot be convicted of the offense of rape. The juvenile justice system suffers from a lack of community-based rehabilitation programs for juvenile offenders. Also, the Youth Residential Treatment Center offers only a few educational and rehabilitation programs.

Investigation

The criminal procedure code in Seychelles, enacted in 1955, originated from the English procedural law. Police investigations are sent to the office of the Attorney General of Seychelles, where a decision to charge a suspect is made. The British High Commission donated basic equipment for drug testing in 2007, enabling Seychellois police to conduct its own forensic test for drug related offenses.

Punishment

Types of Punishment

There are multiple methods of punishment used in Seychelles, such as fines, compensation, and forfeiture of certain assets. The offenders may also be liable to police supervision and can sign a "security for keeping the peace," making a promise to be law-abiding. Imprisonment is also used as a punishment for offenders. According to the Seychelles penal code, an individual convicted of murder faces mandatory life imprisonment. An offender convicted of rape is also liable to life imprisonment. The typical punishment for robbery ranges from 14 years to life imprisonment depending on the usage of weapon(s) during the commission of the offense. An offender committing a burglary can face up to 10 years in prison, and an individual convicted of theft can be imprisoned for up to 5 years. Prison sentences are considered mandatory or discretionary depending on the offense. Finally, the death penalty was abolished in 1993 by article 15(2) of the 1993 Constitution of the Republic of the Seychelles.

Prison

According to reports made by the U.S. Department of State, there were 305 inmates in Seychelles in 2008, including 185 men in pretrial detention and 7 women. Currently, there is only one correctional facility on the island. In 2003, neighbors of the Long Island Prison complained that inmates sometimes fled from the prison to attend parties and to commit more crimes. Long Island and its neighboring islands boast scenic beaches and are integral parts of the Seychelles tourism industry. Hence, fearing negative effects on tourism, the government began transferring inmates to the prison located on the main island of Mahe. In October 2006, all prisoners of the Long Island Prison were transferred to the newly opened Montagne Posee Prison located on the main island of Mahe. In June 2007, inmates incarcerated at the Grand Police High Security Police Prison were also transferred to the Montagne Posee Prison. A month later, the Grand Police High Security Police Prison was closed, leaving the Montagne Posee Prison as the only correctional facility in the Seychelles. The Montagne Posse Prison has a maximum capacity of 400 inmates; men and women are held in separate locations.

Inmates are not required to work, but training in professional trades is offered in prison. Available classes in prison include carpentry, gardening, mechanics classes, and library. Also, a minor part of the budget is allocated to the rehabilitation of offenders. Counseling, self-esteem workshops, and anger and stress management classes are offered to

willing offenders. Finally, programs are being developed to facilitate the reintegration of offenders and to help inmates cope with stigmatization upon release from the prison.

Inmates can receive visits in the facility and receive limited access to radio and television. Such privileges are hindered, however, by the major economic difficulties faced by the facility. Indeed, staff shortages have significantly reduced the time that inmates can spend outside of their prison cells. Also, inmates have been complaining of inadequate sanitation and a lack of water. Such deplorable living conditions ultimately led to a hunger strike in December 2007. Inmates protested for improvement of hygienic and sanitary conditions and for the end of food shortages.

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Sierra Leone

Legal System: Common/Customary
Murder: Medium
Corruption: High
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

Sierra Leone lies on the west coast of Africa with Guinea to the north and northeast, Liberia to the south and southeast, and the Atlantic Ocean on the west and southwest. It covers a total land area of 73,326 square kilometers. The country in 2004 had an estimated population of nearly 5 million.

A former British colony, Sierra Leone was declared a republic on April 19, 1971. The type of legal system in Sierra Leone can be best described as a mixture of accusatorial and customary. The political and social context of the criminal justice system is still evolving in Sierra Leone. The 1991 Constitution established a seemingly complete separation of powers. However, there are still overlaps in the three organs of government—the executive, the judiciary, and the legislature—which sometimes makes it difficult for the criminal justice system to operate effectively.

The criminal justice system in Sierra Leone comprises the police, the judiciary, the law officers department, and the prisons department as major stakeholders. The law officers department contains the office of the director of public prosecution, which supports the police in the prosecution of cases in court. The president appoints the chief justice, the attorney general, and the minister of justice. The latter is the vote controller and accountable officer for the judiciary in the cabinet. By this arrangement, there is every likelihood of interference by the executive in the prosecution and adjudication of matters by the courts.

Police

The Sierra Leone Police (SLP) began as a 600-officer organization during the latter half of the 19th century. The SLP operated as two forces: the Frontier Police and the Civilian Police—with the Frontier Police in charge of the protectorate, the hinterland, while the Civilian Police took control of the colony, the area surrounding Free Town, the present capital of Sierra Leone. Section 174 of the Sierra Leone Constitution of 1978 changed the traditional role of the SLP with the appointment of the chief of police as a member of parliament. The organization consequently became corrupt, ill trained, and poorly equipped, thus losing much of the public trust. This situation was salvaged, however, by the 1991 Constitution of Sierra Leone, which precludes any police officer from getting actively involved in

politics. Nevertheless, section 156(10) of the same Constitution formulated the Police Council, which acts as an oversight body to the SLP, with the vice president of the republic serving as chairman and with the minister of internal affairs as a member. This arrangement also has the tendency to cause political interference with the operational independence of the force.

In 1999, the SLP organization was restructured, and officers were retrained to become capable of performing effective police duties in a democratic environment. The strength of the SLP in 2008 stood at 9,642. This number is spread among 29 local command units (LCUs) into which the entire country has been divided for policing purposes. Each command unit is headed by a local unit commander (LUC). Additionally, each of the country's four regions has a regional commander to whom all the LUCs in that region report.

The regional commander of any region is the local police chief for that region. They are at liberty to develop their own strategic plans in line with the mission of the organization, work out their operational plans, and implement as they deem fit. They are accountable only to the Executive Management Board (EMB), which is composed of the inspector general of police (IGP), the deputy inspector general of police, and 12 assistant inspector generals of police. It is chaired by the IGP, and is responsible for strategic decision making for the entire organization.

Crime

Classification of Crimes

Crimes in Sierra Leone are classified into the following four basic levels:

1. *Treason.* Treason is a statutory offense under Sierra Leone law created by the Treason and State Offences Act, 1963, and carries the death penalty.
2. *Felony.* Felonies include capital or noncapital offenses. Capital felonies are punishable by death, and these include such crimes as murder, armed robbery, and robbery with aggravation. Noncapital felonies are punishable only by custodial sentence for a term between one year and life imprisonment. Crimes of this nature include rape, wounding with intent, manslaughter, larceny, receiving stolen goods, burglary, arson, obtaining goods by false pretenses, conspiracy to defraud, forgery, falsification of accounts, uttering counterfeit coin, and sedition.
3. *Misdemeanor.* Misdemeanors are minor offenses regarded as less serious than felonies. They are punishable with imprisonment for not more than five years or with a fine or both. This category of prohibitions includes common assault, indecent assault, driving without due care and attention, and fraudulent conversion.
4. *Customary law violations.* Customary law violations are infractions of the customary law that are punishable by imprisonment of not more than a year or a fine or both. Examples of customary law crimes include adultery, seducing another man's wife, harboring another man's wife, and incest.

Age of Criminal Responsibility

The law presumes that children under 10 are incapable of committing a crime. Between the ages of 10 and 14, a child is liable for any crime he or she commits if the prosecution is able to prove that the child knew what he or she was doing was wrong. Young persons at the age of 14 are liable for criminal acts, but if under the age of 17, they are tried in juvenile courts.

Crime Statistics

The Sierra Leone Police Crime Statistics Report revealed that for the period 2006–2007, a total of 72,802 offenses were recorded in various police stations countrywide. The Western Area recorded the highest with a total of 52,403 (72%); the Eastern Province was second, recording 8,871 (12%), and the Northern and Southern provinces were third and fourth with 7,889 (11%) and 3,639 (5%), respectively.

On April 23, 2009, at a dumping ground at Freetown, Sierra Leone, police officials burn 1,500 pounds of cocaine seized last year at Lungi Airport. A judge handed five-year prison terms to eight foreigners convicted of attempting to illegally import the cocaine in a Cessna plane with Red Cross markings. (AP Photo/Nazia Parvez)

Finding of Guilt

The Constitution of Sierra Leone 1991 and the Criminal Procedure Act of 1965 provide certain rights to accused persons from suspect stage to trial stage. These include the rights to be defended by an attorney or lawyer of their choice, to have a speedy trial, and to plead guilty to a lesser offense or to elect to be tried summarily.

The 1991 Constitution of Sierra Leone also stipulates that all criminal suits be brought in the name of the attorney general and minister of justice on behalf of the government. The real situation is that as a result of the lack of capacity by the law officers department, the director of public prosecution (DPP) grants a fiat to police officers to prosecute matters on his behalf at the magistrates' courts only.

The Sierra Leone legal system has not made provision for alternative dispute resolution. However, with the increase in population and crime rate, the SLP has adopted what is known as an informal resolution (IR) policy where minor cases are settled by police officers out of court. The majority of criminal cases in Sierra Leone are resolved by summary judgment, and a custodial sentence or fine is imposed.

One of the legacies left by British colonial rule in Sierra Leone is the dual court system—the British-oriented general law courts and the local courts. These are organized in a five-tier system:

1. *Local courts.* These courts have limited jurisdiction, adjudicating minor criminal cases involving customary laws. They are presided over by persons who are elders of the local

communities and have a wealth of knowledge in matters pertaining customary law. The country has a total of 287 local courts.

2. *Magistrates' courts.* These courts too have limited jurisdiction and have both original and appellate jurisdiction. They play three main roles. The first is the hearing and disposal of lesser criminal matters punishable by a maximum term of three years' imprisonment or a small fine or both. Their second role is to serve as appellate courts for customary law matters dealt with at the local courts. In such circumstances, the magistrate sits in what is referred to as the district appeal court, with two assessors who are experts in customary law. The third key role of these courts is to hold preliminary investigations or hearings into felony charges and, where there is sufficient evidence against the person charged with the commission of the offense, commit the matter to the High Court. Where there is insufficient evidence, the court will dismiss the case and discharge the defendant. Lawyers have a right of audience before these courts. There are 15 such courts throughout the country, located mostly in towns. To give wider access to the citizens, roving courts, or circuit courts, were introduced in 2006.
3. *High Court.* The High Court comes next in the hierarchy of criminal courts in Sierra Leone. It has original, appellate, and supervisory powers with jurisdiction over felonious cases and those involving treason. The cases are usually tried by judge and jury or, on exceptional cases, by judge alone. The High Court is continuously in session in the Western Area, where much of its work is concentrated. In the provinces, the sessions vary from two to three a year. All superior court judges are appointed by the president on the advice of the Judicial and Legal Service Commission.
4. *Court of Appeal.* Next in the hierarchy of the Sierra Leone court system is the Court of Appeal. This court hears and determines appeals made from decisions and orders of the High Court. The court is constituted by three justices, with the most senior presiding, for the normal business of hearing an appeal. Justices of appeal are usually appointed from the pool of judges on the High Court bench.
5. *Supreme Court.* The highest judicial organ in Sierra Leone is the Supreme Court. The main business of this court is limited to the hearing and determination of criminal appeals from the Court of Appeal. The Supreme Court also has original jurisdiction on issues that have "substantial questions of law" or "of public interest." The court also exercises supervisory jurisdiction over all other courts in the country. It is constituted for regular judicial business by five justices, including the chief justice as president or, in his absence, the most senior justice. Justices of the Supreme Court are usually appointed from justices of the Court of Appeal.

There is a separate system for juveniles. While being investigated at the police stations, juveniles are not supposed to be incarcerated in the same cells as the adults. The juvenile court is usually impaneled with one stipendiary magistrate sitting with two lay justices of the peace. Juveniles are remanded in separate remand homes during trials. When given a custodial sentence, they are sent to a separate prison for children known as an "approved school" for corrective training. Such a facility is available only in Freetown at the moment.

Punishment

Types of Punishment

The types of punishment typically used are fines, compensation, imprisonment, and the death penalty. In civil matters, compensation or reparations and fines are mostly used. In exceptional cases, imprisonment is used as punishment. For criminal matters, fines and/or imprisonment are mostly the case. Compensation is sparsely used in criminal matters, except where the complainant is allowed such compensation to offset medical, transport, and other bills.

The typical punishment for murder is life imprisonment, although the mandatory sentence according to law is death by hanging. Rape, according to law, should be punished by life imprisonment, but the punishment usually dished out is 15 years' imprisonment. The typical punishment for robbery with aggravation is life imprisonment, although there is a mandatory punishment of the death sentence by hanging, in accordance with the 1971 amendment to the Larceny Act of 1916.

The death sentence is also mandatory according to law for cases of treason, and the prescribed method of death should be death by hanging. However, ~~within the last five years~~, no execution has been carried out since October 1998 in Sierra Leone. According to the Pharmacy and Drugs Acts of 2001, serious drugs offenses should now get a minimum of 10 years' imprisonment.

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Prison

The inception of the Sierra Leone Prisons Service dates as far back as the colonial era, when, in August 1792, a jailer was sentenced by Governor Clarkson, then-governor of the Colony, for being found guilty of slave dealing. In the absence of a prison facility, he was confined on board a vessel in iron bars until he was taken to England to serve his sentence. In May 1793, the colonial powers resolved to build a kind of jail on shore. In 1801, a temporary jail was constructed at Fort Thornton in Freetown. After several efforts by successive governors at providing better prison facilities, a modern prison, known as the Freetown Central Prison, was eventually built at Pademba Road in 1914.

The Prisons Service has since grown over the years, with the construction of prison facilities throughout the country. There are currently 15 prisons in all, with a total 2007 population of 2,047 and an overall capacity of 2,235. However, the Freetown Central Prison, with a capacity of 324, had a 2007 population of 1,094, so it is obviously overcrowded, as are other smaller prisons, such as Bo Prison (capacity 80, population 113), Kenema Prison (150 versus 190), and Makeni Prison (75 versus 116). However, the remaining prisons are generally underutilized or nonfunctional.

Freetown Central Prison is located at the central part of Freetown, the capital of Sierra Leone. This location is not ideal because vehicular and human traffic create a lot of inconveniences. Within the prison, there are dormitories named Clarkson House, Blyden House, Howard House, Wilberforce House, Remand Block, Condemn Block, and Separate Cell that accommodate male inmates. The Female Wing is separated from the male blocks by a concrete wall.

In the middle of the prison, there is a long wooden building with different workshops for carpentry, shoemaking, blacksmithery, upholstery, masonry, and welding, among other skills. There are two wooden buildings for tailoring located by the side of the football field. There is also another building for weaving and artistry work. The prisoners are engaged in the these trades. Some of the machines in these workshops are dysfunctional. As a result, the inmates rely on hand tools to do their work. There is a church and a mosque for religious practices for the inmates and the officers.

The administrative structure is as follows: The regional commander is responsible for the supervision of all officers at the Freetown Central Prison and other prison institutions in the Western Area and assists in the general administration. The Officer-in-Charge of Technical Supervision supervises all technical or trades work. The Officer-in-Charge Female supervises all the female prisoners. There are units within the prison such as the record unit and reception unit, with officers who are responsible for the routine activities of the prisoners and the officers. There is a hospital, with one medical doctor and a number of nurses, where the prisoners are treated. Cases that are beyond their management are referred to the specialist doctors outside the prison.

All the administrative staff are answerable to the director of prisons whose office is at the prisons headquarters at New England Ville in Freetown. Inmates are required to work. Short-sentenced prisoners do outdoor labor at government institutions. There is a literacy class at the Freetown Central Prison and a literacy pilot project at the Moyamba Prison, both of which are sponsored by the Justice Sector Development Programme.

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Visits are allowed on Tuesdays and Fridays, normally in the morning hours. Relatives, friends, and families do come on those days to see their loved ones. Representatives of humanitarian organizations, nongovernmental organizations, and parliamentary committees also come into the prisons on assessment visits. Lawyers are allowed to visit the prisons to see their clients. All visits are conducted within the prisons' regulations.

Al Shek Kamara

Further Reading

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Somalia

Legal System: Islamic/Common/Civil
Murder: Medium
Corruption: High
Death Penalty: Yes
Corporal Punishment: Yes

Background

Somalia is located in eastern Africa, close to the Middle East. It has approximately 3,025 kilometers of coastline and a population of about 10 million. It borders Ethiopia, Djibouti, and Kenya. Somalia includes the semiautonomous Somaliland in northern Somalia, which declared autonomy in 1991; Puntland, around the horn of Africa, which declared autonomy in 1998; and Somalia, which is primarily southern Somalia. Any reference to Somalia in this entry refers to the southern portion of the country. There appears to be some level of stability in Somaliland and Puntland, but Somalia has not had a functioning government since 1992. It is a failed state, but since 2000 it has begun to develop a central government.

Soon after independence, the government considered the police left over from past colonial administrations as part of the armed forces. There was a police commandant and officers in each administrative district. They received training and aid from Italy, the United States, and West Germany. This Western influence was meant to counterbalance the Soviet support of the rest of the army.

The army and the police were used by the rival clans to gain resources and were used in inter-clan conflict. In October 1969, President Shermaarke was killed by one of his bodyguards, and the military, which prior to this was not involved in politics, rapidly took control of the country under the auspices of the Supreme Revolutionary Council, which appointed Major General Mahammad Siad Barre (Barre) to be president and the de facto dictator of Somalia. Initially, Barre's tenure seemed to be positive. He built new institutions and tried to write down the Somali language.

During the Barre regime, the police were advised by units from the German Democratic Republic, a Soviet client state. In 1972, the police were reorganized into three commands, which included Mogadishu, southern Somalia, and northern Somalia, and they were used by Barre to suppress dissidents and opposition.

Barre began the Ogaden War with Ethiopia in 1977, during which a number of internal Somali groups formed in opposition to Barre. He responded harshly to the actions of these groups and killed thousands of innocent people. After the war, the conflict continued and gradually alienated more of the clans. These dissident groups were armed by Ethiopia, which gave them military hardware and training and allowed these groups to operate out of their country. Barre was ousted from power on January 27, 1991.

The civil war destroyed the infrastructure of Somalia. In May 1991, Somaliland declared itself independent of Somalia. Sharia law was to be its legal basis. The country has worked toward becoming a parliamentary democracy. Somaliland appears to have a functioning police force and is relatively stable. Little is known about the police and security in Somaliland.

In Mogadishu, the capital of Somalia along the southern coast of the country, the civil war continued. This round of civil war destroyed almost everything that was left after Barre was ousted from power. This conflict, the destruction of Somalia's infrastructure, and a drought drove hundreds of thousands of people from the country.

In 1993, the United Nations sent international troops to Somalia to ensure the protection of food. This included personnel from the U.S. military. These UN forces were unsuccessful in their efforts. The United States withdrew from Somalia after the killing of U.S. soldiers during fighting in Mogadishu. The UN withdrew fully from Somalia in 1995. The country continued its descent into lawlessness.

Puntland declared itself an autonomous entity in 1998. Since then, it has worked to develop a government bureaucracy and administration after years of civil war and state collapse. It created a 5,000-strong security force in 1998 that was composed of urban police and paramilitary forces, according to a Puntland Development Research Center Web site Police perform services such as arresting criminals and holding them until they can be tried by the courts. The average police wage is $60 per month, and when the police do not get paid, they stop working. The efforts of the police are made difficult by a well-armed populace, strong clan ties, and limited resources.

While both Puntland and Somaliland were attempting to transform into stable states, fighting in the rest of Somalia continued. In October 2004, the Kenyan government helped to broker a deal that developed the Transitional Federal Government (TFG). The peace deal resulted in the election of Abdullah Yusuf Ahmed as president of the TFG (Yusuf). Yusuf was the former leader of Puntland.

The creation of the TFG did little to immediately improve the security situation. Because of security concerns and instability, the government was not relocated to Mogadishu, which was considered too dangerous. Despite pleas for assistance, Yusuf was not able to gain any assistance from the United States, the African Union, or other regional international organizations that would allow him to retake Mogadishu and begin to set up the TFG.

The main opposition to the TFG in Mogadishu was the Union of Islamic Courts (UIC). The Union of Islamic courts was a system of clan-based sharia courts that fought to gain control of Mogadishu through their militias. The UIC were supported by both Eritrea and the Middle East. By May 2006, the Islamic militias had defeated the warlords of Mogadishu and returned some stability to the city. The UIC defeated the U.S.-backed Alliance for the Restoration of Peace and Counter Terrorism during the fighting. The U.S. government was concerned that the UIC was affiliated with Al Qaeda or other Muslim fundamentalist terrorist organizations.

In December 2006, the Ethiopian military entered Somalia to support the TFG and to deal with the Islamic courts and their militias. Ethiopia had support from the U.S. government. The Ethiopian military was rapidly able to defeat the Union of Islamic Courts. Although the UIC forces were defeated, Ethiopian and TFG forces in Mogadishu and the rest of the country continued to be attacked by dissident groups and rival militias. The security situation in Mogadishu has been tenuous ever since, with suicide bombings, mortar attacks, hit and run attacks, and the use of improvised explosive devices. In 2008, a new president, Sheick Sharif Sheik Ahmed (Sharif) was elected, and Omar Abdirasid ali Sharmarke (Sharmarke) was appointed as prime Minster. The TFG continues to work to build Somali capacity and build governance in Somalia.

The TFG's Transitional Federal Charter outlines a framework for the government of Somalia. The charter describes a five-year plan that should lead to the establishment of a representative government after national elections. The charter outlines the need to have an army and a police force. But this has yet to be put in place. Police stations in Somalia

continue to be attacked by antigovernment groups and police personnel executed. This same phenomenon was identified in Somaliland where security makes up approximately 60 percent of the budget. The Somaliland police also operate with impunity and do not maintain order or limit violence.

Crime

In general, Somalia incorporates four distinct legal traditions into one legal mechanism. These include English common law, sharia (Islamic religious law), Somali customary law, and Italian law. The 1964 Uniform Penal Code worked to incorporate these various traditions into one system. The Somali criminal procedure code, which mandates matters of arrest and trial, was based in English common law. The crime problem in Somalia is of both domestic and international importance. Violence in Somalia is common. Weapons are easily available. Somalia's instability has driven it to be an area with a wide variety of international crime and security problems.

Classification of Crime

The Somali penal code was written in 1962 and became effective in 1964. The extent to which the Somali penal code is in use in Somalia or Puntland is unknown. The code noted that written law determined offenses and punishments. Crimes were classified into crimes and contraventions. Crimes are more serious offenses such as murder, rape, and robbery. Violent offenses include rape and various levels of assault such as very grievous hurt, grievous hurt, hurt, assault, robbery, aggravated assault, and assault. Property crimes include robbery and theft.

Contraventions are minor offenses, such as begging, failure to control animals, or other public order and public safety offenses. Contraventions are criminal offenses without criminal intent. These include begging, acts contrary to public decency, and cruelty to animals.

In Puntland, many of the laws and crimes appear to fall under customary law. This customary law is primarily governed by the sharia. For example, there is no insurance or traffic system to deal with car accidents. The rules that are followed are based in customary law, which makes it difficult to classify accidents appropriately. This also means that rules for compensation and responsibility vary from region to region.

Crime Statistics

Criminal statistics in Somalia and Puntland are not available. The U.S. State Department paints a grim picture of crime inside Somalia, including murders, thefts, and kidnappings. But due to instability and limited government capacity, it is not possible to identify levels of crime in Somalia.

The Somaliland Police Force recently released crime statistics in 2008, presumably the numbers of crimes reported to the police. However, it is difficult to understand these statistics because of the obvious lack of specificity of the types of offenses listed. They are as follows:

Deaths	73
Rape cases	126
Theft and robbery	2,467
Trafficking illegal materials and drugs	60
Injuries inflicted upon individuals	2,750

Human Rights Violations

In Somalia, human rights violations are rampant. Violations of human rights do occur in Somaliland and Puntland, but not to the same extent. The U.S. State Department indicates significant violation of human rights in 2008. The Transitional Federal Government, or its agents, and dissident groups were responsible for unlawful and politically motivated killings, kidnappings, torture, rapes, and beatings. Fighting between the TFG and opposition groups killed at least 3,000 civilians in 2008.

Discrimination and Violence against Women

Somali women face a significant amount of discrimination and violation of their human rights. There are laws against rape, but they are not enforced. There are no laws against spousal rape. Sexual

assault in the home is reported to be a significant problem. Rape is commonly used by police and military members and during inter-clan conflict. There are no laws against domestic violence, and no statistics are available on its pervasiveness.

The use of female genital mutilation (FGM) is pervasive in Somalia. In Somaliland and Putland, the practice is illegal, but the law is not enforced, and the practice continues. FGM is the practice of removing or sewing up parts of the female genitalia. UNICEF reports indicate that 95 percent of women in Somalia have undergone FGM. The procedure is primarily performed on young girls between the ages of 4 and 11.

Trafficking in Illicit Firearms

There is an international arms embargo against Somalia, but despite these efforts, firearms are easily available. This causes significant problems for Somalia, Somaliland, Puntland, and their neighbors. Somalia allied itself with both the Soviet Union and the United States at one time or another. The Institute for Security Studies noted that the Soviets reportedly gave $260 million worth of arms to Somalia, and the United States contributed an additional $154 million after that. This built up significant stockpiles of weapons in Somalia. After the fall of the Barre regime, roughly 500,000 weapons went into the hands of militias and other armed groups. These stockpiles, combined with general lawlessness and open borders, have made weapons a problem for this country as well as its neighbors. Small arms and light weapons are easily available. Small arms include such weapons as assault rifles and handguns. Light weapons include machine guns and rocket launchers. Somalia has become a conduit and a shipment point for weapons throughout the region.

Gun possession is an important part of Somali culture. Because Somalians have a herding and nomadic culture, they have come to rely on weapons to protect their resources. Weapons are also considered a symbol of power and wealth. Dowries are often made in the form of weapons. Atta-Asamoah in his research indicates that "a man who is able to offer a gun is believed to make a better husband." Weapons are also used as a source of wealth. Gun owners will reportedly sell their weapons when they are in need of money and then repurchase them after they regained their financial footing.

States bordering Somalia have evaded international efforts to reduce the supply of weapons flowing into the country. There are indications that Djibouti, Ethiopia, Yemen, Eritrea, Iran, Libya, Saudi Arabia, and Syria have broken the arms embargo on Somalia in one form or another. Their actions have included direct delivery of military material to factions, provision of military services, use of their territories for transshipment points, and entering into Somalia with weapons for use by troops.

The Use of Child Soldiers

The use of child soldiers is a longtime practice in Somalia. There are no records of children in the military forces of Somaliland. It is unknown whether child soldiers are fighting in Puntland. In the 2006 conflicts around Mogadishu, children were recruited by all sides including TFG forces, the Union of Islamic Courts, and the Alliance for the Restoration of Peace and Counter-Terrorism. In some cases these organizations forcibly recruited child soldiers. In some instances, it was reported that children as young as eight years old were recruited to fight. The Union of Islamic Courts forcibly recruited many children during its late 2006 fight to gain control of Mogadishu. According to Child Soldiers Web site, headmasters in Mogadishu schools were required to provide between 300 and 600 children to be made into solders. The Alliance for the Restoration for Peace and Counter-terrorism also recruited child soldiers into its ranks. Forced recruitment by this organization is disquieting because the organization was receiving backing from the U.S. government. The TFG openly admits that it has child soldiers in its ranks.

Human Trafficking

Reports indicate that human trafficking is a significant problem in Somalia. Somalia appears to be

a transit, source, and destination point for human trafficking. Puntland appears to be the primary point of entry for trafficking activities. The overall response of the Transitional Federal Government, Putland, and Somaliland to human trafficking has been minimal. Trafficking in children is exacerbated by the poor living situation of many Somali families. Some will surrender the custody of their children to relatives or others in their clan if they can no longer provide proper care. These children are then put at risk of trafficking.

There are reports of persons trafficked for labor to the Gulf states. Somali and Ethiopian women have been trafficked to the Middle East, Lebanon, Syria, and South Africa for domestic labor and prostitution. Somali men have been trafficked to the Gulf states to herd animals and do menial labor. Children have been trafficked for labor and commercial prostitution to Djibouti, Malawi, South Africa, and Tanzania. Cambodian men have been trafficked to work in fishing boats off the Somali coast. Armed militias are also reported to have trafficked women and children for sexual exploitation to both the Middle East and Europe.

International Piracy

Somalia has well over a thousand miles of unmonitored coastline. It is also very close to the shipping lanes of the Suez Canal through the Gulf of Aden. Middleton in his research on piracy in Somalia noted that it is estimated that 16,000 ships pass through the Gulf every year. These factors, combined with rampant poverty, high unemployment, available weaponry, and lawlessness make the coast of Somalia a haven for pirates who capture and hold ships for ransom. A Reuters Web site noted that between 2005 and 2008, the number of reported piracy attacks increased significantly, and between January and March 2009, the number of pirate incidents doubled from 2008. There were 18 attacks in March 2009 alone. These pirates typically operate out of coastal towns in Puntland.

Pirates generally take the captured ships to smaller ports on the Somali coast and hold them until a ransom has been paid. Ransoms for ships generally range from $500,000 to $2 million. Governments, shipping companies, and insurance companies are generally willing to pay the ransoms because of the high value of the ships themselves and the crewmembers on board. The international community is making efforts to deal with the ongoing and increasing threat of international piracy off the coast of Somalia. There has recently been increased activity of naval ships in the area to protect merchant ships and deal with pirates. Dealing with this problem is difficult because of the sheer size of the areas in which these acts are occurring and the continued instability in Somalia and Puntland.

Finding of Guilt

There are a number of different dispute resolution mechanisms utilized in Somalia, Puntland, and Somaliland. These systems are generally a blend of Somalian customary laws, sharia, British common law, and Italian legal codes. In all, available information on the legal systems of the Transitional Federal Government, Somaliland, and Puntland is limited.

Somalia

In 1962, Somalia developed a four-tiered court system. This court system includes a Supreme Court, a Court of Appeals, regional courts, and district courts. There are 84 district courts. The civil district courts handle applications of sharia law, customary law, or lawsuits up to 3,000 Somali shillings. The criminal district courts handle offenses punishable by fines or prison sentences less than three years. There are eight regional courts with three divisions. The ordinary division handles criminal and civil cases more serious than those handled in the district courts. The assize division handles those cases with crimes punishable by more than 10 years in prison. There is also a division that handles labor cases. There are two appeals courts, one in Mogadishu and another in Hargeysa in northern Somalia. There are two divisions in each appeals court, one that deals with ordinary cases and the other that deals with assize cases. The Supreme Court holds

ultimate authority to interpret the law and hear appeals of cases of lower courts.

Under the Somali penal code, to be criminally liable, a person must have committed an act or failed to commit an act that caused harm or danger to the person or property of another or the state. In post-independence Somalia, persons are innocent until proven guilty beyond a reasonable doubt. The burden of proof also rests on the state. A person can be only arrested if he or she is seen committing an offense or through a warrant authorized by a magistrate. A person has the right to appear before a judge within 24 hours of arrest. It is unknown the extent that these rights are upheld in practice.

Somaliland

When Somaliland declared itself an independent state, it rapidly worked to develop a legal system. The Somaliland Constitution provides for an independent judiciary. It largely adopted the court structure of Somalia mandated in the Somali Penal Code of 1964. In theory, it should incorporate many of the legal protections enumerated in the penal code. It has a system of district courts, regional courts, appeals courts, and a Supreme Court similar in organization to that utilized in post-independence Somalia.

There are functional courts, but there do not appear to be enough judges, and there is a lack of legal documentation. An Amnesty International report noted that the Somaliland legal system is understaffed and lacks qualified people. In 1999, there were believed to be 10 lawyers in the entire country. The Globalex Web site notes that in 2006, there were 33 functioning courts and 87 judges. These two problems combine to limit the system's ability to build judicial precedence. The judiciary in Somaliland is not independent, officials are reported to have interfered with the courts, and sometimes laws are used to detain people without trial. Corruption appears to be rampant.

Puntland

Putland operates under a charter that provides for an independent judiciary. But like Somaliland, the judiciary is not independent. There are provisions for a Supreme Court, Court of Appeals, and lower-level courts. The legal system in Puntland appears to be operating through a concurrent system of sharia courts, customary law, and Western legal courts. There are few formally trained lawyers, and those who do exist work in private practice. The judges in the sharia courts lack the formal education or experience to implement court procedure property. It is estimated that 70 percent of the judges in the legal system are informally trained customary (traditional) law judges, according to the Puntland Development Research Center. Most people who are arrested and remanded to prison pending their trial are not represented by attorneys. This occurs because they are unaware of their rights to have an attorney, because they do not have enough money to hire an attorney, or because the government does not have the resources to provide an attorney for them.

The Transitional Federal Government

The Transitional Federal Charter outlines the structure of the Somali court system. But it does not exist in practice. The charter is supposed to ensure an independent judiciary and also establishes the rights of Somali citizens. It establishes equal protection before the law; establishes freedom from detention unless pursuant to an act of a judicial authority or when apprehended committing a crime; calls for judicial proceedings to be open to the public; provides that persons charged with a criminal offense are innocent until proven guilty and have the right to communicate with their relatives and their lawyers; and calls for the provision of free legal services to anyone who cannot afford them and other basic human rights. The Transitional Federal Charter also describes the formation of the judiciary and court system, but outside of traditional dispute resolution and potentially through sharia, courts the legal system is nonexistent.

Punishment

Traditional Somali dispute resolution emphasizes the importance of collective punishments. Not only

is the individual punished, but so are the clans or groups to which the perpetrator belongs. This punishment would typically come in the form of a blood price or *diya*. The *diya* is used for all types of crimes, including for homicides. This system of paying the *diya* continued after Somali independence and is still used to this day.

There has been some effort to standardize compensation for *diya.* In Putland, compensation payment is determined by applying the sharia. The cost of compensation should be borne by the person who committed the crime, but he can ask his family for aid. According to the Puntland Development Research Center, some examples include 100 camels for the murder of a man and 50 camels for the murder of a woman.

The extent to which the *diya* is common throughout Somalia and Somaliland is unknown. *Diya* is paid not only for serious crimes but also for minor crimes. However, it is clear that the *diya* is an important tradition throughout Somalia.

Associated with collective punishment is the customary practice in Somalia of revenge killings. Revenge killings are the killings of innocent relatives of the perpetrator of a crime. Revenge killings can occur for a number of reasons. They can occur because the perpetrator enjoys clan protection and is not brought to justice. They can also occur when compensation for a prior case is not paid or when property taken or looted during a conflict is not returned to original owners.

There has been some movement, at least in Puntland, to eliminate the practice of revenge killings. Traditional leaders in Puntland indicate that a person who commits a revenge killing should lose the protection of his or her clan and be considered to be a criminal. The perpetrator must pay blood compensation (*diya*) on time. All conflict resulting from an incident should be resolved by clan elders, and any property or loot taken during a conflict must be returned. Judicial judgments must be passed swiftly, and legal action must be taken against those who facilitate revenge killings or protect those who commit them.

The Somali Penal Code

The principle punishments for crimes described by the Somali penal code include death, imprisonment for life, imprisonment, and fines. The Somali penal code provides for the death penalty for murder but for imprisonment and fines for other violent and property crimes. The penal code emphasizes that punishment is not to overshadow the need for the moral reeducation of convicted prisoners, suggesting support for the use of rehabilitation. The code requires that all prisoners work during their confinement. In return for their labor, prisoners are to be paid a modest salary. The code also outlaws the imprisonment of juveniles with adults. For contraventions, the typical punishments include imprisonment and fines.

The penal code prohibits collective punishments, which are a part of customary law. But the practice of paying *diya* for the commission of a crime was retained. Sharia was also made applicable in civil matters where disputes arise under the law. The extent that these punishments are in use at present is unknown.

Prison

Available information on the contemporary prison system is limited. In the past in Somalia, prisons held juveniles with adults. Juveniles were often incarcerated at the request of their families as punishment. Females were separated from males, but remand prisoners were not separated from sentenced prisoners. Information about prisons operated by the Transitional Federal Government other than that just provided is limited. There is some information available about the imprisonment in Somaliland and Puntland.

Somaliland

There are eight prisons in Somaliland. According to Amnesty International, in 1996, there were a total of 2,000 male inmates and 20 female inmates. People with mental illness are reportedly also held in these prisons due to a lack of treatment facilities.

In 1999, 70 percent of those prisoners were awaiting trial. In 2008, the main Somaliland Prison of Hargeisa, with a capacity of 150 inmates, had 700 prisoners housed there, according to a U.S. State Department report. That facility is operating at 466 percent capacity. Sanitation is poor, health care is limited, and there is inadequate food and water. The report found that the families of those imprisoned were expected to pay for the costs of detention as well as provide food. The United Nations Development Program and the European Commission recently helped build a new prison in Hargeisa, Somaliland. The prison began operations in December 2008. These prisons were built with the goal of improving prison conditions.

Puntland

The exact number of prisoners in Puntland is unknown. According to the Puntland Development Research Center report, cells in both prisons and lockup are described as having "no adequate space and are not suitable for imprisonment of human beings." There are not separate facilities for juveniles and women. There are no facilities for treating prisoners who are sick or who have a mental illness. Prisoners are not adequately fed or clothed or provided adequate bedding. Because prisons are located in urban areas, prisoners do not have the opportunity to exercise or even go outside. Prisoners are also not separated based on illness, adults and juveniles are housed together, drug offenders are not provided rehabilitation, and convicted and remand prisoners are housed together. The United Nations Development Program and the European Commission have recently helped build a prison in Gardo, Puntland. The prison began operations in December 2008. These prisons were also built with the goal of improving prison conditions.

Nathan Meehan

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South Africa

Legal System: Civil/Common/Customary
Murder: High
Burglary: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: High
Death Penalty: No
Corporal Punishment: No

Background

In 1652, the Dutch East India Company began building a fort at the Cape of Good Hope, modern-day Cape Town. By the turn of the 18th century, the Cape colony had come under control of Britain. In 1824, the British also established a settlement at the Bay of Natal on South Africa's eastern coast (modern-day Durban). During this same period, newly arrived immigrants, primarily from the Netherlands, Germany, and France, as well as descendents of the early Dutch settlers, established the independent Afrikaner republics of the Orange Free State and the South African (Transvaal) Republic. A result of this history is a hybrid legal system influenced by Roman-Dutch civil law tradition, the British common law tradition, indigenous African law that existed before colonization, and more recently, the international human rights movement. The primary sources of modern South African law

include the Constitution, legislation, case authority, and international treaties and conventions.

Crime

South Africa experiences the broad range of crimes found in all contemporary societies, as well as some crimes that are more unique, or restricted, to the African context. The current level of crime is considered by both the general population and government officials to be among the most important domestic issues facing South Africa as it seeks to stabilize the new democracy. Violent crime rates are high. Rape and domestic violence are especially high and are priority concerns of government. The numbers of crimes reported to the South African Police Service for the period April 2007 through March 2008 were as follows:

Murder	18,4871
Attempted murder	18,795
Serious assault	210,104
Rape	36,190
Aggravated robbery	118,312
Resident burglary	237,853

These numbers reflect a general 20 percent decrease over the prior year.

Drug Crime

According to the United Nations Office on Drugs and Crime (UNODC) report of 2007, South Africa is the largest market for drugs entering southern Africa. For the period 2001 through 2005 the South African Police Service reported an increase of 80.9 percent in drug-related crime. Cannabis, is the most prevalent illicit drug used in South Africa, followed by Mandrax (methaqualone). Heroin, cocaine, and Ecstasy use is also reported but at much lower rates, although use of these drugs also appears to be on the rise.

Police

The South African Police Service (SAPS) is a national police service within the Ministry of Safety and Security, with some decentralization taking place at the provincial level. The broad structure and mandate of the SAPS is set out in the Constitution, chapter 11, with more specific direction provided by the South African Police Service Act 68 of 1995. The service is headed by a national commissioner and five deputy national commissioners, each overseeing one of the major divisions of the organization, with the national commissioner reporting directly to the minister of safety and security. Each province is in turn headed by a provincial commissioner, with a structure replicating that of the national head office. As of June 2009, the service had approximately 145,000 police officials (excluding civilians) for a national population of approximately 48,000,000 citizens, resulting in a police population ratio of 1:330. Approximately 22 percent of police officials in the South African Police Service are female.

Municipal police services (MPS) have also been created under the authority of the South African Police Service Amendment Act, No. 83. of 1998. At present there are six MPS agencies, primarily in the largest cities and metro areas in South Africa. The establishment of additional MPS agencies is expected in the near future. Metropolitan police services are intended to supplement the SAPS and ensure that local governments are more able to directly address their own crime control priorities, given that national and local priorities do not always overlap. The mandate of metro police services is to enforce traffic regulations and the policing of municipal by-laws and regulations. The Police Service Amendment Act also added the authority to engage in crime prevention, which in the South African context includes preventive patrol, rapid response to serious crimes, and the investigation of crime. However, the investigation of crime is explicitly denied to municipal police services and thus falls within the exclusive jurisdiction of the SAPS. In addition, the MPS agencies are also limited in their authority to hold evidence and detain arrested persons.

Ministry of Justice

The Independent Complaints Directorate (ICD) is mandated to investigate complaints of brutality, criminality, and misconduct against SAPS and municipal police service (MPS) members and operates

South African police shoot rubber bullets at advancing protesters during a clash with demonstrators from the predominantly Muslim PAGAD (People against Gangs and Drugs) group at the Waterfront Shopping Center in Cape Town, South Africa, on November 3, 1996. Around 5,000 PAGAD protesters demonstrated against local drug barons. (AP Photo/Sasa Kralj)

independently of both the SAPS and municipal police services.

The Directorate of Special Operations (DSO), popularly known as the Scorpions, has had the mandate to investigate organized crime, organized corruption, serious and complex financial crime, and racketeering and money laundering. As a branch within the Ministry of Justice, the DSO's mandate remains outside of the general police functions of the Ministry of Safety and Security. As of 2009, the DSO was to be replaced by the Directorate of Priority Crimes Investigation (DPCI), with a focus on organized crime, commercial crime, and corruption.

The National Prosecuting Authority consists of a national director of public prosecutions, directors of public prosecutions, and prosecutors and has the primary function of the prosecution of criminal cases. The Authority has the power to institute criminal proceedings on behalf of the state and carry out any other functions necessary for instituting criminal proceedings. The national director of public prosecutions determines prosecution policy and the issuance of policy directives but is required to report and answer to the minister of justice, who exercises final authority. The Authority also has responsibility for the Witness-Protection Program, the Asset Forfeiture Unit, and units such as the Sexual Offense and Community Affairs Unit, the Specialized Commercial Crimes Unit, and the Priority Crimes Litigation Unit.

Finding of Guilt

Courts

South Africa's criminal court structure is multilayered consisting of the following courts:

- *Magistrates' courts.* The criminal magistrates' courts, the most numerous of the courts with jurisdiction over criminal matters, are subdivided into regional magistrates' courts and district magistrates' courts. Regional magistrates' courts have jurisdiction over more serious criminal cases in that they are authorized to hear all criminal cases, except treason and murder. A person convicted in the regional magistrates' courts can be sentenced to a maximum of 10 years' imprisonment, whereas district magistrates' courts, upon conviction of an accused, may issue sentences of only up to 3 years. More serious criminal matters are heard in the high courts.
- *High courts.* Currently, the High Court of South Africa is divided into 10 divisions with 3 additional local divisions. The high courts have jurisdiction over all matters in their geographical area, but normally exercise jurisdiction only over civil matters involving more than 100,000 Rand and serious criminal cases. Except where maximum and minimum sentences are prescribed by law, the sentencing discretion of high court judges is unlimited. The maximum criminal penalty in South Africa is a life sentence. The high courts are also the appellate courts for magistrates' courts lying within the jurisdiction of the specific high court.
- *The Supreme Court of Appeal.* The Supreme Court of Appeal is the court of last resort on general jurisdiction. It hears and decides appeals against decisions of the high courts not raising constitutional questions, and its decisions are binding on all lower courts.
- *The Constitutional Court.* Constitutional questions—matters including any issue involving the interpretation, protection, or enforcement of the Constitution—are decided by the Constitutional Court. The court is comprised of a president, a deputy president, and nine other judges and decides only constitutional matters and issues connected with decisions on constitutional matters. The court makes the sole and final decision as to whether a question arising is a matter of the Constitution or is connected with a decision on a constitutional matter. Matters before the court must be heard by at least 8 judges, but in practice all 11 judges hear every case.
- *Specialty courts.* Several specialty courts have also been established to address certain crimes, to divert cases from the principal courts, or to uphold traditional law within South Africa's historical tribal structure.
- *Community courts.* The community courts were established to address lower-level offenses principally affecting citizens within a narrowly defined geographic area. Thefts involving low value of loss or those of a frequent nature such as thefts of cell phones and handbags, offenses related to drug and alcohol abuse, and other petty offenses may come within the jurisdiction of community courts.
- *Chief's courts.* Primarily established to handle civil issues, these courts are designed to deal with customary disputes in terms of customary law and are informal hearings. Although decisions of chief's courts have the force of the decisions of magistrates' courts, their jurisdiction is limited to disputes of one African against another African within the jurisdiction of an authorized headman or his deputy. Appeals from the decision of a chief's court are made to the municipal courts having legal jurisdiction in the territory in which a chief's court may sit.
- *Sexual offense courts.* The courts function as specialist courts for sexual offense cases. They are established with the intention to increase sensitivity toward victims and to reduce the incidence of secondary victimization.

Judicial Appointments and Qualifications

The procedures for judicial appointments in South Africa are essentially characterized by the differing roles played by political and judicial officials, depending on the court to which a nominee is to be

appointed. All of the procedures, however, are established in chapter 8, section 174, of the Constitution. The majority of judicial appointments are made by the national president on the advice of the Judicial Services Commission (JSC), a constitutionally established body consisting of 23 members. The exact makeup of the commission itself is also specified by the Constitution (chapter 8, section 178). When an appointment is to be made to the Constitutional Court, or the appointment is that of the president or deputy president of the Supreme Court of Appeal, the national president is more directly involved.

Qualifications of Judges

The only criteria specified by the Constitution of South Africa for appointment as a judicial officer are as follows: "Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen" (chapter 8, section 174[1]). As a matter of practice, "appropriately qualified" has come to mean being qualified by legal education.

Attorney Qualifications

The first requirement for becoming an attorney is completion of the LLB, a four-year program of legal study. After attaining the LLB, a prospective attorney must then serve as a candidate attorney at a law firm or legal aid clinic, complete a practical legal training course that is recognized by a statutory law society, and pass the attorneys admission examination. There are two levels of legal practice in South Africa, attorneys and advocates, with the authority of an attorney being more limited than that of an advocate. Advocates have the greater expertise and are authorized to present cases in court in contrast to attorneys. Advocates are also empowered to give legal opinions and to assist in the drafting of legal documents.

Rights of Arrested, Detained, and Accused Persons

Rights of arrested, detained, and accused persons are quite extensive and are detailed in section 35 of chapter 2 of the Constitution. Specific rights are associated with specific stages of the adjudication process.

Arrested Persons

Every person who is arrested for allegedly committing an offense has the right to remain silent and to be informed promptly of the right and the consequences of not doing so. An arrested person also cannot be compelled to make any confession or admission. He or she has a constitutional right to be brought before a court as soon as reasonably possible and not later than 48 hours unless the courts are not operating within the prescribed 48-hour period. At this appearance, the arrested party has a constitutional right to be charged, informed of the justification for continued detention, or released. If detained, an arrested person has the right to be released if the interest of justice permits.

Detained Persons

Everyone who is detained, including every sentenced prisoner, has the right to be informed promptly of the reason for being detained. Detained persons also have the right to choose, and to consult with, a legal practitioner and to be informed of this right promptly, as well as the right to have a legal practitioner assigned by the state at state expense if substantial injustice would otherwise result. Detained persons have right to habeas corpus petition and the right to be released from unlawful detention. The Constitution also makes broad provision for the conditions of detention, including at a minimum adequate housing, nutrition, reading materials, and medical treatment. Finally, the Constitution requires that a detained person be provided with the opportunity to communicate with and be visited by that person's spouse or partner and next of kin, his or her chosen religious counselor, and his or her chosen medical practitioner.

Accused Persons

Once charged with a crime, every accused person has a right to a fair trial. Fairness means that every accused has the right to a speedy trial, a prohibition

against trials in absentia, and the right to a public trial before an ordinary court All accused persons are presumed to be innocent and have the right to remain silent, have the right to not testify during proceedings, and cannot be compelled to give incriminating evidence. The Constitution also prohibits the enforcement of ex post facto laws and provides protection against double jeopardy. If convicted, there is a right of appeal or review by a higher court. Finally, the Constitution makes direct provision for the exclusion of evidence obtained in a manner that violates any right in the Bill of Rights if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

Sentencing

The discretion of judges at sentencing has been broad. However, Parliament passed the Criminal Law Amendment Act, 105 of 1997, mandating minimum sentences for a broad range of offenses. At the high end is life imprisonment. Although historically available, the death penalty was removed by statute in 1997. Judges may vary from the statutory minimums, but only with justification that must be documented. Data from the South Africa Department of Correctional Services on sentenced prisoners in March of 2006 indicate 6,800 inmates were serving life sentences, and another 9,500 were serving sentences of more than 20 years, out of a total inmate population of about 112,000 sentenced prisoners. The modal category was a sentence of 10–15 years (24,000 inmates). Slightly less than one-half of sentenced prisoners were serving sentences of 10 or more years on March 31, 2006.

Punishment

The corrections component in South Africa has been the focus of sweeping reforms since the enactment of the Correctional Services Act (Act 111 of 1998) and the Correctional Services Amendment Act of 2001. They are intended to establish a correctional service whose goals and performance are consistent with modern international standards as well as falling within the framework of the South African Constitution. Although major indicators of progress are readily visible, continuous development of the service can be anticipated for the foreseeable future.

Department of Correctional Services

The Department of Correctional Services (DCS) today operates over 230 correctional centers, of which 8 are exclusively for women and 13 are youth development centers; another 86 centers accommodate women in a special section of a center. The remaining centers are male only. The vast majority of both sentenced male (67%) and female (86%) prisoners are incarcerated in medium-security centers. Both males and females are about as likely to be serving minimum-security sentences (+/− 3%). However, male inmates (31%) are about three times as likely to be serving maximum-security sentences as women (11%). The median sentence for all inmates is 7–10 years with a modal sentence of 10–15 years. Almost three-fourths of sentenced inmates are incarcerated for what are termed aggressive (56%) or sexual (16%) crimes, according to the South African Department OF Correctional Services.

In January 2006, the number of DCS authorized personnel was just over 39,000. Of the total number of positions authorized, slightly over 11 percent were unfilled at the time. The vacancy level presents a significant challenge to the DCS in its efforts to meet new legislative and policy mandates to reform correctional practices and services.

The major challenge for the DCS in the development of rehabilitative programming is the large inmate population. Recent statistics available from the DCS, at the close of the 2007 fiscal year, indicated a capacity of 114,644 beds. However, the total population, of both sentenced prisoners and awaiting-trial detainees (ATDs), was slightly over 161,000. In addition is the challenge of reducing the incarceration of youthful offenders. A youth under South African definition is a person 25 years of age and younger. Within this group are child offenders, those under the age of 18. There were 36,000 sentenced youthful offenders in 2007, of whom less

than 1,000 were child offenders. In contrast, out of 25,000 ATD youths, about 1,300 were children. Overall, the challenge to the DCS is that, as of yet, true alternatives have not been put in place to effect change to the correctional system. Reform of the system is ongoing.

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Further Reading

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Centre of Criminology, University of Cape Town: http://www.criminology.uct.ac.za/.

Correctional Services South Africa: http://www-dcs.pwv.gov.za/.

Institute for Security Studies (ISS): http://www.iss.co.za/.

South African Police Service: http://www.saps.gov.za/.

Swaziland

Legal System: Civil/Customary
Murder: High
Burglary: High
Corruption: Medium
Prison Rate: High
Death Penalty: Yes
Corporal Punishment: Yes

Background

Swaziland gained its independence from Great Britain in 1968 and was established as a constitutional monarchy with a clear separation of governmental powers. In 1973, King Sobhuza II repealed the Constitution and declared himself to be an absolute monarch. Since then, the country has generally been ruled under some kind of state of emergency, and the 1978 Constitution never came into force.

The country is neither a parliamentary democracy nor a constitutional monarchy. Rather, it remains a feudal system based on the absolute monarchy of King Mswati III, who assumed power in 1986 and currently presides over Africa's last remaining absolute monarchy. The king and his traditional advisors monopolize political power.

There is no separation of powers across governmental branches. The king is the ultimate authority over his cabinet, parliament, and the judiciary. He is commander-in-chief of the military as well as the commissioner-in-chief of the police forces. He also appoints any government officials of consequence, including senior civil servants, members of commissions, the cabinet, the prime minister, and superior court justices. Most of these officials are from his royal Dlamini family.

The people do not have the right to change the government, and the king is above the law, conferring on himself the prerogative of approving any proposed legislation. Parliament has no power, and the monarch bans all political parties. When the country finally held its first parliamentary elections in 2008, international observers had to report that the elections fell far short of international standards for fair elections because of substantial governmental interference.

In a tightly controlled process, in which all dissenting opinions were ignored, the king's delegates developed a new constitution. This new constitution went into force in 2005. Ironically, the Constitution actually includes a section titled "Protection and Promotion of Fundamental Rights and Freedoms," which essentially contains a sort of Bill of Rights that provides for various civil and political rights. But the Constitution has little substantive authority.

The National Constituency Assembly (NCA), a group of civic associations, petitioned the High Court to reject the Constitution and declare it null and void. The court rejected the petition. The Constitution formally removed the king's privilege to rule by decree. Yet he has continued to do so. He can also waive any constitutional rights at his whim. He holds absolute authority over the cabinet, parliament, and judiciary while upholding the ban on all political parties, as well as the country's feudal *tinkhundla* system of governance.

The *tinkhundla,* or local council, system involves 55 geographical areas ruled by traditional

chiefs. These chiefs are directly beholden to the king. Although these chiefs are supposed to be hereditary positions, the king can, and occasionally does, appoint anyone to be chief over any area. These local chiefs also control elections in the House of Assembly and play prominent judicial roles locally.

Amid this feudal system's absence of any separation of powers, freedoms of press, speech, assembly, association, and movement are all severely restricted. Police frequently and arbitrarily detain and harass journalists, opposition group members, trade union leaders and strikers, and any demonstrators. The lavishly spending, polygamous king presides over a severely impoverished populace, and corruption remains a serious problem.

Societal discrimination against mixed-race and white citizens is problematic in the country in which 97 percent of the people are racially African and 3 percent are of European descent. There are no minorities in the government. Forty percent of the population adheres to a Zionist religion, which is a synthesis of Christian elements and indigenous ancestor worship. A fifth of the population is Muslim, and a tenth is Roman Catholic. Women, children, and homosexuals suffer significant discrimination, and the country maintains the world's highest rates of both HIV infection and tuberculosis. The American-based Freedom House (FH) reports that in recent years, Swaziland has experienced its worst upheavals as a result of labor strife, antigovernment violence, and governmental crackdowns in decades.

Legal System

Swazi jurisprudence is notable for its two distinct legal systems. One is based on South Africa's Roman-Dutch legal tradition as applied in an English-organized courts system. The second system is based on unwritten Swazi customary law and tradition.

The Roman-Dutch Swazi national court system includes the Supreme Court, the High Court, the Court of Appeals, the magistrates' courts, and the judicial commissioner. Civilians are not tried in the military courts. The High Court has unlimited civil and criminal jurisdiction to hear and decide matters brought before it.

The Supreme Court possesses and exercises all the jurisdiction, power, and authority vested in South Africa's Supreme Court. All of the judges presiding over Swaziland's Supreme Court have been foreign-born, primarily retired South African judges. However, it has no jurisdiction over any cases bearing on the institution of the king and other Swazi law and customs. Nor do the courts have jurisdiction over the office of the Queen Mother, the regency, chiefs, the Swazi National Council, or the traditional "regiments" systems.

The High Court interprets the Constitution. It has otherwise unlimited civil and criminal jurisdiction to hear and decide matters brought before it. The Court of Appeals and magistrates' courts operate below the High Court. The 1938 Magistrates' Courts Act governs the magistrates' courts. The criminal jurisdiction of the top-level magistrates' courts encompasses all criminal offenses except treason, murder, sedition, offenses relating to coinage and currency, rape, and any conspiracy or attempt to commit any of these offenses. Civil jurisdiction is limited to cases involving a monetary value not exceeding 1,000 Emolangeni (US$125) and to matters not involving dissolution of a marriage, estates, and determinations as to mental capacity.

The king has judicial powers himself and has the authority to appoint, discipline, and remove judges, including the chief justice and the High Court and appellate court judges as well as all three categories of magistrates: principal magistrates, senior magistrates, and magistrates. The Judicial Service Commission (JSC), appointed by the king, advises him on such matters. When even this level of control displeased the king, he turned to the King's Special Committee on Justice, known as the "Thursday Committee," which has essentially usurped the JSC's role in dealing with judges whose rulings displease the king. The king ignores rulings that displease him, and the Thursday Committee attempts to harass and intimidate errant judges into compliance. When conflicts between superior court judges and the monarch have arisen, judges have been

known to resign in unison, sometimes striking for years. For example, in 2002, when they ruled that the king does not legally possess unlimited power or the right to simply rule by royal decree, the king aggressively rejected the ruling, and prompting all of the Court of Appeals judges to resign in protest, precipitating a judicial crisis. Not surprisingly, international legal observers have concluded that the country's Roman-Dutch judicial system is "crumbling" or nearing the "breaking point" and have called for "urgently needed" reforms.

Most of the Swazi population tends to use the 13 traditional Swazi courts in the *tinkhundla* system. Under the 1950 Swazi Courts Act, these courts serve the local chiefs and are responsible for administering unwritten Swazi law and custom. These emphasize a kind of restorative justice, typically meting out fines, and their criminal jurisdiction is limited to petty offenses such as theft, assault, and violations of Swazi law and custom such as the practice of witchcraft. They have limited civil authority and are authorized to administer customary law only "insofar as it is not repugnant to natural justice or morality or inconsistent with the provisions of any civil law in force."

But some traditional laws do conflict with the international treaties to which Swaziland is a party, particularly with respect to the status of women and children. Females have a subordinate status in the traditional courts. Children are deemed to belong to their fathers, and the practice of arranged marriages involving young females continues. So too does polygamy, despite the fact that the Roman-Dutch law prohibits the practice. Court presidents without legal credentials fulfill judicial roles and are usually elders appointed by the monarch.

Police

The country's police force was first established by the British imperial authority as the Swaziland Police Force, and officers were mandated to carry firearms and apprehend suspected lawbreakers. Upon independence, the king changed the name to the Royal Swaziland Police Service (RSPS) and appointed himself commissioner-in-chief. The RSPS is organized into four regional divisions, with different numbers of police posts in the country and with headquarters in the capital city Mbabane.

Police ranks are similar to those in British services, with a commissioner of police, a deputy commissioner, and an assistant commissioner. Below them are directors, senior superintendents, superintendents, and assistant superintendents. Beneath them, in 2002, were about 100 inspectors, 400 sub-inspectors/sergeants, and 2,000 constables. The sub-inspector rank has recently been abolished, though active sub-inspectors benefit from a grandfather clause until they retire.

The RSPS also includes an Operational Support Service Unit, which is assigned to respond to public disorder, bomb disposal, VIP protection, and vehicle or aircraft rescue operations. The RSPS also has a forensic chemistry lab for blood-alcohol content analyses. There is an officer training college, and some officers also train abroad. The U.S. State Department considers the RSPS to be generally professional, but it acknowledges that bureaucratic inefficiency is problematic and that the service is susceptible to political pressure and corruption.

The police commonly spy on labor unions, political groups, religious organizations, and others. They have also forcibly dispersed political demonstrators and strikers, inflicting numerous injuries in the process. Arbitrary arrests, the excessive use of force, assaults on citizens, and the use of sometimes lethal torture during interrogation are serious problems. For example, rangers at the Mkhaya Private Game Reserve are legally permitted to kill poachers whom they catch in the act of violating the Game Act. But in one recent episode, the reserve's general manager and several plainclothes RSPS officers broke into an unarmed man's home and shot him to death despite the absence of any evidence of a crime. More commonly, the Umbutfo Swaziland Defense Force (USDF) soldiers, ostensibly responsible for external security, patrol inside the country, setting up roadblocks, conducting random searches, and killing civilians. Indeed, security forces generally operate with impunity.

There is no independent investigative body to counteract police misconduct. However, the Constitution does provide for a Commission on Human Rights and Public Administration, mandated to investigate complaints related to violations of human rights, corruption and abuse of police power, poor public service, and the misappropriation of funds. It can publish findings and make recommendations. It can also refer matters to the director of public prosecutors or the attorney general, who is the king's principal legal advisor. The king appoints all of these officials, and if they decide not to prosecute police misconduct, and they typically do not, the commission cannot do so itself. The RSPS has its own internal complaints and discipline unit. This is secretive and does not prosecute or discipline its own.

The Service Charter of the Swaziland police calls for commitment to community policing and the formation of partnership with the community, ostensibly to make the police more accountable. In practice, this has meant the use of so-called community police, volunteer officers operating under the direct supervision of traditional chiefs in rural areas. The officers have the authority to arrest suspects and bring them before an inner council within the chiefdom for a customary trial. In cases involving more serious crimes, they turn suspects over to the RSPS.

Crime

According to the United Nations Surveys of Crime Trends and Criminal Justice Systems, the most recent available crime statistics were for the year 2000. The rates per 100,000 population for crimes reported were as follows:

Homicide	88.61
Major assaults	754.35
Assaults	1,356.84
Rapes	121.24
Robberies	259.14
Major thefts	1,093.78
Thefts	1,251.87
Burglaries	810.00

The law criminalizes rape, including spousal rape. According to the 2007 RSPS Annual Report, there were 663 reported rape cases. But the crime is clearly more common than this. Many Swazi men regard it as a minor offense, and many victims feel inhibited from reporting. Acquittal rates are high, and the laws are not effectively enforced.

Despite traditional restrictions against it, domestic violence, particularly wife beating, is common. According to a Central Statistics Office survey, 60 percent of men believed that it is okay to beat their wives. Victims can complain to both the Roman-Dutch and traditional Swazi legal systems. Women in urban areas often do. But in rural areas, women have little recourse because traditional courts are not responsive to the complaints of "unruly" and "disobedient" women. More likely is that women will be fined for wearing pants rather than traditional female clothing in public.

The law protects children under 16 from sexual exploitation, sets the age of consent at 16, and prohibits prostitution and child pornography. But child abuse, including incest and child sexual abuse, is serious. According to the UN Children's fund (UNICEF), one in three females have suffered sexual abuse as children, and one in four have experienced physical abuse. Most sexual abuse occurs within the home, and fewer than half of these crimes are reported.

The U.S. State Department has added Swaziland to its list of countries with the worst human trafficking problems because the authorities are not taking significant steps to comply with the U.S. Trafficking Victims Protection Act. Swaziland law does not specifically prohibit human trafficking, though the statutes prohibit kidnapping, forced and compulsory labor, aiding and abetting "prohibited immigrants" to enter the country, keeping a brothel, and procurement for prostitution.

Children are trafficked internally or from Mozambique for domestic servitude in the homes of wealthy Swazis and through the country to South Africa for domestic servitude and commercial sex exploitation. The International Organization for Migration (IOM) reports that Chinese women are

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trafficked through the country and sold in neighboring countries. Although the RSPS is generally responsible for enforcing immigration laws and suppressing cross-border crimes, there is no specific agency responsible for dealing with human trafficking or even maintaining records on its prevalence. There have been no known investigations or prosecutions of human traffickers.

Corruption is another serious crime problem. Although corruption is against Swazi law, authorities do not take it seriously. This is not surprising given that business contracts are frequently awarded based on business owners' relationships with government officials. The government has recently set up an Anticorruption Commission with a commissioner and two deputies. But the commission has not taken action yet, and corruption is never investigated or punished. Indeed, journalists who criticize the government, particularly the royals, or report on official corruption risk becoming the subject of libel suits or even arrest and prosecution for supporting terrorists.

Like other authoritarian governments, King Mswati's regime has enthusiastically embraced antiterrorism. A bomb explosion shortly before the parliamentary elections provided the pretext for the passage of the 2008 Suppression of Terrorism Act. Formally, this criminalizes all persons who aid, sympathize with, shelter, or provide logistical support to undesirable organizations, and those who violate the law are subject to arrest and imprisonment for 25 years to life.

The act also lists "specified entities," thus outlawing the Swaziland Solidarity Network (SSN), the Swaziland Youth Congress (SWAYOCO), the Swaziland People's Liberation Army (UMBANE), and the People's United Democratic Movement (PUDEMO). It defines terrorism very broadly so that it effectively criminalizes all progressive political organizations and its members. As Amnesty International and the Human Rights Institute of the International Bar Association concluded, the law is "inherently repressive," violating a range of basic democratic rights and the country's obligations under international and regional human rights treaties.

Finding of Guilt

The Constitution prohibits practices that constitute torture or cruel, inhumane, or degrading treatment or punishment. But the provisions pertaining to law enforcement are located in the "policy" section of the Constitution and are not enforceable in any court or tribunal. Moreover, the law does not specifically prohibit these practices, and they are not punished.

Suspected criminals have been subjected to such abuse even before any authority had decided to initiate any formal arrest and prosecution against them. Punitive mobs frequently beat, whip, and even kill individuals whom they have suspected of committing crimes such as burglary, rape, and assistance with abortions, despite there often being little or no evidence of guilt. Community police working for local chiefs typically participate in these mob attacks, and in one recent incident, a community police officer severely beat several homeless children for having slept in his patrol car overnight. These mobs are never investigated or punished.

The law requires that police officers get arrest warrants except when they observe a crime being committed or believe that a person is about to commit a crime. They are also required to get search warrants from magistrates. But police with the old rank of sub-inspector or higher have the authority to search without one if they believe that evidence might be lost.

Detainees must be charged with violation of a statute within a reasonable time, usually 48 hours, or in remote areas, as soon as the judicial officer appears. However, arresting authorities do not always present detainees within this period. Still, it appears that, in general, authorities promptly inform detainees of the charges against them and allow family members to visit them.

The Constitution includes the right for a detainee's next of kin, personal doctor, and lawyer to be allowed reasonable and confidential access to the detainee. Detainees may consult with lawyers of their choice. Defendants in the magistrate or superior courts are allowed to hire lawyers at their own

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expense. Unfortunately, widespread poverty is a barrier to general access to justice and fair hearings given that a large percentage of the population cannot afford to pay the legal fees.

There is no legal aid system, and the government pays for lawyers only when defendants potentially face either life imprisonment or execution. Further, defendants in the traditional courts are not even allowed the assistance of legal counsel. They must speak for themselves or be assisted by informal advisors. The Law Society of Swaziland serves as the bar association, including all practitioners. The national legal profession numbers just about 100 advocate lawyers and attorneys.

The absolute monarchy does not respect any right to habeas corpus. It provides only that persons be informed of the reasons for their arrests "as soon as reasonably practicable." During detention, police commonly prefer an interrogation technique known as "tubing." This involves temporarily suffocating detainees by putting rubber tubes around their face and mouth until they "confess."

There is a functioning bail system. If detainees can get a court appearance, they can request bail, except in murder and rape cases. In 2002, the Court of Appeals ruled that decisions to deny bail to detainees simply because they are accused of crimes such as rape are actually illegal. Prison officials have refused to abide by this ruling, prompting the courts to rule the officials in contempt.

Prolonged periods of pretrial detention are common. Ostensibly, authorities hold suspects so long to prevent them from influencing witnesses. Judicial inefficiency and staff shortages also contribute to the problem of prolonged pretrial detention. Some detainees have been exonerated after years of detention.

The director of public prosecutors, who is answerable to the JSC, has the authority to initiate and undertake criminal proceedings. As well, the public prosecutor has the legal authority to determine which court should hear a case. Usually, the police actually make this decision. If the king does not want the public prosecutor to actually prosecute someone, the king will have the prosecutor charged with "malicious prosecution" until the case is dropped.

The Constitution provides defendants with the right to "a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law." Trials are to be closed to the public only when necessary in the "interests of defense, public safety, public order, justice, public morality, the welfare of persons under the age of 18 years, or the protection of the private lives of the persons concerned in the proceedings." The judiciary generally abides by the right to public hearings.

Providing speedy trials has proven to be more difficult, and there is a backlog of cases before the courts. There is no independent court budget, and there is a shortage in basic equipment, trained staff, and efficient case management techniques. All contribute to delayed proceedings, as do the inadequate salaries and lack of judges. Only 13 legally qualified magistrates serve on the magistrates' courts.

These financial and efficiency problems are greater in the Roman-Dutch legal systems than they are in the traditional Swazi courts. In the former, defendants not only are entitled to the presumption of innocence and the support of legal counsel, but also are entitled to the adherence of proper formal procedural rules and the keeping of case records. These due process protections do not apply in the traditional courts. Neither system uses juries.

Defendants in the Roman-Dutch system not only can present and question witnesses but also are entitled to access government-held evidence. It appears that they are generally able to get this access even before trials begin. Both defendants and prosecutors have the right to appeal all the way up to the Supreme Court in both civil and criminal cases.

Defendants in traditional Swazi courts may speak on their own behalf and call witnesses. The courts may impose on them fines up to 100 Emolangeni (US$11) and prison sentences up to 12 months. These sentences are subject to review by traditional authorities and can be appealed to the High Court.

Because the Suppression of Terrorism Act is aimed toward groups and individuals deemed threatening to the monarchy, it is not surprising that it generally abrogates the legal protections allowed to those accused of common crimes. For example,

the act shifts the burden of proof to the accused, lacks any procedural safeguards during trial, and limits judicial review.

Punishment

The Internal Security Act of 2002 provides for severe penalties for anyone participating in or organizing political demonstrations, and it outlaws "support" for any political parties already banned by the king's proclamation of 1973. Swaziland's most prominent political prisoner is Mario Masuku. He is the leader of PUDEMO, one of the "specified entities" criminalized by the 2008 Suppression of Terrorism Act. Officials have not allowed religious leaders, labor union leaders, or foreign embassy officials to visit Masuku during his prolonged incarceration.

In many interpersonal crimes, however, offenders are unlikely to face significant punishment. Roman-Dutch courts have discretion regarding the punishment for assaults, other than rape, against women. They typically mete out light sentences. Even aggravated rape cases typically incur lenient sentences, despite the fact that they are punishable by up to 15 years' imprisonment.

The law prohibits forced exile, and the monarchy does not use it. Corporal punishment is not a lawful punishment for convicted criminals. However, it is legally and routinely inflicted on school children under age 16 who have committed no crime. Children may be beaten on the buttocks with up to four strokes. The death penalty is permitted by the Constitution. Though two persons have received death sentences, none have been executed since 1983.

The 1964 Prisons Act provides for the organization of the prison system. It also regulates the authority and duties of prison officers such as mandating that they carry firearms. The prison system is administered under the auspices of the Ministry of Justice. According to the World Prison Brief, the system incarcerated 2,546 people in its 12 prisons in 2008. This gave the country an official imprisonment rate of 231 prisoners per 100,000.

Because of the problem of prolonged pretrial detention, 25.1 percent of the prisoners are pretrial detainees. Convicts and pretrial detainees are held together. Foreigners represent 6.0 percent of the prison population, and juveniles represent just 0.5 percent.

Only one facility, Mawelawela, is designated for females. Although they sleep in different quarters within the prison, adults and juveniles are otherwise held together. Further, several children have lived there with their imprisoned mothers.

The government reports that its prison system is at just 89.7 percent of its official 2,838 capacity. This claim lacks credibility. The U.S. State Department concludes that Swazi prisons are quite overcrowded and that conditions are poor. Freedom House agrees and has noted that the prisons lack proper sanitation. As on the outside, HIV/AIDS is a severe problem inside the prisons, and rapes contribute to the epidemic. However, some prevention programs have been introduced inside prisons along with free HIV/AIDS testing, counseling, and antiretroviral treatment.

The torture ban inside the prisons is not enforceable in court. As well, beatings are quite common. The Swaziland Coalition of Concerned Civic Organizations reports that physical punishment of prisoners remains an accepted part of the culture, and authorities do not regard the corporal punishment of prisoners as a human rights violation. Life in Swazi prisons is indeed punitive.

Paul Schupp

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Tanzania

Legal System: Common/Customary
Murder: High
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

The United Republic of Tanzania consists of Tanganyika and the Zanzibar Islands. The union between the two territories occurred in 1964. Tanzania is located in the eastern part of Africa, sharing borders with Kenya, Uganda, Rwanda, Burundi, Mozambique, Zambia, Malawi, and the Democratic Republic of Congo, with the Indian Ocean on the east. With an area of 945,087 square kilometers, Tanzania's population stands at over 34 million according to the National Census of 2002. The United Republic of Tanzania is divided into 26 regions, with 21 in Tanganyika and 2 in Zanzibar, and with Dar es Salaam as its capital city.

Police

The Tanzanian mainland did not see European-style "civilian" police until 1916 when the German East African Company imported 31 South African Mounted Rifles for civilian police functions, who were in turn replaced by the English-style police in 1919 when Britain look over Tanganyika and established the Tanganyika Police Force and Prisons Service. The command structure was similar to other colonial forces established by the British in other commonwealth countries, with the top hierarchy consisting of white officers and the middle and lower ranks staffed with a mix of Asian and African personnel. In 1961, when Tanzania celebrated independence from Britain, the police force consisted of about 6,000. Changes in policing occurred in the 1960s, with a clear shift in colonial to postcolonial politics and with major expansion in security forces from nearly 3,000 to 40,000–50,000 strong, blurring distinctions between the police and the military. These shifts have been seen as the consequence of redefining national security with emphasis by regimes to safeguard their continued rule.

The Tanzania Police Force (TPF) is a national police force guided by the Police Force and Auxiliary Services Act 2002 (the Police Act), the Police Force Service Regulations 1995 (the Police Regulations), and the Police General Orders. Other legislation such as the penal code (which codifies criminal offenses), the Criminal Procedure Act 1985 (procedural guidelines), the Evidence Act (guidelines for gathering evidence), and the Prevention of Terrorism Act of 2002 all guide police mission and conduct.

The TPF is hierarchically structured. At the headquarters, the department is headed by the inspector general, who is supported by five commissioners: the Zanzibar police commissioner, the director of criminal investigation, the operations and training commissioner, the administration and finance commissioner, and the Dar es Salaam zonal commissioner. Outside the headquarters, the field establishments are spread over 23 regions on the mainland and 5 in Zanzibar consisting of 97 districts. These include the regional and district establishments, specialized units, and training institutions. Each district is headed by an assistant commissioner or a superintendent of police. Each district has many police stations headed by an inspector or a senior non-commissioned officer. The TPF has a number of different units, including the Airports Division, the Air Wing Unit, the Anti-Drug Unit, the Anti-Robbery Unit, the Central Railway Unit, the Anti-Terrorism Unit, and the Traffic Unit, among others. In addition, the TPF has provisions for auxiliary

police organizations, 15 of them, most notably in Dar es Salaam, to enforce local government laws, bylaws, and ordinances.

In 1999, Tanzania had about 27,200 police officers (officer-to-population ratio of 1:1,298), and despite a marginal increase in the police officers, the ratio of officers to population got worse (1:1,400), which was insufficient compared to the UN recommended standard of 1:450, making the TPF force ineffective and inadequate to conduct its operations. A report by the Commonwealth Human Rights Initiative identified police pay and living conditions as poor. As an example, the cite that a constable who joined the police in 2003 would have earned Tsh 1,087,440 annually (about US$820) and accommodations with poor living conditions and no access to toilets or water. There is no insurance for police personnel, and the compensation for personnel killed in action is too small to assist families. Conditions at work are poor, and basic equipment is not reliable, nor are the officers adequately trained to use the equipment well. In Dar es Salaam, there is one identification bureau to deal with ballistics and fingerprinting. However, there is no forensic laboratory at the present time.

Community Policing

This program draws its legitimacy from Constitution article 146(2)(b) to deliver the service the public deserves by enlisting the cooperation and participation of the communities it serves and other stakeholders. However, there are other programs that the TPF either has created or supports that involve citizen participation in social regulation.

Auxiliary police: To assist the TPF, under the Police Act, the inspector general police (IGP) has powers to design and supervise auxiliary police to maintain order and protect property in designated areas. The IGP has jurisdiction over training, salary, equipment, and administrative control of the auxiliary police. The auxiliary police have the power to search and arrest and are entitled to the same immunities as police officers; however, they have to surrender an arrestee at the nearest police station. The Dar es Salaam Auxiliary Police Force was established in 2001 to enforce city ordinances, guard city property, and assist local police in investigating crime and making arrests. A number of these units are deployed in Dar es Salaam, which includes the University of Dar es Salaam, Muhimbili National Hospital, Tanzania Harbours Authority, and Tanzanian companies such as the Tanzania National Petroleum and Tanganyika Wattle Company.

Sungusungu

In addition to the auxiliary police force, all across the country there are civilian police that engage in self-policing, the people's militia or the Sungusungu. The Sungusungu began in cattle-breeding regions of Tanzania Nyamwesi and Sukuma areas as a grassroots law and organization, a citizen patrol, to prevent cattle and stock theft resulting from inadequate police presence in these areas. The organization is widely spread across the country and primarily consists of young persons in the age group of 14 to 30 years.

Though they do not have any legal authority, the government amended legislation to formalize their role. They are now governed by a wide range of enactments that include the People's Militia Law 1973, People's Militia (Compensation for Death or Injuries) Act 1973, and the Militia (Powers of Arrest) Act 1975. The Sungusungu do have some police powers such as the right to arrest, but they do not carry weapons, nor do they have investigative authority. The Sungusungu organization differs from place to place, but its power and authority structure in relation to the TPF remains the same. A 1996 household survey in Tanzania suggested that citizens were more satisfied with the Sungusungu than with the TPF.

Crime

Classification of Crimes

Chapter 16 of the penal code (revised edition 2002, issued under cap. 1, s 18) outlines the definitions of crimes for each crime. Chapter 7 of the penal code outlines definitions for treason and murder, which are punishable by death. Chapter 7 also identifies

other felonies related to treason, such as treasonable felony (section 40), promotion of warlike undertaking (section 43), aiding prisoners of war to escape (section 46), seditious intention (section 55), and unlawful drilling (section 62).

Sections 195 and 196 of chapter 19a define manslaughter and murder. Other sections in this chapter define "malice aforethought" (section 200), provocation (section 202), "causing death" (section 203), and "when a child deemed to be a person" (section 204). Other offenses related to murder, such as accessory after the fact of murder (section 213), written threat to murder (section 214), conspiracy to murder (section 215), and suicide (aiding suicide, section 216), and attempting suicide (section 217), are provided for in chapter 21. Chapter 24 defines assaults (section 24) and assaults occasioning actual bodily harm (section 241).

Crimes against Morality

Chapter 15 classifies crimes against morality, which also include some forms of violent crime. Sections 130 and 132 define rape and attempted rape, respectively. The punishment for rape is life imprisonment with or without corporal punishment (section 131).

S__ A member of the Tanzanian police ignites a bonfire of over 2,000 confiscated weapons at a stadium near Kigoma on January 23, 2007. The guns were surrendered under a program to rid Tanzania of illegal arms. (AP Photo/Khalfan Said)
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There are many provisions in this chapter relating to sexual violence against young women and girls. These include abduction of girls under 16 (section 134), householder permitting defilement of girls under 16 (section 142), defilement of girls under 12 (section 136), and defilement by husband of wife under 12 (section 138). This chapter also penalizes abortion (section 150), abortion by women with child (section 151), indecent practices between males (section 157), incest by females (section 160), and unnatural offenses (i.e., against the order of nature, or animal, etc. [section 154]).

Property Crimes

Chapter 27 covers robbery and extortion. Robbery (section 285) is punishable with imprisonment for 20 years, and if it involves the use of weapon and causes injury, the imprisonment can be life imprisonment with or without corporal punishment (section 286). Other offenses in this category include attempted robbery (section 287), assault with intent to steal (section 288), and various forms of extortion (e.g., demanding property by written threat [section 289] and procuring execution of deed by threats [section 291]). Burglary, housebreaking, and related offenses are covered in chapter 29. These include breaking and entering dwelling house (section 294), entering dwelling house (section 296), and criminal trespass (section 299).

Human Trafficking

According to the U.S. Department of State Trafficking in Persons Report 2008, Tanzania is a source, transit, and destination country for men, women, and children trafficked for forced labor and sexual exploitation. Tanzania's penal code outlines various offenses related to human trafficking in chapter 25—offenses against liberty. These offenses are punishable by imprisonment of up to 10 years and a fine.

Terrorism

Terrorism as a problem in Tanzania has been highlighted since the terrorist bombing of the U.S. Embassy in Dar es Salaam on August 7, 1998. The Criminal Procedure Act of 1985, the Extradition Act, and the Evidence Act of 1965 have provisions to deal with terrorist acts. However, in response to increasing terrorist threats, the United Republic of Tanzania enacted the Prevention of Terrorism Act 2002, applying to both the mainland of Tanzania and Zanzibar.

Other Offenses

Piracy

A common problem in the Gulf of Aden and the Indian Ocean in recent years has been piracy, with increasing attacks on merchant ships occurring on the high seas off the coast of Somalia. According to the IMB Piracy Reporting Center, as of 2008, the pirates had attacked almost 100 vessels and had successfully hijacked nearly 40./ Section 66 of the penal code defines piracy, and offenders can be punished with life imprisonment.

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Poaching

Tanzania is rich with natural game reserves (84) and national parks (16), with hundreds of animal species. Though hunting is permitted, and the government issues gaming licenses, poachers target a range of wildlife, including zebras, wildebeest, antelopes, gazelles, hippos, and exotic birds. More than 1,300 people were arrested in the 2006–2007 season for illegal hunting, a number lower than that recorded in 2005–2006, when there were 2,303 cases.

Drugs

Illicit trafficking in drugs and psychotropic substances is a problem in Tanzania. The drugs include cannabis, khat (*Cath edulis*), hashish, heroin, cocaine, and Mandrax among others. Although some drugs such as cannabis are grown in the rural areas of the country and transported to the urban area, other drugs such as heroin come from Pakistan and India. Some of these contents are consumed in the country, but most of the drugs move to Europe and North America. The number of cases registered, amount seized, and persons arrested relating

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to cannabis and khat trafficking during the period 2001 to 2004 showed a fairly consistent increase according to Tanzanian Police records.

Illicit Trafficking in Firearms

Illicit trafficking in firearms is a major concern for Tanzania. Most of these arms are trafficked into Tanzania from neighboring states of Burundi, Rwanda, and Congo because of political instability combined with porous border. Most of these weapons are small arms left over from years of civil wars. The number of firearms seized between the period of January 2001 and December 2005 totals 3,098. Seized illicit firearms are routinely destroyed.

Cattle Rustling

Cattle rustling is a serious crime problem in Tanzania, particularly in the northern regions of Mara, Arusha, Manyara, Tanga, and Kiimanjaro; in the central regions of Dodoma, Shinyanga, and Singida; and on the borders with Rwanda and Burundi. Although people within the country steal cattle to smuggle them outside the country, it is also not uncommon for aliens to cross into Tanzania for the purpose of stealing animals. Sungusungu, originally the rural defense groups formed by volunteers, were among the first to organize to prevent and fight cattle theft in the rural areas of the Shinyanga, Mwanza, Mara, and Singida regions. Police records indicate that from 2001 to 2005, the following numbers of heads of cattle were reported stolen: 31,126 in 2001; 25,120 in 2002; 27,089 in 2003; 28,524 in 2004; and, 25,704 in 2005.

Crime Statistics

Crime data for the year 2000, the most recent year available, were published by INTERPOL, a sample of which follows, showing numbers of offenses reported by police:

Homicide/murder	1,846
Rape	1,758
Serious assault	5,408
Robbery and violent theft	786
Aggravated theft	30,556
Breaking and entering	23,415
Motor vehicle theft	230
Other thefts	29,269
Fraud	223
Counterfeit currency	398
Drug offenses	4,069

A. S. Mapunda reported in 2006 that during an 18-month period, from January 2004 to June 2005, police recorded 140 incidents of armed robbery committed by foreign nationals. However, in general, the number of armed robberies remained fairly similar for the years 2001–2005: 1,047; 1,237; 1,111; 1,175; and 1,080. Mapunda noted a slight increase in motor vehicle thefts during 2002–2005 compared to the years 1998–2000.

Since 1992, police have been seizing counterfeit 1,000 legal tender (bank notes), representing an increase in white collar crime. Since 1995, Tanzanian 5,000- and 10,000-shilling notes were the most popular tender for counterfeiting. Police data on the numbers of cases registered for the years between 2001 and 2005 were 494, 707, 722, 742, and 653, respectively.

Crime in Zanzibar

Mapunda also reported police data on crime in Zanzibar for the years 2000 through 2005. The number of murder cases increased from 18 in 2000 to 43 in 2003 and 25 in 2005. However, the number decreased to 9 in 2001 and 17 in 2002 and 2004. There were no reported cases of armed robbery for most of the years, with the exception of 2002 (5) and 2003 (1). Though drug trafficking cases increased slightly overall during the reported period, the sharpest increase was noted from 2003 to 2004. The sharpest increase in crime was noted for rape.

Finding of Guilt

Courts

Tanzania has a five-level judiciary and combines tribal, Islamic, and British common law. Christians are governed by customary or statutory law in both

civil and criminal matters. Muslims may apply either customary law or Islamic law in civil matters. Judges are appointed by the chief justice, except for those for the Court of Appeals and the High Court, who are appointed by the president. Advocates defend clients in all courts, except in primary courts. There is no trial by jury. The law also provides for commercial courts, land tribunals, housing tribunals, and military tribunals.

The Magistrate's Court Act of 1963 introduced a three-tier court system in Tanganyika, including (1) subordinate courts, (2) the High Court, and (3) the Court of Appeals. The subordinate courts consist of primary courts (limited jurisdiction and appeals can be made to the higher courts), districts courts, and resident magistrate's courts. Under the Magistrate's Courts Act of 1984, the primary courts are the lowest court in the country, established in every district. These courts cover all civil suits related to customary and Islamic law and all civil and Christian matrimonial suits. Appeals from primary courts are allowed to the district court. Currently, there are 206 district courts in Tanzania.

The next highest court in the hierarchy is the High Court established by article 108(1) of the Constitution. There are two divisions of the High Court, one in Tanganyika and one in Zanzibar. The High Court is headed by *jaji kiongozi,* the principal judge, and not less than 15 *puisne* judges. The court consists of 37 judges ruling in 11 zones. They are appointed by the president.

The highest court in the land is the Court of Appeals. It consists of the chief justice and four judges who are appointed by the president. The court hears appeals from both Tanganyika and Zanzibar. There are two attorney generals for the United Republic of Tanzania—one serving the mainland and the other serving Zanzibar.

Zanzibar's court system generally parallels that of the mainland but retains Islamic courts to adjudicate Muslim family cases such as divorce, child custody, and inheritance. Islamic courts only adjudicate cases involving Muslims. Cases concerning Zanzibar's constitutional issues are heard only in Zanzibar's courts. All other cases may be appealed to the national Court of Appeals.

The Constitution of Zanzibar came into effect in 1963 upon being granted internal self-government. With independence the Courts Decree 1966 made provision for a High Court, district courts, kadhis' courts, primary courts, and juvenile courts. The most significant development in Zanzibar was the introduction of people's courts in 1970 (People's Courts Decree 1969), which slightly altered the court system. These include, from lower to higher level, (a) the people's area courts, (b) the people's district courts, (c) the kadhis' Courts, (d) the High Court, and (e) the Supreme Council. Further reorganization occurred with the enactment of the High Court Act 1985, which provides for three levels of courts: the High Court of Zanzibar, the kadhis' courts, and the magistrates' courts. The magistrates' courts, like those on the mainland, consist of primary courts, district courts, and the resident magistrates' courts. The kadhis' courts are established in every district deal with the Muslim law relating to marriage, divorce, inheritance, and so on.

Tanzania's criminal trials are governed by the criminal procedure code that governs trials before the primary courts. The Magistrates' Courts Act 1963 governs trials before the subordinate courts and the High Court. An assessor presents a case in the primary or district court, and the director of public prosecutions presents a case in court for the Government.

The Constitution, in article 13(6)(e), ensures equality before the law and requires the state to guarantee that no person is subjected to torture or to inhumane or degrading treatment. The accused have a right to legal representation under section 310 of the Criminal Procedure Act, 1985. This includes the right to be informed of that right to legal representation by the trial court. There is no trial by jury in Tanzania, and criminal trials are open to the press and the public. Criminal defendants do, however, have the right to appeal. All defendants have a right to bail because it is considered a right for any person whose liberty is at stake pending the due process of law. There are three types of bail: the police bail, bail pending trial, and bail pending appeal. Though Tanzania has made great strides in achieving gender equality in the legal system, women are

seriously disadvantaged in the application of customary and Islamic law, particularly in the areas of property ownership, inheritance, and custody of children.

Juvenile Justice

Juvenile justice in Tanzania is governed by the Children and Young Persons Ordinance (cap. 13) enacted by the British in 1937 to deal with problem street children, both delinquent and non-delinquent. Today, in addition to cap. 13, the Probation of Offenders Ordinance, the Corporal Punishment Ordinance, the penal code, the Criminal Procedure Act, and the Magistrates' Court Act govern juvenile justice in Tanzania

According to cap. 13, a "child" is a person under the age of 12 years, and a "young person" is 12 years and over but below 16 years. Section 17 specifies a young person above 16 "not to be a child or young person," which highlights concerns for those older than 16 but younger or at the age of 18. The common types of offenses committed by juveniles in Tanzania include pickpocketing, stealing, robbery, sexual offenses, burglary, housebreaking, and aggravated assault. Data on juvenile crimes were not available. In a study that covered the years 2000–2002, data from Lindi, Mbeya, Mwanza, Tabora, Ngara, and Moshi indicate that of the 800 juvenile delinquency cases registered, as many as 443 were brought in primary courts, 353 in district/resident magistrates' courts, and only 4 in the High Court.

The 1985 Criminal Procedure Act, section 56, requires a police officer in charge of investigating an offense that involves a juvenile delinquent to notify parents or guardians. Only in rare instances do police officers notify probation officers. Similarly, like apprehension, in most instances, police officers interrogate young offenders in the presence of parents, guardians, or probation officers.

Section 4 of cap. 13 empowers the officer in charge of a police station to grant bail to an apprehended juvenile offender on the officer's own recognition (bond) unless the offense is punishable by a sentence exceeding seven years or it is in the interest of the offender to be removed from association with undesirable elements. The Criminal Procedure Act, section 64(3), also provides for the offender to be released to parents or guardians if the apprehended juvenile is younger than 15 years.

Section 3 of cap. 13 requires that the criminal hearing against juveniles be held in a different courtroom, and no members other than the members of the court, the relatives of the accused, and parties to the case can be present (section 3[5]). The 1985 Criminal Procedure Act, under section 148, provides for granting of bail during trial with some conditions, such as explaining to the juvenile in simple language the "substance of the alleged offense" or requiring the court to order a hearing if the juvenile pleads not guilty and so on.

Juvenile punishments are outlined under part 3 of cap. 13. The trial magistrate must be guided by the provisions outlined in section 22(2) of cap. 13, which states that "no young person shall be sentenced to imprisonment, unless the court considers that, none of the other methods in which the case may be legally dealt with by the provisions of this or any other Ordinance is suitable."

Punishment

Types of Punishment

The Tanzania penal code (cap. 16) outlines various punishments. These include death, imprisonment, corporal punishment, fine, forfeiture, payment of compensation, and any other punishment provided by the penal code or by any other law or ordinance.

The Death Penalty

The penal code's cap. 16 outlines the two offenses that draw death penalty. They are murder (section 197) and treason (section 40). Death penalty exemption is made if the convicted offender is a female and pregnant, in which instance she will be sentenced to life (section 198). However, recently, the Law Reform Commission has begun to review its position on abolishing the death penalty in response to human rights watchdogs. The last time a person was hanged in Tanzania was in 1994, and the number of inmates on death row was 286 as October 31, 2008.

Corporal Punishment

Corporal punishment is one of the punishments permissible under section 28 of the 1945 penal code and is administered in accordance with the Corporal Punishment Ordinance, 1930; the Corporal Punishment Order, 1930; and Government Notice No. 76 of 1941. Juveniles and females are exempt from corporal punishment under the Minimum Sentences Act (articles 2 and 3). Mandatory corporal punishment was abolished by the Minimum Sentences Act in 1972 but was reintroduced in 1989 by the Written Law (Miscellaneous Amendments) Act. In Zanzibar, special procedures for offenders under the age of 16 years are outlined in the Children and Young Persons Act. Corporal punishment is lawful in prisons. Prison officials can administer punishment (caning) under article 33 of the Prisons Act of 1967 for inmates guilty of offenses within the prison.

Imprisonment and Fines

Imprisonment is the most common form of punishment in Tanzania. Numerous offenses listed in the penal code (cap. 16) are punishable with some term in prison.

Prisons

The Tanzania Prisons Service (TPS) was officially established in 1931 and took over from the police force that was primarily responsible for administering punishments. The Prisons Act of 1967 embodied the guidelines relating to treatment of prisoners listed in the international basic human rights documents. Some of these include humane treatment of the offender as the core value with the overriding philosophy of rehabilitation and community safety. Alternatives to incarceration were introduced, including open farm houses and establishment of educational and vocational training centers in prisons. Further, training programs for correctional personnel were also introduced.

The prison service comes under the jurisdiction of the home ministry. The principal commissioner is the chief administrator who in turn is assisted by three commissioners: those for rehabilitation services, legal and prison affairs, and finance and administration. The prison system consists of 122 institutions, 21 regional offices, 2 staff training centers, 4 vocational training facilities, and a head office, with an overall total employment of nearly 12,000. The regional offices provide administrative oversight, and the head office effect management and administration of all prison stations countrywide. The TPS is responsible for the custody and care of more than 45,000 inmates, but its accommodation capacity is 22,669. This implies that the prisons facilities are overcrowded by more than 100 percent. In 2008, there were 40,613 inmates in Tanzania's prisons, of which a little more than 18,000 were on remand or on trial. Of these inmates, 1,261 were females.

Upon admission to the prison, inmates are segregated by gender, age, and type of sentence. Male and female prisoners are housed separately. The two age categories are those inmates between 16 and 20 and those 21 and above. Based on the nature of offense and repeat offender status, inmates are classified as star class (inmates with good behavior), ordinary class (those unsuitable for star class), and incorrigibles (troublesome offenders). To the extent possible, prisoners awaiting trial, young prisoners, juveniles, and civil offense prisoners are separated from the regular inmates. Even among inmates, to the extent possible, star-class inmates are housed separately.

Prison diet is determined by dietary scales by taking into account the inmates' cultural background and medical conditions. There are a minimum of three inmates to a cell but never less. Inmates charged with rule violations have the right to be heard, the right to appeal, the right to apply for review, and the right to make defense. Those found guilty receive additional punishment, which may be awarded by a subordinate officer or senior officer and may require approval of a qualified medical officer. In some instances, a punishment may require approval by the principal commissioner of prisons before implementation.

Inmates have opportunities for recreation with provisions for outdoor and indoor games. Educational classes are offered for those interested, and reading materials such as magazines, newspapers, and books are available for inmates. In addition, an

inmate grievance process is available through meetings called *barazas* about once every month.

Mahesh K. Nalla and Ernest Mallya

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Togo

Legal System: Civil
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Low
Death Penalty: Maybe
Corporal Punishment: Yes

Background

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The republic of Togo is a small country situated in West Africa between Ghana to the west, Benin to the east, and Burkina Faso to the north. The capital and largest city of the country is Lome. Roughly 6,300,000 people live in this area of 56,785 square kilometers.

The legal system of Togo combines French Napoleonic code with African traditional law, therefore making it an inquisitorial system. The Napoleonic code went into effect in 1804 and consists of 2,281 rules, or articles, covering a variety of subjects: persons, property, torts, and contracts. The classification as an inquisitorial system means that extensive pretrial investigations and interrogations take place. People are provided with an independent judiciary and are protected from arbitrary interference of privacy.

According to the 1992 Constitution, executive power is vested in the president. The president and the unicameral National Assembly are both elected for five-year terms by the universal adult suffrage committee. The president elects a prime minister, who in turn, with consultation of the president, appoints a cabinet of ministers.

The Constitutional Court of Togo has nine members and is the highest court of jurisdiction for constitutional matters and for preserving the basic freedoms and rights of the people. The Supreme Court, established in 1961, sits in Lome and consists of Court of Sessions, Appeals Courts, and Tribunals.. Tribunals are divided into civil, commercial, and correctional chambers. These include a labor tribunal, a tribunal for children's' rights, a military tribunal, and a special state security court. These tribunals are divided into civil, commercial, and correctional chambers. The Court of State Security, established in 1970, judges crimes against the internal and external security of the state. There is also a tribunal for recovery of public funds that handles cases involving misuse of public funds.

The Superior Council of Magistrates was set up in 1964 and is responsible for maintaining the independence of the judiciary system. This makeup of the controlling men of the Superior Council allows for politics to play a large role in the criminal law proceedings. The corruption of the president and his appointed officials has led to many attempted coups to overthrow the government and force the president out. The majority of these have failed,

and those that did not were soon reversed by the military controlled by the president.

Policing in Togo is based on the French system. There is a national gendarmerie, which is part of the armed forces and is directed by the minister of defense; a national police force under the authority of the minister of the interior, Security, and Decentralization; and the city police of Lome, responsible for policing the metropolitan area of the capital.

The gendarmerie is a paramilitary police force responsible for maintaining order throughout the country, updating the Central Criminal Archives, performing domestic intelligence duties, and training the Presidential Guard, whose sole responsibility is protecting the president. This force consists of five brigades: air, harbor, traffic, territorial policing, and criminal investigation.

The national police force, commanded by an inspector general, is responsible for the regulatory and administrative aspects of policing. It is also responsible for Togolese security and monitoring potential subversion against the state. This police unit has a number of different divisions, including intelligence (special service), railway, harbor, fire service, and the judicial police. The president has no control over this police force, as he does with the gendarmerie, so he has little trust in its activities. Therefore, he has established duplications of some of the tasks performed by the national police through the development of brigades attached directly to the president.

The judicial police are under the authority of the minister of interior, security, and decentralization and are responsible for criminal investigation. However, although organizationally they are under that control, when they conduct investigations, they come under the jurisdiction of the courts and are supervised by the chief prosecutor. During an investigation, they establish that an offense has occurred, gather evidence, and search for offenders. Once a charge has been developed, they have delegated judicial powers to hold preliminary inquiries, to receive complaints and charges, to search, to detain, and to process a suspect's testimony.

Work conditions are being improved to raise the effectiveness of the judicial police. Police buildings are being renovated and temporary detention facilities properly outfitted, computerization is being introduced, and office materials and stationery is being supplied. Officer ranks are being trained in school for judicial police, modern scientific methods are being introduced, and a minimum graduation certificate is set for judicial police agents.

Crime

Crimes that are a particular challenge to the country are pickpocketing, mugging, assault, theft, residential burglary, carjacking, violent attacks, vigilante/mob justice, domestic violence, human trafficking, drug-related crimes, organized crime, and business fraud. These are the main problems that the Togolese police force must face. They seem common to most countries and big cities in Africa. However, these crimes have a distinction because certain crimes are more focused on foreign visitors than natives of Togo, whereas others are problems of only the Togolese people themselves. Pickpocketing, mugging, theft, and business fraud are aimed at foreign visitors or targeted at businesses in foreign countries, and domestic violence, human trafficking, residential burglary, and drug-related crimes are mainly Togolese-only problems. Crimes such as assault, carjacking, violent attacks, vigilante/mob justice, and organized crime can be problems of foreigners and Togolese alike.

Over the past year, Togo has seen an increase in violent crimes throughout the country, including several machete attacks in poorly lit areas of Lome. Particular areas for foreigners to avoid within Lome, especially during the hours of darkness, include the Grand Marche (Lome's largest market area), the beach road, and the Ghana-Togo border areas. Foreign travelers are advised also to avoid driving late at night on the eastern section of the beach road, where criminals often target cars for theft.

In the first decade of the 21st century, business fraud had increased in Togo. The perpetrators of business fraud often target foreigners, using the facilities of the Internet. These fraud schemes are accredited with starting in Nigeria, but they are now present in western Africa, especially in Togo. These schemes pose a threat of financial loss and physical harm. Typically, these scams begin with an

unsolicited e-mail from an unknown individual that promises quick financial gain if the recipient assists in the transfer of a large sum of money or valuables out of the country. The scenario is as follows: An American must pretend to be the next of kin to a deceased Togolese who left a fortune unclaimed in a Togolese bank. The requests are usually for the payment of advanced fees, attorney's fees, or down payments on contracts. The final payoff does not exist, and the purpose of the scam is to get any money possible and to gain information about the victim's bank account.

Human trafficking is a major problem in Togo. Togo has been a transit point for human trafficking from Burkina Faso, Ghana, Côte d'Ivoire, and Nigeria. Although the law does not prohibit trafficking specifically, other statutes such as kidnapping, procuring, and other crimes linked to trafficking allow the prosecution of these people.

Children are the primary victims of trafficking. They are trafficked for indenture and servitude, which amounts at times to slavery. Women are the next most likely victims of trafficking. They are used for the purpose of prostitution or nonconsensual labor as domestic servants. Adult males are the least likely to be involved as victims in trafficking. This could be a result of the fact that they may be harder to control; the majority of the time, they are the people responsible for procuring the victims for trafficking.

Organized crime and drug smuggling are also large problems in Togo, as with all of western Africa. Togo is not a major drug-producing country, but it is an alternate trafficking route for shipments headed for the United States and England. Togo is such a popular trafficking route because of its loosely patrolled borders. These borders allow smugglers to pass through without much resistance from the Togolese police force.

Finding of Guilt

The legal system of Togo is based on the French Napoleonic code combined with African traditional law. The Togolese Constitution prohibits arbitrary interference with privacy and provides for an independent judiciary. Trials are public, and defendants have a right to counsel and to appeal cases from a lower court. The bar association provides attorneys for indigent defenders. Defendants may confront witnesses, present evidence, and enjoy a presumption of innocence. The court systems in Togo are overburdened and understaffed.

The Constitutional Court is the apex court. It is made up of nine members and is responsible for constitutional matters and for preserving the basic rights and freedoms of the people. The civil judiciary system is made up of the Supreme Court, the Court of Sessions (Court of Assizes), and appeals courts. There is a labor tribunal and a tribunal for children's rights. There is also a military tribunal and a special state security court; both hold hearings that are closed to the public, dealing with crimes against the internal and external security of the state. In the countryside, village chiefs or councils of elders try minor civil and criminal cases. Those who reject the rulings of these courts may take their case to the regular courts, which is the starting point for cases that originated in the urban areas of Togo.

There is no evidence of plea bargaining or other alternatives to going to trial. The majority of cases involve a short trial that usually ends in conviction with a sentence of at least a year in prison, plus fines, or one year of probation. The majority of cases end in imprisonment.

Arbitrary arrest and detention are major problems in the legal system of Togo. The law allows authorities to hold arrested persons without charge for 48 hours, with an additional 48 hours for cases that are deemed serious or complex. Detainees can be held without bail for extended periods of time with or without approval of the judge. After the detention period of 48–96 hours, a detainee has the right to access to family members or an attorney, but authorities often delay or deny this privilege. Detainees have a right to be informed of the charges against them; however, police often times ignore this right as well. The law in Togo stipulates that a special judge conduct a pretrial investigation to examine the adequacy of evidence and decide on bail. However, a shortage of judges and qualified personnel results in lengthy pretrial detention,

in some cases several years, which would be longer than the actual sentence if the person were tried and convicted.

The courts in Togo are understaffed and overworked. This leads to many backups in trial proceedings. Even with the stipulations and regulations in the Constitution, many rights and procedures are ignored by actors of the legal system.

Punishment

Most information gathered on the types of punishments is based on political crimes. These cases involved some of the members of the political party opposing the president. Charges were brought against these men for expressing their political opinions. These cases ended in varying sentences, ranging from 3–18 months in jail to 6–12 months probation, or $150–$500 fines. However, these were only political crimes based on expressing political opinion. Crimes such as drug smuggling and human trafficking result in long harsh sentences.

Prison

Prison conditions in Togo are very harsh, and overcrowding is a problem. Poor sanitation, unhealthy food, poor medical facilities, and drug use are common in the majority of the prisons. The central prison in Lome, Togo's largest, is built to hold 350 prisoners but is reportedly housing more than 1,500 inmates. Prison guards in the overcrowded civil prison in Lome charge prisoners fees to shower, use the toilet, or have a place to sleep. It is also reported that sick prisoners have to pay guards $2 to gain access to the infirmary.

In April 2007, a UN special rapporteur was invited by the government of Togo to visit prisons, gendarmerie, police, and military detention facilities without prior notice and to conduct interviews of the detainees. Two of the three prisons that the special rapporteur visited were severely overcrowded. Detainees sleep in overcrowded cells, often times in shifts. Food is restricted, and inmates rely mainly on supplies from family members. All prisons in Togo have nurses who provide daily treatment, but that service is provided only to those inmates who can afford the fee. This results in many serious cases going untreated.

Conditions are even worse in gendarmerie and police detention facilities. Detainees sleep on concrete floors in dark cells with little or no ventilation and minimal food and water. Inmates are permitted to use the toilet one time per day, and access to water for washing is restricted. Inmates are even required to be naked day and night to prevent suicide or attempted suicide.

There have been major improvements in the treatment of prisoners since 2005. There are few allegations of ill treatment or torture, but there are many allegations of beatings by guards or other inmates as a means of punishment. Inmates are beaten by wooden sticks, primarily to help in extracting a confession, but also for punishment or intimidation purposes. Verbal threats are also used to intimidate detainees.

Women and minors are housed separately from male inmates. Conditions in these prisons are generally better than in the men's prisons because of the lack of overcrowding. However, women and minors are more likely to be victims of ill treatment or torture. There is a lack of female guards in the women's prisons, which is a violation of international standards. This fact leads to the likelihood that they will be mistreated.

Minors face the greatest risk of torture and ill treatment. At the juvenile detention centers, all the children are held together, regardless of age. Ten-year-old children are held in the same prison as young adults. This is a clear violation of the basic principles of the Convention on the Rights of the Child.

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Uganda

Legal System: Common/Customary
Murder: High
Burglary: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

Uganda is a landlocked country in East Africa whose modern legal system is based on the common law tradition. The territories now identified with Uganda were placed under the control of the British East Africa Company in 1888. The country was then confirmed a British protectorate in 1894, and the British introduced the English common law system. Prior to this, most parts of Uganda applied customary law, which was unwritten law developed according to the customs and lives of the local communities. Customary law, however, was not abolished and continued to apply in the native courts, using the chieftaincy structures to administer the process. When Uganda gained independence from the United Kingdom in 1962, the government moved to unify the native courts and protectorate courts by enacting the Magistrates' Courts Act (MCA) in 1964.

The System of Criminal Justice

The British introduced a model criminal code in Uganda in 1930. Although the Uganda Penal Code Act (PCA) in its present form is still principally a reflection of criminal law as it existed in Britain in 1930, the 1995 Constitution established the current system of courts of judicature, which include the Supreme Court, Court of Appeal, High Court, magistrates' courts, and other subordinate courts.

The Supreme Court is at the top of the judicial hierarchy and is the final court of appeal. Below the Supreme Court is the Court of Appeal, an intermediate court that was established by the 1995 Constitution. The High Court is the next court of record in the judicial hierarchy, and it is the most important court of judicature in the Ugandan system. It has unlimited jurisdiction over both civil and criminal cases of any value and magnitude. In addition, it also handles appeals from the lower courts, which include magistrates' courts and local council courts.

The magistrates' courts were established by the Magistrates' Courts Act and are responsible for administration of criminal justice as well as civil proceedings in Uganda. At present, there are 26 chief magisterial areas in Uganda; each area is presided over by a chief magistrate with the power to supervise all magisterial courts in that area. Local council courts handle minor offenses and have limited territorial jurisdiction. Judges in Uganda are appointed by the president upon recommendation of the Judicial Service Commission and approval of Parliament.

Role of the Police

The Ugandan police system is hierarchically structured. There are three main departments, the Criminal Investigation Department (CID), the Directorate of Special Branch, and the Mobile Police Patrol Unit, plus other minor departments. Other departments include the traffic police, the Marine Unit, the Department of Private Security and Firearm Control, and the Child and Family Protection Unit. The Constitution mandates the police to cooperate with other security organs. This provision has been applied extensively by the government, which in several instances has deployed the military and other security agencies on law and order duties. The many joint operations between the military

and the police have greatly blurred the mandate imposed by the Constitution on these two government forces and contributed to an increasing militarization of the police.

Crime

Classification of Crimes

In Uganda, a felony is an offense that is declared by law to be a felony or that, if not declared to be a misdemeanor, is punishable, without proof of previous conviction, with death or with imprisonment for three years or more. A misdemeanor, on the other hand, is defined as any offense that is not a felony. The PCA further provides that when no punishment is especially provided for any misdemeanor, it shall be punishable with imprisonment for a period not exceeding two years. An offense is referred to as an act, attempt, or omission punishable by law.

Examples of felony offenses punished under the Ugandan penal code are murder, rape, treason, robbery, terrorism, habitual dealing in slaves, theft, and arson. Examples of misdemeanor offenses are unlawful assembly, public riot, insult to religion, common nuisance, keeping gaming houses, fouling water, and criminal trespass.

Specific Criminal Offenses

Rape

The law on rape has been criticized for its narrow definition and failure to recognize that various types of forced sexual acts might have serious impacts on the victim, including psychological trauma. The Uganda Law Reform Commission recommended that the definition be expanded to any act of a sexual nature between two persons without consent. This definition would include homosexual rape and forced oral sex, as well as the use of other parts of the body to penetrate. The burden of proof in rape cases is on the prosecution, which must always prove the offender's culpability beyond reasonable doubt; the onus never shifts.

Cyber-Crime

Uganda enacted the Computer Misuse Act in 2004. The act criminalizes various behaviors, such as distributed denial of service, cyber terrorism, cyber stalking, phishing, identity theft, hacking, and spoofing. The major cyber-crime cases detected so far involved inter-country situations, including within Nigeria, Congo, Kenya, and Canada.

Terrorism

The Anti-Terrorism Act was adopted in 2002 in the aftermath of the 9/11 attacks. Section 7 of the statute defines terrorism as any act that involves "the use of violence or threat of violence with intent to promote or achieve religious, economic and cultural or social ends in an unlawful manner, and includes the use, or threat to use, violence to put the public in fear or alarm." The act has been condemned by human rights organizations, such as the local NGO Foundation for Human Rights Initiative (FHRI) as well as Human Rights Watch and Amnesty International, for its lack of specificity and the vagueness of the offenses' definitions.

War Crimes and Crimes against Humanity

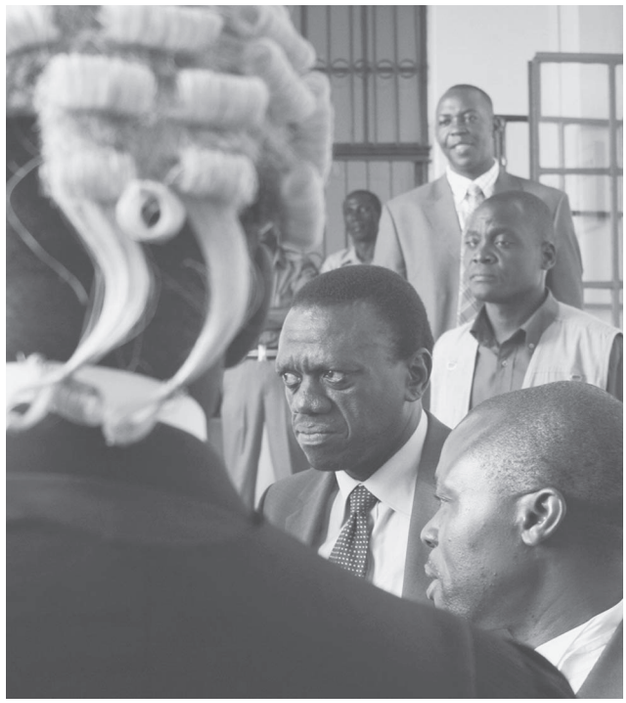
Upon referral from the Ugandan government, the International Criminal Court launched an investigation in 2004 that led to the issuance of five arrest warrants against the top commanders of the Lord's Resistance Army (LRA). The accused have been charged with war crimes and crimes against humanity as provided under articles 7 and 8 of the Rome Statute, namely, murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape, forced enlisting of children, enslavement, sexual enslavement, rape, and torture.

The charges raised by the ICC concern crimes that are not covered under Ugandan criminal law. The PCA does not provide for crimes of utmost gravity such as the mentioned international crimes. In addition, it is believed that because of the magnitude and gravity of the crimes and atrocities committed by the LRA, the Ugandan judiciary would be in an

unlikely position to handle these crimes appropriately. Therefore, there is a belief that local prosecutions would offer a magnitude of challenges, both financially and structurally, that would result in a diversion of resources that could be better put to rebuilding the lives that have been affected by the LRA war in the last 20 years.

Crime Statistics

The crime statistics provided in this section are found in the 2006 and 2007 Annual Crime Reports compiled by the Uganda Police Department (UPD). In 2007, the Ugandan police registered a total of 153,924 crimes that were reported and investigated by the Criminal Investigations Directorate. Of these, only 46,422 cases reached the trial phase by the end of the year, leaving a backlog of 107,502 cases. Out of those brought to court, 12,346 cases secured actual convictions. The distribution of reported crime varies by region, the locality with the highest incidence being Kampala. However, for the country as a whole, there was a decrease in the number of reported crimes in 2007.



Opposition Forum for Democratic Change (FDC) leader Dr. Kizza Besigye, center, listens to his legal team at the High Court in Kampala before resumption of his trial for rape, January 23, 2006. Besigye, who was later an unsuccessful candidate in Uganda's 2006 presidential election, was acquitted of the rape charge on March 7, 2006. (Stuart Price/AFP/Getty Images)

Finding of Guilt

Criminal Prosecutions

There are three ways to initiate criminal proceedings against any person in Uganda. The first mode involves the immediate arrest and detention of a suspect at the police station. This usually occurs in the case of the most serious offenses, when the police decide to promptly arrest a person with or without warrant because there is sufficient evidence for criminal prosecution. The police next lay the charges against the suspect, who will then either be released on bond or, more frequently, be put in detention until the first court hearing within the next 48 hours.

The second way involves the director of public prosecutions, who is Uganda's central prosecuting authority and is appointed by the president upon recommendation of the Public Service Commission. The director of public prosecutions institutes criminal proceedings against a suspect either personally or through authorized officers, who serve as public prosecutors before magistrates' courts in any local area.

The third mode involves the initiation of criminal proceedings by any private citizen who has reason to believe that a crime has been committed. A private prosecutor does not have to be directly involved (e.g., as a victim) in the reported offense; any citizen with knowledge of a crime is entitled to exercise this right. However, the power to initiate criminal action may be exercised only for minor offenses that fall under the jurisdiction of Uganda's lower courts.

Rights of the Accused

The 1995 Constitution details the rights of the accused, including fair and speedy trial and public hearing before impartial court or tribunal. Despite this important provision, there are still enormous

flaws in the Ugandan criminal justice system. At the magistrates' courts level, an average trial may take up to three months from the beginning of the trial to the sentencing stage. Proceedings at the High Court may also take from two weeks to several months, especially for capital cases. The lack of basic resources, such as facilities, equipment, stationery, and funds, and the low number of available trial attorneys are major problems that hinder the effectiveness and efficiency of the criminal justice system in Uganda.

According to the Ugandan Constitution, every person charged with a criminal offense is entitled to be represented by a lawyer of his own choice. However, there is no general obligation on the state to provide free legal services to indigent defendants. The availability of public legal assistance at the expenses of the state is limited to cases brought before the High Court, Court of Appeal, and Supreme Court. The Constitution, however, provides that free assistance of a translator be guaranteed to those defendants who do not understand or speak English, Uganda's official language. This provision is important, considering that there are more than 20 languages and many more dialects in the country.

Defendants are presumed innocent until proved guilty by a court of law or until the person has pleaded guilty. There is no jury system. In capital cases tried by the High Court, however, the presence of at least two "assessors" is required. These are Ugandan citizens selected by chief magistrates, whose function is to assess the evidence against the defendant and decide whether he is guilty or not in the light of the special customs, language, and habits of the particular community the defendant comes from. Judges are not bound by the assessors' opinion but must justify any departure from it.

The law provides for pretrial custody of defendants awaiting trial for reasons of public interest, namely, (1) to ensure that the defendant is present at court hearings, (2) to safeguard police investigations against possible attempts to intimidate witnesses or influence prosecuting authorities, (3) to protect material evidence, (4) to protect the accused against retaliations or attacks from victims or their relatives, and (5) to protect the community from potentially dangerous individuals. Recent legislative reforms have substantially reduced the legal period allowed for pretrial custody and have established an automatic release on bail after 16 months for capital cases and after 8 months for all others.

Juvenile Justice

Uganda has introduced aspects of restorative justice in the treatment of youths involved in crime. A separate system for juvenile defendants—under the age of 18 years—has been created in every district, which is dealt with by special Family and Children Courts and which emphasizes children's welfare. Special procedures have been developed to protect the juvenile during the criminal justice process. For example, hearings are held as often as necessary, with closed doors and in camera; parents or guardians are required to be present whenever possible; probation and social welfare officers are also informed and may participate in the parents' absence; and proceedings are generally informal and do not require typical adversarial procedures. Special facilities to hold children on remand awaiting trial are established and kept separate from adult detention centers. In addition, there is a time limit of six months for a child's pretrial custody.

Punishment

Types of Punishment

Death Penalty

The Ugandan penal code (PCA) imposes the death penalty for eight offenses that are considered most serious. The death penalty is mandatory when offenders are convicted of murder, treason, smuggling involving the use of a deadly weapon, or aggravated robbery. The court may choose the death penalty for rape, unlawful sexual intercourse with an underage person, detention with sexual intent, and kidnapping with intent to murder. After the adoption of the Anti-Terrorism Act in 2002, additional offenses carry a possible death sentence.

There are certain limitations with respect to the use of capital punishment. Ugandan law establishes

that individuals who, at the time of the offense, were under the age of 18 years cannot be executed. Similarly, a death sentence cannot be pronounced against a pregnant woman; instead, she must be given a sentence of life imprisonment.

The legal method for executions as provided by Ugandan law is by hanging. Statistics on the number of people sentenced to death or executed in Uganda are unfortunately hard to retrieve and may not be entirely reliable. According to a 2005 report by Amnesty International, in December 2004 there were at least 525 inmates on death row in Ugandan prisons. No executions of civilians have been conducted since May 1999, when 28 inmates on death row at Luzira Prison were hanged. Executions are, however, still imposed and carried out by military courts. In February 2006, the chief of Ugandan defense forces stated that 26 UPDF (Uganda People's Defense Force) soldiers had been sentenced to death and executed between 2003 and 2005 for killing civilians while on duty in northern Uganda.

Corporal Punishment

Although considered a controversial means of punishment and conflicting with several human rights provisions, corporal punishment is still practiced in Uganda with respect to a limited number of offenses. It is mandatory if a person commits robbery and attempted robbery, and it is administered in addition to any imprisonment sentence. The judge can also require it at his own discretion in cases of attempted rape, incident assault, and attempted defilement. The law prohibits using corporal punishment for any other offenses.

In fact, there are exceptions to this rule; corporal punishment can be used with offenders younger than 16 years as an alternative or in addition to imprisonment. Corporal punishment is believed to be more appropriate for young offenders and to have a stronger deterrent impact compared to other forms of punishment.

The law specifies 24 strokes as the maximum that can be imposed as a sentence. Women of any age, men over 45 years old, and convicts sentenced to death cannot be subjected to this practice. In addition, a doctor must examine individuals who are to be corporally punished to establish whether they are physically fit to receive it. If this is not the case, another form of punishment is to be preferred. Because corporal punishment is believed to have a major deterrent impact when administered swiftly, the law provides that the sentence must be executed soon after the end of the proceedings, and in any case not after six weeks.

Imprisonment and Fines

Imprisonment is the most common type of punishment for criminal offenses in Uganda. Time in prison must be served at one of the facilities administered by the central government or by a district administration. Illegal detention in secret prisons is forbidden; however, there are allegations that this practice is still used in present-day Uganda.

The practice of imposing fines as a punishment was already in use in precolonial Uganda. Indigenous justice provided that individuals who violated the law pay back with livestock to the local authorities. With the introduction of cash, the system has changed, and now fines are paid in money form. Fines can be imposed as an alternative to imprisonment or in addition to time in prison, especially for serious offenses such as the illegal smuggling of goods.

Other Measures

When the crime consists of assault or any other offense of a personal or private nature not amounting to felony, the judge may propose to settle the dispute peacefully, promoting reconciliation between the offender and the victim. The court may request that the offender financially compensate the victim for the harm suffered, repair a damaged property, or simply offer an expression of remorse and apology.

Compensation may be awarded anytime during normal criminal proceedings. Individuals entitled to receive it include any person who has suffered material loss or personal injury as a result of the offense,—that is, not only the victim but also the prosecuting private party or a witness. Complainants

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are also allowed to file a civil suit against the defendant to obtain full compensation. In case of property-related offenses, the court may also order the convict to return any property or proceeds that were subtracted from the victim, if—obviously—this is still available.

Probation is an alternative disposition available at sentencing time. Offenders granted probation are allowed to return to their homes under two conditions: (1) that they follow law-abiding behavior and (2) that they remain under supervision by a probation officer. Not all offenses allow for probation, only those for which there is no minimum sentence prescribed by the law.

A different mode of punishment involves police supervision and applies, after their release, to persons who have been sentenced to imprisonment terms other than life imprisonment. It is mandatory for offenders convicted of robbery for up to five years following their discharge from prison; as of 2008 this is the only type of crime for which it has been used. Ex-convicts must comply with a series of obligations, such as reporting personally to the police at certain time intervals and notifying the police supervisors of any changes in residence.

Prisons

The prison system is administered at a central level by the Ugandan Ministry of Internal Affairs. The commissioner of prisons, who is accountable to the minister, is in charge of supervising the 46 central government prisons as well as local detention centers. There are two main types of prisons in Uganda: (1) reception centers—or district prisons—for defendants on pretrial remand and awaiting trial and (2) prisons for convicted offenders. Reception centers of the first type are usually located in urban areas, where defendants can be held close to the court. Convicted offenders serving short-term sentences may also be detained in these facilities. Prisons for convicts are classified in six categories, depending on the offender's characteristics and the type of sentence: "preventive detention" prisons for habitual offenders, "prison farms" for convicts serving medium- to long-term sentences, maximum-security prisons for dangerous offenders and hard-core recidivists, "reformatory schools" for juvenile offenders, special prisons for young offenders, and women's prisons.

Prison conditions in Uganda—especially in the non-central areas—have been condemned by local NGOs and human rights organizations. Recent reports reveal that the majority of inmates lack bedding (mattresses and blankets) and proper uniforms. Overcrowding, lack of transport, extremely poor sanitation, and scarce food also constitute a chronic reality in today's prison system.

The prison population in Uganda has been growing steadily in part because of the inefficiency of the judicial system, which suffers from an enormous backlog. A major problem is the excessive length of the temporary stay of prisoners in custody on remand. In 2005, there were a total of 19,600 prisoners in Uganda, 63 percent of whom were being held on remand. Facilities are, therefore, congested by prisoners on remand, whose costs of maintenance weigh on the government's finances. Most inmates in Uganda are between the ages of 15 and 50 years.

Lack of funding is the most compelling reason behind the appalling state of prisons in Uganda. Most facilities were built in the 1950s and have not been renovated since. The 2001 Human Rights Report by FHRI reveals that, although inmates in central government prisons do not work, in local administration prisons, they are sometimes forced to work in exchange for food and other necessities such as soap, salt, or medication. In some instances, local prison administrators have resorted to the sale of prisoner labor. Prisoners in local facilities are oftentimes overworked and forced to take long shifts without being sufficiently fed.

Other allegations of human rights abuses involve torture and inhumane treatment, such as in the case of prisoners at the Kanungu Local Administration Prison, who have been employed to exhume cadavers at a mass murder site without protective gear. Incidents of violence and other cruel treatment by prison officers and wardens are also common. Despite recent efforts to improve prisoners' conditions, the number of complaints to the Uganda Human Rights Commission remains steady. Between 2003

and 2004, the commission received almost 4,000 complaints.

Under pressure from the United Nations to honor the obligations undertaken in the Brussels Declaration and the Programme of Action for the Least Developed Countries for the Decade 2001–2010, the Ugandan government has initiated a number of reforms in the area of criminal justice. In November 2001, the Community Service Act was implemented. This statute provides that an offender may be sentenced to spend a number of hours working pro bono at a public institution as part of the court's ordered punishment. This measure has contributed to a partial decongestion of prisons and has saved the Ugandan government more than 1.35 billion shillings in anticipated costs of maintaining prisoners in custody. Other initiatives to improve the state of the prison system involve a renovation project of dilapidated infrastructures and the construction of new offices; enhanced machinery and equipment—for example, in prison farms to build self-sustainability in food production for inmates; the purchase of vehicles to ease transportation of prisoners attending trials in courts; and the recruitment of prison officers and wardens to increase the staff-to-prisoner ratio from 1:9 to 1:6 toward the targeted international standard ratio of 1:3.

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Zambia

Legal System: Common/Customary
Murder: Medium
Burglary: High
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

Zambia is bordered by eight countries: Mozambique, Zimbabwe, Botswana, Namibia, Angola, the Democratic Republic of the Congo, Tanzania, and Malawi. It is also multiethnic with the Banta-speaking ethnic groups forming the majority. The changing sociopolitical contexts from the 1960s through the dawn of the 21st century in Zambia have been extensively chronicled from the constitutional and economic perspectives. They have had and continue to have both positive and negative consequences on crime and punishment in the country. Zambia was an English colony until 1964 when it became independent. English is the official language, and Bemba, Lozi, Nyanja, and Tonga are among the major languages. It has over 70 ethnic groups spread over 9 provinces and is the home to the spectacular Victoria Falls along the Zambezi river. Zambia was the third-largest copper producer in the world after the United States and the Soviet Union in the 1960s and was considered one of the continent's richest countries but became one of the poorest when copper prices crashed in the mid-1960s.

Mr. Kenneth Kaunda, referred to as the father of the nation, ruled Zambia for more than two decades until a multiparty system was established in 1991. This change occurred with the enactment of a new constitution that increased the size of the National Assembly from 136 members to a maximum of 158 members, established an electoral commission, and allowed for more than one party. The executive branch is headed by the president who is elected by popular vote for a five-year term and who appoints the cabinet from among the elected members of the national assembly. The Constitution was amended again in 1996 to set term limits for the president and a requirement that both parents of a presidential candidate be Zambian-born.

Legal System

The unicameral National Assembly consists of 158 seats, of which 150 members are elected by popular vote and the remaining nominated by the president. The judicial system is based on English common law and customary law. The president appoints the chief justice and eight justices to the Supreme Court, the apex court. The president, along with the prime minister, appoints the director of public prosecution and the attorney general. The attorney general serves as the principal legal adviser to the government. Common law is administered by several high courts, which have authority to hear criminal and civil cases and appeals from lower courts. Resident magistrates' courts are also established at various centers. Local courts mainly administer customary law, especially cases relating to marriage, property, and inheritance. The government respects the independence of the judiciary, and trials in magistrate courts are public.

Police

The Zambian police service is located in the Ministry of Home Affairs and has approximately 14,000 officers. The inspector general of police (IG) is the head of the department and appointed by the president. The IG of police is supported by the commissioner of police (COMPOL), who is also appointed by the president of Zambia. Various deputy commissioners of police (DCP) support various divisions.

The criteria for police recruitment, selection, and basic training are not as rigorous as for the gazetted (or senior) police officers who were exclusively European. They could be characterized to be based on hunches and ingenuity or as the senior officers saw fit. On the other hand, the criteria for recruitment, selection, and training of the senior officers were the generally applicable ones throughout the British Empire, with room for modification to suit the territorial sociopolitical contexts. Structural problems in the police department hinder effective policing. The heavily centralized structure leads to delays in decision making and implementation. All the police posts in the country report to one of the nine provincial stations, and these in turn report to the central station.

The organized structure of the police force breaks into two categories: mainstream and the special units. The police headquarters are located in the capital, Lusaka, and regional headquarters are located in each of the provinces. District headquarters are located in each province, as are police stations. The special police units include the Mobile Unit or the Paramilitary Battalion, the Mounted Section, the Marine Service, the Prosecutorial Branch, and the Police Training School.

According to article 104 of the Zambia Constitution, the police functions in the postcolonial era include protection of life and property; preserving law and order; detection and prevention of crime; and cooperation with civilian authorities and security organs, in particular the director of public prosecutions in the Ministry of Legal Affairs.

The Zambian police force is enlisted as a component of INTERPOL's Sub-Regional Bureau for Southern Africa, which includes Angola, Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe. As such, it tends to share some of the attributes of the police services in other countries. The Bureau of Democracy, Human Rights, and Labor in 2004 criticized Zambian police for numerous human rights abuses, including reported extrajudicial killings by the police during the year.

Contributing factors to these abuses were identified as follows:

1. Inadequate training in investigation skills, leading to improper handling of suspects
2. Insufficient knowledge of human rights law
3. The absence of a national forensic laboratory, resulting in the application of underhanded methods by overzealous officers
4. Lack of adequate financial resources and logistical support
5. Supervising officers' reluctance to expose perpetrators of torture to disciplinary action

As part of police reforms, the Zambia Police Act was amended (Zambia Police [Amendment] Act number 14 of 1999) to create victim support units in all police stations; to establish the Police Public Complaints Authority, whose members have since been appointed and which is now operational; and to designate custody officers. Despite the spirit of the law, observers such as Human Rights Watch and the Consultative Group characterize Zambian police reform to be very slow.

The Police Public Complaints Authority was created upon the amendment of the Zambia Police Act (cap. 107). Its is required to receive and investigate complaints against police actions and submit its findings and recommendations to the director of public prosecutions and inspector general for disciplinary action or to the Anti-Corruption Commission or any other relevant body or authority.

A review of the police training curriculum was completed during the late 1990s. Among others, the minimum educational requirement was elevated to completion of secondary education. Also now included in the curriculum is sensitivity to human rights with a view to cutting down the number of human rights violations.

A victim support unit was established in 1994. Its inclusion is comprehensive throughout the country. Its offices are located not only at the headquarters and regional offices but also at both the district and local station levels. The jurisdiction of this unit includes both criminal and civil cases involving particularly vulnerable women and children. It has had foreign support, including transportation donations in the form of bicycles and funds for capacity building.

A Police Professional Standard Unit was added in July 2003. Among other things, it conducts investigations pertaining to corruption, abuse of power, and other related extrajudicial activities. It is headed by a senior police prosecutions officer.

HIV/AIDS is a serious problem in the Zambian police department. Estimates suggest about 21 out of the roughly 14,000 officers may be dying of AIDS each month, which translates to about 254 personnel each year. Further, it is estimated that more than 3,000 personnel died of AIDS between January 1991 and April 2003.

Crime

Crime Statistics

There has been a scarcity of official crime statistics. Old crime statistics published in the *World Encyclopedia of Police Forces and Penal Systems* cite the number of crimes reported to police in 1984 as follows:

Murder	569
Sex offenses including rape	456
Rape	341
Serious assault	23,056
All theft	58,864
Robbery and violent theft	3,567
Breaking and entering	25,226
Auto theft	1,173
Fraud	651
Counterfeiting	96
Drug offenses	356
Total offenses	**150,311**

Though recent systematic crime data are not available, Chikwanha in a report in 2007 noted that armed carjacking, mugging, residential burglaries, and petty theft are common occurrences in Lusaka, the Zambian capital. She also noted that burglary victimization was reported by an estimated 10.9 percent of respondents in 2003 in the same region, and the crime of child rape in Zambia had increased by up to 60 percent. According to the NationMaster

Web site, there were a total 59,426 recorded crimes in that year. Of these, 797 were murders; 300 rapes; 2,699 robberies; and 792 car thefts.

Classification of Crime

The conventional crimes include petty theft, assaults, larceny, murder, mugging, burglaries, and armed carjacking, especially in urban areas. Crime and corruption in Zambia have been widely reported by the media. It is public knowledge that members of organized crime—the mafias—have been outwitting the police service in southern Africa of which Zambia is a part.

Zambia was among the more than 40 African countries that became signatories to the United Nations Convention on Organized Crime at the dawn of the 21st century. Its deputy secretary of home affairs spoke loud and clear about the importance of joint efforts to stamp out the menace of organized crime as a transnational crime.

Prostitution

Prostitution, especially child prostitution, has become a pervasive social problem in Zambia, particularly in urban areas. A national survey of the magnitude of this social problem has yet to be documented. On the other hand, many observers seem to have opinions as to its causes as well as impact. In the former case, the causal factors include poverty, Western values, urban migration, school dropout, and unemployment and underemployment. The commonly cited forms of impact are infection with HIV, orphanage, divorce, and criminal activities related to prostitution. Unfortunately, the victims of these social ills are more often than not considered to be the "forgotten" and "voiceless" people.

Street Children

Physical abuse and exploitation of children are known to occur along with missing children, including those who have succumbed to death resulting from HIV/AIDS. Responses to street children vary from the public sector to the private sector. Segments of the former, including the police and the Ministry of Labor, have been ad hoc in the absence of comprehensive national legislation as well as policies. Some semblance of a dent in the problem of the street children has come from the stakeholders in the private sector. These stakeholders include the local and foreign NGOs. Their efforts include the establishment of shelters, fund-raising, and special projects geared toward prevention and control of HIV/AIDS. The U.S. Agency for International Development (USAID) and UNICEF joined the efforts to launch a network of local NGOs and community-based organizations early in the 21st century.

Wildlife Crimes

There are prisoners serving time for conviction for wildlife crimes. This penalty derives from the Zambia Wildlife Act No. 12 of 1998. The nature and form of other penalties vary from one wildlife crime to another. In its efforts to prevent and control wildlife crimes, Zambia joined forces with five other African countries, namely, the Democratic Republic of the Congo, Kenya, Lesotho, Tanzania, and Uganda, to set up an international task force that is now called the Lusaka Agreement on Cooperative Enforcement Operations.

Border Crimes

Border crimes abound in southern Africa in general and Zambia in particular. The responsibility for their prevention and control has belonged to both the Southern African Regional Police Chiefs Cooperative Organization and the Zambian police service.

The southern African region comprises Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. These crimes have been committed by perpetrators at large, by bad apples in the ranks of the national police forces, and by some of the retired soldiers, and the Southern African Regional Police Chiefs Cooperation Organization was formed to, among other things, police border crimes, but they suffer poor resources. Its members

are primarily the senior police executives from each country. These members meet once a year.

Human Trafficking

An estimated 563,000 children between the ages of 5 and 17 were found in 2000 to be involved in some form of domestic labor or prostitution according to a Zambian government report. Child trafficking for labor is primarily related to work in quarries, stone breaking, household work, cooking in markets, and labor such as construction and carpentry. Minors are at greater risk of being pushed into prostitution in border towns and along trucking routes, particularly along the border between Zambia and Zimbabwe, where truck drivers wait for days to cross the border. Trafficking in female children is also related to sex tourism. The most common place is Livingston, located above Victoria Falls, which has the highest incidence of HIV/AIDS in Zambia, at around 30 percent. Though Zambia has legislation on the protection of children's rights in judicial proceedings, it does not fully comply with the goals of the Convention on the Rights of the Child.

Finding of Guilt

The Zambian Constitution stipulates not only the structure but also the management and operations of the country's courts. In the former case, the court structure includes the following components: The upper-level courts are known as the Supreme Court and the high courts; their counterparts are the local courts and the magistrates' courts. The Supreme Court is strictly limited to appeals; the high courts conduct both trials in major cases and appeals from the magistrates' courts. The local courts have jurisdiction in cases involving customary law, whereas the magistrates' courts are the courts of first instance and summary jurisdiction.

The majority of the rural population relies on customary law administered by local leaders who are not generally considered part of the judicial system in the Zambian Constitution. In spite of this weakness, many citizens use customary justice because of the inaccessibility of the state system. Customary law is also applied by local courts, which occupy the lowest position in the constitutional hierarchy of the Zambian courts. Though the local court structures are part of the formal legal system, they appear to be in trouble because there is no overview or administrative control of the cases that move through the court system. Often, local chiefs are asked to recommend potential candidates for court administration who are knowledgeable of the local customs and who are then given access to considerable power and influence over the institution of justice. Women use the customary courts often for such family-related issues as domestic violence, adultery, and divorce.

Courts are generally congested, and there are significant delays in trials, with a large number held in detention while awaiting trial. In many instances, it may take six months before a magistrate sends a defendant through to the high court. It usually takes the magistrate months to prepare the court record, and once the high-court proceedings begin, they can last over six months. One of the reasons cited for the delay is a high turnover in judicial and court personnel, which is often a result of poor pay and poor working conditions. The increased use of alternatives to imprisonment for minor crimes—community service, probation, and fines—has also been attributed to these courts.

Prosecution of Offenders

The prosecution of offenders is under the jurisdiction of the directors of the department of public prosecution and the police service. The latter does its business primarily in the magistrates' courts, whereas its counterpart works in the Supreme Court and high courts and other courts subject to the provisions of the Constitution.

Punishment

The Zambian penal concepts and practices are aligned with those of the United Kingdom. The definitions of crimes both serious and less serious accrue from the penal code, as is the case with the

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provisions for their corresponding punishments. Capital punishment is a sentence for murder except in military circumstances, treason, and aggravated robbery. Conviction for trafficking of women and children carries the sentence of between 20 years and life in prison.

Prisons

The administration of the Zambian prisons is conducted within the framework of the Prisons Act and related legislation including the Constitution. The commissioner of prisons is a presidential appointee. The day-to-day administration is strictly defined by the Prisons Act. Zambia is the only African country whose minister of home affairs was an ordained reverend in the 1990s through the dawn of the 21st century. His preaching to prisoners in the industrial region—the Copperbelt—has been extensively reported by the media.

Conditions are harsh and life-threatening in Zambia prisons. Some of the reasons cited are severe overcrowding, inadequate food supplies, lack of potable water, and unhygienic unsanitary conditions. A similar situation applies to inmates in remand awaiting trial. Outbreaks of tuberculosis and dysentery are common medical concerns. The report submitted by the commissioner of prisons submitted to Parliament in 1996 indicated that 975 prisoners had died in prison between January 1991 and December 1995 as a result of illness and harsh conditions. Overcrowding was also a major concern in Zambian prisons, and the Kamwala Remand Prison in Lusaka at one time was operating at three times its capacity. In March 2000, the commissioner of prisons cited slow disposition of cases in courts (resulting in higher numbers of those detained awaiting trial) as a reason for overcrowding, which led to the Magistrates and Judges Association of Zambia decision to make efforts to release all eligible detainees on bail to reduce prison congestion.

The Zambian Prisons Act provides for visits and inspections by officials in their capacity as "visiting justices"; judges, magistrates, the minister of home affairs, and provincial ministers are examples of these officials. Part 19 of the Prisons Act stipulates that during their visits, they must inspect all management and discipline records, visit every part of the prison and see every prisoner, assess the quality and quantity of the food, inquire into complaints by prisoners, and ensure compliance with all standing orders.

HIV/AIDS in the Prisons

It has not been uncommon for the prison staff to make negative commentaries about the prison victims of HIV/AIDS. There have been reports that some of the prison staff have preyed on inmates, especially the young female offenders. There are hardly any accounts of successful strategies on the part of prison authorities to solve the problem of recalcitrant prisoners with respect to repeat sexual activities resulting in the spread of HIV/AIDS. Prison authorities have resorted to segregation or isolation, maximum security, behavior readjustment, and placement in special units dealing with especially violent inmates as stipulated by the Prisons Act and Standing Orders since the colonial era.

Juvenile Justice and Institutions

Since the colonial era, the penal authorities have on occasion had to make three choices in cases of juveniles: detain juvenile offenders in the adult prisons; segregate them into their own institutions, such as the approved schools and the reformatories; or establish alternatives to detention in the public institutions.

Zambia not only is one of the signatories to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, but also practices some of these rules. The Juveniles Act (chapter 53 of the Laws of Zambia) makes provision for the custody and protection of juveniles in need of care and for the correction of juvenile delinquents. Among other things, these rules emphasize procedural safeguards, including presumption of innocence, use of discretion given the varying needs of juvenile offenders, provisions of alternatives to detention (e.g., community-based diversion), spe-

cialization within the police, special police units, and competent authority to adjudicate.

Resurrection of the Crime Prevention Foundation of Zambia

The Crime Prevention Foundation of Zambia, a nonprofit organization, was resurrected in 2006. Its mandate include promoting awareness and education; coordinating units and their operation; and providing technical assistance to organizations that deal with victims of crime, ex-prisoners, and offenders in the country's criminal justice system.

Ejakait (J. S. E.) Opolot

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Zimbabwe

Legal System: Civil/Common/Customary
Murder: High
Burglary: High
Corruption: High
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

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Background

Geographically located in southern Africa, Zimbabwe, also known as the Republic of Zimbabwe, has a population of approximately 11.6 million. This landlocked country borders South Africa, Botswana, Zambia, and Mozambique. It is divided into 10 provinces, with two metropolitan cities having provincial status.

The official language of Zimbabwe is English; however, the majority of the natives speak Shona. Zimbabwe was known as Southern Rhodesia when it was a self-governing colony claimed by the United Kingdom. By the 1970s, many Zimbabwe natives sought violent means to gain independence. A formal agreement proclaiming Zimbabwe's independence was reached in 1979 between the key players, the British government, the African National Union, and the African People's Union. Since its independence in 1980, the African National Union led by President Robert Mugabe has dominated all aspects of the criminal justice system. Currently, deteriorating economic stability and a HIV/AID epidemic plague Zimbabwe.

Zimbabwe operates under a parliamentary democracy. Foreign nations debated this after questioning the past three elections. Although Zimbabwe's Constitution allows for multiple parties to run in an election, the ruling party has consistently used intimidation and manipulation to control the national security forces and committed abuses against those parties running in opposition.

The legal system is a mixture of Roman-Dutch and English common law. At the head of the executive branch lies a majority-elected president who is both chief of state and head of government. The president is elected for a term of five years with no term limit. The president is responsible for appointing two vice presidents and many upper-level administrators in the public service sector, along with both the legislative and the judicial branch. Zimbabwe employs a bicameral legislature. The upper house, the Senate, contains 93 seats, 15 of which are nominated or appointed to the chamber by the president; the House of Assembly, the lower chamber, contains 210 seats all elected by popular vote.

Zimbabwe's Constitution is the supreme law of the nation and calls for an independent judiciary. There are five sources of Zimbabwean law: legislation; case law, or court decisions and precedent; customary law; common law; and authoritative texts. Besides criminal law, the majority of Zimbabwean laws are uncodified. The president appoints judges, typically, to serve until the age of 65. Terms may be extended if the judge remains in good physical and mental health. The Zimbabwe Constitution provides that judges may be removed from the bench only for gross misconduct, and they cannot be discharged or transferred for political reasons. Recent concerns regarding judiciary independence rose in 2001 when the judiciary came under intense pressure to conform to the current government policies.

The responsibility of enforcing the law falls between the Zimbabwe Republic Police and two divisions of the Zimbabwe armed forces: army (ZNA) and air force (AFZ). Zimbabwe has no navy because it is landlocked between other countries. After proclaiming independence in 1980, Zimbabwe set up two national armed forces. Currently, the Zimbabwe National Army has approximately 30,000 active duty members, and the air force approximates that it has around 5,000 active members. Zimbabwe Republic Police (ZRP) law enforcement capabilities have seen dramatic deterioration in recent years, largely as a result of Zimbabwe's economic decline. Because of a lack of sufficient funding, the police are unable to maintain and operate equipment or train new personnel. They have nearly no ability to respond to emergencies; in the case of criminal activity, the police typically need to be provided with a means of transportation to perform any investigative function. Due to the police's limited mobility, criminal incidents must be reported in person to the nearest police station. Given these issues, the ZRP tend to be apathetic toward investigating crime, and as previously stated, they prefer to focus their resources and energies on political acts, especially demonstrations. The ZRP estimate their membership to be approximately 25,000. The police are divided into a variety of units including a uniformed national police, the Criminal Investigation Department, and traffic police. To support each provincial department, the ZRP also includes a paramilitary Police Support Unit, a riot unit, and a Police Internal Security and Intelligence unit. Under the command of the police commissioner-general, who like other upper administrators is appointed by the president, the ZRP is organized by province. The majority of the ZRP patrols the highly urbanized capital, Harare.

Crime

According to the U.S. Department of State, the reported crime in Zimbabwe is a very serious problem and has been shown to be driven by the country's recently deteriorating economy. One of the most prevalent and serious crimes in Zimbabwe is street crime; Americans and other foreign visitors are typically perceived as being wealthy and have found themselves the targets of criminals operating in the close vicinity of hotels, restaurants, and shopping areas in major cities and tourist locales. Purse-snatching is another form of street crime in which teams of two work together, with one of the teammates acting as a diversion. Muggings typically involve younger males who surround and overwhelm their victims in a populated area. The U.S. Department of State lists the majority of crimes in Zimbabwe as being nonviolent, though most of the perpetrators are armed with weapons that usually include firearms. Cellular phones are of great interest to local thieves. Another typical crime is "smash and grab" where thieves break windows of cars at intersections and remove items from inside. Kidnapping is also a crime that has been frequently connected to the political arena; several members of opposing groups have found themselves tied up and left in remote areas or taken into custody of the ZRP and treated poorly under harsh conditions. In 2003, there were 35 reports of politically motivated "disappearances," mostly committed by ZANU-PF supporters, especially in the rural areas where most organized groups were loyal to the government and where there were few opposition organizations. Domestic human rights organizations believe that there were disappearances in rural areas that were

not reported because of fear of retribution by progovernment factions. Many abductees were beaten or tortured; others later were found killed.

The country of Zimbabwe has a Ministry of Home Affairs Web site that contains the only statistical data available. This "Crime Statistics Report" details only white-collar crime for the years 2000–2001, providing minimal and vague information, though indicating that white-collar crime (possibly comprising corruption, tax evasion, other crime related to gold trading and precious stones, and currency exchange) increased by some 54 percent from 200 to 2001. The Overseas Security Advisory Council notes an increase in crime rates during 2007, though most of these crimes are nonviolent and less serious. However, the downtown sector remains a concern, especially at night when thieves act with little fear of police.

There are no laws that specifically address trafficking in persons, and there continue to be anecdotal reports that the country is both a point of origin and a transit path for trafficking. Common law prohibits abduction and forced labor, and it is a crime under the Sexual Offenses Act (SOA) to transport persons across the border for sex. Traffickers also can be prosecuted under other legislation such as immigration and abduction laws. The SOA provides for a maximum fine of $0.41 (Z$35 thousand) or imprisonment of up to 7 years for those convicted of prostituting children under 12 years of age. It also provides for a maximum fine of $0.58 (Z$50 thousand) and a maximum prison sentence of 10 years for procuring another person for prostitution or to have sex inside or outside the country. Little information exists on the trafficking of humans beyond known instances for sexual encounters in exchange for money.

Finding of Guilt

Those accused of a crime in Zimbabwe are protected under the Constitution, which provides the right to a fair trial; the judiciary rigorously enforces this right. However, under Mugabe, the judiciary's reputation for independence from the executive branch has been compromised, with the executive refashioning the courts to conform to personal opinions. The law requires that the ZRP inform an arrested individual of the charges against him or her before being taken the person into custody; warrants of arrest issued by the courts are required except in cases of serious crimes or where there is the risk of evidence disappearing. There is a growing problem, especially in rural areas, in which victims or witnesses of crimes who inform the police are charged themselves with the crimes of the perpetrators. According to law, a preliminary hearing before a magistrate must be held within 48 hours of arrest, 96 hours over a weekend. The law typically is disregarded if the accused does not have legal representation. To delay the bail release hearing, the police typically conduct arrests of individuals accused of political crimes.

In general, detainees are not afforded prompt or regular access to their lawyers, with the authorities often informing lawyers who attempt to visit their clients that detainees were "not available." It is also not uncommon for family members to be denied access unless accompanied by an attorney. Detainees, especially those from rural areas without legal representation, routinely are held without communication, leaving family members and attorneys unable to verify that the individual has been detained until he or she is scheduled to appear in court.

Zimbabwean law provides for a unitary court system, consisting of headmen's courts, chiefs' courts, magistrates' courts, the High Court, and the Supreme Court. Civil and customary law cases may be heard at all levels of the judiciary, including the Supreme Court. Military courts deal with disciplinary proceedings; police courts, which can sentence a police officer to confinement in a camp or demotion, handle disciplinary and misconduct cases involving police. Trials in both these courts generally meet internationally accepted standards for fair trials. All accused have the right to appeal to the Supreme Court.

In criminal cases, an impoverished defendant may apply to have the government provide an attorney, but this is granted rarely. In capital cases, the government provides an attorney for all defendants unable to afford one. Those litigants in civil cases can request legal assistance from the NGO Legal Resources Foundation, and all litigants are

represented in the High Court. According to the U.S. Department of State, the Zimbabwe Supreme Court instructs its magistrates to ensure that unrepresented defendants fully understand their rights and to weigh any mitigating circumstances in criminal cases, whether or not the accused presents them as part of his or her defense. According to the Zimbabwe Constitution, the right to appeal exists in all cases and is automatically granted in cases in which the death penalty is imposed. Trials remain open to the public except in circumstance involving national security issues. The Zimbabwe Constitution outlines several rights for defendants. Those accused of crimes are presumed innocent until proven guilty. Defendants also enjoy the right to present witnesses and the right to question witnesses against them. Defense attorneys and their clients generally have access to the government-held evidence relevant to their cases.

Punishment

As with the lack of current and reliable crime statistics, relevant information regarding the types of punishment is also not disclosed by the Zimbabwean government. What is understood from the little published information is that the court compiles reports and recommendations regarding appropriate punishments for individual offenders. Besides imprisonment, the Ministry of Justice, Legal, and Parliamentary Affairs mentions the utilization of community service as a proper punishment. Capital punishment exists within the country, but it is unclear what type of conviction must be made for this to occur, though it appears that the rate of usage is low.

Prisons

Zimbabwe's prison system contains 42 prisons divided among four regional headquarters, with the largest and most central prison in the national capital, Harare. Zimbabwe's current prison conditions remain harsh and life-threatening, as prisons nationwide suffer from overcrowding. According to the Ministry of Justice, Legal, and Parliamentary Affairs, the combined holding capacity for the 42 prisons is approximately 17,000 prisoners; however, the ministry estimated the inmate population in 2007 to be fluctuating around 18,000. This estimate seems to represent a low approximation because in that same year, the U.S. Department of State estimated the inmate population to be around 25,000. Of the total prison population, approximately 70 percent are convicted prisoners, and the other 30 percent are awaiting trial. The majority of the Zimbabwe inmate population is between the ages of 18 and 40 years. Female prisoners represent only 3 percent of the total inmate population. An inspection done in December 2004 by the Law Society of Zimbabwe (LSZ) at Khami Maximum Prison in Bulawayo revealed that the prison, which had been built to accommodate 650 prisoners, actually housed 1,167 inmates.

In 2006, convicted juveniles represented 1.8 percent of the total inmate population; however, presently, they are not held separately from adults. The Prison Fellowship of Zimbabwe, a local Christian organization working with former inmates, has estimated that there are more than 200 children living in the country's prison system with their detained mothers. Prison cells are divided into groups to separate pretrial detainees from convicted offenders. Large group cells typically hold pretrial detainees until their bail hearing, and once charged, the detainees are moved to separate remand prisons.

According to the Ministry of Justice, Legal, and Parliamentary Affairs, unconvicted detainees are permitted one visitor per week. For convicted prisoners, the number of visits depends on the inmate's classification. Prisoners in class A, the lowest security risk, are granted up to three visitors once every two weeks. Prisoners in class B are permitted two visitors once every two weeks for a period of time not exceeding 20 minutes. Class C prisoners are granted two visitors once every two weeks for a period of time not exceeding 15 minutes. Class D prisoners, the highest security risk, are permitted one visitor once a month for a duration not exceeding 15 minutes. According to the ministry's Web site, class A and B prisoners are permitted to work in the prison in areas such as the cafeteria or cleaning. At this time, no credible sources suggest that

Part of a group of 150 former inmates leave a prison in Harare, Zimbabwe, on September 11, 2009. The inmates are among 1,500 prisoners being released across the country under a presidential amnesty program designed to ease overcrowding. (AP Photo)

movement between countries is legal for prisoners of Zimbabwe.

Megan Beckwith and Jennifer Janowski

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Author Queries

1 Is this a correct formal title? An Internet search for it yields almost no results. Should the headword be changed to match?

2 Please provide the actual year or time frame.

Middle East and North Africa

Algeria

Legal System: Islamic/Civil
Murder: Low
Corruption: Medium
Human Trafficking: High
Prison Rate: Medium
Death Penalty: No
Corporal Punishment: Maybe

Background

Algeria is situated in the northern African region known as the Maghreb, with an estimated population of more than 33 million. It is about 2.4 million square kilometers in area and is the second-largest country in Africa after Sudan. Almost since the beginning of written history, Algeria has been conquered and recolonized by larger empires. As a result, the laws, culture, and criminal justice system have been the product of the amalgamation of different cultures over the centuries.

To maintain order within the country, several forms of policing have risen to prominence over the years. The type of policing enforced depended on who was exercising colonial or political control over the country. Although the Ottomans had their own system of government and law enforcement during their rule, the French National Gendarmerie system has had a far greater influence on modern policing in Algeria. As a result, there are three major organizational divisions in Algerian law enforcement: the Gendarmerie National, the Sûreté Nationale, and the Sûreté Militaire. The National Gendarmerie serves as a fully national police force that answers directly to one central authority, much like the current system in France. For the most part, the National Gendarmerie serves as the security and law enforcement force in the rural and remote mountain regions of the nation. The Sûreté Nationale (National Security) force is a police agency that was formed after the French left Algeria in 1962. This force focuses on urban areas and, like the National Gendarmerie, is based on the French system. The final branch of Algerian law enforcement is the Sûreté Militaire (Military Security or SM). The Sûreté Militaire is in charge of foreign and domestic intelligence, military offenses, and civilian espionage and subversion. For American audiences, they are similar to a combination of the FBI, CIA, and military police. It is a relatively large force with between 6,000 and 10,000 officers, and the group answers directly to a general who reports to the minister of national defense within the Ministry of the Interior. The use of the SM, which is also known as the Département du renseignement et de la sécurité (DRS), became somewhat controversial in the civil war following the invalidation of the 1991 election. Amnesty International has written reports on some

of the agency's tactics. During the civil war, there were many reports of secret detention and the creation of situations that would facilitate the torture of prisoners and persons of interest. Additionally, controversy surrounds the use of the military as law enforcement, which stems from speculation about the military's involvement with terrorism in the country. For example, several individuals have accused the military of setting up false road blocks to allow terrorists to commit attacks. However, there is no concrete evidence that the SM were ever involved in any such attacks.

Others were concerned over the complete carte blanche that the military received to fight terror without regard for individual rights or civil liberties. Several reports indicate that the military slaughtered civilians in an attempt to root out suspected Islamic militants. Concerns have also risen regarding the secretive tactics used by the Military Security forces. For instance, members of the SM will go incommunicado while infiltrating the various terrorist organizations that have riddled the countryside from time to time. Because of this, it is often difficult to determine to what extent the officers have remained loyal to the state as opposed to joining the terrorist cause. Although there is some skepticism as to the SM's loyalties, the United States has put much faith into communicating with the Algerian military in recent years. Since the election of President Abdelaziz Bouteflika, American forces have been working in concert with Algerians to fight the war on terror and the threat of the Salafist Group for Preaching and Combat (GSPC).

Although 90 percent of the country lives within 20 percent of the Algerian landmass known as the Tell, there is still a need to police the other 80 percent of Algerian territory. These unique needs are addressed by the National Gendarmerie, the force that patrols the remote areas of the country. The gendarmerie is over 35,000 officers strong and is organized into battalions responsible for policing the 48 provinces known as *wilayat.* The battalions are highly mobile forces that are very well connected through well-developed communication systems. The gendarmerie officers are rigorously trained and well equipped. For instance, they are known to have at their disposal several light armored vehicles and helicopters for patrol and mobility in remote and inhospitable areas. Like the Military Security, the gendarmerie falls under the auspices of the minister of the interior.

Finally, the National Security (SN) force is the main police presence in Algerian urban areas. They exercise jurisdictional responsibility for the capitals of the wilayat and other major cities. They serve as the main police force for maintaining order, enforcing laws, and controlling crime. Within the SN, there are branches in charge of law and order, as well as judicial police that serve as the main investigators and detectives for crimes. Along with the Military Security forces, the SN assists in the control of public uprisings and are trained in riot control techniques.

Crime

Following independence, the Algerian government borrowed heavily from the French judicial system. Like the French, the Algerians use a codified system known as a penal code to outline crimes and corresponding punishments for those crimes. The Algerian penal code dictates a range of severity of punishment for particular crimes as a guideline. For example, unintentional fire setting that endangers others is punishable with a prison sentence between 6 months and 3 years and a fine of 10,000 to 20,000 dinars (approx. US$155–310). Also similar to the French system, the Algerian penal code classifies offenses based on the degree of seriousness of that offense.

Types of Crime

Offenses are classified, in order of seriousness, as a crime, délit, or contravention. As listed in the penal code, a "crime" is a very serious offense that is punishable by death or extremely long prison sentences. In the Algerian law system, a crime would be akin to *mala in se* offenses, such as rape and murder, in common law systems. Algerian crimes carry heavy penalties. Although the death penalty has not been used since 2003, many crimes are death-eligible offenses.

Firefighters begin removal of the remains of a car bomb that exploded in the center of Algiers on May 25, 1999. The explosion killed three people and wounded five others. (AP Photo)

Other punishments include 20 years to life in prison without the opportunity of parole. The punishment section of this entry further discusses the penalties that are available for Algerian offenses.

The second most serious offense is known as a délit. Délits are offenses that can be punished with shorter imprisonment sentences, fines, or both. An example of a délit in Algeria would be abandoning one's family for longer than two months without having a "good" reason to do so. As an Islamic nation, Algeria is very concerned with the well-being and preservation of families. As such, there are many offenses written into the penal code that address offenses against the family. In addition to offenses against families, délits include disruption of the public good. An example of a disruption of the public good would be threatening another individual either verbally or with images or other symbols.

The final degree of seriousness is that of contravention. In common law terms, a contravention is most comparable to a misdemeanor offense. There are varying degrees of seriousness within the category of contraventions. In Algeria, there are three levels of seriousness for contraventions. The most serious of offenses, the First Category offenses, include penalties of imprisonment up to two months and fines up to 1,000 dinars (US$16). Examples of First Category offenses would be animal baiting or unnecessarily killing of domestic or work animals.

Second Category offenses carry fines up to 500 dinars (US$8) and/or five days in prison. Individuals who deface buildings with graffiti face such a penalty. The Third Category of offenses carry fines between 30 and 100 dinars (between US$.47 and US$1.60) and include such crimes as neglecting to maintain, clean, or repair chimneys, ovens, or factories that use fire.

Various mitigating and aggravating circumstances are taken into consideration when classifying a crime, deciding culpability, determining guilt, and handing down sentence. Within this system of aggravating and mitigating circumstances, there are many distinctions made based on Islamic law. One might describe the Algerian penal code as based on the French system with influences from Islam. For example, within the Islamic law, a great deal of importance is placed on matters of family. As a result, there is a separate section of the penal code devoted to crimes and délits committed against family members. When determining the circumstances of a case of murder or manslaughter, there are stipulations within the code that allow for self-defense and circumstances that will reduce the sentence for a murder. However, the penal code clearly states that parricide cannot be mitigated, regardless of circumstance.

Special Crime Problems

Terrorism has been a major problem within Algeria over the last 20 years. Between 1970 and 2004, there were about 1,600 incidents of terrorism in Algeria. Using data from MIPT, NationMaster indicates that Algeria is ranked second in the world for the most terrorism when considering domestic terrorist attacks. Other reports put Algeria at approximately 19th overall for domestic terrorism between 1970 and 1997. There are also varying estimates of the number of lives lost during the civil war between 1992 and 2004, but a conservative estimate brings the total to around 100,000 deaths. Government reports were not forthcoming in the number of fatalities during the period and have given many different estimates of the number of deaths resulting from terrorism and violence in the 12-year span. The majority of those casualties were civilian targets.

These statistics are indicative of the grave problem that Algeria faced during the latter half of the 20th century and the first decade of the 21st century. The government understood the needs of the nation, and in 1995, Algeria added a special section to its penal code in an attempt to address these particular needs by aggressively combating the amount of terrorism that it faced.

Human trafficking is yet another crime problem that has received particular attention in Algeria in recent years. The UN's International Labor Organization defines human trafficking as a modern from of slavery in which individuals are bought and sold and coerced into performing sexual acts or involuntary labor. In 2006, Algeria was placed into the Tier 2 Watch List in the annual Tracking of Persons Report published by the U.S. State Department. The Tier 2 ranking indicates that Algeria does not fully comply with the minimum standards of protection against human trafficking and has failed to provide evidence of increasing efforts to combat human trafficking.

Drug Offenses

Unlike most of the North African countries, Algeria does not have a serious drug trafficking and production problem. Countries such as Morocco, Tunisia, and Egypt have long struggled with the task of curbing production and trafficking of marijuana and hashish. In fact, most of Europe receives its hashish from these North African countries. One of the potential reasons behind the hashish "problem" is the cultural usage of the drug. The Arabic and Berber cultures have a long history of using the drug in social settings. As a result, Morocco has become a famous destination for cannabis enthusiasts. Estimates put Morocco's production and sale of cannabis at approximately $4 billion per year. In recent years, there has been a crackdown on the transportation of hashish out of Morocco. The crackdown has sparked smuggling of the drugs into Algeria for sale in other regions of the world. In addition to the increased attention to drug smuggling,

the global market has begun to focus on the role the drug money plays in the funding of terrorism. Although Algeria's role in the production and trade of the drug is minor at most, the terrorist group GSPC benefits from the sale of the drug through an elaborate and complex financial network. Also, according to the U.S. Department of State, Algeria has not been known to participate in extensive money laundering for the drug trade, but the State Department does recognize that Moroccans often use Algeria's border farmlands to grow their crops and to export them.

Statistics

For the most part, statistics on crime in Algeria are scarce. Those statistics that have been compiled are often questionable in regard to their reliability and validity. However, from what statistics are available, Algeria's murder rate for the period 2000–2004 was 1.4 murders per 100,000. It is also necessary to point out that a significant number of deaths from terrorism seem to be missing based on open source data that track terrorism fatalities. This may be the result of how the government counts murders versus terrorist attacks within the nation. Some crime analysts have noted that there was an increase in the number of offenses between 1999 and the early 2000s. However, this might not be an indicator of an upward trend but might instead be simply a reflection of an increased number of cars that can be stolen, a reporting artifact, or a change in reporting behavior on the part of crime victims or police. The following are the most recent statistics (crimes per 100,000 inhabitants) of reported offenses for major crime categories in 2000 as recorded by INTERPOL.

Murder and non-negligent manslaughter	1.49
Forcible rape	1.05
Robbery	10.58
Aggravated assault	42.58
Burglary	30.08
Larceny theft	106.59
Motor vehicle theft	6.34
Total	**259.76**

Although drug offenses have not been a large concern for Algerians over the past 20 years, there have been some modest drug seizures. Nonetheless, the level of drug enforcement activity has not approached the level of similar crackdowns in neighboring Morocco and Tunisia. Although Algeria has not experienced the same levels of illicit drug production, usage, or smuggling, analysts point to several potential risk factors for increased drug use. First, 70 percent of Algeria's population is 30 years old or younger. The youth of a population is often strongly correlated with crime and drug use in particular. Additionally, the high unemployment rate may be a factor that would contribute to drug use.

Finding of Guilt

The Algerian Constitution states that all arrestees are innocent until proven guilty. The Algerians, however, use the French tribunal system of judges as opposed to the American jury system. While in custody and awaiting trial, suspects are afforded a number of rights by law. For instance, upon arrest, individuals have the right to immediately contact their family. Although the Algerian Constitution makes this distinction, it is interesting from a Western perspective that no requirement for the presence of an attorney is mentioned, although free access to legal council is separately guaranteed. Suspects must also be released after 48 hours, and after that release, suspects have the right to receive a medical examination. In certain exceptional circumstances, the period of 48-hour detainment may be extended in accordance with the law. Interrogating a suspected terrorist would be considered an "exceptional circumstance."

Courts

Within the Algerian justice system, there are three different levels of courts. The lowest of the courts are known as the first instance courts and are administered on the *daira,* or district, level. There are 218 first instance courts that handle civil, commercial, and labor disputes as well as some low-level criminal cases. Above these courts are the *wilaya* courts.

These courts are divided into four different chambers for civil, criminal, administration, and accusation. The four chambers each have three judges and allow for appeals. *Wilaya* courts serve as the courts of appeal for the *daira* courts and are similar to the U.S. version of state courts, whereas *daira* courts are more comparable to county-level systems of justice. Within the *wilaya* system, there are courts of appeal. Appeals must be made on points of law and procedure as opposed to the interpretation of facts or additional information.

The court of final appeal in the Algerian justice system is the Supreme Court. It is the highest court in the land and located in Algiers. Like the lower *wilaya* courts, the Supreme Court is divided into four chambers. The Social Chamber of the Supreme Court focuses exclusively on issues of social security and labor disputes. The Public Chamber hears cases pertaining to civil and commercial disputes. The final two chambers deal with matters of criminal and administrative law. These chambers are, perhaps appropriately, named the Criminal Court and the Administrative Division, respectively. The Algerian Supreme Court does not issue legal decisions, and does not exercise jurisdiction over the actions of the Algerian government. Instead, the court only hears cases that are based on disputes over procedure. Finally, while not part of the civil court system, Military Tribunals were often used during the 1990's to try Islamist leaders, terrorists, and other criminal offenders. This was during a period in Algeria when the government declared a state of emergency and most individual rights were suspended. This included a suspension of sentencing guidelines as military tribunals were often known to issue harsh sentences, including regular use of the death penalty.

Punishment

The system under the greatest flux and reform is that of the penal system. Within Algeria, there are varying levels of punishment. Convicted offenders can receive punishment upon conviction ranging from fines to life in prison or a death sentence. As of this writing, there are no alternative sanctions specified in the Algerian penal code. Although there are still many death-eligible offenses on the records, there has not been an execution in Algeria since the institution of a moratorium in 2003. Before the moratorium, offenses that would qualify as death-eligible were crimes against the state such as treason and espionage and homicide.

One of the more interesting aspects of the Algerian penal code is the distinction of what crimes are labeled "excusable." Excusable offenses in the penal code often refer to violent criminal acts that are mitigated based on either victim characteristics, such as the victim's relationship to the perpetrator, or the nature of incidents that may have precipitated the attack. Within this category of "excusable" offenses, the Algerian belief in honor and family is apparent. As in many other nations, killing in self-defense is a case where one may be excused of homicide. More interesting cases, however, can be observed in cases where there has been an "attack on one's purity." For example, killing a spouse when he or she is caught in the act of committing adultery is excusable under the penal code. Castrating a man, if the crime is immediately provoked by a violent rape, is also excusable, as is killing or injuring an adult who is caught raping a minor (age less than 16 years old). However, parricide, or the killing of one's parents or grandparents, is never excusable. The distinctions between what is and what is not "acceptable" in the Algerian justice system paint an interesting depiction of the culture of the North African nation. It is clear that Algeria combines its past as a French colony with its cultural heritage as an Islamic nation.

Beyond the excusable offenses, the Algerian belief in family and morals is reaffirmed with the special section of the penal code that provides sanctions and definitions of crimes that are against "The Family" and "Good Morals." Many of the punishments attached to the crimes indicate a strong belief in the protection of children. Crimes such as abortion, family abandonment, and immoral or lewd acts are included, and punishments range from fines to imprisonment. As previously mentioned, abandoning

one's family for longer than two months without a reason is punishable by imprisonment from two months to one year and a fine.

The dedication to the family and the sanctity of the family is also expressed in the gravity of incest in Algerian law. For instance, conviction for acts involving sexual relations between parent and child, grandparent and grandchild, or brother and sister is punishable by 20 years in prison. As the proximity of the bloodline decreases, so does the penalty. Sexual relations with a sibling's spouse are forbidden, as are relations with one's godparent, but these crimes result in a sentence of 5 years in prison, as opposed to 20. By contrast, under the U.S. Federal sentencing guidelines, incest between a father and a daughter where the daughter is less than 13 years old calls for a maximum prison sentence of 13 years. Additionally, abortion is strictly forbidden and carries a sentence of varying lengths in prison without parole, with a maximum of 5 years in prison as a possible sentence. Lewd public acts are forbidden and carry minor sentences or fines. However, if the "lewd act" involves homosexuality, the sentence is dramatically increased. Corrupting and contributing to the corruption of minors is also a fairly serious offense that carries a sentence of 5 to 10 years in prison.

Other offenses have varying levels of sentences. Sentences for rape range from 5 to 10 years for an adult and 10 to 20 years for raping a minor under the age of 16. However, if the perpetrator of the rape of an adult was in a parental role or other position of authority or power over the victim, the sentence is increased to 10 to 20 years in prison. If a parent or person of authority or power rapes a child less than 16 years old, that person faces life in prison. Depending on the circumstances surrounding a theft, robbery, or burglary, an offender runs the risk of being imprisoned for a month or less or up to 10 years in prison. If an offender is armed and commits robbery or burglary at night, he or she runs the risk of a death sentence. Within the penal code, there are many sentence enhancements for crimes that are committed at night.

Essentially, all of the sentences are relative to the circumstances surrounding the incident in regards to the exacerbation or mitigation of a sentence. It is unclear whether the defendant's criminal history is taken into account during sentencing, but it is likely given the nature of the justice system.

In recent years, the government created a special section of the penal code to punish terrorists. Essentially, the sentences for terrorism act as enhancements for existing sentences. For example, if a crime originally held a penalty of life in prison, but the perpetrator committed that act as a form of terrorism, then the sentence would be increased to death. In the case of crimes with sentences of 10–20 years in prison, the perpetrator would receive life in prison. The section on terrorism goes so far as to punish creators of terrorist organizations with life in prison and members of the organization with sentences of 10–20 years in prison, even without committing any acts that threaten Algerian national security. The punishment for being involved in terrorist organizations also extends to any activity committed outside of Algeria. Thus, if a citizen joined Al Qaeda, he would be given the same punishment that he would have received had he joined Algeria's Armed Islamic Group. Financiers of terrorism, as well as any person generating or distributing terrorist propaganda, are also at risk for being sanctioned if convicted. Finally, if convicted of any terrorist involvement, the person must serve at least one half of his or her sentence before being paroled.

In an attempt to curb terrorism, President Bouteflika presented the Civil Concord Act in 1999 to the public for referendum. In this legislation, Bouteflika offered amnesty to terrorists who voluntarily ceased their terrorist activities and admitted to their terrorist actions. In return for their promises, the terrorists received lighter sentences than they would have been awarded upon conviction. The sole exceptions to this amnesty program were individuals who had committed rape or murder. Somewhat surprisingly, the referendum received approximately 97 percent approval by the populace. Even more surprisingly, reports estimate that approximately 80 percent of the extremists accepted the amnesty and have reintegrated into society.

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The Prisons

In 2005, there were approximately 42,000 individuals in prisons across the nation, with prisons operating at about 140 percent capacity. This number includes individuals who had been sentenced to prison as well as individuals who were pretrial detainees. In terms of incarceration rate, Algeria had 127 inmates per 100,000 citizens.

There are currently two levels of imprisonment in Algeria. For low-level offenders, or individuals who have been convicted of civil offenses, there are provincial civil prisons. More serious offenders are sent to one of three state penitentiaries. Many of these offenders have committed crimes that are death-eligible, such as murder or rape, and also include convicted terrorists. The conditions within the prisons vary widely from rudimentary to more modern facilities. Inmates in the civil prisons are much better cared for than those inmates in the state penitentiaries. For example, inmates in civil prisons are usually taken to the hospital when seriously ill, are allowed weekly visitation from their families, and are allowed to receive food from outside the prison to supplement the nutritionally poor food provided by the prison. In contrast, the main penitentiary, El Harrach, has come under scrutiny by international human rights interest groups for its practices. The maintenance of health standards within Algerian prisons and the creation of alternatives for juveniles continue to be major humanitarian concerns among watch groups.

More recently, however, the Algerian government has been attempting to institute plans for modernization and reorganization of the prison system at all levels. This reform plan includes improvement of living conditions, organizational changes at the national and local levels, and overall modernization of both facilities and prison programs. This plan, as published, is general in nature but does include statements that indicate sweeping changes for the Algerian penal system. For instance, the Justice Ministry report states plans to replace decrepit prison buildings with newly constructed prisons that meet international standards, to focus on rehabilitative programs, and to increase the capacity of the prisons to meet the needs of a growing prison population and relieve overcrowding. Those who are planning or attempting research in this area should, then, observe the Algerian prison system closely to determine whether or not these changes are actually being implemented and whether they make any real difference. There does seem to be a real interest on the part of the Algerian government to pursue reform, given that they have recently hosted a prison reform conference in Algiers and allowed outside assessment by the International Centre for Prison Studies.

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Bahrain

Legal System: Civil
Murder: Low
Corruption: Low
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes

Background

Bahrain (official name: Kingdom of Bahrain) is an archipelago of 33 islands situated midway in the Persian Gulf with a total area of 691 square kilometers. The largest island, Bahrain Island, constitutes more than three-fourths the land mass and most of the 2008 estimated population of over 1 million, over half of whom are foreign nationals. In this former colony of Britain, the Constitution guarantees the king as the head of the kingdom. The prime minister is the head of the government and, along with the king, who is chief of state, appoint a council of ministers. The legislative branch consists of a bicameral parliament of a 40-member Council of Representatives and a 40-member Shura Consultative Council appointed by the king, the members of which serve four-year terms. The Council of Representatives, composed of elected officials, passes laws, while the Consultative Council reviews laws passed before they are sent to the king for final approval. The Supreme Court of Appeal is the apex court; it is independent, with right of judicial review, and decides on the constitutionality of laws and regulations.

Police

The earliest known history of the police in Bahrain goes back to 1869 when the first police patrols, called the *fedawewa,* were established. In 1920, the first Bahraini police force was set up, and the first law for police was issued. The police at the time consisted of the camel riders and cavalry men. The first motorbike division was established in 1937, followed by the traffic directorate in 1942. In 1996, an amiri decree was issued to reorganize the Ministry of Interior to establish various directorates and security sections. In 2004, another amiri decree was given to reorganize the Ministry of Interior with plans to improve public security and policing services. Among the goals are improvement in the recruitment and retention of officers, the use of scientific approach to problem solving, development of a national database and advanced network of communications, and improved cooperation with the public. An example of recent developments is the purchase of advanced Radar Auto Vision mobile CCTV systems for installation in Bahraini Police Force patrol cars, which helped in securing more than 700 prosecutions for traffic violations. Another example of improving relationships with the public include Bahraini Ministry of Interior personnel getting training on lessons to effectively interact with the media. These efforts have enhanced the Bahraini image both among the public and in the neighboring Arab states.

The overall responsibility for public security (Bahrain Public Security [BPS]), law, and order is vested with the Ministry of Interior, which has the primary responsibility to maintain public order and prevent and investigate crimes. In addition to the usual police functions, the mission of the force is to prevent sectarian violence and terrorist actions. Precise data on police personnel are not available for Bahrain. In 1992, there were an estimated 2,000 Bahraini national police officers, which increased to about 3,000 in 2006.

The Directorate of Criminal Investigation (DCI), which is responsible for investigation and prosecution of criminals, is associated with the BPS. The DCI has within its jurisdiction the Mobile and Stationary Forensic Laboratories, the Vice and Begging Squad, and the Narcotics Bureau, and it maintains the Juvenile Care Unit. The Public Security Flying Wing (which operates the helicopters) serves both the BPS and the DCI. The Directorate of the Coast Guard, which is responsible for coast guard work, is also within the jurisdiction of the BPS.

Bahrain's law enforcement authorities such as the vice squad and the Criminal Investigation

Directorate of the Ministry of Interior cooperate with other agencies such as the Municipal Council of the Capital Governorate. For example, raids are conducted by the police with the cooperation of these agencies on private apartments and hotels when residents report unlawful activities such as trafficking and prostitution. Yet research on domestic workers in Bahrain suggests that police authorities appear reluctant to investigate or effectively prosecute the reported cases of abuse of domestic workers. A Human Rights Watch report notes that domestic workers, who are often noncitizens, routinely face arbitrary detention and deportation as a result of disputes with their sponsors or lack of work permits, although the Constitution prohibits arbitrary arrest and detention with the exception of severe criminal cases involving treason.

The Bahraini Women Police force was established in November 1970, beginning with two female police officers. In 2006, there were an estimated 368 women officers. Women officers are assigned to police stations that have women police units to deal with female cases. They are also assigned to various other tasks, including cases dealing with domestic disputes; fingerprint sections to assist with women who come in for fingerprinting; traffic and the Immigration Directorate; security as it affects women travelers in the international airport; and the child protection office that deals with juvenile delinquency.

Police training for officers lasts six months. Basic training includes coursework in laws and regulations. In-house physical training is given by instructors at the Public Security Training Institute, and instructors from Bahrain University, the Civil Services Bureau, National Guard Headquarters, and the public prosecutor's office cover areas in their areas of specialization. Cadets receive a rank of MMT (assistant second lieutenant) upon successful completion of training and eventually get promoted based on the availability of vacancies and requirements. Besides in-house training, some cadets are sent abroad to various countries located in the region, such as the King Fahad Security College in Saudi Arabia, Kuwait Police College, Dubai Police College, Abu Dhabi Police College, and the Royal Police Academy in Jordan. For refresher courses, police officers are sent to police colleges or institutes in the United Kingdom, the United States, and France, among other countries.

Crime

The Ministry of Interior (MOI) lists a series of crimes with supporting penal codes: murder, treason, danger of fireworks, the "miscarriage" of chair power, fraud, hoax, money laundering, and flirting. Though rape is illegal, the ministry's Web site does not include it in the list. It should be acknowledged that marital relations are governed by sharia law, and thus spousal rape is not a legal concept within the law. Among the interesting concerns noted by the MOI is flirting. The penal code punishes offenders who harass young women over the phone (e.g., calling a young woman and telling her that he loves her or sending her MSM messages). Offenders face up to three months of jail and monetary fines.

The MOI Web site notes that the Bahraini penal code criminalizes soliciting for prostitution in public places, with penalties of up to two years' imprisonment. Other related offenses in this category are enticing or assisting a person to commit acts of immorality or prostitution; using coercion, threat, or deceit to force a person to commit prostitution; living off the money received from one's own prostitution or from the prostitution of another; and establishing or operating a brothel or an establishment for prostitution. Penalties are more severe if victims are 18 years and under. All forms of pornography are prohibited under sharia law, with no differentiation between adult and child pornography.

Bahrain recently enacted human trafficking laws, in 2008, with penalties of prison sentences and fines ranging from 2,000 to 10,000 Bahraini dinars (US$5,319 to US$26,731). The law also calls for the formation of a committee to combat human trafficking.

Local media and research suggest crimes against domestic workers are common. A common complaint from foreign women working as domestic workers is physical or sexual abuse. Though many

cases are reported to local embassies and the police, most victims appear too frightened to sue their employers. There were reports that courts, however, allow victims who do appear to sue for damages or return home to their home countries, or both.

Current crime data from Bahrain are not available. The INTERPOL Web site has data available from 1996. The total number of crimes recorded in national crime statistics was 21,294, representing 3,686 crimes per 100,000 population (crime rate). During this year, there were 8 homicides (1.38); 235 (38.9) sex offenses including rape; 9 (1.6) serious assaults; 272 (47.1) thefts; 3,141 (543.7) breaking and entering; 2,156 (373.22) theft of motor cars; 332 (57.5) offenses related to drugs; and 238 (41.2) fraud cases. The U.S. State Department Web site notes that the crime rate in Bahrain is low and violent crime is rare. However, burglary, petty theft, and robberies do occur.

Courts

The legal system comprises customary tribal law (*urf*), three separate schools of Islamic sharia law, and civil law influenced by the British legal system. The Constitution provides for an independent judiciary and separate branch of government. The Minister of Justice and Islamic Affairs is the highest judicial authority, but the amir, who retains the power of pardon, is the highest judicial official.

The civil court system consists of summary courts and a supreme court. Summary courts of first instance are located in all communities and include separate *urf,* civil, and criminal sections. The Supreme Court of Appeal is the highest appellate court in the country. It hears appeals from the summary courts and decides on the constitutionality of laws and regulations.

Civil Courts

The civil law courts handle civil and commercial cases, including cases regarding the personal status of non-Muslims. The hierarchy of the civil courts is as follows: The courts of minor causes (the lower courts and the Court of Execution) are the first level and have one judge with jurisdiction over minor civil and commercial disputes. The High Civil Court of Appeal deals with larger civil and commercial disputes and personal status cases involving non-Muslims and is presided over by three judges. The Supreme Court of Appeal (or the Court of Cassation) is the final court of appeal for all civil matters and is composed of a chairman and three other judges appointed by decree.

Criminal Courts

The criminal law courts settle all criminal cases and are structured similarly to civil courts. The lower criminal court has one judge and rules on misdemeanor crimes; the higher criminal court deals with felony cases and has three judges and is also the place where appeals are made. The Supreme Court of Appeal (or the Court of Cassation) serves as the final appellate court for criminal matters.

Sharia Courts

The sharia law courts have jurisdiction over all issues related to the personal status of Muslims, both Bahraini and non-Bahraini, including matters relating to inheritance and wills. Sharia courts operate at two levels: the Senior Sharia Court and the High Sharia Court of Appeal. At each of the two levels there is a separate court for Sunni and Shiite Muslims to deal with all personal status cases brought by the respective populations. That is, there are Sunni courts at two levels, with jurisdiction over all personal status cases brought by Sunni Muslims, and Shiite courts with jurisdiction over cases brought by Shiite Muslims. The High Sharia Court of Appeal is composed of a minimum of two judges, and in cases of disagreement, the Ministry of Justice provides a third judge to attain a majority vote.

Special Courts

The Ministry of Defense maintains a court system for military personnel accused of offenses under the Military Code of Justice, and a similar court for police officers is maintained by the Ministry of Interior.

In 2000, the Higher Judicial Council was established for supervising the courts and the office of public prosecution. This council is chaired by the king. The king appoints the council members, who are drawn from a cadre of judges from the Supreme Court of Appeal, the sharia law courts, and the civil high courts of appeal.

The Constitutional Court was created in 2002 with jurisdiction over the constitutionality of laws. The Higher Judicial Council appoints a president and six members who serve nine-year terms and cannot be removed before their terms expire. Members of the government, including the king, can challenge the constitutionality of laws in this court. Decisions of the Higher Judicial Council are final and "binding on all state authorities."

Constitutional Safeguards

The Ministry of Justice is responsible for public prosecutors. Access to attorneys is not freely available. Civil and criminal trial procedures provide for an open trial with right to counsel and the right to appeal. Legal aid is made available when necessary. The Constitution states that "no person shall be arrested, detained, imprisoned, searched or compelled to reside in a specified place except in accordance with the provisions of the law and under the supervision of the judicial authorities." Criminal court proceedings do not appear to discriminate against women, children, or minority groups. In the early stages of detention, detainees and their attorneys must seek a court order to be able to meet. Detainees may receive visits from family members, usually once a month.

With the abolition of the State Security Act in 2001, courts refused police requests to detain suspects longer than 48 hours, and the police complied with court orders to release suspects. Judges may grant bail to a suspect. However, attorneys still require a court order to visit detainees in jail. In 2004, the government made efforts make the judicial process more transparent in the areas of recruitment of new judges as well as training of judges and prosecutors, establishment of an office of mediation, and steps to speed up court procedure.

Punishment

The Penal Code Law, article 333, provides for life imprisonment for cases dealing with premeditated murder. However, if it is well planned in advance or associated with other crimes, then the judge has the right to sentence the murderer to death. The same punishment applies to the killing of public employees during their working hours or to murdering people by explosive or poison products.

Article 49 of the penal code notes that the penalty for a felony is capital punishment or imprisonment for at least 3 years and deprivation of civil rights for a period exceeding 3 years but not more than 15 years. Article 50 of the same code lists the punishment for misdemeanors as imprisonment and a fine of amount in excess of 5 dinars and deprivation of civil rights for a period exceeding 3 years and not less than 1 year. The punishment for those who illegally take money from others is a jail term. The punishment is more severe if fraudsters steal public money or cheat their victims by changing their names or identities or use or sell properties owned by others. Offenders convicted of money laundering can receive up to 7 years in prison and a fine of BD1 million.

The Constitution prohibits torture and other cruel, inhumane, or degrading treatment or punishment. Following the reforms of 2001, systematic torture no longer takes place; however, there has been no attempt to investigate allegations of torture committed by government officials in the past.

Prisons

The corrections system is administered by the Ministry of Justice and Islamic Affairs through a director of prisons. The Kings College of London Prison Brief for Bahrain reports that there are two prisons in the sheikhdom, with a total population of 911 (rate of 155 per 100,000 population) in 1997 and 437 (60 per 100,000) in 2003. The 2004 UN Survey data report a prison population of 701 (95 per 100,000). The rocky islet of Jiddah houses the main state prison and has a capacity of 816 with a 2004 occupancy rate of 91 percent. Women prisoners are

housed separately from men. In 1973, the juvenile care center was opened.

Mahesh K. Nalla

Further Reading

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Egypt

Legal System: Civil/Islamic
Murder: Low
Burglary: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

Situated in the northeastern corner of Africa, Egypt, officially known as the Arab Republic of Egypt, is the only land bridge from Africa to Asia. Although Egypt is on the African continent, it is considered an Arab country, and the official language is Arabic. With a total area of 1,001,450 square kilometers and a population of 81 million, the republic shares borders with Israel, the Gaza Strip, Libya, and Sudan and has coastline on both the Red Sea and the Mediterranean Sea.

Because of the various empires that have ruled Egypt throughout its long history, the Egyptian legal system has undergone various changes. Prior to the 1952 revolution, in which Egypt gained independence from Great Britain, the ruling parties enforced their own codes and laws as they saw fit. There were separate courts called sharia for Muslims, whereas other courts were reserved for the Christians. Since the revolution, Egypt has been governed by several constitutions, the last of which was adopted in 1971. With only three amendments to the Constitution in 1980, 2005, and 2007, this document still governs Egypt today. The Egyptian legal system is a civil law system that combines European and Napoleonic codes with Islamic or sharia law. Napoleonic code is essentially the criminal code that Egyptians were taught while Napoleon Bonaparte controlled the country.

The executive branch of Egypt is headed by the president, the chief of state, for unlimited six-year terms. The president appoints vice presidents, prime ministers, and the Council of Ministers. The president of Egypt also assumes the responsibility of commander in chief of all armed forces and has the power to declare war pending legislative approval. The president, as head of the party, controls the legislature with the power to dismiss

the legislature at any time. The president can get the legislature to enact laws that he proposes or supports and has the power of veto any piece of legislation.

The legislative branch of the government is a bicameral system consisting of a lower house, the People's Assembly, and an upper house, the Advisory (Shura) Council. The People's Assembly is made up of 454 seats, 444 elected by popular vote and 10 appointed by the president for five-year terms. It is the job of the People's Assembly to draft and enact laws for the republic, as well as approve the yearly national budget. Furthermore, the People's Assembly is given, by decree of the Constitution, the power to monitor the executive branch.

The judicial branch of government consists of a variety of courts whose responsibility is to hear and rule on both civil and criminal matters. The highest court in the country is the Supreme Constitutional Court. Located in Cairo, the mission of the highest judicial body is to determine the constitutionality of laws and regulations, rule on disputes of jurisdiction, settle disputes in rulings of different judicial bodies, and interpret the laws and statutes issued by the executive and legislative branches. The Supreme Constitutional Court is not an appeals court, and individual defendants cannot appeal their cases to this judicial body.

Below the Supreme Constitutional Court in the Egyptian judicial hierarchy is the Court of Cassation, which serves as the highest court of appeals, and the misdemeanor courts of appeal are the first level of appeals. The courts of appeal review appeals of violations and misdemeanor cases submitted by either the defendant or the public prosecutor. Unlike the Court of Cassation, in a court of appeal, the basis of the appeal can consist of both factual findings and points of law. In addition, there are the courts of general and limited jurisdiction that serve as courts of first instance and are high-level trial courts in the judicial system. The courts hear lawsuits and other criminal charges brought forth by the public prosecutor or private parties. As a general jurisdiction court, the courts of first instance deal with criminal cases and civil matters where the sum of the dispute is greater than 10,000 Egyptian pounds. Cases that involve sums less than this are heard in trial courts of limited jurisdiction, also known as summary courts.

Police

The police force in Egypt is a major source of employment for the Egyptian people. According to figures published in 2006, the Arab Republic of Egypt employed 10,000 sworn and an additional 112,000 individuals serving in various capacities at that time. On top of that, a paramilitary force of about 300,000 officers is used to help with security, riot control, and other protective services. The Egyptian police force is organized in a national, centralized fashion. Under the guidance of the Ministry of Interior, the force is distributed throughout the provinces within the 26 governorates of the country. Governors and police chiefs in each jurisdiction control policing activities and carry out tasks as they are instructed by the Ministry of Interior. The overall structure of the national police force can be compared to that of a domestic military. The major general of police answers to the Ministry of Interior and, ultimately, the president.

To become a police officer, one must attend the Police Training College located near Cairo. During a three-month course, cadets are instructed on the finer points of policing and learn different procedures and practices pertinent to their job. This could include training in marksmanship, basic criminal and civil law, emergency response, and first aid. Those individuals looking to become officers (i.e., lieutenant) must graduate from the Police Training College with a two-year bachelor's degree in police studies. During their time at the school, candidates have the opportunity to take classes in a wide array of fields, including security administration, foreign language, first aid, cryptology, criminal investigation, and public relations.

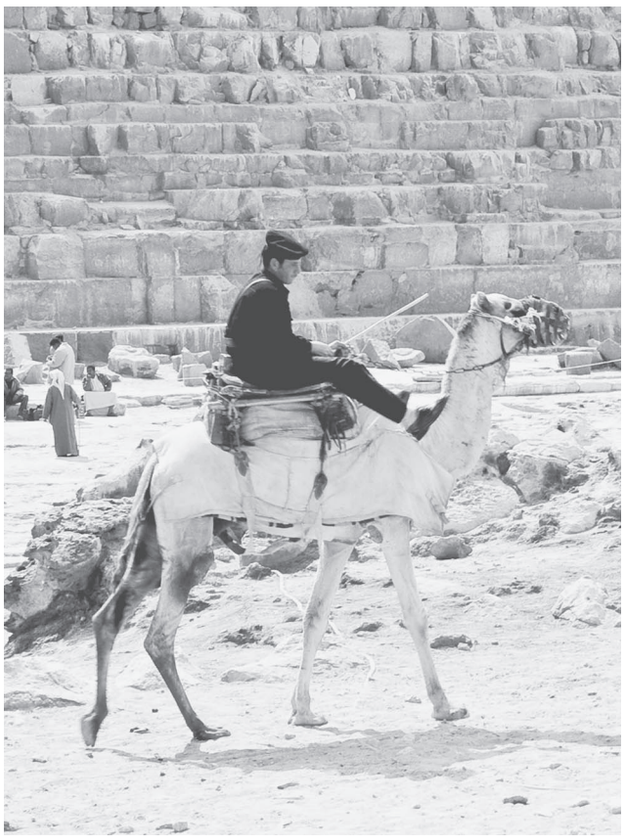
Upon graduation from the training college, new officers are assigned to a new police division. If assigned to a basic police department, the tasks include keeping the peace, assisting in criminal investigations, and overall crime prevention. Besides general police departments, the national police force has a number of specialty divisions. Some of the notable ones include the Tourism and Antiquities

Police, the Port Security Division, the Immigration and Customs Division, and the Narcotics Division. These specialty divisions have a narrow scope of responsibility and focus specifically on their individual missions.

Crime

Classification of Crimes

As mentioned earlier, Egyptian law is a combination of European code and Islamic law. The Egyptian civil code is the source of laws and codes that govern the Egyptian people. Although this code is a variation of different legal systems, the French civil code seems to be the dominant influence, with Islamic law playing a lesser role. The secular code usually covers criminal matters such as murder, rape, robbery, and the like, whereas Islamic code deals with personal matters, family disputes, divorce, and other similar issues. However, in the past several decades, there has been a movement by Islamic fundamentalists such as the Muslim Brotherhood to adopt Islamic law completely. Although this has not taken place, in 1985, the People's Assembly began a review of the legal code and recommended changes to laws that conflicted with Islamic law. This action illustrates the struggle between secular and religious ideals within the government.



An officer of Egypt's Tourism and Antiquities Police patrols the pyramids at Giza. (Jack Versloot)

Today, the Egyptian criminal justice system comprises four different jurisdictions: military justice, administrative justice, emergency justice, and ordinary criminal justice. Military justice refers to the system that governs and brings to justice criminal offenders who are members of the military. In rare instances, civilians can be prosecuted in the military justice system. This usually occurs when crimes have been committed that affect state security and also when crimes occur during a state of emergency. The second jurisdiction, administrative justice, also does not deal with too many Egyptian civilians. The point of this jurisdiction is to provide an avenue of administrative review. Officials here are charged with reviewing presidential decrees and administrative decisions to determine their legality as they are brought forth by government employees. The third type of jurisdiction in the system is emergency justice. In this system, the president has the authority, per the Constitution, to declare a state of emergency. By doing this, the president assumes great power over the system. With the ability to skirt around the rights normally afforded to civilians, the president can order surveillance on citizens, searches and seizures, censorship of the media, the closure of businesses, and many other invasive procedures. There are also a number of powers given to the president for creating new courts and procedural rules within those courts. Although this power is supposed to be reserved for "emergencies," Egypt has been in a state of emergency since 1981 when President Sadat was assassinated.

Criminal Code

The criminal code in the ordinary criminal jurisdiction outlines three basic types of crimes. The first is

a violation. This type of crime cannot carry a punishment of more than 100 Egyptian pounds. Violations can include disturbing the peace, unlawful discharge of a firearm, defacing property, and littering public waterways. The second type of crime is a misdemeanor. In Egypt, a misdemeanor is defined as any crime that carries a fine of greater than 100 Egyptian pounds but no more than three years in prison. Examples of misdemeanors include theft, perjury, aggravated assault, negligent homicide, and impersonating a public official. Last, the most serious types of crime are known as felonies. Intentional homicide, rape, mayhem, kidnapping, robbery, burglary, arson, and terrorism offenses are all defined as felonies in the criminal code. A typical punishment for the commission of a felony can range from imprisonment for three years to life in prison. For certain crimes, the death penalty is also an option.

Crime Statistics

Although Egypt is one of the few African countries that reports data to the United Nations Office on Drugs and Crime, there is no real way to verify the information that is being reported. The following are the crime statistics reported by the Egyptian government in response to the UNODC Crime Trends Survey: In 2005, Egypt reported 528 intentional homicides, which resulted in a rate of 0.72 per 100,000 people (WHO, however, reports a rate of 1.3 in 2004). There were also 261 assaults and 435 thefts in 2005. The only other two crimes reported by Egypt for the year 2005 were embezzlement and kidnapping. Their totals were 114 and 18, respectively. One interesting point is that for each of the crimes listed here, except for kidnapping, no more than 20 percent of each occurred within an urban area.

Other Crime Problems

Drug trafficking and subsequent use is a big problem in Egypt. The country has been pinpointed as a transit point for Southwest and Southeast Asian heroin and opium. The final destinations for the products are Europe, Africa, and the United States. Egypt also faces the problem of drug cultivation within the country. Both cannabis and opium are grown in various regions of the country. To combat this problem, the Egyptian government has undertaken a very aggressive drug control strategy. Under the direction of the Anti-Narcotic General Administration, the military, Coast Guard, customs department, and Ministry of Interior all work together to disrupt and intercept shipments. Over the past several years, the government has seen an increase in the amount of drugs seized each year. For example, in 2000, they seized 524 kilograms of cannabis, but in 2004, they seized 1,868 kilograms. The same can be said for opium: in 2000, officials seized 75 kilograms, but in 2004, they seized 114 kilograms. The biggest increase in seizures came from marijuana: almost a 50,000 kilogram increase from 2000 to 2004.

In a span of two years from 2004 to 2006, there were six terrorist attacks in Egypt. The attacks targeted not only a famous bazaar but also tourist buses and tourist resorts on the Red Sea. Although religious extremism has existed in Egypt for some time, this new wave of terrorism poses many challenges the government is forced to address. The Egyptian economy is geared around tourism, and when tourism drops due to fears of terrorist attacks, the strain on the economy is drastic. The Ministry of Justice has created a National Committee for Combating Terrorism that works closely with other nations to investigate and arrest suspected and known terrorists.

Finding of Guilt

Prosecutors and Judges

Prosecutors are considered both executive and judicial officials because they are granted both prosecutorial powers and the power of an examining magistrate. This means that prosecutors have the duty of investigating crimes, referring them to the court, and also prosecuting those cases that enter the system. As part of their powers, prosecutors can issue warrants for arrests or searches but also can make arrests in the role of a judicial officer. Because of this wide-ranging authority, the position

of prosecutor is very powerful in the system. To become a prosecutor, individuals must be at least 21 years of age, hold a law degree, and be licensed to practice law. After selection, potential future prosecutors are required to attend a course at the National Center for Judicial Studies, which lasts for six months, and then pass various oral examinations. Once appointed as a prosecutor, the individual has tenure except in the case of gross negligent misconduct or failure to perform specific duties. Positions as a prosecutor are highly coveted because they are the stepping stone for obtaining judgeship.

Judges are also important actors in the process of finding guilt. Appointed by the executive branch and seated at all levels of the judicial system based on seniority, judges hold the responsibility of ensuring justice is preserved in a manner consistent with the Constitution and other judicial precedents. As of 2006, in Egypt there were 7,680 judges and magistrates, all male. This number includes all of the judges who preside over limited jurisdiction courts, general jurisdiction courts, the courts of appeal, the Court of Cassation, and the Supreme Constitutional Court. To receive appointment to a judgeship, individuals must hold a law degree and be a minimum of 30 years old. To serve on the courts of appeal, the minimum age requirement is 38, and in the Court of Cassation, the minimum age is 43. Judges are trained at the same National Center for Judicial Studies as prosecutors, in a variety of different subjects including criminal law, civil law, and criminal procedure. Judges at all levels also have lifetime tenure with respect to their appointments.

Arrest, Searches, and Seizures

The process of finding the guilt of an individual for the occurrence of a crime can be broken down in to two distinct phases. During this process, there are freedoms and individual rights afforded citizens, and these must be respected by government officials. The first phase is the pretrial. This phase covers the time from the first police interaction with the defendant up to the actual court date. To initiate the process of finding guilt, the defendant and evidence must first be brought into the system. This requires police and prosecutors to go out into the field, investigate crimes, collect evidence, and make arrests. These actions are regulated by specific rules regarding stops, arrests, and searches. In terms of stops, police are allowed to proceed with a search when the "circumstances warrant suspicion." This definition is very vague and is the product of decisions from the Court of Cassation. The same can be said for the act of frisking a suspect. Although there is no constitutional provision regulating this behavior, the courts have allowed them to be conducted when they are preventive in nature. This means police officers can search an individual for weapons or contraband that may be used to cause harm; however, there are a variety of rules that limit the scope and applicability of preventive searches.

Unlike the police procedures of stops and frisks, the power to arrest citizens is regulated by constitutional provisions. The Egyptian Constitution states, "Individual freedom is a natural right not subject to violation except in cases of *flagrante delicto,* and no person may be arrested, inspected, or detained or have his or her freedom restricted in any way or be prevented from free movement except by an order necessitated by investigation and the preservation of public security." To restrict someone's freedom, a warrant has to be issued by a judge or public prosecutor. Use of force is permitted to make an arrest or control unruly civilians. Defined as "military force," an officer is permitted to use deadly force on people who resist arrest or flee if they meet any of the following criteria: (1) the individual has been convicted of a felony or a misdemeanor that has an associated prison term of more than three months, (2) the individual is suspected of committing a felony or *flagrante delicto* misdemeanor, or (3) an arrest warrant has been issued for the individual. In certain situations that endanger public safety, deadly force may be used for crowd control. To use deadly force, the officer must first give a verbal warning and then a warning shot, before exacting deadly force against an individual.

The last police function the Constitution regulates in the finding-of-guilt process is that of search and seizure. In Egypt, there are three legal provisions addressing the legality of searches. The first

is that private homes are protected against warrantless entry. For an officer to search a suspect's private dwelling, a warrant must be issued by a judge or judicial officer. Based on Court of Cassation rulings, the issuance of a warrant is valid only if there is sufficient evidence to indicate the individual has committed a crime. The second provision explicitly forbids warrantless surveillance of correspondence between individuals. Essentially, telephone calls, mail, electronic mail, and other forms of communication cannot be monitored without a proper warrant. Unlike warrants to search the homes of suspects, warrants to eavesdrop on communications between individuals must come from a magistrate or judge. A prosecutor does not have the authority to issue this type of warrant. The last provision of the Constitution regarding search and seizure simply ensures the protection of citizens' private lives and allows for legal action in the event of illegal searches and seizures.

Pretrial Process

Once an individual is taken into custody, the prosecutor has 24 hours to charge the suspect or he or she must be released. Typically, police officers or judicial officers do not question suspects. They simply turn the suspect over to the prosecutor after apprehension. During this time period, the prosecutor can question the suspect and attempt to build or strengthen a case. To formally charge a suspect, the prosecutor must file a summons stating the charges and deliver it to the defendant. Before trial, it may be necessary to hold preliminary hearings to settle disputes, obtain witness testimonies, and conduct other business. The pretrial process also involves pretrial motions and a period of discovery, in which both parties have the opportunity to examine all documents and evidence that the opponent plans to present to the court.

Trial

As previously noted, the nature of the charges determines what type of court the trial will take place in. Violations and misdemeanors are tried in summary courts with a single judge, and felonies are tried in a court with a three-judge panel consisting of judges pulled from the courts of appeal. The proceedings of the trial are fairly straightforward. They begin with the task of confirming the defendant's personal information and declaring the charges for the court record. The defendant is then given the opportunity to enter a plea. If the plea is not guilty, then the trial begins immediately. During the trial, the prosecutor has the first opportunity to introduce witness testimony. After the prosecutor is finished with questioning the witness, the victim, civil plaintiff, defendant, and responsible civil party may also question the witness. Upon hearing all of the witness testimony, the prosecution and the defense both present their closing arguments before the court renders its decision. If the defendant is found not guilty, then the court must release him or her from custody. However, if the verdict is "guilty," the court assigns punishment accordingly. Depending on the outcome of the trial, both parties have the right to appeal the decision of the court. Felony appeals are sent immediately to the Court of Cassation, whereas all other appeals follow the process outlined in the judicial branch section.

However, not every case brought into the system comes to conclusion with a full trial. There are a couple of options or dispositions available to the parties involved that can resolve a case without proceeding to a full criminal trial. The first is a simple guilty plea by the defendant. This usually occurs before the start of the trial, and the court determines appropriate punishment at that time. Another option is called a criminal writ. In cases where the charge is for a violation or other minor felony and the punishment is less than 1,000 Egyptian pounds, the prosecutor can call on the court to determine guilt based on the details of the investigation and the evidence collected. If the court determines the defendant is guilty, it can issue a criminal writ. This writ publicly declares the defendant innocent, but the defendant is responsible for the fine resulting from the writ. The defendant has the option to object to this ruling and send the case to trial, but if there is no objection, then the criminal writ is the final decision of the court.

A third option for avoiding a full trial in a criminal case is a conciliation or settlement between parties. Just like in criminal writs, this option is available only for violations and low-level misdemeanors. A conciliation takes place between the defendant and the prosecutor. When it happens, the two parties reach an agreement where the defendant pleads guilty and then is responsible for only a portion of the fine for the charged crime. Although this is not technically plea bargaining, one can see the parallels in the two processes. A settlement is an arrangement that is reached between the victim and the defendant. There are not currently any rules regulating this process other than that the agreement must be mutual.

Defendants' Rights

Throughout the criminal justice process, defendants are afforded a number of rights and protections. The following are some of the rights not previously discussed in the text, but which are still recognized as rights by the criminal code and the courts.

- An individual cannot be charged with a crime or punished when there is an absence of law forbidding that crime.
- One cannot be charged with a crime ex post facto. This means that laws cannot be applied retroactively and used to prosecute individuals who committed the act before the law was established.
- There is a presumption of innocence, and defendants have the right to a fair trial.
- Defendants have the right to counsel in all felony cases and misdemeanor cases where there is a possibility of imprisonment.
- Defendants have the right to remain silent and protect themselves from self-incrimination during court proceedings.
- If found innocent, those who were detained have the right to be compensated. Additionally, those who are found innocent on appeal have the right to public announcement of their exoneration in official newspapers and to be compensated for the situation.

Some of these rights are not expressly decreed in the criminal code but are recognized as rights by the precedents set forth in the Court of Cassation.

Conviction Statistics

The following are the conviction statistics for 2006, the most recent year for which data are available as reported by the government of Egypt to the United Nations Office on Drugs and Crime.

Persons brought to court	5,923,898
Grand total convictions	5,585,058
Adult* females convicted	694,320
Adult* males convicted	4,927,496
Juveniles convicted	36,578
Homicide convictions	3,123

**Legal adult is age 18.*

Punishment

Types of Punishments

If a criminal defendant is convicted of a crime, the court in which the trial took place will decide on a commensurate punishment. The general guidelines for punishment based on the crime are as follows: For a criminal violation, the punishment/fine cannot exceed more than 100 Egyptian pounds. A misdemeanor carries a fine of greater than 100 Egyptian pounds but no more than three years in prison, and the typical punishment for the commission of a felony can range from imprisonment for three years to life in prison. To determine the punishment within those guidelines, judges assess a number of factors including the severity of the crime and the defendant's prior criminal history. The ultimate punishment in Egypt is the death penalty. Although only two out of three judges are needed to convict and sentence felony offenders, the decision must be unanimous when sentencing someone to death. In addition, the sentence must be reviewed by the chief *muti,* Egypt's highest religious official, or the minister of justice.

Prisons

Criticized over the years by groups such as Amnesty International and Human Rights Watch for the

conditions of its prison system, Egypt has also been the target of bad press for its use of the prison system to house political prisoners and other detainees for indefinite periods of time without a formal trial. The Egyptian prison system consists of an array of different prisons ranging from maximum-security prisons to slight-security and special-purpose prisons. As of 2002, there were 43 different prisons, jails, and correctional institutions in Egypt. These institutions held 61,845 prisoners, the vast majority of whom were male, and according to 2001 data, they were being monitored by a total of 9,455 employees. Prisoners are assigned to correctional institutions based on the severity of their crimes and any special needs or requirements they may have. For example, a low-level drug offender or white collar criminal will not be housed in the same area as murderers and terrorists. Reports regarding the condition of the prisons vary from source to source. According to a 1992 Human Rights Watch report, the overall prison conditions are not stellar. Although prisoners are allowed family visits and contact with outsiders, the system overcrowding has led to inadequate living conditions and medical care. Prisoners and international observers alike point out the existence of major sanitation issues, poor sleeping arrangements, and lack of quality food. Also, according to Middle East Watch, many inmates do not have the opportunity to engage in work and educational activities. Even though the 1992 report is somewhat dated, international human rights groups have continued to report on the poor conditions in Egyptian prisons. With a finite amount of resources at the government's disposal, it is unlikely there will be widespread prison reform in the near future.

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Iran

Legal System: Islamic/Civil/Common
Murder: Medium
Corruption: High
Human Trafficking: High
Prison Rate: High
Death Penalty: Yes
Corporal Punishment: Yes

Background

Iran (Persia) is a powerful force in the Middle East and has a long history dating back to 4000 BCE. It covers 1,648,000 square kilometers with a population of over 71 million people. The country is surrounded by the Caspian Sea, Armenia, Turkmenistan, and Azerbaijan to the north; the Persian Gulf and Oman Sea to the south; Afghanistan and Pakistan to the east; and Iraq and Turkey to the west. The official language of Iran is Persian (Farsi). The country also has a long history of the rule of law. Cyrus the Great drafted the first human rights document in 539 BCE. Freedom of movement, freedom of religion, and freedom of speech are some examples of the Cyrus conception of human rights.

Historically, the official religion of most Persians was Zoroastrian. However, with the invasion of Arabs in 641, Zoroastrianism was replaced by Islam. Iran had many dynasties throughout its history. The head of a dynasty had total power and was a symbol of justice. Hence, justice was rendered in the name of the king. The Qajar dynasty (1796–1925) played a major role in transplanting some Western ideas about justice-related matters by employing several Europeans advisors to reform the

Persian system. By the end of the Qajar dynasty, Iran had adopted its first Fundamental Law, which was based on the Belgium constitutional model, and later the Pahlavi dynasty adopted provisions of France's Napoleonic code. In January 1925, and following the French model, the first Iranian penal code classified three types of crimes: felony, misdemeanor, and violation.

In 1979, the Pahlavi dynasty was overthrown because of the Islamic Revolution. The new constitution was based on sharia (Islamic law). The leadership of the country appoints the head of the judiciary system (principle 157). The Constitution accepts separation of powers; however, the leader oversees all three branches of the government. The system is primarily inquisitorial because courts act as fact finders for all types of crimes, which means the system is based on bench trials. However, there are two exceptions for bench trial: political crimes and libel crimes perpetrated by the media. Principle 168 of the Constitution indicates that with political crimes and libel crimes related to media, courts must proceed with an adversarial process in the presence of a jury.

An independent centralized court system follows the applicable penal and procedural regulations and makes independent decisions. Article 167 of the Constitution indicates that if a judge does not find the statute to make his decision in a specific case, he is obligated to refer to sharia. The Supreme Court also has a main role in making decisions regarding conflicting sentences and overturning unconstitutional or illegal decisions of the courts. Supreme Court decisions are regarded as law for the courts in similar cases. In sum, the main sources of law are the Constitution, statutes passed by legislature, sharia, and Supreme Court decisions.

Law enforcement agencies are under the executive branch of government. Prior to the revolution, the gendarmerie used to be responsible for rural areas and villages fewer than 5,000 inhabitants; also, the gendarmerie was responsible for maintaining the security of the roads. Police had jurisdiction over areas with more than 5,000. Before the Islamic Revolution, the shah of Iran also maintained a secret police known as SAVAK whose repressive tactics became notorious. After the Islamic Revolution, the SAVAK was abolished, and the Islamic Revolutionary Committee was added to maintain security and act as law enforcement. Eventually, the gendarmerie, police, and committee were combined to make the Islamic Revolution of Iran Police Force (IRIP). The force reports to the Ministry of Interior.

Crime and Punishment

According to the Constitution (principle 4), all laws passed by Iran's Parliament should be compatible with Islamic law. That is why Parliament enacted the new penal code based on sharia. To satisfy this goal, principle 96 of the Constitution established the Guardian Council whose primary goal is comparing statutes passed by parliament with sharia, to assure they are not against the Islamic regulations. The Guardian Council also is the only official authority to interpret the Constitution.

There is no general definition of crime in sharia; however, each act of commission or omission has its own definition, such as murder, rape, adultery, and so on. Most Islamic criminal law texts contain specific sections for each crime that consists of definition, procedure, law of evidence, and punishment for that crime. There are also some acts of commission or omission that are not discussed in sharia, however, which, because of societal change, are considered criminal behaviors. For instance, there is no concept of cyber crimes in Islamic law. Sharia left the door open for society's needs in the future, by the concept of *ta'azir,* that is acts of commission or omission that are not defined in Islamic law and could be defined by the legislature for the criminal justice system. Here is where the Iranian criminal justice system used the new ideas and standards to deal with those criminal behaviors that are not mentioned in sharia. To implement a policy, the legislature needs to have a general definition for the crime and make it known to the people. According to article 2 from section 1 of Islamic Penal Law (1991), "crime is any act of commission or omission which is against the law and punishable by law."

An unidentified woman, left, leaves the Irshad Judiciary Compound, north of Tehran, Iran, after receiving 70 lashes for taking part in a New Year's party wearing "indecent" clothing, January 3, 2001. Her mother, right, and an unidentified woman, center, walk with her. Police arrested more than 250 people, including foreigners, for attending the private party "indecently" dressed. In Iran, which strictly interprets Islamic laws, women must wear clothing that only shows their faces and hands. (AP Photo/Vahid Salemi)

Furthermore, the code does not divide the concept of crime as Napoleonic code (felony, misdemeanor, and violation). Instead, the sharia code is divided into four different types of punishments for different crimes: *hudud, qisas, diyat, and ta'azirat* (article 13). The code also added a fifth type of punishments called deterrent punishments, even though there are no such sanctions in the Islamic law.

Hudud is the plural of *hadd,* which means the criminal sanctions that sharia has determined for specific crimes. Usually, *hudud* are for serious crimes. Because Islamic law has provisions for these types of crimes in terms of the amount of punishment, the legislature followed the same standards in the code. The code provided different *hudud* for the following crimes: fornication, homosexuality, facilitating prostitution, false accusation of fornication or adultery, drinking alcohol, *dacoity* (armed robbery in which innocents are attacked or killed), and theft. Each of these crimes has specific punishments under the code. Some of them also have subclassifications. For instance, the code envisages different situations in which adultery could happen, from nonconsensual to consensual intercourse, and each has a specific punishment, from whipping to capital punishment through stoning.

Punishment for first-degree rape is capital punishment (article 82), and punishment for fornication is 100 lashes. Sometimes, the age of victim could affect

the amount of *hadd* as well. For instance, if a married woman has sexual intercourse with an underage boy, she has to suffer 100 lashes (article 82), but if the same person commits adultery with a mature man, the punishment could be stoning. It is interesting to note that sometimes the age of the offender can be considered as an aggravating circumstance to increase the amount of punishment. Article 84 indicates that if a married woman or man is old and commits adultery, he or she should suffer from whipping before being stoned to death. ~~Surely, stoning cannot be justified with today's criminal justice standards.~~ ~~However, the~~ idea of increased punishment based on aggravating circumstance is considered justified based on the general deterrent effect of punishment. Usually, society has higher expectations of elderly citizens because in most communities, elderly citizens are role models for youth. This means that by committing a crime, they are sending the wrong message to the society. That is why if an elderly citizen who is also married commits adultery, this is considered an aggravating circumstances that mandates more punishment than would adultery by someone who is young or not married. Basically, the code wants to send a message to elderly offenders that if they commit the same crime, they might be sentenced to a harsher punishment. Another type of *hadd* is *dacoity* (armed robbery). If the robber was armed and committed the robbery through creating public panic or endangering people's safety, he or she should be punished in one of the following ways, at the discretion of the judge: execution, hanging, amputation of the right hand and left foot, or exile.

There are also different types of *hudud* to which Iranian judges refer to find the right punishments within the provisions of principle 157 of the Constitution. For instance, apostasy is a crime, and if a Muslim converts to another religion, including Christianity, he or she will face the death penalty.

Quisas

As Article 14 of the Islamic penal code mentions, *quisas* is a criminal sanction that is mimics the offender's crime. *Quisas* is the same concept as *lex talionis* (the law of retaliation). The concept of an eye for an eye not only is mentioned in the Bible but also is part of Islamic law. Based on the same concept, the code contains the same provision for those found guilty of some specific crimes. The code accepted the law of retaliation for two different types of crimes, homicide and intentional inflicting of injury, and each type has its own subclassifications. The code divides homicide into three different types:

1. Premeditated murder for which the code prescribes life-for-life punishment. However, if the victim's family withdraws its complaint, the offender can escape capital punishment.
2. First-degree manslaughter.
3. Second-degree manslaughter. The code provides restitution provisions under *diya* (blood money, see next section) for first- and second-degree manslaughter.

The philosophy of *quisas* comes from retributive justice. Retributive justice believes that by committing crime, an offender inflicts harm against society. That is why the criminal justice system must impose the same amount of harm against the offender.

Diyat

Diyat is the plural of *diya,* which is an amount of money ("blood money") that the offender has to pay as punishment for crime in case of death or injuring people. *Diya* can be compared with the concept of restitution in the Western criminal justice system. Usually, for cases of unintentional killing of a victim, the offender has to pay *diya*. The code also has some provisions for converting *quisas* to *diya.* For example, if a victim or his or her family withdraws the complaint against the offender, the victim or family can ask for *diya* or simply forgive the offender without receiving any monetary compensation. It is imperative to note that in the Islamic criminal justice system, sometimes people have a right to forgive the offender. In a situation such as this, prosecutors do not have enough power to convict the offenders. Most of these cases happen regarding those crimes that are to be punished with *quisas* (the law of retaliation). Most offenders try to convince victims or their families to forgive them. Sometimes there are some social

processes involved in this mediation. The offender or his or her family will participate in this process of forgiveness. As a result, the law of retaliation (an eye for an eye) is not applicable to such offenders. The amount of money that the offender has to pay for *diya* is based on the seriousness of the crime and also the part of the victim's body that is injured.

Ta'Azirat

Ta'azirat is the plural of *ta'azir*, a criminal sanction that is not mentioned in sharia; however, the state can pass some regulations through Parliament to adopt some punishments for acts of commission or omission. The basic philosophy behind *ta'azir* is the concept of new crimes in society. Islamic criminal law provides for those crimes that have existed throughout history. However, new types of crime will always occur in the future, and the criminal justice system must adopt new rules to respond to these criminal behaviors. Legislators use new ideas in criminal justice to enact some standards for these types of crimes. Policies such as probation, parole, mitigating or aggravating circumstances, necessity, self-defense, and so on are mostly used in *ta'azirat*.

Deterrent Punishments

Deterrent punishments are those punishments that are adopted by the legislature to discipline and maintain order in society (article 17). Because legislators already addressed these types of punishments under *ta'azir*, it seems unnecessary to have deterrent punishments as well. Therefore, the Supreme Court subsequently held that deterrent punishments mentioned in article 17 of Islamic penal code are for those offenders who commit intentional crimes, and *ta'azir* is not enough for them. Hence, imposing a maximum *ta'azir* punishment does not prohibit the judge from adding deterrent punishments to the sentence at his discretion.

There are no deterrent punishments in Islamic criminal law. According to the fourth principle of the Constitution, none of the statutes passed by legislature can be against sharia. Here is an important point about different interpretations of sharia. There are two main divisions of Islam, Sunni and Shia. Sunni mainly has been practiced in the Arab world. Persians mostly follow the Shiite school. Shiite doctrine holds that the prophet Mohammad chose his successor (his cousin Ali), and each successor chose the next one, called the imam.

According to the Shiite school, Islamic principles are divided into the following two parts:

1. *Primary principles,* which are those parts of Islamic rules adopted by the Koran, tradition (sayings and behavior of Prophet Mohammad and his successors), consensus, and reason
2. *Secondary principles,* which are those changes that have been made to primary principles through high-ranking Shiite clergyman (ayatollah)

This means that the ayatollah has the authority to change some rules and regulations that initially belong to primary principles. Thus, adding deterrent punishments to the code is a legislative use of secondary principles.

There are also some other regulations under primary principles; however, the code changed them to be comparable with today's standards. For instance, under *quisas* (the law of retaliation), primary principles indicate that if an offender murders a person, he or she should be punished by capital punishment. However, if the victim's family forgives the offender through the process of restorative justice, the offender can be released instead of being punished. Legislators noticed that this option would release into society an offender who had committed a heinous crime. Applying this primary principle could create a big risk for society, especially if offenders become recidivists. To prevent this, the code indicates, in article 208, that in such instances, a court can impose between 3 and 10 years' imprisonment for the offender. As noted, these provisions are not in the primary principles of sharia, but by using the secondary-principles provisions of the Shiite school, legislators solved the problem. The code also accepts some of today's standards as secondary principles in the *ta'azir* category of punishments. For example, attempt, probation, parole, and some other concepts cannot be found

specifically in Islamic law, but the code accepted them in *ta'azir,* which indicates that the legislature has a tendency to use today's standards through secondary principles.

Juvenile Justice System

In Shiite Islam, there is a belief that the imam is a guardian of children. Following this idea, in today's Iranian criminal justice system, juvenile justice exists based on the age of offenders. In section 4, article 49, the Islamic penal code indicates that children are free from criminal responsibility. If children commit an act that would be punishable if an adult did it, they will be trained or will be sent to correctional facilities. The code allows the courts to use their discretion in deciding whether to send the delinquent child to a correctional facility for rehabilitation or to let his or her parents supervise the child for training. In either case, the child is not criminally responsible.

The code also mentions that a child is not mature based on sharia, but because the legislation did not specifically mention until what age a person is considered a child, some problems have occurred. According to sharia, the age of maturity is 15 years for boys and 9 years for girls. However, there are instances in which delinquent children reach the age of 15 or 9 but are not mentally mature. It seems age of maturity differs from one person to another, depending on many circumstances; thus, there is no universal standard for the age of maturity. Therefore, some children who are already mature by sharia standards are not mature in reality. To solve the problem, the General Legal Affairs Administration of Judiciary System came up with a guideline: If a delinquent child is under the age of 18 but still is not mature, initially he or she will be prosecuted under the adult justice system. Depending on the punishment for the crime that the delinquent committed, the case will be sent either to juvenile court or to the criminal court of the province that has jurisdiction over the case. The legislature also recognized juvenile courts in the Act of Establishing General and Revolutionary Courts (2002).

Corrections

According to the Constitution (principle 156), the corrections system is under the judiciary, and the judiciary system is required to provide policies to prevent crimes and rehabilitate offenders. As noticed in aforementioned discussions, punishments for *hudud, quisas,* and *diyat* are mentioned in sharia, which was used by Parliament to adopt the Islamic penal code. Most of those primarily principles of sharia are mentioned ~~in the~~ in the code. However, through the use of secondary principles, some of them have been changed to satisfy today's needs. In examining sharia, one will notice that imprisonment is mentioned for only three different offenses:

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1. When a murderer kidnaps and kills the victim. The offender must be incarcerated for the rest of his or her life (life imprisonment) and is a subject for *quisas.*
2. Theft for the third time.
3. Apostasy of females.

There is no other crime in sharia to be punished by imprisonment. However, using imprisonment as a punishment was adopted by the system for a variety of *ta'azirat* and deterrent punishments. They are not mentioned in sharia, but today's standards are used to adopt some policies to deal with these types of crimes.

The penitentiary administration works under the supervision of the judiciary system. The administration supervises all of the correctional facilities in the country. All together there are 178 open, semi-open, and closed prisons; 23 juvenile correctional facilities, 28 after-care centers, and 18 work-therapy centers. In 1979, there were more than 13,903 prisoners in the country's correctional facilities, and in 2002 there were 160,000 prisoners.

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Iraq

Legal System: Civil/Islamic
Corruption: High
Prison Rate: Medium
Death Penalty: Yes

Background

The Republic of Iraq has an estimated population of around 27,499,638, composed of Arabs (75–80%), Kurds (15–20%),and smaller minorities such as the Turkoman and Assyrians (5%). The vast majority of Iraqis are Muslim (97%), and of these, approximately 60–65 percent are Shia (Shiite), and 32–37 percent are Sunni (most Kurds are Sunnis). A small minority (3%) of Iraqis such as the Assyrians are Christian or have other religious affiliations.

Until March 2003, Iraq was under the dictatorial rule of Saddam Hussein, who was the head of the Sunni-controlled Arab Socialist Baath Party. A U.S.-led invasion by multinational coalition military forces overthrew Saddam and his ruling Baath Party. The invasion had far-reaching ramifications beyond turning Iraq into a democratic, federal, representative republic. In particular, for present purposes, it has meant that Iraq's police, legal, judicial, and penal systems have been overhauled in an effort to do away with injustices allowed under Saddam's regime and to establish the rule of law.

Since 2003, Iraq has been occupied by coalition forces, while insurgent and militia groups have entrenched themselves in parts of the country. At present, Iraq is considered the world's second-most unstable country, after Sudan, and is considered one of the world's most corrupt countries according to Transparency International.

During Saddam's rule, many changes were made to the police, judicial, and penal systems. The security and order of Iraq were mostly under the control of the military and security and intelligence agencies, and the civil police force played a minimal role. There was an emphasis on dealing with crimes affecting the internal and external security of the state and with crimes against moral decency. Torture and severe punishments such as amputation, branding, and the death penalty were allowed, even for nonviolent offenses. Furthermore, investigative, prosecutorial, and judicial systems were not considered to be independent.

Invasion by U.S.-Led Multinational Coalition Forces, 2003

In March 2003, Iraq was invaded by U.S.-led multinational coalition military forces. The main justifications for the invasion included the belief that Iraq was developing "weapons of mass destruction" and had not abandoned its weapons program in violation of the 1991 United Nations Resolution 687; that Iraq posed an imminent threat to the United States and its allies; that Iraq was cooperating with Al Qaeda and other terrorists; that Iraq had committed many human rights abuses; and that invasion could remove an oppressive dictatorial regime and establish democracy. Among other things, the invasion, which lasted from March 20 to May 1, 2003, led to the immediate political collapse of the ruling Baath Party and the later capture, trial, and execution of Saddam in December 2006, as well as other prominent figures.

The Coalition Provisional Authority (CPA) was created in May 2003 for the temporary administration of Iraq. In March 2004, the Transitional Administrative Law was introduced as the supreme law of the land. In June 2004, all governmental authority of Iraq was transferred to the Iraqi interim government. Following elections in January 2005, the Iraqi transitional government took over. A new permanent constitution was accepted in October 2005. Finally, after elections in December 2005 (where no Baath Party candidates were allowed to

run because of their connection with the former regime), the new permanent Iraqi government took office in May 2006. The former Sunni control over Iraq had ended, and all three of Iraq's major ethnic groups (Shiite, Sunni, and Kurds) were represented in the new government. However, although Shiite and Kurdish communities supported the new Constitution, it was largely rejected by Arab Sunnis who had previously been the ruling group. Similarly, in the parliamentary elections, the votes were along ethnic lines. Although the sovereignty of Iraq was transferred to an Iraqi government, coalition forces still remain in Iraq and are working in partnership with the government to help rebuild Iraq and establish the rule of law.

As part of the reconstruction of Iraq, coalition forces made several changes to the police, legal, judicial, and penal systems. For instance, new police, security, and intelligence forces were recruited and trained; the third edition of the 1969 Iraqi penal code and the 1971 law on criminal proceedings were adopted and revised; the judicial and court systems were restructured; and the prison system was modernized. Additionally, basic rights regarding trial and punishment were established.

However, rebuilding the criminal justice system was severely hampered. First, much of the criminal justice infrastructure (buildings, equipment, and information) was looted or destroyed during the invasion. Second, the policy of de-Baathification introduced by the CPA immediately after the invasion meant that civil servants and criminal justice managers and professionals who were affiliated with the Baath Party (regardless of their level of support for Saddam's regime) were removed from their positions, thus leaving a large experience and skills gap in the operation of the criminal justice system (although later this policy was set to be reversed to some degree). Finally, the system has suffered from a lack of resources, including financial aid and expert advice, as a result of the limited investment made by coalition forces and other international bodies. The coalition forces and Iraqi government are also accused of corruption.

Although efforts are being made to establish the rule of law, during the invasion there was massive civil disorder and crime, supported in part by the fact that Iraqi police had left their posts and Saddam had earlier released thousands of convicted prisoners. Government buildings (including police stations, courthouses, and prisons) were looted or destroyed, public utilities were damaged, and violent crime soared. Since the invasion, insurgent and militia groups, including Al Qaeda, have formed and operate in Iraq. These have been responsible for much of the violent crime. There were 4,240 fatalities suffered by coalition forces from March 2003 to January 2008 according to the Iraq Index of the Brookings Institution. It is estimated that from June 2003 to January 2008, 7,829 Iraqi military and police were killed and that 103,567 Iraqi civilians were killed from May 2003 to December 2007 (although as will be shown later, estimates of Iraqi deaths vary dramatically). In addition, Amnesty International has reported evidence that coalition forces, the Iraqi police, and the Iraqi government have also committed violent acts against civilians and committed human rights abuses.

More recently, coalition forces have begun to hand over control of various provinces to the Iraqi government, and several coalition forces have pulled out of Iraq altogether, leaving primarily the U.S., British, and Polish forces. The government of Iraq became entirely responsible for leading security in the entire country pending the complete withdrawal of coalition troops.

Police

By the end of the invasion, most Iraqi police, intelligence and security services, border control guards, and military had left their posts. These were all initially formally dissolved by the CPA. Later, forces and services were reformed. For instance, the Iraqi Armed Forces was reestablished in August 2003 and is controlled by the Ministry of Defense. The military code was also revised. In addition, an Iraqi National Guard was established, and although under the Ministry of Defense, it supports the Iraqi police. The National Guard was not meant to be used in civil operations, but the need to tackle insurgency has meant that they are being used in this capacity.

The Iraqi National Intelligence Service was established in April 2004 to work with the Ministry of Defense and Ministry of the Interior to provide information on terrorism, insurgency, drugs, espionage, weapons of mass destruction, and organized crime. This service, however, now cannot arrest or detain anyone and is no longer allowed to report on domestic political issues or get involved in these.

Immediately after the invasion, the CPA had to reconstruct and transform the police in Iraq. This involved requesting existing personnel to return to duty, recruiting new personnel, and expelling any Baath loyalists or corrupt and unreliable personnel. The transformation also involved (re-)training the police to conduct routine patrols, make arrests, and investigate crimes (although magistrates mostly perform this function), as well as equipping and organizing the police. A police code of conduct was introduced. However, implementing a new police force in Iraq took considerable time, and the effort suffered from a lack of funding and agreement on the type of force required (e.g., to tackle community crime or counterinsurgency) and lack of direct, competent, and noncorrupt leadership from the Ministry of the Interior. As a consequence, the police were left unprepared for the violence they faced from insurgents, and insurgents have infiltrated the police force.

The Ministry of the Interior now manages the civil security forces. These comprise the Iraqi Police Service, the Iraqi National Police, and supporting forces such as the Department of Border Enforcement and the Facilities Protection Service. The Iraqi Police Service is mainly responsible for enforcing Iraqi criminal law, as well as performing daily station, patrol, and traffic control functions. In early 2006, a new Iraqi National Police was established (along the lines of a gendarmerie) to deal with insurgency operations, public disorder, and terrorism. Its personnel, however, include Shia loyal to militia groups. The Department of Border Enforcement consists of border police, customs, immigration, and nationality and civil affairs. Finally, the Facilities Protection Service protects government buildings and facilities. The Kurdistan Regional Government has its own security forces.

The U.S. Department of defense estimated that, as of January 2008, there were approximately 155,248 trained police (plus 41,399 national police) and 27,959 trained border enforcement personnel. In addition, there were 174,940 personnel in the army, 19,750 in the support forces, 1,370 in the air force, and 1,194 in the navy.

The Iraqi police and security forces are currently heavily supported by U.S. military teams, private contractors, and security companies. In addition, the Iraqi forces have benefited from the support of approximately 91,000 individuals who joined the Sons of Iraq (formerly called Concerned Local Citizens) to support the fight against insurgency by providing security to infrastructure and local-level intelligence. Some of these individuals are being trained and integrated into the Iraqi police, but it is unclear what the future of this group will be.

The work of the police in Iraq is difficult. They face violence from insurgents. For instance, individuals have been targeted at recruitment stations, while performing their duties, and after work on their way home. From June 2003 to January 2008, it is estimated that 7,829 Iraqi military and police were killed. Consequently, members have left the Iraqi police. Despite this, new recruits are readily found because of Iraqis' need to find employment.

Problematically, the new civil security forces have also been infiltrated by insurgents, who may commit crimes while working as part of the forces or steal uniforms and impersonate police officers when committing crimes. Indeed, the police in Iraq working under the Shiite-controlled Ministry of the Interior reportedly have links to Shia militia, and the Iraqi National Police in particular have been accused of using sectarian death squads against Sunnis, as well as kidnappings. The police have been accused of condoning attacks on people suspected of violating Islamic morality. Thus, it is apparent that the police in Iraq have not yet reached a sufficient degree of impartiality, responsibility, and accountability and are not yet working entirely within human rights obligations. Distrust of the police remains.

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Crime

Classification of Crimes in the Third Edition of the 1969 Iraqi Penal Code

In 1969, the Baath Party adopted a new penal code that replaced the original code called the Baghdad Penal Code, which was introduced by the British in 1919. During Saddam's rule, the 1969 code was itself revised. Specific laws made it a crime to behave in a way that was deemed politically, economically, or socially disruptive. Thus, the definition of crime included acts that were harmful to the state. The number and range of crimes that carried the death penalty also increased to include several nonviolent crimes such as theft, prostitution, adultery, homosexuality, corruption, smuggling antiquities, and military desertion. Gender crimes such as sexual violence and honor killings (of female family members perceived to have brought dishonor upon the family) were not considered serious and were more or less condoned. In general, the penal code was very strict and especially biased against dissidents and women.

In July 2003, the CPA declared that the third edition of the 1969 Iraqi penal code would be readopted, with some revisions. In this code, criminal offenses are separated into those that are ordinary and those that are political. In addition, there are three categories of criminal offenses that increase in their level of seriousness: infractions, misdemeanors, and felonies.

The penal code separates offenses into those against the public welfare, those against the person, and infractions. Offenses against the public welfare include offenses against the external and internal security of the state; offenses against public authorities (e.g., against the Constitution, and public officials); offenses prejudicial to the court (e.g., affecting due process, perjury, and impersonating officials); offenses against the public confidence (e.g., counterfeiting and forgery of stamps and currency); offenses in breach of the duties of office (e.g., embezzlement); offenses that endanger the public (e.g., fire and explosives, flooding by a public utility, offenses affecting safety of public transport, telecommunications, and public health); social offenses (e.g., violating religious sensibilities, desecrating graves, offenses involving the family, drunkenness, gambling, and begging); and other offenses (e.g., prostitution). Drug offenses are not explicitly mentioned in the code.

Offenses against the person refer to those affecting the life and physical safety of others (e.g., murder, assault, intentional wounding, and abortion); offenses affecting the freedom of an individual include kidnapping, threats, and defamation, for example; and offenses against property include, for example, theft, breach of trust, deception, commercial offenses, damage to property, and killing animals. Although the penal code refers to theft, it does not use the terms burglary or robbery. Finally, infractions include offenses against the public highway, against the public peace, against public health, against property, and against the public decency and organizational offenses.

According to the new constitution, no law can be passed that contradicts the Constitution, the laws of Islam, or the principles of democracy. The penal code was further revised by the CPA. For instance, the death penalty was suspended for members of the Baath Party who commit certain offenses affecting internal state security, and imprisonment was suspended for anyone who publicly insults the president of Iraq. Legal proceedings can now be brought only with the written permission of the head of the Iraqi government for offenses of publication, offenses affecting external state security, certain offenses affecting internal state security, offenses affecting the Constitution, and certain offenses against public officials. No one can be prosecuted for working with coalition forces. In addition, some amendments were made to the maximum penalty carried by certain offenses, so that life imprisonment (remainder of person's natural life) now applies to kidnapping, destruction of public utilities, and rape and sexual assault (with 15 years for indecent sexual assault). The mitigating circumstances provided for kidnapping were repealed. The maximum penalty is now life imprisonment (remaining natural life) for theft of means of transport using force. The CPA announced that any individual publicly inciting violence and disorder or advocating changing Iraq's

borders or a return to Baath Party rule would face immediate detention. Stiffer penalties would also be given to offenders originally granted amnesty by Saddam's regime in 2002 if they are convicted of a crime. There are now also increased sentences for individuals convicted of weapons violations after conditional release. Finally, gender-based crimes are being treated more seriously. For instance, judges and prosecutors from the Iraq Special Tribunal were trained to investigate, prosecute, and try crimes of sexual violence and honor crimes that affect women, so that legal precedents can be set on gender and women's rights. The statute used by the tribunal redefines rape as a serious gender-neutral crime and codifies other crimes such as sexual slavery and forcible prostitution.

Crime Statistics

Crime statistics from Saddam's regime are difficult to obtain, although it can be said that the severity of the regime tended to minimize general crime and that the nature of the laws and penalties probably served to fuel certain crimes such as those against women. In fact, the UN Special Rapporteur for Violence against Women reported that more 4,000 women were victims of honor killings from 1991 on.

The Border and Immigration Agency of the U.K. Home Office reports that, generally, the security situation in Iraq is poor. Crime is committed by organized gangs, members of the security forces, and insurgents. After the invasion in 2003, the coalition forces focused their efforts on securing oil fields and refineries, while violent and other property crime soared. Organized criminal groups trading in firearms, drugs, and stolen cars and who kidnap and blackmail have established themselves. Many crimes during that initial period were unreported because there were no police to report to. Similarly, because the country's borders were unmanned, there was opportunity for foreign criminals and terrorists to enter the country and for the smuggling of stolen antiquities, weapons, drugs, and other goods. These crimes would not have been detected. In fact, Iraq does not have any national crime statistics. However, in 2004, the Baghdad Police Department began to collect data on reported and detected crime.

The U.S. Department of Defense reports that property crime, including the destruction of government buildings and other public utilities, is pervasive. For instance, in Baghdad, major property thefts rose from 47 in 2003 to 284 in 2004. There were 466 attacks on Iraqi oil and gas pipelines, installations, and personnel from June 2003 to January 2008 according to the Iraq index. Throughout the country, there was also looting of archaeological sites and antiquities, although some stolen items from Iraqi museums and cultural heritage sites have now been recovered.

The definition and enforcement of Islamic morality, defended in the Constitution, has not been formalized, and so there are instances of private citizens, groups, and even Iraqi police taking the law into their own hands by punishing people (in particular, women and homosexuals) they suspect are guilty of immorality. Domestic violence remains prevalent. For instance, the WHO Iraq Family Health Survey 2006/7 found that 21.1 percent of married women said they had experienced physical violence in the preceding 12 months. Honor crimes against women in the Kurdistan region have also risen according to Amnesty International. Children are also being pushed into prostitution, drugs, and violence according to the U.S. State Department.

Drug abuse has also risen amid the increase in the availability of narcotics. Furthermore, there is evidence that some Iraqis are turning to growing drugs such as opium, which fund the insurgency.

Few kidnappings are brought to police attention often because families simply wish to pay the ransom. Nevertheless, more than 919 kidnappings were reported to the U.S. Embassy Baghdad Office of Hostage Affairs from 2004 to 2006. These included 347 Iraqis, and this figure is estimated to represent less than 10 percent of the actual kidnappings across the country.

In Baghdad, from May 2003 to April 2004, there was a rise in murders from 3.6 per 100,000 inhabitants before the invasion to more than 24 in 2004 according to a RAND study in 2005. These are

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conservative figures because they do not include deaths from insurgency and terrorism.

Generally, there has been a large increase in violent crime, including that by insurgent, militia, and terrorist groups. Several organizations have compiled statistics on the number of violent deaths in Iraq involving combatants and noncombatants during the invasion (March to April 2003) and since. However, whereas the deaths of coalition forces are reliably recorded, the tracking of deaths of others, including Iraqi forces, insurgents, and civilians, is less reliable. Furthermore, different methods for collecting data on Iraqi deaths have yielded different results, and there are several reasons (including lack of reporting and detection) to suggest that these deaths are undercounted.

The Commonwealth Institute estimated that during the invasion, there were a total of 12,150 Iraqi fatalities (plus or minus 2,150), including 3,750 (plus or minus 550) noncombatant civilians. These figures were based on a combination of journalistic surveys of hospital and burial records, media and nongovernmental reports, interviews with military personnel, and U.S. combat statistics. A report published in *The Lancet* estimated that after the invasion, as of July 2006, there were 654,965 (392,979–942,636) excess Iraqi deaths as a consequence of the fighting, with 601,027 (426,369–793,663) resulting from violence (e.g., gunshot, explosion, air strike, and car bomb). These data were based on a national cross-sectional survey of 1,849 randomly sampled household clusters from 16 governorates. By contrast, the Iraqi Family Health Survey Study Group also used a nationally representative survey of 9,345 households but estimated that there were 151,000 (104,000–223,000) violent deaths from March 2003 to June 2006. The Brookings Institute based its figures on UN reports, including hospital and morgue data, as well as data provided by the U.S. Department of Defense. It concluded that there had been 103,567 Iraqi civilian fatalities from May 2003 to December 2007. A survey of 2,414 adult Iraqis by Opinion Research Business estimated that there were 1,033,000 (946,000–1,120,000) civilian deaths between March 2003 and August 2007. According to the official military sources used by the Iraq Coalition Casualty Count, there were 4,321 fatalities of coalition forces from March 2003 to March 2008. Iraqi security forces and civilian deaths reported in the media totaled 39,797 from January 2006 to March 2008. The Iraq Body Count project cross-checks media reports and figures from hospitals, morgues, and nongovernmental organizations on violent deaths of civilian noncombatants (including some police and military). The figures are updated regularly, and as of February 2008, the project documented 82,591–90,115 deaths. Generally, the levels of civilian deaths fell by around 72 percent from July 2007 to February 2008.

Attacks by insurgents on coalition forces, Iraqi security, and civilians showed some decline over the period from May 2003 to July 2007 according to Global Security Operation Iraqi Freedom (OIF). However, there were still many attacks (e.g., around 140 in July 2007). Levels of violence in February 2008 were around 60 percent lower than June 2007 and similar to the levels in mid-2005, as reported by the U.S. Department of Defense. Iraqi forces and U.S. military deaths fell from January 2006 to February 2008. Finally, although incidents of sectarian violence rose from February 2005 to April 2006, ethno-sectarian deaths fell from January 2006 to February 2008.

Finding of Guilt

During Saddam's rule, the judicial system partly continued to follow the French model introduced prior to 1918 when Iraq was under Ottoman rule, partly followed the model introduced by the British who ruled subsequently until 1932, and partly followed Islamic law. The legal system was inquisitorial. Juries were not used in Iraq. The RCC chaired by Saddam was the highest legislative authority. The Ministry of Justice managed the courts and appointed all judges with the agreement of the president. There were courts of first instance (including magistrates' courts) dealing with misdemeanors and minor felonies, courts of sessions dealing with felonies and appeals from courts of first instance, and a Court of Cassation (Iraq's highest court) dealing with appeals. In addition, there was a security component to the court system (revolutionary courts)

that dealt with crimes against the state and operated under a separate judicial system. Here, Baath Party members without legal training conducted closed hearings, and defendants had limited rights and faced harsh penalties. The prosecutorial system included the judicial investigator, the investigative judge, and the prosecutor. In practice, the judiciary was marginalized. There was no real independence of the judiciary, and the president could make laws and overturn any court decision, so the courts were used to protect the regime. Saddam granted immunity from prosecution to particular groups such as members of the Baath Party and men who committed rape and honor killings.

The justice system was overhauled after the invasion in 2003 in an effort to make the judiciary independent and operate under the rule of law and to make court proceedings follow those of modern Western courts. The system is, however, still inquisitorial, and juries are not used. In June 2003, the CPA established the Central Criminal Court of Iraq, which has jurisdiction over crimes committed in Iraq since March 19, 2003. This central court has two chambers: an investigative court and a trial court. The investigative court has jurisdiction over all criminal offenses and consists of one judge. The trial court consists of three judges and deals with matters (including felonies) referred to it by the investigative court. In addition, the Higher Juridical Council later established major crimes courts across Iraq as branches of the Central Criminal Court to deal with acts of terrorism. There is also a temporary court at the Rustafa complex in Baghdad. The hearings of the Central Criminal Court are public, although broadcasting from within the courtroom is prohibited. Judges' deliberations are confidential. There is a right to legal representation. There is a right of appeal from the decisions of both the investigative and trial courts, to the trial court and Court of Cassation, respectively. In 2004, there were 128 courthouses and 557 separate courts. The courts are organized into 17 appellate districts.

An Iraqi Special Tribunal was set up in December 2003 to deal with Iraqis accused of certain crimes committed in Iraq or abroad from July 17, 1968, to May 1, 2003. The crimes include genocide, crimes against humanity, war crimes, and violation of specific Iraqi laws (e.g., manipulating the judiciary, squandering public assets, and threat or actual war against an Arab nation). The tribunal also deals with gender crimes. The tribunal is independent. There is a trial chamber, an appeals chamber, and investigative judges, as well as a prosecutions department. Each chamber has permanent judges who do not overlap (i.e., five judges for the trial chamber and nine for the appeals chamber) and who may be Iraqi or foreign. The tribunal, which can set precedents, applies some of its own rules of procedure and evidence and principles of criminal law but otherwise uses the revised 1971 law on criminal proceedings and the revised 1969 penal code. The accused has rights similar to those in Western criminal courts operating under due process. Hearings are public. The verdict is based on a majority vote. Individual responsibility is assumed, and so punishment is applied to an individual. Only sentences compatible with those in existing Iraqi law (including the death penalty) can be imposed. The crimes of Saddam and other prominent members of the Baath Party have been tried in the Iraqi Special Tribunal.

After the invasion, the judiciary in Iraq became an independent branch of government, no longer reporting to the Ministry of Justice. A Judicial Review Committee was set up temporarily by the CPA in June 2003 to investigate the suitability of judges and prosecutors to hold office and to remove them where necessary. Although the committee was later abolished, its decisions remain. The Council of Judges was reestablished in September 2003 (after it was abolished in 1979) to supervise the judicial and prosecutorial systems in Iraq, independently of the Ministry of Justice. The Higher Juridical Council later assumed the role of the Council of Judges. The Ministry of Justice meanwhile drafts legislation and organizes judicial and prosecutorial training. In May 2004, the CPA made the judiciary (Council of Judges and Court of Cassation) financially independent of the Ministry of Justice. The Higher Juridical Council oversees and manages the budget of the court system, all court personnel, and courthouse security. The judiciary in the Iraqi Kurdistan National Assembly is organized slightly differently.

Effort was made to find attorneys and judges who were not Baath loyalists or who were not complicit in the abuses of Saddam's regime, as well as to reinstate judges unjustifiably dismissed by Saddam. The Iraq Index reported that as of November 2007, there were 1,200 trained judges (300 fewer than required). According to the CPA, judges should meet the following criteria: possess high moral character and reputation, not be affiliated with the Baath Party, have no criminal record or involvement, be an Iraqi National, have been a judge for at least five years with a demonstrated high level of competence, and be prepared to sign the oath of office. Judges and prosecutors have also been given training in human rights.

However, judicial work is dangerous, and judges and prosecutors have been attacked. Thirty-five Iraqi judges have been assassinated since 2003 according to the U.S. Department of Defense. A special area called the "Rule of Law Complex" has been set up in Rustafa to house judges and their families and hold trials in safety and security. More such areas are expected to be built around the country.

The Constitution defines basic rights regarding trial and punishment. These include equality before the law, independence of the judiciary, legal defense (including public defender/assistance), presumption of innocence, public trial, compensation, and protection against torture or inhumane treatment. The right to remain silent was added by the CPA. In addition, the courts apply the third edition of the 1969 Iraqi penal code as revised by the CPA and the Iraqi law on criminal proceedings of 1971 as revised by the CPA.

Iraqi Law on Criminal Proceedings of 1971 with Amendments

The law on criminal proceedings describes the initiation of criminal proceedings; investigation of offenses (e.g., investigating officers, notification of offenses, investigations conducted by the police, hearing witnesses, and search); methods to attend court (e.g., summons, arrest, bail, dealing with absconding, questioning the accused, and judges' post-investigation decisions); court process (e.g., types of court and their jurisdictions, defendants' court appearance, principles of trial, charge, court rulings, proceedings against those with diminished responsibility); appeals against judgments (including retrial); and implementation of penalties. The CPA made revisions to the provisions of bail, outlined rights of security detainees held by coalition forces, and altered use of the death penalty (which was later revised by the Iraqi interim government).

Briefly, initial investigations are conducted by examining magistrates or those acting under their supervision. The accused may attend court after being summoned or after being arrested (the latter always applying to those accused of offenses punishable by death or life imprisonment). Pretrial custody can be used under certain circumstances: An accused charged with an offense punishable by detention of three years or less or a fine must be released on a pledge with or without bail unless it is considered that he would obstruct justice or abscond. An accused charged with an infraction must be released unless he has no fixed abode. A person charged with an offense carrying imprisonment for a term of three years to life imprisonment may be held in custody for 15 days at a time or released on a pledge with or without bail if the judge does not consider the person will escape or prejudice the investigation. A suspect charged with an offense carrying a maximum penalty of life imprisonment can now be held without bail until trial. Similarly, a suspect charged with an offense carrying the death penalty may be held in pretrial custody for a longer period. The total period in pretrial custody should not exceed one quarter of the maximum sentence for the offense the accused is charged with. Bail should be set according to the type of offense and circumstances of the accused. A "bailsman" (bail bondsman) may be used. A remand in custody pretrial is deducted from the sentence, even if that sentence is a fine.

The accused must be questioned within 24 hours of his arrest, although he has the right to remain silent and to be legally represented. If the examining magistrate finds there is sufficient evidence for a trial, the accused is transferred to the appropriate court. The defendant has an opportunity to plead guilty, plead not guilty, or request a trial. There is a

trial for each charge. (However, the court may issue a penalty without trial, which can later be contested and a trial set, for infractions not liable to a sentence of detention, where a request for compensation has not been submitted, and the defendant's action has been proven.) The trial may occur in the defendant's absence if he was notified but absconded or does not attend without legal excuse. Trial sessions are open unless the court decides otherwise to maintain security or decency (or if proceeding against a juvenile). Court proceedings are subject to written record. Offenders may be extradited in specific circumstances.

After the trial, the court can issue a verdict of guilty followed by a penalty, issue a verdict of not guilty followed by release, drop the charge due to insufficient evidence and release, or issue a judgment of diminished responsibility if the defendant is not legally responsible followed by release. Judgments may be made in absentia, and the defendant notified, who can object. Defendants have the right to appeal in the Court of Cassation (with death sentences being automatically appealed). Mentally ill defendants said to have diminished responsibility are given over to relatives on payment of a guarantee to undergo treatment.

Despite the legal rights and protections afforded by the law on criminal proceedings and by the Constitution, there is evidence that defendants are being denied a fair public trial according to the U.S. Department of State. They often lack an opportunity to get defense representation and face considerable delays.

Juvenile Justice

Saddam inherited a juvenile justice system from his predecessors that institutionalized juveniles. Although the Juveniles' Law 11 of 1962 included several features in common with modern juvenile systems, such as hearing cases in closed sessions, and emphasized the protection and treatment of offenders, this did not occur in practice. There was little effort to rehabilitate and reintegrate juveniles.

At present, the penal code sets out the liability of juveniles, and the law on criminal proceedings stipulates how juveniles are proceeded against. The code states that anyone under the age of 7 at the time the offense was committed cannot be tried. A juvenile is defined as someone who commits an offense between the ages of 7 and 18. Furthermore, if a juvenile is under 15 years at the time of the offense, then he is considered to be a child, and if he is between 15 and 18 years, then he is considered a young person.

Cases in juvenile courts are heard by a judge, lawyer, and social worker. The type of sentence is determined by the age of the offender. For example, a juvenile committing an infraction can be cautioned in court or fined. A child or young person committing a misdemeanor can be handed over to his or her guardians who must ensure the child's good behavior for a specified period, can be confined to a reform school or school for young offenders for a period of no more than three years, or can be fined. A child committing a felony can be sentenced to confinement in a reform school for two to five years, if the crime for an adult carries life imprisonment or the death penalty, or one to four years otherwise. A felony committed by a young person can result in confinement in a school for young offenders for 2 to 15 years if it carries life imprisonment or the death penalty, or from 1 year to half the maximum penalty otherwise. No person committing a crime between the ages of 18 and 20 can be sentenced to death (life imprisonment applies instead). Finally, young offenders may be confined in a school and children in a reform school, both for the purpose of training and correction for the period specified.

Effort is being made to develop policies and practices that will update and rejuvenate the juvenile system and integrate it with related agencies. It is anticipated that UNICEF will help in that capacity, with special training for juvenile judges, social workers, Iraqi lawyers, and juvenile police units.

Punishment

Types of Punishment—Sentencing According to the Third Edition of the 1961 Iraqi Penal Code

Since the invasion in 2003, sentences have been laid out in the third edition of the revised 1969 Iraqi penal

code, and their implementation is described in the revised 1971 law on criminal proceedings. According to the code, the main sentences are death penalty, life imprisonment, imprisonment for a term of years, penal servitude, detention, fine, confinement in a school for young offenders, and confinement in a reform school. The death penalty involves hanging by the neck. Appeals of death sentences and life sentences are automatic. If the court upholds the decision, then the sentence must be carried out within 30 days. No one over 70 years of age should be executed. Life imprisonment means 20 years (or remaining natural life of person for certain offenses as amended by the CPA), and imprisonment cannot exceed more than 25 years in total. A person may be put to work during imprisonment. Penal servitude is for 3 months to 5 years. Detention is from 24 hours to 1 year, and a person must not be put to work. A sentence of detention less than 1 year may be suspended. A fine can be an additional sentence and may result in detention if it is not paid. The period spent in custody pretrial and during trial is deducted from a prison sentence or fine. The law on criminal proceedings allows a person given a custodial sentence to be granted a conditional discharge in certain circumstances.

In addition, the penal code lays out "incidental" penalties, "supplemental" penalties, and "precautionary measures." Incidental penalties are not necessarily stated in the sentence, and they may include withdrawal of certain rights and privileges (e.g., voting) and police supervision. Supplemental penalties also refer to the withdrawal of certain rights and privileges (e.g., holding public office and carrying arms), confiscation, and publication of the sentence. Precautionary measures may be imposed on a person who has committed a crime and who is considered a danger to public welfare (e.g., confinement in therapy unit, police supervision, driving disqualification, confiscation, and closure of business). Some of these penalties and measures may hold for a period after completion/termination of the primary sentence. Violations of some of these penalties and measures can result in detention or a fine.

The type of offense determines the severity of the punishment in the penal code. A felony is punishable by death, life imprisonment (i.e., 20 years), or 5 to 15 years' imprisonment. A misdemeanor is punishable by detention (with or without hard labor) for three months to five years or by a fine. Finally, an infraction is punishable by detention for 25 hours to 3 months or by a small fine.

Sentences are also determined by aggravating and mitigating circumstances. However, whereas the penal code does not list specific mitigating circumstances, it does refer to general aggravating circumstances such as having a base motive, the physical or mental vulnerability of the victim, use of violence, and the abuse of position of employment.

Torture and cruel, degrading, or inhumane treatment or punishment was prohibited by the CPA. The death penalty was suspended temporarily in June 2003 by the CPA, but it was reinstated by the Iraqi interim government in August 2004 for offenses against internal state security, offenses that endanger the public, attacks on transportation, premeditated murder, drug trafficking, and abductions. Anyone involved in terrorism may also receive the death penalty. Although there is an automatic right of appeal for those receiving the death penalty, there is no right to pardon or commutation of sentence (which was allowed under previous criminal procedure law). The death penalty is also used in the Kurdistan Regional Government area. According to Amnesty International, Iraq was fourth in the world for its frequent use of the death penalty in 2006, after China, Iran, and Pakistan. Since the new Iraqi government took control, 270 death sentences have been meted out, and at least 100 people have been executed (with at least 65 in 2006).

Prison

During Saddam's regime, the penal system was administered by the Ministry of Labor and Social Affairs. The prison at Abu Ghraib near Baghdad was the main prison and housed several thousand prisoners. In addition, there were three smaller prisons in the governorates of Al Basrah, Babylon, and Nineveh and detention centers around the country, as well as police cells. Standards in Iraqi prisons were poor, and prisoners suffered torture and other

abuses. Precise imprisonment figures are difficult to obtain, but in 2003, the prison population was estimated to be 10,000, according to the Iraq Index. In October 2002, Saddam had given amnesty to most political prisoners in Iraq.

Today, the Ministry of Justice oversees the Iraqi Corrections Service (ICS), which is responsible for prisons, although detention facilities are also operated by other agencies such as the Ministry of the Interior and the Ministry of Defense. In addition, there have been reports of the operation of unofficial detention facilities by the Iraqi government and of holding cells on U.S. military bases such as Camp Cropper and Camp Bucca in Iraq. In 2005, the ICS operated 17 detention facilities throughout the country, and there were plans to build 3 more large prisons by the end of 2005, resulting in a total capacity of around 16,500 beds. The Kurdish regional authorities operated 7. The Ministry of Defense operated 30 "holding areas" or detention facilities. Although the precise number is unknown, the Ministry of the Interior operated over 1,000 facilities including police station holding facilities. The prison at Abu Ghraib in Baghdad remains the largest. The temporary prison at the Rustafa complex in Baghdad is also large, with approximately 6,647 (mostly untried) detainees as of February 2008. In addition, new facilities are being constructed that will provide education and skills training to help reintegration of offenders.

Prisoners in Iraq fall into three categories: prisoners of war, security detainees, and criminal detainees. The ICS prisons and detention centers hold criminal detainees who have violated the penal code (and so these do not include insurgents fighting coalition forces). Detainees may be on remand awaiting trial or serving sentences. There are a large number of untried prisoners because of the delay in investigating crimes. As of December 2007, there were approximately 26,000 people in U.S. custody and 24,000 in Iraqi custody, according to the Iraq Index. There were approximately 640 juvenile detainees at the Remembrance II Theater Internment Facility according to the U.S. Department of State. Around 80 percent of those held by the coalition forces are Sunnis. In February 2008, the Iraqi Parliament passed an Amnesty Law to consider amnesty for detainees who are charged with certain offenses and who are not already sentenced to death. This will reduce the number of people in custody.

The CPA made an effort to rebuild and modernize the prison system to meet international standards. Criteria for the management of detention and prison facilities in Iraq were outlined by the CPA. Prisoners of different categories (i.e., men and women, untried and convicted prisoners, persons imprisoned for debt or civil offenses and criminal offenses, and prisoners age under 18 and adults) should be kept separately. Prisoners who are determined to be mentally ill should be sent to a mental institution rather than detained in a prison, and during their stay in prison, they should be under medical supervision. There are a variety of other basic principles pertaining to quality of food, respect for religion, contact with families, and sanitary conditions.

However, the fact that many prisoners are being ~~in~~ held in facilities not managed by the Ministry of Justice means that their well-being cannot be easily monitored or guaranteed. In fact, there are many reports of poor conditions in prisons run by the Ministry of Justice. For example, there is overcrowding, violence and other prisoner abuse, deaths in prison, children in adult prisons, unconvicted and convicted prisoners being held together, and people serving a longer time on remand than the potential sentence for the crime they are charged with. Conditions are particularly bad in detention facilities controlled by the Ministry of Defense and Ministry of the Interior, which have been infiltrated by Shia militias. Similarly, the conditions in prisons in the Kurdistan Regional Government area are also difficult. There have also been reports of the torture and ill-treatment of prisoners detained by the coalition forces, of which the most infamous were the abuses that occurred in Abu Ghraib prison in 2003. Finally, there is particular concern over the treatment of juveniles in detention.

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New ICS corrections officers were recruited to work in a modern penal system (given that former

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officers were corrupt or otherwise unfit for duty). New recruits receive training covering topics such as corrections techniques, human rights, personnel management, and security. They will not normally be armed. Female staff will deal with women prisoners. Prisons will be inspected regularly. An Iraqi ombudsman for penal and detention matters has been established. Training and inspection are needed, not only because of the prisoner abuses documented in the past and more recently by U.S. military in Abu Ghraib prison, but also because although most corrections officers are Shiites, most prisoners are Sunnis.

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Israel

Legal System: Common
Murder: Low
Corruption: Low
Human Trafficking: Medium
Prison Rate: High
Death Penalty: Yes
Corporal Punishment: No

Background

Political and Social Context

The state of Israel, established in 1948, is a parliamentary democracy, officially defined as a democratic and Jewish state. Its total area is about 22,000 square kilometers, and its population includes over 7 million residents. Although Jews make up more than three-quarters of the overall population, the country includes a substantial minority of Muslims (16.5%) and smaller numbers of Christians (2.1%, which include both Arab and non-Arab Christians) and Druze (1.7%). About 20 percent of Israelis are Arabs, a figure that includes Arab residents of East Jerusalem. About 66 percent of the Jewish population was born in Israel, whereas the rest came to Israel from numerous countries worldwide. Nearly half of the Jewish population is concentrated in the center of the country, whereas the Arab population is mostly centered in the north and south districts. Geographically, Israel is bordered by Syria and Lebanon in the north, Egypt in the south, the Mediterranean Sea in the west, and Jordan in the East.

The head of the state of Israel is the president; however, his role is mainly ceremonial. The Israeli Parliament (the "Knesset") is composed of 120 members who proportionally represent the different political parties. Elections for the Knesset are held every four years. The prime minister, who is the leader of the coalition government, is elected by the Knesset in a dual process. First, the president invites the leaders of political parties for discussions and assigns the one with the best chances of formulating the government with this task. The Knesset either approves or disapproves the new government established by the chosen party leader, and the leader who is eventually successful in formulating the government becomes the prime minister and holds much of the responsibilities associated with the government's activities.

Israel maintains the principle of separation of powers, whereby the Knesset constitutes the legislature; the government, led by the prime minister, holds the executive; and the Israeli courts hold the judicial responsibility. This last branch is composed of three levels of courts: magistrates' courts (or "peace" courts), which exercise authority over offenses punishable by a fine or by no more than seven years of imprisonment; district courts, which handle all cases that do not fall under the authority of the magistrates' courts, as well as appeals in relation to cases that were tried by these courts; and last, the Supreme Court, which handles appeals in relation to judgments of the districts courts and also serves as the High Court of Justice ("Bagatz"), where it provides judicial review of policies and actions of the state.

Legal System

The criminal legal system in Israel is adversarial. There is no jury and no preliminary hearing, and all cases are judged and ruled by professional judges. The burden of proof rests on the prosecution, which is usually the responsibility of the state prosecutor's office or, in minor cases, the police prosecution. The defendant has the right to be represented by an attorney during all stages of the criminal legal process, and in some cases, there is mandatory representation, and thus a defense counsel is appointed by the court.

The criminal legal process is governed by the criminal procedure law that was adopted by the Knesset in 1965 and reissued in a consolidated version in 1982. Its origins, however, may be traced back to the Criminal Code Ordinance of the British Mandatory Government of Palestine, which was introduced in 1936. It was based on the British common law and was modified to account for local circumstances. In 1977, a new integrated version was published in Hebrew, and in 1994, following ongoing revisions, a new draft of the major part of the penal law was adopted. This new version reflected Supreme Court decisions handed down over the years and included a revision of the basic principles of criminal responsibility, whereby subjective principles of culpability were emphasized.

In addition to the criminal procedure law, a second major statute related to the criminal process in Israel was the Criminal Procedure (Arrest and Search) Ordinance (New Version) 1969, which has been replaced by two laws that govern the pretrial procedures of arrest, bail, and searches. Today there are still numerous statutes related to the criminal law that were adopted during the British Mandate (and are thus called "Ordinance"), such as the Dangerous Drugs Ordinance (New Version) 1973.

The criminal legal system in Israel has evolved greatly since 1965, particularly with regard to defendants' rights. For example, the wiretapping law and privacy law prevent the admissibility of evidence that was obtained using illegal means. Although in certain notable court cases, the Supreme Court has upheld such exclusionary rules, the "fruit of the poisonous tree" doctrine is not part of the Israeli justice system. At the same time, there has been a shift toward the "crime control" model. For example, some statutory amendments are viewed as having an eroding effect on the "right to silence."

History, Organization, and Role of Police

Several Israeli policing scholars have noted that the origins of the Israel National Police are firmly rooted in the military. When the state of Israel was declared in 1948, the initial organizational structure and operational procedures of the Israeli police were based heavily on the model of the British Mandate Police, which was a colonial-military police. In turn, the responsibility for establishing the Israeli police was placed on the "Hagana" (the pre-state Jewish militia) and on the chief of the general staff of the IDF (Israel Defense Forces, the Israeli Army). The Israel police force was initially founded as a brigade in the IDF and depended on it for weapons, supplies, and manpower.

The police in Israel are organized at the national level. All police units are subordinated to the commissioner of police, who is appointed by the government on the recommendation of the minister of public security. Geographically, the Israeli National Police is divided into six districts: Northern, Tel-Aviv, Central, Judea and Samaria, Jerusalem, and

Southern. Each district (*machoz*) is again divided into two to four subdistricts (*mrchav*), and within the subdistricts are the local police stations. These three geographical levels also represent the hierarchy of command, and all are subordinated to the national commissioner and deputy commissioner. Another important national police entity is the Border Guard, which makes up about one-third of the estimated 28,000 sworn officers in the Israel National Police.

In addition to the districts, several important police units, which are also subordinated to the commissioner, form the National Headquarters in Jerusalem. It is composed of seven departments (patrol and security, organization and planning, traffic, community and civil guard, logistic support, human resources, and investigations and intelligence), which are expected to assist the police commissioner in developing policy, allocating resources, planning, coordinating, and supervising the various districts. Headquarters includes several additional units, such as legal advice, public relations, accounting, public complaints, and so on, which also answer directly to the police commissioner. Lastly, several police units operate on the national level and hold various responsibilities including important homeland security tasks.

The Israeli police force also has authority over the Civil Guard, which is the largest voluntary organization in Israel. The Civil Guard was established in 1974 following several major terror attacks that took place that year. Its volunteers directly assist police units in matters of homeland security throughout the country by carrying out activities such as patrolling, setting road blocks, and securing local and major events, schools, and public transportation. Further, Civil Guard volunteers assist in other police duties such as traffic control, investigations, identification of disaster victims, and rescue operations. In addition to the significant contribution in terms of manpower, the Civil Guard is considered an important vehicle for fostering police–community relationships.

In addition to the usual policing responsibilities of controlling crime and disorder, the Israeli police also are responsible for maintaining homeland security. This last responsibility was assigned to the Israeli police by the government in 1974, following the rise in Palestinian terrorism and a major terror attack in Maa'lot. This new responsibility forced the police to reorganize: the Civil Guard was established; the Border Guard began securing the airports and seaports; a year later, the Operations Division was established for the purpose of coordinating all operating forces and increasing their effectiveness; and a special unit for combating terrorism was established (the Ya'mam), along with a bomb-disposal unit.

The Israel National Police has been responsible for homeland security in Israel ever since, facing repeated threats and terrorist incidents. This extensive experience of the Israeli police has been generating much interest in recent years on the part of police forces worldwide.

Crime

Classification of Crimes

Crimes in Israel are classified into three categories: (1) contraventions, which are offenses punishable by imprisonment of no more than three months, or if the punishment includes a fine only, it cannot be larger than the fine imposed on offenses for which the maximum fine is not defined by law; (2) misdemeanors, which are offenses punishable by imprisonment of more than three months and up to three years, or if the punishment includes a fine only, it cannot be larger than the fine imposed on offenses for which the maximum fine is not defined by law; and (3) felonies, which are offenses punishable by more than three years of imprisonment.

In addition, the penal law classifies offenses into eight categories according to their type. Each offense includes a description of the offense components as well as the maximum penalty. The categories are as follows:

- Harm to the security of the country and foreign relations such as treason, espionage, and so on, punishable by life imprisonment or even death.

Members of the Israeli Eilat Rescue unit evacuate one of two Colombian women who died of dehydration in a canyon near the Israeli town of Eilat, September 13, 2006. Israeli police are investigating this as a case of human trafficking from Egypt into Israel. (AP Photo/Eilat Rescue Unit)

- Harm to the order of the government and society such as inciting racism, illegal demonstrations, disturbing the peace, insults to religious sensibilities or traditions, multiple marriages, prostitution, and some other sexual offenses.
- Harm to the order of the government and the law such as disruption of trials, attacks on police officers, bribery, and offenses carried out by public servants in the context of their employment.
- Harm to person such as murder, manslaughter, and causing death in an indirect manner. It also includes behaviors that endanger life or well-being, sexual offenses, offenses toward minors or the disabled, and assaults.
- Damage to property such as theft, robbery, burglary, the possession of an asset obtained through contraventions or misdemeanors, fraud, and extortion. These crimes constitute 55–60 percent of all offenses in Israel. Offenses of this nature, along with offenses that entail harm to another person's body, constitute the group of offenses that most occupy the criminal justice system in Israel.
- Forgery vandalism of banknotes, coins, bills, or stamps.

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- Minor offenses such as blocking a public road, littering in a public area, and social disorders such as loud noise that disturbs the peace.
- Conspiracy by contacting another person to carry out contraventions or misdemeanors, providing means to carry out a contravention, and preparing an offense through the possession of explosives, a machine, or an instrument designed to carry out a contravention.

Counterterrorism

Counterterrorism activities, particularly preventing and thwarting attacks by terrorists, have become a major component in the daily routine of local police stations, often at the expense of other policing duties. These activities are carried out by all the units within the local station, Border Guard units, and Civil Guard volunteers as well as bomb-disposal units and include the collection of intelligence, setting roadblocks, carrying out observations, surveillance, security checks, and foot and car patrols. The challenges, benefits, and risks of combining the two fundamental tasks of fighting crime, particularly severe and organized crime, and combating terrorism have been raised in recent years by both scholars and practitioners.

Trafficking in Women

Trafficking in women has been considered a particular challenge to the criminal justice system in Israel over the past few years. The phenomenon began in Israel, as in Western Europe and North America, during the early 1990s, following the collapse of the Soviet Union and the breakdown of many of its social and economic systems. In July 2000, following the publication of the 2000 Amnesty International report, amendment 56 to the penal code was adopted, which defines the offense of human trafficking, prohibits trafficking in women for the purpose of prostitution, and provides a penalty of up to 16 years of imprisonment for this offense.

However, it was not until the U.S. Department of State published the Trafficking of Persons Report in 2001 that a significant change in policy and practice was adopted. This report determined that the State of Israel belonged to the third category of states—that is, it was considered one of the countries that did not fulfill minimal requirements of fighting the phenomenon of human trafficking and was therefore in danger of losing American financial aid. Consequently, dramatic changes in policy and practice were adopted: numerous women-traders and pimps were arrested; committees to examine the phenomenon in Israel were established; an emergency hotline for victims of trafficking was opened; and the prosecution changed its guidelines regarding bordellos where foreign women are found. For example, police data indicate that during the year 2002, the Israeli police opened 351 criminal investigations for the offense of trafficking in women, compared to only 1 case in 2000 and 25 cases during the first half of 2001. Indeed, in the 2002 Trafficking of Persons Report, Israel was moved up to the second category, which includes states that take initial measures to fight the phenomenon.

In the 2005 report, however, Israel was classified in a subcategory of the second category, reserved for countries that are in danger of losing their place in the second group. It was stated that the Israeli government has exhibited significant efforts to fight the phenomenon of human trafficking, but it has been lowered to the subcategory because of its inability to prove enhanced efforts over the last year.

Organized Crime

Trafficking in women in Israel is often considered part of the larger phenomenon of organized crime, which also presents a particular challenge to the criminal justice system in Israel. Recently, organized crime was brought to the center of public attention in 2003, following several events where hand grenades were tossed at police stations, in addition to eight innocent bystanders being murdered as part of turf wars between organized crime groups. A particularly horrific attack took place in December 2003, when in the center of Tel Aviv, at noon, a failed murder attempt of an organized crime group member resulted in the death of three bystanders.

The question of whether organized crime operates in Israel and to what extent has been raised since the 1960s and has resulted in several reports and governmental committees, including the Shamgar

Report (1971), the Bochner Committee (1976); and the Shimron Committee (1978). Much of the recent organized crime in Israel is traced to the wave of immigration that took place in the 1990s from Eastern Europe, particularly from the previous Soviet Union. It has been recognized that some offenders, whose patterns of operation resemble classic organized crime patterns, infiltrated this immense wave of immigration and settled in Israel. These offenders are thought to be particularly active in the niche of trafficking in women. For example, one study found that between April 2001 and September 2004, 173 suspects were arrested for trafficking women by the Tel Aviv Police Central Unit. Of these suspects, 137 (approximately 80%) were immigrants from Eastern Europe and countries of the previous Soviet Union.

Recognition of the phenomenon led to the enactment of the Law of the Struggle against Crime Organizations, 2003. The law provides a definition of a "crime organization," determines heavy punishments of 10 to 20 years' imprisonment for those accused of leading or fulfilling certain roles in a crime organization, and sets the punishment of 10 years' imprisonment for a civil servant accused of using his or her position or authority to assist the activities of a crime organization. This law follows the Prohibition of Money Laundering Law, 2000, which was also legislated as part of the struggle against the phenomenon of organized crime.

Motor Vehicle Theft

The crime of motor vehicle theft has also been particularly challenging to the criminal justice system in Israel since the 1990s. This form of property crime is characterized by its strong relation to the unique economic and political situation in the region. About 70 percent of stolen cars in Israel are transferred to the Palestinian Territories (PT), where they are dismantled into used car parts that are subsequently sold within Israel. When borders with the PT were closed, after a terror attack, for example, significant decreases in motor vehicle theft in Israel were evident.

A recent phenomenon related to car theft is that of Israeli garages or car dealers transporting damaged Israeli vehicles to the PT, where they are repaired using stolen car parts. The vehicles are subsequently returned to Israel and sold as "ordinary" used cars. Beyond the financial loss, there is no supervision over the quality of the repair, and thus, vehicles are often returned to Israel and sold with significant safety problems that the new owners are not aware of. Motor vehicle theft in Israel is also related to terrorist activities. For example, car bombs that have exploded in Israel often have been made using stolen cars or license plates. Additionally, intelligence warnings indicate that tow trucks that transfer vehicles from the PT back to Israel may also carry terrorist devices.

Several measures have been taken over the last decade to try to control the phenomenon. After motor vehicle theft reached a peak in 1997, with 45,918 vehicles being stolen, a special unit within the Israeli police (Etgar) was established in 1998, and it operated until 2003, when it was shut down due to budget constraints. In 2006, the unit became operational again owing to financial assistance from private insurance and leasing companies. In July 2005, the law for "limiting the usage and registering activities with used car parts" was adopted. According to the law, any vehicle parts that are dismantled, assembled, imported, bought, sold, or transferred must be registered, including, for example, the details of the car part, the date, manufacture, the identity of the individuals involved in the transaction, and so on. If a law recently proposed in the Knesset is adopted, it will be illegal to repair cars in the Palestinian Territories, an offense punishable by up to three years' imprisonment.

Drug Offenses

The main legal basis defining drug-related offenses in Israel is the Dangerous Drugs Ordinance (1973). The amendments to the ordinance define almost 100 substances as "dangerous drugs," including hashish, opium, heroin, cocaine, and LSD. "Dangerous drugs" are illegal to use, entice minors to use, possess, or sell. The ordinance defines four types

of drug-related offenses as illegal: (1) possessing and using dangerous drugs, offenses that are punishable by 3years of imprisonment; (2) dealing in dangerous drugs, which is an offense punishable by 10 years of imprisonment; (3) growing, manufacturing, and producing dangerous drugs, which are offenses punishable by 10 years of imprisonment; and (4) enticing minors to use drugs, which is a severe offense punishable by imprisonment for 25 years.

According to the Israeli Anti-Drug Authority, the phenomenon of drug use in Israel evolved during the 1980s from a marginal problem to a central trend influencing Israeli society. About 300,000 individuals in Israel abuse drugs, either occasionally or on a regular basis. Seventy thousand are teenagers between the ages of 12 and 18, who constitute about 11 percent of their age group. Twenty-five thousand of the total users are addicts. The Anti-Drug Authority reports that the growth in drug abuse among teenagers who attend school has leveled off and remains at around 11 percent. At the same time, however, the use of drugs, particularly hashish, marijuana, and Ecstasy, among 118- to 30-year-olds has been increasing.

The illegal drug market in Israel is estimated at about 6 billion NIS a year (equivalent to about US$1.5 billion) and includes approximately 100 tons of marijuana, 10 tons of hashish, 5 tons of heroin, 3 tons of cocaine, and more than 20 million tablets and doses of party drugs such as ecstasy and LSD. Numerous substitutes are also part of the drug market in Israel, including contact glue, air-conditioning gas, and laughing gas. Following the second war with Lebanon, the border with Jordan has become the major route for smuggling illegal drugs into Israel, particularly heroin, cocaine, and hashish. At the same time, Israel continues to be a "transit" country from Jordan to Egypt and Saudi Arabia. Much of the marijuana is smuggled across the border with Egypt, while Lebanon continues to be a transit country for heroin and cocaine and a source for hashish. A recent phenomenon is the smuggling of cocaine in liquid form, absorbed in clothes or concealed in wine bottles, from South America. Homegrown drugs for the purpose of retail sales are also part of the Israeli drug market.

Crime Statistics

The statistics detailed in the following list were reported by the Israeli police in their annual report for the year 2006. As a reference point, the population in Israel at the end of 2006 included approximately 7,116,700 residents.

- *Murder:* The Israel National Police reports 187 criminal cases opened for murder in 2006 throughout the country. Out of those, 107 are "cleared" cases—that is, cases in which an offender was identified. One hundred sixty-nine individuals were accused of murder, among whom 9 were adolescents.
- *Rape:* In 2006, 938 criminal investigations were opened for "rape using force or threat," out of which a suspect was identified in 692 cases. Six hundred thirty-one offenders were involved in this type of offense, out of which 70 were adolescents. For the second type of rape, 269 criminal investigations were opened for "rape and illegal coitus," out of which a suspect was identified in 194 cases. Two hundred twenty-four offenders were involved in this type of offense, out of which 94 were adolescents.
- *Robbery:* In 2006, the Israeli police opened 1,261 criminal cases for robbery and 1,033 for "robbery under severe circumstances." An offender was identified in 765 cases of the first type and in 580 of the second. Five hundred fifty-one offenders were accused of being involved in "robbery," out of which 161 were adolescents. Six hundred seventy offenders were accused of being involved in "robbery under severe circumstances," out of which 133 were adolescents.
- *Drug offenses:* 3,424 criminal cases were opened against individuals accused of dealing in, importing, or exporting drugs in 2006. "Cleared cases" constituted 3,072 of the total, which led to the identification of 2,305 offenders, out of which 351 were adolescents. An additional 519 criminal investigations were opened for growing, producing, or manufacturing drugs, out of which an offender was identified in 320 cases. Three hundred fifty-three individuals

were accused of this offense, out of which 29 were adolescents.

Finding of Guilt

Rights of Accused

A suspect in Israel is considered innocent until convicted by a court of law, following due process, in cases where the defendant's guilt has been proven beyond a reasonable doubt. The suspect has the right to remain silent and not incriminate him- or herself, while all matters between the suspect and his or her attorney concerning the suspect's representation are privileged.

If the suspect was arrested, the arresting officer must identify him- or herself, notify the suspect of his or her arrest and the reasons for the arrest, and provide a copy of the warrant if such exits. The suspect is then brought before the commanding officer of the police station, who determines if there was reasonable cause for the arrest and whether further detention is required. To extend an arrest, regardless of whether a warrant was issued, the detainee has to be brought before a magistrate no later than 24 hours from the initial arrest and no later than 12 hours if the suspect is a minor. If still in custody after 75 days, the prosecution has to decide whether to file an indictment or to release the suspect. A Supreme Court judge has the authority to provide additional 90-days extensions.

Every suspect or accused has the right to choose an attorney to represent his or her case. Because private attorneys are often expensive, if the defendant cannot afford one, the court has the right in certain cases to appoint an attorney free of charge, following the defendant's request or based on the court's initiative. The circumstances and types of assistance provided to defendants free of charge are detailed in the next section.

Once an indictment has been filed and prior to the trial, the accused and his or her attorney have the right to examine and copy the prosecution's material, a right that may be enforced by the court. Before the trial, some defendants with certain characteristics, such as those who hold high public office, may be granted an administrative hearing. This may be carried out upon the initiative of the prosecution before it has reached a decision as to whether to file an indictment, or it may be initiated by the defendant. For this purpose, an amendment to the procedural law has been adopted, whereby the defendant has to be notified immediately when the investigation file has been passed on from the police to the prosecution, before an indictment has been filed.

At the opening of a trial, immediately after the judge reads the indictment, the defendant may raise preliminary pleas, such as immunity or statute of limitations. If the defendant chooses not to do so, he or she may answer to the charge—that is, admit or deny some or all of the charges—and reveal any alibi that he or she may claim to have. If the alibi claim is not made at this point, it cannot be raised later unless authorized by the court. The defendant may choose not to raise any plea or keep silent altogether; however, this choice may be used as evidence against the defendant later on.

After the prosecution has presented its case, the accused may claim "no case to answer," that is, arguing that the prosecution has not produced basic evidence supporting the charge that the defendant has committed the alleged offenses. If the trial continues, at the stage when the defense presents its case, the accused has the right not to testify if he or she chooses not to do so. Additionally, at the defendant's request, the court will summon any witnesses, unless it believes that a specific witness cannot assist in clarifying the questions at hand.

After a verdict has been declared, the accused (as well as the prosecution) has the right to call additional witnesses to testify as to his or her character and to provide the court with any additional information that should be considered before the sentence is passed. Additionally, the accused (as well as the prosecution) has a basic right to appeal the court's verdict or sentence within 45 days. The appeal may be allowed in whole or in part, dismissed, or returned to the trial court with instructions.

Assistance to Defendant

A public defender system has existed in Israel since 1996, following the enactment of the Law of the

Public Defender in 1995. The goal of this office is to ensure adequate representation to all suspects, detainees, and accused, regardless of their financial means. The office includes a core team of in-house attorneys, who are employees of the Office of the Public Defender, and a large group of private lawyers hired as defense attorneys when needed. In the old system, the authority and responsibility for paying court-appointed defense attorneys lay in the hands of the courts, which often did not have the ability to supervise the professional standards of the defense. The public defender law, however, determines that any court decision to appoint an attorney will be handled by the Office of the Public Defender, and thus, the responsibility for payments as well as for the quality of the defense rests in the hands of the public defender, which has the organizational and professional ability to provide support and supervision.

Conditions that define the eligibility to be represented by a public defender attorney are detailed in section 18 of the Law of the Public Defender and take into account the type of legal procedure, the severity of the offense, and the financial status of the individual.

Investigations and Prosecutions

Generally speaking, the Israeli police force is the organization responsible for carrying out criminal investigations in Israel. Some exceptions include, for example, the military police, which has jurisdiction over criminal investigations within the military, or in some cases private or media investigators, whose initial inquires and collection of evidence may give rise to official police investigations. Additionally, if the alleged offense is a contravention or misdemeanor, the police may decide that the investigation will be carried out by another agency with investigative and enforcement powers, such as internal revenue investigators from the Ministry of Finance or environmental inspectors from the Ministry of Environment.

In certain cases, the police may decide that an investigation should be terminated and the suspect should not be indicted, usually owing to insufficient evidence or "lack of public interest." In cases of lack of public interest, the complainant will be notified and may appeal the decision to the attorney general's office.

Once the investigation is completed, and all relevant evidence has been gathered, the material is forwarded to the prosecuting agency, which will generally be the police prosecution unit (in cases of contravention or misdemeanors) or the district attorney's office (in cases of felonies). Other prosecuting agencies may include, for example, the Tax Authority or the military prosecution. The investigation file is then reviewed, and a decision is made as to whether further investigation is required (in which the case file will be returned to the police) or whether there is sufficient evidence to file an indictment.

Alternatives to Trial

In recent years, there have been several attempts to incorporate restorative justice and mediation programs into the criminal justice procedure in Israel, as alternatives to going to trial when the offender is a juvenile. These still represent, however, unusual and exploratory attempts.

How Are the Majority of Criminal Cases Resolved?

The large majority of criminal cases are closed before they reach the stage of an indictment. To begin with, at the investigation stage, many criminal cases that are considered "less serious" are defined by the police as "no prosecution" cases, which are consequentially not investigated. Police guidelines specify offenses that should not be investigated, such as perjury or false testimony in civil trials, unless directed by the courts. In actuality, many additional offenses, some with significant impact on quality of life and general sense of security, are almost never investigated. In 2006, 14.6 percent of cases opened by the police were disposed of as "no prosecution" cases.

The classification of cases is merely the first filter that files go through on the way to an indictment. Many of the cases that are investigated are closed at a later stage by authorized police officials. Files that

remain open are passed on to a prosecutor (at either the police prosecution or the district attorney's office), who also may close the file due to lack of evidence or "public interest." Data from 2001 indicate that in about 55–60 percent of cases that are closed, the decision is made because of lack of sufficient evidence; in 20–25 percent, the reason for closure is "lack of public interest"; and lastly, some cases are closed because even the slightest evidence against the suspect could not be established, and thus it is determined that there is "no guilt."

Research has in fact shown that the large majority of cases that are investigated do not eventually reach the stage of an indictment. For example, only 7.7 percent of suspects identified in 1990 and 7.2 percent in 1995 were actually prosecuted. With regard to cases that reach indictment, preliminary data indicate that the large majority (approximately 75–80%) of cases tried in district courts are resolved with a plea bargain.

Incarceration before or Awaiting Trial

Incarceration before or while awaiting trial is permitted in Israel. At the outset, police officers have the authority to arrest an individual without a warrant if one or more of the following circumstances take place: there is a reasonable suspicion that an offense has been committed, and if not arrested or detained, the suspect may harm a person, the public, or the security of the state of Israel; the officer suspects that the individual may disrupt an investigation, tamper with evidence, or try to influence witnesses; or the individual has been released on bail but has violated the terms of his or her release or is a prisoner trying to escape.

Following the arrest, the detainee must be brought before the commanding officer of the police station, who determines whether the arrest was justified and whether the individual should remain in custody. Regardless of whether a warrant for the arrest was issued, the detainee must be brought before a judge no later than 24 hours following the initial arrest if the suspect is over the age of 14 and no later than 12 hours if the suspect is younger. The judge's decision as to whether to extend the detention period depends on the presence of evidence indicating that the detained individual, if released, will pose a danger to a person, to the public, or to the state of Israel; or on the judge's assessment that the suspect will tamper with evidence, try to influence witnesses, leave the country, or try to escape justice.

The courts may extend the detention period by up to 15 days at a time, though usually the period is extended by 5 days at a time. After 30 days, the police, with the consent of the attorney general, may request further extension. However, 75 days after the initial arrest, the prosecution must either indict the suspect or release him or her. A Supreme Court judge may order further 90-day extensions; however, this rarely takes place.

After an indictment has been filed, the prosecution may request that the suspect remain in custody throughout the trial. In making such a decision, the court considers three questions: (1) whether there is evidence against the accused that unless rebutted would suffice for a conviction; (2) whether there are reasons to believe that, if released, the accused may try to escape, tamper with evidence, influence witnesses, commit additional crimes, or endanger a person, the public, or the state of Israel (when the alleged offense is a severe one, such as rape, murder, etc., there is an assumption of such dangerousness); and (3), whether there are no alternatives to the detention, such as bail, house arrest, or handing over the suspect's passport to the police.

Criminal Court Judges: Numbers and Qualifications

Currently there are 15 Supreme Court judges in Israel. The Central Bureau of Statistics reports that in the year 2006, there were 121 district court judges and 353 magistrates' court judges.

Judges in Israel are appointed by the president, following the recommendation of the Judges Election Committee. This committee is composed of nine members, including the president of the Supreme Court, two additional Supreme Court judges, the minister of justice (who also serves as the chair of the committee), an additional minister, two members of the Knesset, and two representatives of

the Israeli Bar Association. Thus, members of the Judges Election Committee represent all three powers of the state: the executive, the legislative, and the judicial, as well as the Israeli Bar Association. Attorneys who wish to be appointed judges complete an application and appear before a subcommittee, which submits its impressions and recommendations to the Judges Election Committee. A committee's recommendation to appoint a judge is based on a majority vote.

To be appointed a magistrates' court judge, a citizen of the state of Israel must adhere to the following preconditions:

- Be registered, or entitled to be registered, with the Israeli Bar Association.
- Have practiced law, held a legal position as a civil servant, or taught law at a university or law college for at least five years, out of which at least two were in Israel.

To qualify as a district court judge, an Israeli citizen must comply with the preconditions of a magistrates' court judge, but have 7 rather than 5 years of experience, out of which at least three must be in Israel, in addition to 4 years of experience as a magistrates' court judge. A Supreme Court judge must fulfill the same criteria, with no less than 10 years of experience, out of which at least 5 must be in Israel, and additionally have 5 years of experience as a district court judge.

The Juvenile Justice System

Minors, defined as 12- to 18-year-olds, are subjected to different treatments throughout the criminal justice process, owing to the emphasis of the juvenile justice system on individual treatment and rehabilitation, which gives rise to much flexibility, informality, and wide-based discretion.

First, as mentioned earlier, minors under the age of 14 may be detained for no more than 12 hours before being brought before a judge (in special circumstances, a senior police officer may order detainment for an additional 12 hours). A judge may order the continuation of the detainment for 10 days, followed by an additional 10 days (versus a total of 75 days for adult suspects—see earlier discussion). Minors may be detained only in special facilities, separate from adults. Parents or guardians must be informed immediately of the arrest and must be invited to be present during the questioning (unless there are special reasons not to do so).

The questioning of minors under the age of 14 who have been involved in sexual or violent offenses is carried out by special "child investigators." These special investigators are probation officers with university training in social work, employed by the Ministry of Welfare and Social Services. Their questioning incorporates a variety of methods such as picture drawing and role play. Leading questions in these types of investigations are allowed, and the entire process must be audiotaped.

When a minor has been detained or arrested, a youth probation officer must be informed. He or she will provide the police with a report on the minor and his or her background and family. This report may include a recommendation that the file be closed due to lack of public interest or because it may impede the minor's rehabilitation process. Thus, the Israeli police may, in cases involving suspects who are minors, close the file or put it "on hold." In such cases, the suspect is warned that the file may be reopened if he or she continues deviant behavior, and the suspect may be referred to further treatment by social services. If the minor complies, the file can be closed permanently and even removed from the records altogether. In any event, if the police do decide to press charges, they must do so no later than a year from the date of the offense. Prosecution at a later stage requires the approval of the attorney general.

Offenses where the suspect is a minor that do end up in court are dealt with by juvenile judges in special juvenile courts. Proceedings in these courts are not open to the general public, and all personal details of the minor are confidential. All minors who have been detained or accused are entitled to be represented by a public attorney, and the judge may order that the minor be supervised by a probation officer or sent for observation during the course of the trial. In cases where a child investigator carried

out the questioning, the minor's testimony is presented by the investigator, along with the audio and sometimes videotape of the investigation. The same investigator may not deal with both the suspect and the victim in the same case.

If the court finds the minor guilty, the judge must receive a report from the probation officer before determining the sentence. The court then may convict and sentence the minor; order treatment; or make no order in cases of very minor or first-time offenses. In the majority of cases, treatment orders are made, which may include closed or open homes, probation, adult supervision, fine or financial compensation, or any other course of action that in the court's view is required for the minor's treatment and rehabilitation.

If the court convicts and sentences the minor, the normal sentencing options apply with several limitations: the death penalty is never allowed; minimum or mandatory penalties do not apply; imprisonment is available only if the minor is over the age of 14; and the option of a closed home is available instead of imprisonment, for a term that does not exceed the term of imprisonment available for that offense (this provision does not apply when a closed home is imposed as treatment).

Punishment

Types of Punishment

The types of punishment defined by Israeli law include the death penalty, imprisonment, "conditional imprisonment," "service work" (a type of imprisonment served in the community), "community service," fines, and probation. Courts in Israel are given much discretion in sentencing, and mandatory or minimal sentences are rarely imposed. Maximum sentences, however, are defined for any particular crime.

The death penalty under Israeli law is a possible punishment for the crimes of treason during wartime and crimes against humanity and genocide. It has been imposed only once in the history of the state of Israel, against Adolph Eichmann, the Nazi war criminal who was hanged in 1965.

The punishment for murder, which used to be death under the Criminal Code Ordinance inherited from the British Mandate, has been replaced with mandatory life imprisonment, which is also the mandatory punishment for kidnapping a child with the intent to endanger life. The punishment of life imprisonment is generally converted by the president to imprisonment of around 30 years, following a recommendation made by a specially designated committee. Such recommendations may be made only after the prisoner has served no less than 7 years of the life term. Offenses that under the British Mandate Criminal Code Ordinance were punishable by life imprisonment have been replaced with the maximum sentence of 20 years. Several severe offenses have been added to this category over the years, such as aggravated rape or enabling a minor to obtain drugs, which is an offense punishable by 25 years of imprisonment.

The punishment of "conditional imprisonment" (suspended sentence) is defined as a prison term, suspended for one to three years, that can be activated if the offender commits, within that time frame, an additional offense of a particular type as defined by the court. A conviction for a new offense may lead to an extension of the suspension period. Conditional imprisonment may be combined with a probation order, based on the ideology of combining the deterrence of the conditional imprisonment with the rehabilitation of the probation. Additionally, conditional imprisonment may require a financial obligation (a "suspended fine") to refrain from offending behavior during the designated timeframe.

"Service work" is considered a prison sentence, but one that is served in the community rather than in prison, and may replace a prison term of no more than six months. Its aims include reducing the overcrowding of the prisons as well as minimizing the harms caused by imprisonment.

Offenders engaged in service work are supervised by regional inspectors of the Israeli Prison Service, who according to the law must pay an unannounced visit to the service institute once a week and no less than twice a month. Violation of the service terms

may result in their termination and the offender carrying out the rest of his or her sentence in prison. During the year 2002, more than 4,000 convicted offenders carried out service duty, in cycles, in 430 institutions.

"Community service" in some respects is similar to the common form of "service work," but the offender carries out services for the community in his or her free time. Community service is administered by the Probation Service and may be imposed without a registered conviction. These services are usually performed for no more than 250 hours, during a one-year period. A probation order may be added to this sanction.

Fines are common punishments for misdemeanors and contraventions, particularly in traffic law enforcement. Fines may also be imposed as an additional punishment to imprisonment, for example. Failure to pay the fine may result in imprisonment for the period of time specified in the sentence or determined by the law, which does not exceed three years. This sanction, however, rarely takes place. Courts may also order the offender to financially compensate the victim, up to a maximum sum revised periodically.

Probation can be ordered by the courts for a time period of six months to three years, with or without a registered conviction. Probation requires the consent of the offender and may be connected with an additional sanction such as conditional imprisonment or community service. If conditions set by the courts are violated, or an additional offense is committed within the determined time frame, an alternative sentence may be imposed.

In 2005, for most offenses, a suspended sentence was the most common type of punishment followed by imprisonment for offenses against the security of the state, bodily harm, sexual offenses, offenses against morality, and offenses against property. A fine was the next most common penalty for crimes against public order and for fraud. It is important to mention that often an offender will receive more than one type of punishment. The distribution of imprisonment for a variety of offenses in 2005 was as follows:

Against the security of the state	58.0%
Against public order	34.4%
Bodily harm	28.8%
Sexual offenses	51.9%
Against morality	40.1%
Against property	34.2%
Fraud	25.3%

Prisons

The Israeli Prison Service (IPS) is the national prison system in Israel. Its goal is to safely and suitably incarcerate prisoners and detainees, while maintaining their dignity, fulfilling their basic needs, and providing correctional capabilities to enhance the prisoners' ability to reintegrate into society upon release. The IPS operates 28 prisons and jails, including a prison for women (Neve Tirtza) and a prison for juveniles up to the age of 21 (Ofek). Additionally, many prisons operate wings intended for special populations, such as prisoners who require special protection; psychiatric wards; religious wings; drug-free wings; and wings for refugees, particularly from the Sudan, who have been entering Israel since 2005. The different prisons also vary in their security levels, ranging from minimum to maximum levels of security.

Since 2005, the IPS has been gradually taking responsibility over all prison and jail facilities in Israel, including those for "security prisoners" (inmates from the Palestinian Territories accused of terrorist activities), which were previously operated by the army. These additional "security prisoners" constitute a major increase to the prison population, which now includes more than 21,000 prisoners and detainees, out of which almost 10,000 are security prisoners. About 330 of all inmates are women.

The largest prison in Israel, both in size (400,000 square kilometers) and in population (over 2,200 prisoners), is "Ktziot" prison. It is located in the Southern District, south of the Gaza strip and east of the border with Egypt. Many of the inmates in this prison are "security prisoners" drawn from different terrorist organizations. Many were

transferred to this prison after serving time in other prisons, in facilities of the SHABAK (General Security Agency) or in army jails throughout the country. Most are from the so-called new generation of terrorists, serving time for involvement in terrorist activities during the second Palestinian intifada. The prison also holds a wing of regular prisoners, who carry out maintenance duties. Additionally, since 2007, the prison has include a special separate wing for African refugees, mainly from the Darfur region in Sudan, who infiltrated Israel via the border with Egypt. Until 2006, when responsibility for the prison was transferred to the IPS, the Ktziot prison was run by the Israeli Army.

Work and Education Policies

Prisoners in Israel are legally obligated to work; however, according to Professor Leslie Sebba and other researchers, this provision is not strictly enforced owing to a lack of working opportunities. The majority of inmates do work, however, in the maintenance of the prison, including cleaning duties, cooking, and so on, for which they receive a small salary that allows them to purchase items in the prison canteen. Overall, work is encouraged as part of rehabilitation and acquiring good work habits and skills. Thus, professional courses are offered. Additionally, commercial companies set up small industrial units within prisons, which allow inmates to acquire important working skills while earning a salary. As part of reintegration into society, several months before their release, some prisoners (who qualify) may leave the prison, as a group, to work in a civil facility. The next stage is for the prisoner to leave the prison on his or her own, in civilian clothing, and return to the prison every evening after work.

The IPS also provides and enables formal education at all levels (from very basic reading and writing skills up to university-level education), as well as informal education. Formal courses are at least 12 weeks long and include 20 hours of class a week. Grades are passed on to the Ministry of Education, and official credentials are given. On a yearly average, 1,600 inmates in all prisons receive formal education. Informal education follows the format of a community center and includes a variety of courses and seminars in areas such as art, general knowledge, computers, tradition and holidays, health education, parenting, reading, and more.

Visiting Policies, Furlough, and Privileges

Three months after imprisonment, convicted prisoners are entitled to receive a visit once every two months, in the presence and within hearing range of a prison guard. As a privilege, visits may be granted once every two weeks. Additional visits may be granted in specific prison wings or under certain circumstance (such as the prisoner excelling in general behavior or at work, special family situation, etc.) and following the approval of the appropriate authority (wing or prison commander). Generally speaking, a visit may last no more than 30 minutes; however, much discretion is given to wing and prison commanders to extend this period. Each visit may include no more than three adults (not including the inmate) and the inmate's children, but the prison commander may approve two additional visitors. Usually a net or glass divider will separate the prisoner from the visitors, though in rehabilitation or advanced wings, visits are carried out in visiting rooms without separation devices.

Furlough from prison is not an automatic right of all prisoners but a privilege based on the discretion of the prison service and the Israeli police, while taking into account the inmate's security status, intelligence information, possible danger to the inmate's family, likelihood of involvement in criminal activity, and more. For example, sex offenders who renounce their guilt are not eligible for a furlough. Inmates who qualify may take their first leave after serving a quarter of their sentence, and no less than two months in prison. Their eligibility will be continuously reexamined, and if found eligible, they will be granted a furlough every month or every two months, for the time period of 6 to 96 hours. Some inmates who are not eligible for furlough may receive conjugal visits. Prisoners who are convicted of family violence or incest must go through a special procedure before conjugal visits

are approved. "Security prisoners" are not eligible for this type of visit. If qualified, a prisoner may receive a conjugal visit once a month.

Extradition, Transfer, and Exchange of Prisoners

According to the Extradition Act (1954), an Israeli resident may be extradited to another country if the following criteria apply: the suspect committed an offense that under Israeli law is punishable by a year of imprisonment or more; the extradition request is for the purpose of prosecuting the suspect; the country requesting the extradition made a commitment that, if convicted, the sentence would be served in Israel; there is an extradition agreement between the requesting country and Israel, and the event at hand fulfills all conditions of the agreement.

In 1996, the Law for Transferring Prisoners to Their Countries of Origin (1996) was enacted. The purpose of this law was to allow Israeli citizens serving prison sentences abroad to carry out their sentence in Israel, while similarly enabling foreign citizens serving prison sentences in Israel to carry out their sentence in their country of citizenship. The law enabled the state of Israel to abide by international conventions and sign special agreements for transferring prisoners. Thus, the European convention for transferring prisoners was endorsed by the state of Israel in 1997 and became active in January 1998. Between 1997 and 2001, 95 Israeli citizens serving prison sentences abroad applied to be transferred to Israel, of which about 17 were actually transferred. During the same period, 13 foreign prisoners serving prison sentences in Israel applied to be transferred to their home countries, of which about 5 were actually transferred.

Security prisoners have been exchanged in the past in return for Israeli soldiers who were captured or kidnapped. A well-known example is the "Jibril Deal," which took place in May 1985. This deal between the state of Israel and the Popular Front for the Liberation of Palestine, the General Headquarters of Ahmad Jibril, included the release of 1,150 security prisoners serving time in Israeli prisons, in return for three Israel soldiers: Shai, Groff, and Salem, who were captured in 1982 during the Lebanon War. The Israeli government was severely criticized in the media, particularly for the large difference between the number of prisoners released and the number of soldiers returned and for releasing terrorists with "blood on their hands."

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Further Reading

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Jordan

Legal System: Common/Islamic/Customary
Murder: Low
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

Following the breakup of the Ottoman Empire after World War I, Transjordan became a British Mandate. In 1946, the Hashemite Kingdom of Jordan

became an independent nation. Jordan has been a hereditary constitutional monarchy since 1952, and the king is constitutionally above the law. As the head of state, the king enjoys very broad executive authority over the bicameral National Assembly and the armed forces.

According to article 99 of the Constitution, the courts are structured into three basic categories: ordinary civil courts, religious courts, the special courts. The legal and judicial systems are rooted in Islamic traditions and French codes.

The civil courts include magistrates' courts, courts of first instance, and conciliation courts for juvenile cases. They also include appellate courts such as the courts of appeal and the Court of Cassation as well as the high administrative courts. The judiciary is subject to executive influence through the Justice Ministry and the Higher Judiciary Council that the king appoints.

The religious courts are sharia courts for Muslims, and there are other tribunals for citizens belonging to other legally recognized religions. Constitutional articles 103–106 grant the sharia courts exclusive jurisdiction over personal status matters, such as religion, marriage, divorce, child custody, and inheritance involving Muslim citizens.

Jordan is not a multiparty democracy. Restrictive laws block the formation of true political parties, and elections are widely reported to be corrupted by government agents. The Constitution grants citizens the freedom to peaceably assemble and associate, but the minister of interior must certify nongovernmental organizations (NGOs) as lawful "societies" and has the power to dissolve them for alleged technical violations.

Censorship is prevalent, with about 20 laws concerned with press prohibitions. The press is heavily monitored and coerced, imported publications are censored or banned, and journalists have their foreign travel restricted and can be criminally fined and imprisoned.

Islam is the state religion, and over 90 percent of Jordanians are Sunni Muslims. Fewer than 5 percent are Christians, and not all religions are legally recognized. The Ministry of Religious Affairs and Trusts manages Islamic institutions and appoints imams to whom it pays regular salaries. The ministry also prohibits imams from engaging in what the ministry deems subversive political commentary.

About 90 percent of Jordanians are Arabs. Minority groups and refugees are said to suffer significant discrimination. This is particularly true for refugees. The regime has experienced difficulties in dealing with the estimated 500,000 to 750,000 Iraqi refugees fleeing war. They now constitute about 10 percent of Jordan's population. Discrimination is also a problem for the more than 1.7 million Palestinian refugees in Jordan who are now an outright majority in the country.

Given the traditional influence of both sharia law and tribal customs, it is not surprising that women experience systemic discrimination. Human rights groups have called on the regime to abolish a number of discriminatory laws such as the rape law. Indeed, until 2002, only men could legally file for divorce.

Criminal justice institutions contribute to the kingdom's bleak human rights environment through the well-developed system of special security laws, police, and courts. Together, these represent an exceptional system of control outside of the ordinary civil courts aimed at maintaining internal and external state security. They are subordinated to the executive's military authority.

Martial law in Jordan ended in 1989. But the 1954 Crime Prevention Law (CPL) has been revived. This law grants governors the authority to detain persons indefinitely on the pretext that those individuals are "a danger to the people." The governors preside over the country's 12 provincial governorates and answer to the king's minister of interior.

Police forces in Jordan have also been criticized for threatening human rights. For example, Amnesty International (AI) has reported that the public security police, operating under the auspices of the Ministry of Interior, have actually unlawfully killed citizens. But when the minister of interior had appointed public security police official to head its Commission of Inquiry to investigate the allegations, the commission exonerated its officers of any wrongdoing.

The General Intelligence Directorate (GID) is a military security agency directly linked to the prime minister. It is empowered to charge and remand security detainees and ultimately prosecute them in one of Jordan's special courts outside of civilian control under the State Security Law. There are various specialized courts, including the Supreme Council and the Court of Major Felonies, as well as the Police Court and the military-dominated State security court.

Crime

Jordan's 1960 penal code denotes a range of misdemeanor and felony criminal offenses. The minimum age of criminal responsibility was raised from 7 to 12. This is still the lowest age of criminal responsibility among the Arab states. According to the UN Tenth Survey of Crime Trends and Operation of Criminal Justice Systems, Jordan's homicide rate is low. In 2006, there were just 100 homicides per 100,000 civilians. The rate of intentional homicides resulting from firearms the prior year was just 0.47 per 100,000. Even in the country's largest city, Amman, there were just 1.84 per 100,000 civilians, or about 40 homicides in 2006.

Drug possession, use, and trafficking elicit severe penalties. However, the U.S. State Department does not regard crime to be serious in Jordan. It does warn that Western women traveling in Jordan are experiencing sexual harassments, though serious sexual assaults appear uncommon. Marital rape is not a crime in Jordan. There are no laws or shelters to protect domestic violence victims.

Jordanian women are also subjected to so-called honor crimes. Male relatives may assault and kill them for talking to unrelated males, having premarital sex, becoming pregnant outside of marriage, or marrying someone without family approval. There are about 25–30 "honor" killings annually. Article 340 of the penal code allows courts to treat killers leniently.

Jordan is regarded as both a destination and a transit country for men and women as forced labor, as well as for women in prostitution. The UN Human Rights Commission (UNHRC) reports that foreign workers experience slave-like conditions and exploitation, are regularly imprisoned and abused by employers, and suffer sexual and physical abuse. AI criticizes the government for failing to protect the 40,000 registered and 30,000 unregistered migrant workers from highly exploitive and abusive practices. Lacking victim protection service, authorities punish and deport victims instead of investigating and prosecuting offenders. The UNHRC also reports that Jordanian companies have also been forcibly transporting Asian workers to labor in American-occupied Iraq.

The U.S. State Department believes that the terrorism threat in Jordan from both transnational groups and less sophisticated local groups is high. Al Qaeda claimed responsibility for the November 9, 2005, bombings of international hotels in Amman killing 60 and injuring over 100. Afterward, authorities amended the new terrorism law to criminalize financing, interacting with, and recruiting for any terrorist group. It gave the military jurisdiction over terrorism cases and allowed surveillance of terrorism suspects as well as detention for up to 30 days.

Finding of Guilt

Three conciliation courts (Zarka, Irbid, and Amman) deal specifically with juvenile cases. According to the NCHR, the courts processed 1,985 juvenile cases in 2007, 21 of which were for females. They also note that juveniles are not guaranteed to have lawyers unless the charges carry a severe potential sentence such as death or life imprisonment at hard labor. Further, if juveniles are charged with having committed misdemeanors together with adults, juveniles are then charged in adult courts.

Prosecutors charging adults with serious interpersonal crimes such as murder or rape take cases to the Court of Major Felonies. This court was established in 1976. Reportedly, the court was established to guarantee speedy trials involving serious interpersonal crimes specifically to prevent blood feuds from erupting.

Defendants in the ordinary courts are constitutionally guaranteed basic due process rights such

as the presumption of innocence, judicial review of pretrial detention, and fair trials based on evidence. The Constitution and the code of criminal procedure allow arrestees to be detained up to 48 hours without a warrant and up to 10 days without formal charges being filed in court. Courts routinely grant prosecutors 15-day extensions. Although the NCHR credits the country for making progress in providing for the right to have fair trials in the ordinary courts, they nonetheless point out that national legislation still does not fully guarantee judicial independence. Judges are subject to executive influence through the Justice Ministry and the Higher Judiciary Council, which the king appoints. As well, the judiciary has been slow to include women. Women have been judges only since 1996, and there were no women appeals court magistrates until 2007.

Yet arbitrary arrest and the violation of basic due process rights remain serious problems in Jordan because so many persons can be detained and adjudicated through the extraordinary state security police and court systems. Administrative detention under the CPL allows administrative governors to send security officers to arbitrarily detain and hold individuals while circumventing the ordinary court system and its constitutional due process guarantees. Unlike in the ordinary courts, authorities in the exceptional security system need not bring arrestees before a judge within 24 hours. Prosecutors can initiate proceedings without judicial review, and charges are not subject to review by an independent tribunal during the investigation.

According to HRW, authorities use administrative detention a good deal, averaging over 10,000 detainees annually. In 2006, there were reportedly 12,000. Administrative detainees commonly include prisoners whose sentences have expired and would otherwise have to be released, individuals arrested on suspicion of a crime but currently released on bail by judicial orders, offenders with prior criminal records, and victims threatened by tribal revenge or "honor" crimes. Even juveniles can be administratively detained.

S__ The GID can hold detainees at Swaqa and its
E__ detention facility in Amman, which holds about
L__ 20 detainees. Detainees are prevented from receiving visits during at least the first week and are held in solitary confinement. Often, they are not even told with what crimes they will be charged. Military prosecutors can order the detention of civilians for up to six months, but some of the Islamist detainees have been detained for periods ranging from two-and-a-half to four years at a time.

Article 278 makes it an imprisonable offense to engage in speech or publication that the regime considers to be "offending the religious sentiments of people." The penal code also criminalizes *lese majeste* by allowing the prosecution of an individual deemed to be insulting the king pursuant to article 195.

Prosecutors from the courts of first instance decide whether to transfer those accused of violating politically suppressive laws and administrative detainees to the jurisdiction of a military prosecutor in the State Security Court (SSC), and by a 2001 temporary law, the prime minister may refer any case to the SSC. The SSC is a special three-member military court that has been operating since 1991. The court has jurisdiction over alleged crimes against internal or external state security, including those against "the dignity of the state and national consciousness."

Proceedings may be closed, and there are no appeals for misdemeanors resulting in imprisonment. There are no constitutional limits on pretrial detention in these cases, and defense attorneys are refused access to their clients until just before trial begins. The SSC also frequently fails to order in-depth investigations into allegations that detention and trials are unfair.

Torture is widespread in the context of administrative detention and the special security apparatus. The UN Special Rapporteur concluded that "torture is systematically practiced" by the GID and occurs in essentially all SSC cases. The International Commission of Jurists corroborates this conclusion, reporting that the use of torture and ill-treatment to extract "confessions" is routine in GID and the Public Security Directorate's (PSD) Criminal Investigations Department facilities.

Jordan has also been an active participant of the United States' rendition program in which American agents abduct individuals from various countries suspected of terrorist affiliations and then deliver them to security services in countries such as Jordan who will reliably extract "confessions" from them through torture. According to HRW, the GID, as proxy jailor, accepted at least 12 such abductees between 2001 and 2004 and successfully tortured them to "confess" to being Al Qaeda operatives.

Naturally, this contravenes international human rights agreements. Interestingly, the Jordanian government amended article 208 of its penal code to prohibit torture, actually defining it the same way as does the Convention against Torture. But it does not stipulate any penalties, and even though the Court of Cassation is responsible for addressing torture allegations when it reviews cases on appeal, it does not.

Punishment

A range of familiar punishments, such as fines, probation, imprisonment, and death, are available in the Jordanian courts. Juvenile offenders can receive probation, as 37 juveniles did in 2007 according to the NCHR.

Jordan retains and uses the death penalty. When juveniles between the ages of 15 and 18 are convicted of a crime normally warranting execution or life imprisonment at hard labor, the maximum penalty that they can receive is instead 4–12 years' imprisonment. Adult offenders committing violent crimes and terrorism offenses are eligible for the death penalty. But since 2006, it is no longer imposed for other ordinary crimes such as drug offenses.

The penal code and the 1952 military penal code both have provided for a high number of capital crimes. In 1988, the number of drug offenses eligible was greatly expanded. Crimes against the state's external security interests such as treason have carried with them mandatory death sentences. Various crimes against the state's internal security as well as homicides involving torture or "barbaric treatment" by roaming gangs of three or more armed persons have also been eligible for death.

Ordinary criminal courts of first instance can try capital cases, as can the Court of Major Felonies in rape and murder cases. By law, defendants in death penalty cases have the right to defense counsel. Death penalty convictions are reviewed by the courts of appeal and then the Court of Cassation. The SSC also has several capital offenses, such as security and drug offenses, within its jurisdiction. Since 1993, convicts in these SSC cases have had the right to appeal their cases to the Court of Cassation. The Court of Cassation then upholds the sentence and sends the condemned back to the SSC jurisdiction. The king must then approve all death sentences. He can also commute them.

According to article 358 of the code of criminal procedure, authorities are to execute convicts inside prison by hanging them at dawn. Until 1988, this took place in al-Mahatta prison in Amman. Since then, executions have occurred in the Swaqa prison south of Amman. Articles 359–362 deal with execution procedures. The condemned are not to be told of the time of their executions until 15 minutes beforehand.

AI estimates that Jordanian officials execute about 10 people annually. Various human rights groups have reported serious abuses in death penalty cases, particularly involving incommunicado detention and torture of individuals held by the GID and condemned to death by the SSC. Although King Abdullah has expressed his support for eventually abolishing the punishment, Jordanian authorities generally see the death penalty as a necessary sanction in Jordanian society and one justified by both Islamic sharia law and Arab tribal custom.

Prison

The PSD, operating within the Ministry of Interior, administers the prison system. According to the World Prison Population List, 8th edition, Jordan incarcerated about 7,500 prisoners, for a rate of about 123 prisoners per 100,000 civilians, in 2008. These prisoners were housed in 10 prisons designated for adults.

An estimated 46.1 percent are officially pretrial detainees. Human rights researchers also estimate that because of the extensive use of administrative detention, as many as 1 in 5 prisoners are actually an administrative detainee there indefinitely. In 2008, the PSD began to separate convicts from the pretrial and administrative detainees. The Qafqafa, Swaqa, and Muwaqqar prisons have been designated for the convicts, and the remaining adult prisons have been designated for the pretrial and administrative detainees. Officially 9.6 percent of prisoners are foreigners.

Just 3.6 percent of prisoners are females. They are incarcerated at the country's only prison for women, the Juwaideh women's prison in Amman. These include as many as 40 women administratively detained for "protective custody" because they have been threatened with "honor" crimes. HRW has called on officials to cease this punitive incarceration and instead protect these victims by providing them residence at the government's Wifaq Center or an alternative NGO shelter for at-risk women.

The Ministry of Social Development administers nine facilities for juveniles. Four are for males, two are for children needing protection and care, one is for females, and two are for beggars. Girls are detained separately at the Khansaa center for girls. Attempts are made to also separate juvenile detainees by age category. But pretrial and convicted juveniles are sometimes mixed because of facility limitations. There are holding cells available for boys in the Al Zohoon security post, Quwaysmish, and there has been a new one in the Aquba security center since 2007. But in the southern governorates, boys are detained along with the men because there are no separate facilities.

Jordan's prisons are generally near cities and larger communities. Some are older buildings, and some were built in the 1980s. Others, like the Juwaideh women's prison and Aqaba, are new. Officially, the PSD's prison system is only at 98.5 percent capacity. The NCHR disputes the official assertion, however, claiming that Jordanian prisons are actually above capacity. It is reportedly common to find prisoners sharing one bed or even renting out their beds or mattresses for money or services. Human rights investigators also conclude that the prisons suffer from poor conditions such as inadequate health, psychological, and food services, as well as insufficient allowances for recreation and the exercise of political rights. They also express concern that prisoners have too little access to their families and attorneys.

Human rights groups have expressed heightened concerns over the infliction of torture and ill-treatment upon Jordanian prisoners. In part, these concerns have been heightened by recent HRW investigative visits to Jordanian prisons. These include private interviews of randomly selected prisoners and officials.

Concerns were also raised following the recent deadly riots at the Juwaideh men's prison in 2007 and Swaqa prison in 2008. These were reportedly sparked by officers' abusive practices. There were no official investigations into the riots and their aftermaths.

Torture and corporal punishment commonly involve beatings with cables and sticks, metal or plastic pipes, or truncheons. As punishment for institutional infractions, prisoners are reportedly suspended from metal grates by their wrists and flogged. Islamists may be beaten en masse for allegedly threatening national security. *Falaqa,* or beating the soles of the feet, is reportedly common, as is the "salt and vinegar walk," which involves lacerating the feet and making the victim walk across a mixture of salt and vinegar to inflame the wounds.

The International Committee of the Red Cross visits the prisons every two weeks and submits its reports directly to government officials. Unfortunately, the internal mechanisms for detecting, investigating, and punishing torture and ill-treatment cases inside Jordan's prisons are inadequate. New prison directors are sometimes active participants in serious misconduct. For example, the new director at the troubled Swaqa prison reportedly ordered that the heads and beards of almost all the prison's 2,100 Muslim prisoners be forcibly shaved, a serious insult to a Muslim male—all on his first day on the job.

Prisoners can complain formally to the PSD's grievances officials. But these officials wear the

same uniform as the prison officers, do not remove the alleged perpetrators from contact with the prisoners, and reportedly even threaten and intimidate prisoners who complain. The Public Security Law allows unit commanders such as prison directors to internally discipline subordinate officers for their misdemeanors instead of sending them to trial. An amendment made torture in the prisons a crime for the first time in 2007, and in 2008, the PSD assigned prosecutors to investigate abuses at seven prisons. But these prosecutors have still not prosecuted anyone under the law.

The special Police Court also has jurisdiction for investigating, prosecuting, and trying fellow officers accused of abuses. Police officials appoint officers to serve as prosecutors and judges. Only the most egregious cases have been taken up by the Police Court. When they have, invariably they have resulted in very lenient penalties. For example, after the deadly Swaqa prison riot, some guards were fined, the aforementioned prison director was fined the equivalent of US$180, and 12 guards were found not guilty because they were "just following orders."

In 2006, Jordan relented to demands and finally closed down the notoriously abusive al-Jafr prison south of Amman. Officials also took steps toward reform by hiring a U.S. consulting firm after the Swaqa prison riots that year. Taking the advice given by the Kerik International group headed by former New York City Police Commissioner Bernard Kerik, Jordanian officials opened a new "supermax" prison, Muwaqqar II, in 2008 to imprison its Islamist "national security" prisoners in 240 cells in 3 wings.

Paul Schupp

Further Reading

Amnesty International: http://www.amnestyusa.org.

Freedom House: http://www.freedomhouse.org.

Human Rights Watch: http://www.hrw.org.

National Centre for Human Rights: http://www.nchr.org.jo/.

Kuwait

Legal System: Civil/Islamic
Murder: Low
Corruption: Medium
Human Trafficking: High
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

The country of Kuwait, an Arab state located between Iraq, Saudi Arabia, and the Persian Gulf, is a democratic nation with a government divided into legislative, executive, and judicial branches. The amir (emir), titled "Head of the State" or "His Highness the Amir of the State of Kuwait," is a key person in the Kuwaiti government. To be eligible to become the amir, one must be a member of the Al-Sabah family and, in particular, must be a male descendent of Sheikh Mubarak Al-Sabah. The amir, along with the National Assembly, retains the government's legislative power. The executive power is held by the amir, the cabinet, and the ministers, whereas the judicial power is held by the courts.

Kuwait is divided into six governorates: Al Asimah (which is the capital), Hawalli, Al Ahmadi, Al Farwaniyah, Al Jahara, and Mubarak Al-Kabear. Kuwait offers freedom of religion to all persons. However, the government does designate Islam as Kuwait's official religion, which is reflected in its judicial system that includes religious courts. The country guarantees certain rights and freedoms to its people through the Kuwaiti Constitution. The Constitution was enacted in 1962 and is built on a foundation of the sovereignty of the state, public freedom, and equality before the law.

Among the amir's duties and capabilities is that which allows him to appoint the prime minister and ministers or, if necessary, dismiss them from their positions. In addition, he signs laws after they have been approved by the National Assembly. The amir is the head of the Kuwaiti defense forces. Furthermore, he retains the power to appoint judges to regular courts.

Before making judiciary appointments, the amir solicits recommendations for the positions from the Justice Ministry. Once the amir appoints a Kuwaiti judge, the judge holds that position for life. If a non-Kuwaiti person acquires a judicial appointment, his appointment may only be in renewable terms lasting from one to three years at a time.

Judicial System

The present Kuwaiti judicial system was brought about by legislation in 1959. Kuwait is separated into different administrative districts. The Kuwaiti judicial system is made up of a summary court in each of these administrative districts. Each of these summary courts is assigned one presiding judge. Although each summary court may be composed of more than one division, all of the divisions that fall within a particular summary court are under the jurisdiction of only the judge assigned to that court.

The summary court presides over all civil cases, leases, and commercial cases and is broken into several divisions. The first of these divisions is the Tribunal of First Instance. This court holds jurisdiction over administrative cases, civil cases, commercial cases, criminal cases, labor affairs, and personal status cases. The second of these divisions is the High Court of Appeals, which is divided into two chambers. The first chamber handles appeals regarding personal status cases and civil cases. The second chamber of the High Court of Appeals has jurisdiction over commercial case appeals and criminal case appeals. There is also a Court of Cassation, which deals with state security court appeals. The uppermost level of the Kuwaiti judiciary system is the Superior Constitutional Court, or the Supreme Court. This court is composed of five persons. Being the highest judiciary level, the Superior Constitutional Court holds jurisdiction over bylaws, the constitutionality of laws, the election of members of Parliament (MPs), and statutes. It also can determine the validity of MPs' membership and interprets the Constitution.

Crimes committed by or charged against members of the military or security forces are reviewed under separate circumstances. The Military Court handles these cases. Civilian cases also may be tried in the Military Court under conditions of martial law. The Military Court is separated into two "state security court panels." The State Security Court is made up of six individuals, three on each of the two panels.

In addition to those courts previously mentioned, the Kuwaiti judicial system allows for religious courts. There are two such courts, the Sunni and the Shia. Both courts handle family law issues. There is no appellate court for the Shia court. Any Shia decisions being appealed are handled by the Sunni court of appeals. Non-Muslim family law issues are handled in a separately established domestic court.

There are three different types of appeal for decisions rendered in the Kuwaiti courts. The first right of appeal would be to the Higher Court of Appeal. With this type of appeal, the entire case may be reheard. Second, a decision may be appealed to the Court of Cassation. In this instance, the case is reviewed to determine whether the decision may be dismissed based on the erroneous application of the law or whether the decision was inaccurately rendered. Third, a decision may be appealed via a request for a retrial in the same court, to make any necessary adjustments to the initial decision to amend any factual or legal mistakes. The amir is the final "court of appeal" regarding all issues. He has the authority to pardon or commute any sentence.

Police

The Kuwaiti government has established a police force with the goal of maintaining public order and preventing and investigating crime. The Kuwaiti police force is the single agency responsible for the enforcement of non-national security related issues. The police force falls under the control of the Ministry of the Interior, which is the ministry given the responsibility of security, law, and order within Kuwaiti society.

Information provided by the Ministry of the Interior regarding the Kuwaiti police force's utilization of a ranking system for the officers indicates that the system is similar to that of a military, which consists of several ranks from general through corporal. For

an individual to obtain officer rank, he first must be selected for such, and he must attend a three-year program at the police academy. There are a total of 62 police stations currently listed on the Ministry of the Interior's Web site, located throughout the country.

The Kuwait Ministry of the Interior (MOI) has a host of vehicles, ranging range from motorcycles, cars, and sports utility vehicles to armed vehicles, boats, and helicopters, to aid in the performance of its duties. According to the Ministry of the Interior, its sea fleet is used in chasing smugglers and unwelcome intruders along the water borders of the country. Motorcycles are used to access places that are inaccessible to other forms of patrol, aiding in traffic control and participating in official processions. The MOI's armed vehicles are the frontline of convoys and are used to open gaps and remove barriers. Helicopters are used for the purpose of traffic control and transporting persons and cargo and are employed in search and rescue missions.

The Kuwaiti police force handles issues pertaining to the following areas: criminal investigations, traffic, emergencies, nationality and passports, immigration, prisons, civil defense, trials and courts-martial, terrorism, and issues in which collaboration with Iraq is suspected. Although the Kuwaiti police force handles a multitude of issues, women are permitted to work only in the areas of criminal investigation, inquiries, and airport security.

According to information provided by the Ministry of the Interior, the Criminal Sentences Execution Department of the Kuwaiti police force is located in Farwaniya. This department is responsible for carrying out sentences handed down to offenders by the court system.

Police actions are controlled by Kuwaiti law. Kuwaiti police are not permitted to make an arrest without first obtaining a written warrant from either a judge or state prosecutors. The only exception to this is in the occurrence of a "hot pursuit." Police are required to obtain sufficient evidence to substantiate the arrest of an individual, confirming individuals will not be subject to arbitrary arrest. Once arrested, police are allowed to hold an individual for up to four days without that person being charged for a crime, unless an order from an investigating officer indicating otherwise has been received. If such an order is issued, the accused may not be detained in protective custody for a period of more than three weeks. Once detained, the offender may be held for a maximum of six months from the arrest date unless the accused has been heard by the establishment handling the case and a review of the progress of the investigation against the accused has occurred.

According to the Country Reports on Human Rights Practices for 2007 issued by the U.S. Department of State, the Kuwaiti police force has problems with corruption, particularly regarding situations in which the police officer has a personal stake in the case. Furthermore, it was reported that the complaints and requests made to the police were not always taken seriously. Reported abuse of detained individuals further derogates the reputation of the police.

The state security department also falls under the jurisdiction of the Ministry of the Interior. Where the police oversee non-security related issues, state security handles issues in the area of overseas intelligence and national security. Its responsibilities include the investigation of security-related offenses, terrorism, and cases regarding suspected collaboration with Iraq.

Kuwait has established a National Guard whose responsibility is to provide backup for the military and the national police when necessary. Their duties also include guarding country borders, oil fields, and other locations susceptible to unwanted interference. Those guard members selected to become officers are required to complete their education at the Kuwaiti Military College. They receive further specialized training post-education.

External security involving the Kuwait army, navy, and air force is headed by the Ministry of Defense. Although the Ministry of the Interior has jurisdiction over internal security, the Ministry of Defense is responsible for defending the country. Once they turn 18 years of age, Kuwaiti males are obligated to give two years of service to the army, or one year if they have graduated from university. In addition to the members of the military, the

Ministry of Defense employs approximately 1,500 individuals.

Crime

Classification of Crimes

In Kuwait, in accordance with the rule of law, no act can be considered a crime or punished as such except as specified by the law. Furthermore, no person is to be retrospectively punished for an act committed prior to a law that establishes the act as a crime.

Kuwaiti criminal law originated in 1960. Ten years later, in 1970, the Kuwaiti criminal law was amended to the law currently practiced. Offenses in Kuwait are broken down into two categories, misdemeanors and felonies. A misdemeanor is defined as a crime that, by law, is punishable by up to three years in prison, a monetary fine, or a combination of the two. A felony is a crime punishable by over three years of prison, a monetary fine, or a combination of the two or by capital punishment.

There are several crimes within Kuwaiti jurisdiction that are classified as misdemeanors, including some types of physical assault and honor crimes. Crimes commonly classified as felonies include rape, murder, kidnapping, defamation and insult, vandalism, and drug crimes.

A misdemeanor may not be prosecuted if criminal action has not been taken within 5 years of the date the criminal act occurred. In the case of a felony, criminal action may be taken only within 10 years of the date the criminal action occurred. The age of criminal responsibility is 7 years old. Children under the age of 7 years may not be criminally prosecuted. Children between the ages of 7 and 15 years old are tried in the juvenile court system established by means of juvenile law. The juvenile court hears cases involving juveniles accused of criminal acts, misdemeanors, or felonies and juveniles who are considered to be "delinquent."

Human Trafficking

S__ Human trafficking is a tremendous problem plaguing the country of Kuwait. According to the 2005 Trafficking in Persons Report issued by the U.S. Department of State, individuals are brought into Kuwait from many countries, including but not limited to Bangladesh, India, Indonesia, Pakistan, the Philippines, and Sri Lanka. These individuals are used mainly for labor purposes including domestic or household labor. Some are brought into acts of prostitution or are otherwise sexually exploited and verbally and physically abused while providing labor services. These individuals are provided with few, if any, means to escape these situations.

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Human trafficking is a lucrative operation because it provides employers with inexpensive labor. The 2007 Country Reports on Human Rights Practices cite adult, female domestic laborers and uneducated, unskilled workers as the most common victims of trafficking within the country.

According to the same report, in some cases employers will pay for the transport of individuals to Kuwait for purposes of employment. Once these workers arrive in Kuwait, they often find that the employment conditions are less than what were promised to them. Leaving these exploitative situations can prove difficult because many of them have already become indebted to their employer. Even if they are capable of leaving, often their documents necessary for travel are withheld from them by their employers. In addition, it has been reported that the victims of trafficking are forced to work long hours and are sometimes prevented from even leaving their homes. They often do not receive adequate compensation for their services. Moreover, domestic employees in Kuwait are not protected under the Kuwaiti labor laws. Because many of the victims of human trafficking are being utilized for the purpose of domestic labor, they receive essentially very little legal guidance or protection from the government, further inhibiting their escape from these undesirable conditions. Furthermore, because there is very little protection for these individuals, if they are picked up for other crimes, the Kuwaiti government may detain, jail, or deport them. Some are even returned to the employment situation from which they came. In few cases, the government may provide these individuals with financial assistance.

The trafficking offenders are reportedly citizens and foreigners alike, as well as agencies involved in labor recruitment and individual employers. In its 2005 Trafficking in Persons Report, the U.S. Department of State indicated that the country of Kuwait was not in compliance with the minimum standards for the elimination of human trafficking. Although not considered in compliance with these standards, the Kuwaiti government has publicly denounced the act of human trafficking and did enact a law in 2004 in an attempt to preventing the use of children as camel jockeys, which is one of the utilizations of children being trafficked into the country. The government also created a task force to address labor problems, including domestic labor. As of 2007, a place of refuge has also been established for domestic employees who are attempting to escape from the problems typical of this type of employment.

Human trafficking is not directly punishable because Kuwait does not have laws specifically against the act. However, the practice is not supported by the government, and consequently, the government prosecutes human trafficking crimes using statutes already in place such as laws specifically against kidnapping, prostitution, rape, slavery, coercion, and forced labor. Punishment includes a prison sentence ranging from 3 to 10 years for kidnapping or "inducing prostitution," and capital punishment can be imposed as punishment for rape.

The Kuwaiti Ministry of the Interior initiated a labor contract that must be signed by all parties—the employer, the employee, and the employment recruitment agency—which presents specific guidelines regarding rules the parties are to follow, including a minimum wage that must be paid to the employee. Failure to abide by such a contract can result in prosecution under Kuwaiti law. The government is also attempting to control the trafficking situation by taking legal action against agencies and companies that violate labor laws.

As reported by the 2007 Country Reports on Human Rights Practices, statistics show 258 people were convicted of bringing persons into the country and not providing them with employment. There were 276 individuals convicted of selling residence permits to aliens unlawfully. There were also 19,908 violations of workers' rights convictions, all of which helped to combat the issue of trafficking.

Domestic Violence

Violent acts committed against women are also challenging crimes for Kuwait. Among these crimes are rape and physical assault, including domestic violence. The highest possible punishment for rape is the death penalty. However, according to the Country Reports on Human Rights Practices for 2007, offenders are not regularly arrested for rape charges, and some reports of rape cases are improperly handled by both the police and hospitals. Sources indicate that several rape victims have been foreign domestic employees.

According to the same report, police receive complaints of spousal abuse allegedly on a weekly basis. There is no specific law barring spousal abuse in Kuwait; however, these cases can be tried by charging the abuser with assault. The 2007 report indicated that most domestic violence or spousal abuse cases are not reported. Of the cases that are reported and in which abusers are convicted, penalties generally are not severe. The victim can file police reports and may also ask for formal charges to be issued against her spouse. As of the 2007 report, there were no domestic violence shelters, hotlines, or sources of reprieve available to victims. Adding to the problem, it is reported that even in situations where the abuse has been documented and witnesses can attest to the violence, abusers are not usually detained by the police.

Drug Offenses

Drug crimes continue to be problematic for Kuwait. Based on information provided by the Ministry of Justice, a large number of drug cases prosecuted are cases dealing with possession for personal use. However, some cases are referred to the courts to be heard for possession with intent to sell or manufacture drugs, or for growing narcotics with the intention of selling them. Information reported by the *Kuwaiti Times* indicates that the punishment for drug-related crimes can vary from a fine to a death

sentence, with the death sentence being one of the least common forms of punishment.

Kuwait has established hospitals for treatment of drug-addicted individuals. In addition, a committee has been established for the purpose of examining drug addicts assigned to these institutions by order of the court. Very few individuals are sentenced to drug treatment programs when convicted of a drug-related crime.

Although information indicating narcotics are illegal in Kuwait is prominent, a list of specific drugs prohibited in the country is not readily available.

Prostitution

The criminal act of prostitution and crimes related to prostitution are problematic for Kuwait. Many foreign women are forced into prostitution. Typically, when prostitutes are caught, they are either deported to their home country or made to sign a "pledge of good conduct" before being released. Individuals running prostitution rings generally receive prison sentences.

Crime Statistics

Because Kuwait does not make available crime statistics, the only available data come from the INTERPOL International Crime Statistics, and the last available data for crimes known to Kuwaiti police are from 1997. These statistics were as follows:

Murder	16
Sex offenses, including rape	686
Rape	15
Serious assaults	2,609
Car theft	1,005
Fraud	1,767
Drug offenses	785

Although these statistics are very out-of-date, they do give some indication of the profile of crimes. INTERPOL reports that more than half of these crimes were committed by aliens. Women accounted for less than 20 percent of offenses.

The Ministry of Justice of Kuwait provides more recent statistics related to cases forwarded to and prosecuted within the court system. The last available statistics are for the year 2006. In 2006, 6,606 felony cases were received by the Ministry of Justice, and 6,633 were acted on. The ministry received 2,991 trade misdemeanors and acted on 3,344. Juvenile misdemeanors received by the courts equaled 2,012, ith 1,963 being acted on. Press misdemeanors received by the courts equaled 253 for the year, with 194 cases acted on. Of 1,194 false-checks misdemeanors, 1,176 were acted on. The number of drug cases received was 233, with 229 being acted on. This puts the total number of cases received by the Ministry of Justice at 13,289, with a total of 13,539 cases acted on.

Of the felonies received and acted on by the Ministry of Justice in 2006, 894 cases regarding murder and bodily assault crimes were considered. The courts received and acted on 299 kidnapping and illegal detention crimes, 477 defamation and insult crimes, 3,094 vandalism crimes, 346 bank crimes, and 1,058 drug and alcohol crimes. There were also 872 miscellaneous felonies received and acted on that were placed in a category titled "Other Crimes."

Rural and Urban Crimes

Because Kuwait is a largely urban area with only 4.4 percent of the country being classified as rural, it is difficult to distinguish between crimes that are common in urban areas and those that are common in rural areas. However, certain types of crime are more common in some areas of the country than others. For example, in third-country national (TCN) communities, a unique crime facing these communities is that of individuals pretending to be police officers. In these situations, a man in civilian clothes and vehicle attempts to stop a civilian, ask for his or her ID, and force that person to get into the offender's vehicle. Typically, the victim is brought to a remote area and beaten. Because Kuwaiti police officers are entitled to make traffic stops in their civilian attire and vehicles, it can be difficult to distinguish whether the stop is genuine.

The area of Jahra, a section of Kuwait City, is known for its high crime rate. Crimes within this area include vehicle vandalism, creating fires, and harassing aliens. It is thought that the high crime rate in this area may be due, in part, to tribal customs

of the inhabitants of the area being more influential than police enforcement.

Finding of Guilt

Rights of Accused

All Kuwaiti criminal trials are open to the public unless the government decides that, to maintain public order or so as not to undermine the morals of the people, a trial must remain closed. Court decisions are rendered by judges. Trial by jury is not a right offered to the accused.

Individuals accused of committing criminal offenses in Kuwait are afforded many rights. An integral right afforded to all persons under the Kuwaiti Constitution is that all accused are considered innocent until proven guilty through means of a legal trial. Furthermore, the Constitution guarantees the right of equality to its citizens, so that no individual can be treated differently based on race, religion, age, sex, and so on in everyday dealings, while detained for accusation of criminal activity, or while in legal proceedings.

All individuals retain the right to trial and the right to counsel. In situations where the accused does not obtain counsel, counsel is assigned to accused by the court. In cases involving felony charges, the accused may have counsel with him or her throughout all parts of the legal course. Individuals who do not speak or understand the language being communicated within the courtroom are afforded the right to have an interpreter present. The right to remain silent is allowed to every defendant. The accused is not required to speak in his or her defense or against it. A defendant is also allowed to confront his or her accusers and is permitted access to case-related evidence. In addition, every individual is provided with the right to appeal a court decision. Finally, any wrongfully accused and detained individual is allotted the right to be compensated for hardship he or she has encountered caused by wrongful accusations by a witness or plaintiff.

In Kuwait City, Kuwait, in 2009, a security van leaves the Justice Palace, where the country's law courts are located. (AP Photo/Gustavo Ferrari)

Investigation and Prosecution

Individuals may be incarcerated while awaiting trial, within limitations. In Kuwait, an individual arrested for a criminal act must be delivered to the investigation authority within four days unless a written order is issued by the investigator indicating additional detention is required. During the initial four days the accused is being detained, the police have the right to refuse him visits, including those from counsel and family members. In addition, the accused cannot be detained any longer than six months without a court order commanding his detention. Furthermore, as established by Kuwaiti law, detained persons accused of a crime who have not yet been tried or convicted are to be kept separate from those who have been convicted of a crime and are serving a sentence. Therefore, there are separate quarters within a Kuwaiti prison for each of these two groups so as to keep them from intermingling.

Juveniles are prosecuted through a separate court system, the juvenile court. This court retains the

power to commit a juvenile to institutions or health centers as the court finds necessary to address issues of health and rehabilitation and for the purpose of supervision of the minor. In the criminal justice system, juvenile offenders are kept apart from adult offenders and are housed in separate institutions. The country has also established a Juvenile Welfare Office whose purpose is to review problems of juvenile delinquency and their placement in facilities for rehabilitation, protection, and care. The Ministry of Social Affairs and Labor oversees the social welfare institutions under whose care delinquent juveniles are placed.

Many of the acts for which juveniles in Kuwait can be tried are the same acts for which adults can be tried. However, there are also additional restrictions placed on their actions by virtue of their age. Juveniles can be prosecuted for offenses including pornography, the purchase of drugs and/or alcohol, gambling, involving themselves with persons known to be criminals, running away from either home or school, and rebelling against their parents.

Punishment

Types of Punishment

Punishments typically issued to convicted criminals can be as little as a small fine and expand to include prison sentences and the death penalty. In some cases individuals may be sentenced to rehabilitation programs, specifically those cases involving drug use. The Kuwaiti government prohibits the banishment of any citizen from the country. Therefore, banishment cannot be used as a means of punishment for convicts. However, in the case of noncitizens who have been convicted of a felony, Kuwaiti law requires that they be deported on completion of their sentences. Furthermore, individuals can be stripped of their citizenship for committing an act that constitutes a felony within 10 years of becoming a Kuwaiti citizen.

Capital punishment is permitted and used in Kuwait. The death penalty can be imposed on an individual convicted of rape, murder, or drug offenses, among others. Although capital punishment is used, there are restrictions as to whom it may be inflicted upon. The law states that capital punishment may not be used as punishment for crimes committed by youth under 18 years of age. If an individual who has reached 15 years of age but not 18 is convicted of a crime otherwise punishable by death, the sentence must be reduced to an imprisonment of no greater than 15 years. In cases where a juvenile under 15 commits a crime that would otherwise be punished by a sentence of death or life in prison, a maximum sentence of 10 years may be imposed. The law also prohibits the use of capital punishment on pregnant women. It stipulates that if a pregnant woman commits and is convicted of a crime punishable by death, but goes on to birth a live newborn, her sentence must be reduced to life in prison.

Before executing a sentence of capital punishment, referral of the decision for appeal to a higher court is mandated. Every level of appeal must be exhausted before a death sentence may be executed. Finally, the amir must ratify a death sentence before the punishment may be imposed. He also retains the power to pardon or commute a sentence. From 2003 through 2007, the Kuwaiti government exercised capital punishment in the cases if 27 individuals.

Typical Crimes and Punishments

According to Kuwaiti law, abortion is a punishable crime. Kuwaiti law states that performing or attempting to perform, by use of any means, an abortion on a woman is a punishable act. The punishment for such an act is increased if the act is carried out by a medical or pharmacological professional. Intentionally preparing and distributing any substance that is used for the purpose of aborting a pregnancy is also punishable by way of a prison sentence and fine. Women who attempt to abort and in actuality abort a pregnancy are subject to punishment of up to 10 years' imprisonment and a fine.

Acts of prostitution are illegal and punishable in Kuwait. Any individual who assists another adult in the act of prostitution is subject to a punishment of imprisonment of two years or less, a fine of approximately 75 Kuwaiti dinars (KWD) (approx. US$250) or less, or a combination of the two. If the assistance

is to a minor individual, meaning under the age of 18 years, the punishment is escalated to no more than a two-year prison sentence, a fine of no more than 150 KWD (approx. US$250), or a combination of the two. The punishment for a person who coerces or threatens another person to engage him or her in the act of prostitution faces a potential punishment of a prison sentence of five years or less, a fine of 375 KWD (approx. US$1,300) or less, or a blending of the two. If the same act occurs with a minor victim, the potential prison term increases to seven years or less, and the potential fine increases to 525 KWD (approx. US$1,800) or less. The law includes punishment of a maximum of two years' imprisonment and/or a fine of 150 KWD (approx. US$250) for any person who receives proceeds by persuading another person to participate in prostitution in exchange for a desired commodity. One who participates in the founding or maintenance of a location for the purpose of prostitution is punishable by a term three years or less imprisonment, a fine of 225 KWD (approx. US$783) or less, or a combination of the two. Finally if a person provokes the act of prostitution in a public place, he may be subject to a punishment consisting of a prison term of two years or less, a fine of 150 KWD (approx. US$520) or less, or a combination of the two.

Assault is prohibited by Kuwaiti law. The United Nations' *Initial Report of States Parties due in 1997* for Kuwait provides detailed information regarding different levels of assault and the punishment assigned to each level. According to this report, any individual who is convicted of beating, wounding, or causing bodily harm to another individual is subject to a punishment of imprisonment for no more than two years, a fine of no more than 150 KWD (US$520), or a combination of the two. If an individual commits an act that results in causing the victim "severe physical pain" or incapacitation "from using one or more of his organs in a natural way for more than 30 days," but the act did not inflict permanent damage to the victim, the offender's punishment will consist of a fine of no more than 375 KWD ($1,300), a prison term of no more than five years, or a combination of the two. When serious injury is inflicted on an individual or individuals with the utilization of any instrument by another individual, the offender may be punished with a term of no more than 10 years' imprisonment and a fine of no more than 750 KWD ($2,600). The same punishment may be applied if an individual causes irreparable harm to another individual in the sense that he or she becomes permanently deformed as a result of the act. Any other assault committed at a lesser level than those specifically listed is punishable by a fine of no more than 22 KWD (US$75), no more than three months in prison, or a combination of the two.

The law established that defamation of religion and criticism of the Constitution, the amir, the neutrality of the courts, or public prosecution are all criminal acts and are punishable. This law is commonly enforced, and as a result, some members of the press have been penalized for such acts. Homosexuality is considered a crime in Kuwait. Furthermore, there are penalties, including a fine, imprisonment, or both, for emulating the sex opposite of one's own.

The typical punishment for murder is dependent on the situation. If the killing can be determined to be an honor crime in which a female or her counterpart was murdered as a result of being caught in an adulterous act, or to be the killing of a daughter or sister for similar dishonorable acts, the killing may be construed as an honor crime, in which case the punishment should not exceed three years of imprisonment. In other situations, the act of murder may land an individual a life sentence in prison or the death penalty.

Prison

According to reports by the U.S. Department of State, in 2007 there were roughly 3,500 individuals being detained in the Kuwaiti prison system. This group consisted of either the accused awaiting trial or the convicted, serving previously issued sentences. Of the total population of detained individuals, approximately 10 percent were individuals awaiting trial, and 150 of the detained individuals were being held for having committed some form of state security offense.

Each prison is equipped with a health unit that provides health care to its inmates. All health units

are supervised by a medical doctor. The responsibility of keeping prisoners in good health, including proper nutrition, exercise, and clothing, falls under his domain. The doctor is also responsible for preventing illness on a prison-wide basis. The medical doctor also ensures adequate prison food quality and sanitation of prison cells.

Kuwaiti prisons are segregated by characteristics of the prisoners. Persons accused of crimes must be kept apart from those previously convicted of crimes. Additional factors considered for placement of inmates are their age and their social and cultural background. In addition, an individual's openness to reform is measured. The type of crime for which they are serving time, their criminal histories, and their length of incarceration are also weighed in determining placement within the prison. Individuals who have received a sentence of the death penalty are alienated from all other inmates.

Each prison has an established committee made up of the warden of the prison and social work specialists, to oversee the social welfare of its prisoners and to assure that its prisoners' social and psychological needs are being taken care of, which includes the use rehabilitation programs. The warden of the prison also takes on the additional responsibility of making sure each prisoner is kept up-to-date on the status of his or her family and also of making sure a prisoner's family is kept aware of the prisoner's status and well-being in prison.

In addition to the warden and social work specialists, each prison has a religious figure. The duties of this religious figure are to encourage inmates to follow religious behaviors in the hope that this will have a rehabilitative effect on the inmates. Furthermore, prisoners are provided opportunities to attend classes to further their education. Prison libraries are accessible for prisoners to obtain reading material, and they may also opt to have books and newspapers brought to them from outside the prison, provided that the prisoner covers the cost and that the reading material is within the scope of materials allowed by prison policy. Other programs such as job skill training, training on the values of society, and drug rehabilitation programs also have been provided.

According to the 2006 Country Reports on Human Rights Practices issued by the U.S. Department of State for the country of Kuwait, some of the prison conditions were poor. It was reported that there was overcrowding. Despite a medical doctor being retained to address health conditions in the prison, including sanitation, it was reported that the sanitation conditions were less than satisfactory, and diseases were poorly contained. This was attributed to a lack of medical staff. Improper treatment of prisoners, including includes the abuse of prisoners and inaction on violence occurring between prisoners, was also reported. At the time of this report, a new prison for male offenders to alleviate the problem of severe overcrowding was determined to have met international standards for prisons.

Stephanie L Stashenko

Further Reading

Kuwait Ministry Justice: http://www.moj.gov.kw.

Kuwait Ministry of the Interior: http://www.moi.gov.kw.

Kuwait Times Newspaper: http://www.kuwaittimes.net.

Lebanon

Legal System: Civil
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: No

Background

The republic of Lebanon is a western Asian country that borders Syria, Israel, and the Mediterranean Sea. The capital is Beirut, and the official language is Arabic, but English and French are widely spoken. Lebanon is a parliamentary republic. The total

area of the country is of 10,452 square kilometers, and the estimated population in 2009 is roughly 4 million, although the last official consensus was undertaken in 1932, with a population density of 440 per square kilometers. There are 18 recognized religious sects separated into three groups: 59.7 percent Muslim, 39 percent Christian, and 1.3 percent other.

Political and Social Context

The First Lebanese Constitution went into force in 1926 during the French mandate. The history of Lebanon has long been one of political and religious turmoil among periods of economic and cultural prosperity. The Israeli-Arab conflict that led to a huge inflow of Palestinian refugees, coupled with sectarian tension, led to the 1975 civil war.

The Palestinian forces then allied themselves with the leftist Muslim faction against the Lebanese president supported by Christian militias, Syrian military forces entered Lebanon upon the request of the Lebanese president in 1976. Israel invaded Lebanon in 1978 and occupied part of its southern land under the pretext of eliminating the military threat of the Palestinian Liberation Organization (PLO). Israel would occupy that land until 2000 (Lebanon maintains the position that Israel has still not withdrawn from all Lebanese territories). A UN Interim Force in Lebanon (UNIFIL) was deployed on the borders. It would be reinforced in 2006 and tasked to implement UN Security Council resolution 1701. During the period of the 1980s, which witnessed another Israeli invasion in 1982 that reached Beirut, fighting continued, leading to the killing of thousands of civilians and the assassinations of many high Lebanese officials and foreign diplomats as well. That period was marked as well by the presence of international forces and the rise of the Iranian-backed Hezbollah. By 1989, Lebanon witnessed the partition of Beirut into two governments: a Christian one in east Beirut and a Muslim one controlling the west of the city. Following further military confrontation, an Arab League delegation succeeded in gathering Lebanese Parliamentarians in Saudi Arabia, where the Taif accord was reached, which put an end to the civil war that reportedly claimed more than 150,000 Lebanese and 15,000 missing, whose whereabouts are still unknown. The Taif agreement introduced major amendments to the Lebanese constitution. These changes cut the wide executive power the Lebanese president enjoyed under the past constitution and vested it in the multisectarian council of ministers, which includes ministers (representatives) of all sects. Another significant amendment was the provision that an equal number of seats be reserved for Christian and Muslim members of Parliament. Currently, by virtue of custom, the Lebanese president should be Christian (Maronite), the speaker of Parliament should be Shiite, and the prime minister should be Sunni. The first elected president, Mouawad died in a car bomb explosion 18 days after his election. President Hrawi, his successor, remained in office until 1998. In March 1991, Parliament issued an amnesty covering all politically motivated crimes committed before its date of enactment, excluding those perpetrated against foreign diplomats and high officials.

In the aftermath of the Taif agreement, Lebanon entered the sphere of Syrian influence, with the presence of more than 40,000 Syrian troops in Lebanon. The Syrian military presence came to an end in 2005 following the assassination of the influential ex-prime minister of Lebanon, Rafik Hariri, when many Lebanese politicians accused Syria of being behind the assassination, sparking massive protests against the Syrian presence in Lebanon. This led to the formation of two opposing political campaigns: "March 14," which was anti-Syria and backed by Western powers, and "March 8," pro-Syria and backed by Iran and Syria. In 2007, UN Security Council resolution 1757 would establish the special tribunal for Lebanon, situated in the Hague, to prosecute those responsible for the killing of Hariri. Between 2005 and 2008, high tension prevailed among the two opposing campaigns amid car-bomb explosions that targeted March 14 politicians.

In 2006, Israel launched a strong aerial and ground attack against Lebanon after Hezbollah abducted Israeli soldiers on the borders between the two countries. The fighting between Israel and Hezbollah resulted in the death of roughly 1,500 Lebanese and 160 Israelis.

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In 2007, fighting broken out between Lebanese armed forces and the extremist Islamic group Fatah Al Islam, which that controlled the Palestinian refugee camp of Nahr Al Bared in northern Lebanon. Around 168 soldiers and 226 militants were killed in the fighting during the 105-day siege of the camp. More than 400 soldiers were wounded and more than 200 militants were captured.

In May 2008, when fighting broke out in Beirut and Mount-Lebanon, political bickering reached its end between the groups March 14 and March 8. The Doha agreement between the Lebanese parties calmed the situation, and a national unity government was established to run the country. Currently, political tensions have eased and the country is in a state of relative stability. Arabic is the official language but English and French are widely spoken.

Police

The Lebanese national security system consists of the Lebanese Armed Forces (LAF), the Internal Security Force (ISF), the State Security Apparatus (SSA) and the General Security (Sureté Generale, or SG). The LAF has the power to arrest and detain suspects based on mere national security concerns. The authority of the ISF, a regular armed force, covers the whole Lebanese territory, including its regional waters and airspace. The SSA and SG are both charged with the collection of sensitive information about groups deemed to pose a threat to national security. The Sureté Generale, in particular, oversees the issuance of passports and residency permits, the screening and censoring of foreign periodicals, documentaries, television programs, movies, and so on, on the basis of their moral tenability and national security relevance.

As for the Internal Security Force, its functions include the following:

- Enforce rules on public and private morality
- Protect citizens and their property
- Protect civil liberties
- Ensure the enforcement of specific laws and regulations
- Execute warrants and other acts of the judiciary
- Assist other public authorities in the performance of their duties
- Guard public facilities
- Guard prison inmates
- Provide protection to diplomatic missions on Lebanese territory

The Internal Security Force operates under the authority of the minister of the interior and is mainly subjected to military law. The ISF includes nine units:

1. The general staff of the ISF includes, among other things, a number of specialized bureaus responsible for studying sensitive issues and subsequently providing qualified advice to the force's director-general.
2. The Central Administration consists of administrative and technical sections in charge of the financial, supply, and equipment management of the Internal Security Forces and of the facilities it owns or controls.
3. The Social Services Administration is responsible for the publication of the ISF's own magazine and oversees its clubs as well as the implementation of cultural and social initiatives.
4. The Territorial Gendarmerie consists of all subsections operating outside of Beirut except for those that totally or partially refer to other lines of command: its posts are spread all over Lebanon.
5. The Mobile Unit is an ISF force equipped and trained to respond to security emergencies arising around the country in a way both rapid and effective; it includes all mobile battalions based in and outside Beirut.
6. The Beirut Police, which consists of a number of specialized divisions is the metropolitan police force in charge of enforcing the law within the city of Beirut. Because of a lack of personnel, many police operations are regularly carried out in conjunction with the military and under the command of a military officer, if not, in some cases, by the military alone.
7. The Judiciary Police includes the departments of crime combat, the detective department, the forensic police, and the tourism police.

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8. The Apparatus for Security of Embassies, Administration and Public Institutions includes the forces charged with protection of embassies and other public administrations and institutions.

9. The Institution of ISF includes the academies of the police.

Heads of these departments are usually nominated based on sectarian allocation, though this is by virtue of custom, not enshrined in law. Whenever incidents pose a threat to national security, they are settled by the military. As any foreigner visiting Lebanon may notice right away, there are army checkpoints spread throughout the whole national territory.

Legal System

The current Lebanese criminal justice system has its roots in the period of Ottoman rule, the result of a combination of systems comprising, besides Ottoman Law, the so-called Canon Law and the codices based on the French model. Starting from 1516, and over the following three centuries, a relatively free interpretation of the Ottoman system was adopted; the ensuing French rule (1920 to 1943) then played a critical role in the development of the current system, albeit exerting no significant influence on Ottoman family law and on noncodified sources of personal law.

Central to today's system are codes coherent with the standards developed and adopted by civil law countries, rather than with the statutory law usual in countries of common law. Therefore, we can say that the Lebanese legal system is inspired by the French Legal system, and it is common for Lebanese judges to refer to French jurisprudence and case law in their judgments. As in the case of France, administrative law regulates the functioning of all branches of civil administration as *pouvoirs publics* based on statutory provisions and on the rulings of specialized courts of law.

The Constitutional Council was established in 1993 to review the constitutionality of laws and the legality of elections of the president, speaker, and members of Parliament. It is made up of 10 members nominated by Parliament (5) and the government (5). Recourse to the council is open to the president, speaker, prime minister, official heads of sects in personal status only, and 10 members of Parliament.

Hence, the Lebanese judicial system consists of two separate hierarchical structures, with a civil court system devoted to handling matters of criminal and civil nature and whose court of last resort is called Cour de Cassation, and an administrative court system whose Supreme Court is equivalent to the Conseil d'Etat (Majlis al-Shawra).

Depending on the pecuniary relevance of the case at hand, and on whether criminal prosecutors intend to present their case as a crime or as a felony, the courts of first instance may consist of either one or three judges. Above the Court of Appeal sits the Cour de Cassation, consisting of several chambers, which functions as the court of last resort for all cases of civil, commercial, and criminal matters; the judges, depending on their rank, are eligible to be appointed to the newly created Judicial Council (*Al-Majlis Al-Adli*) functioning as both a first- and a last-resort court (which is deemed as violating international legal standards that call for more than one stage of trial) in criminal and politically relevant cases that are considered especially sensitive by virtue of the threats to national security.

The code of criminal procedure was issued in 1948, with most of its articles deriving from the French Code d'Instruction Criminelle of 1808 (which in turn lasted through 1959), only to remain in force until 2001, when a new code was signed into law.

In general, whenever a case is filed against a suspect by the plaintiff or the district attorney's office, the investigating judge will initiate an investigation culminating either in the subject's acquittal or in his or her arraignment, which in turn will result in the defendant's trial by a court of law. In the case of felonies, the plaintiff, especially when no further investigations are needed, can go directly to the court of the single judge.

The procedural approach adopted by the Lebanese Code of Penal Procedure (LCPP) is mixed at best. The inquisitorial approach dominates the preliminary investigation phase, which sees the

presence of the investigative judges who are entitled to question and detaining suspects whenever they deem appropriate, except for the limitations set by the law itself. At this stage, investigations assume such a level of confidentiality that the defendant may even be unaware of being the subject of judicial attention.

During the second stage of the proceeding, the accusatorial approach's main landmarks become apparent, and the hearings are open to the public, in the presence of both the defendant and the district attorney (the district attorney does not appear before single-judge courts). The district attorney's presence and role in the Lebanese criminal system is, nonetheless, fully coherent with the inquisitorial paradigm, defining an offense not only by the damage that an individual victim or group of victims may sustain as a consequence of it, but also and mainly by the collective, general damage that it causes to society as a whole.

The eminently inquisitorial nature of the LCPP as modified in 2001 and its contiguity with the principles first expressed by the 1808 French Code d'Instruction Criminelle become even more evident if we consider the system's distinctions between the following three separate judicial bodies:

- The public prosecutor's office (*niaba aama*), in charge of initiating a proceeding
- The inquisitorial bodies that investigate the case
- The criminal courts that preside over the whole trial

These three bodies make up "judicial justice," which, in turn and pursuant to the 20th Amendment of the Lebanese Constitution, is one of the three branches of the country's judiciary, the other two being "financial justice" and "administrative justice."

Coherent with the separation of powers principle, the Lebanese judicial, legislative, and executive branches of government are fully independent from each other. The hierarchy of sources relevant to Lebanese judicial justice consists of the following:

1. The Lebanese Constitution
2. International treaties and conventions
3. The Lebanese code of penal procedure
4. The Lebanese code of martial laws
5. The Lebanese Judicial Justice Act
6. The Lebanese penal code
7. The Lebanese code of civil procedure
8. The Lebanese Public Officials Act

The fundamental principles guiding the Lebanese judicial organization may be summarized as follows:

1. At the discretion of the Supreme Judicial Council, judges may be transferred from a court of civil law to a court of penal law, and vice versa.
2. Judges are by no means unremovable, and none of them may be permanently assigned to any court of civil or penal justice.
3. There is a distinction between ordinary and special courts.
4. Court judges are functionally, though not substantially, distinct from public prosecutors and initial inquisitorial judges, and all are subject to the same rules.

With regard to the public prosecutor's function, or *niaba aama,* article 6 of the LCPP describes it as "a judicial body vested with the duties and powers connected to the prosecution of penal offenses in the name of the Lebanese people and before penal justice authorities." The position enjoys remarkable independence. Following the Ottoman Code, the Lebanese legislature eventually exempted the *niaba* from the minister's control, vested the *niaba* chief prosecutor with the role of attorney general (AG), and left the minister with only residual power to request that the AG prosecute a crime brought to his office's attention, though the AG could, in turn, refuse to comply whenever he deems appropriate on the basis of "sound" and "valid" considerations (article 14, LCPP). The role of the *niaba* in Lebanese due process may vary based on whether *niabas* lend their contribution during the phase preceding prosecution, the initial investigation phase, the trial phase, or the ensuing sentencing and executory phases.

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Courts

The Lebanese court system is shaped after the pattern laid out by the Napoleonic code (1808) and includes a separate order of specialized confessional courts exerting their jurisdiction on marital and hereditary affairs within the boundaries of their communities of origin and pertinence. There are Islamic sharia courts, either generically sharia or specifically Sunni and Shiite nature, and there are also Christian and Druze courts. Although the principle of independence of the judiciary is clearly stated by the 20th Amendment of the Lebanese Constitution, this power remains fully exposed to political influences, owing to the fact that senior positions in the judiciary system are filled by the political authority (council of ministers) like the head of the High Judiciary Council, the head attorney general, the head of Judicial Inspection, the head of the Conseil d'Etat, and the head of Court of Audit. Absent from the Lebanese Constitution is the principle of nonremovability of members of the judiciary.

The Lebanese courts of first instance, known by the name of Mahakim Bida'iyya, consist of three-member chambers, not withstanding the possibility for a single judge to preside over civil and penal trials (felonies) of minor relevance. The courts of appeals (Mahakim Isti'naf) handle both cases already handled by the courts of first instance and felony cases. There are seven of them, one in every district, with the exception of Mount-Lebanon, where there are two districts. The Supreme Court (Cour de Cassation) is the Lebanese court of last resort, situated in Beirut and divided administratively into nine chambers; its jurisdiction also encompasses disputes involving either an ordinary and a special court or two special courts. Special courts include the military/martial courts; the Audit Court, which oversees public spending and tax returns; the Publications Court oversees crimes committed by mass media (such as libel); the Higher Council exists to prosecute presidents and ministers, and the Judicial Council, a permanent tribunal consisting of five judges before which national security threats are discussed.

Trials before Lebanese courts are lengthy, and it is very common for a lease contract case brought before the courts to last for more than five years. Court hearings are adjourned for more than four months in many cases. Oral pleadings by attorneys before courts are not common in civil cases, but more common in criminal cases.

Crime

The Lebanese penal system defines misdemeanors, felonies, and crimes as offenses punishable by prison terms of 1 to 10 days, 10 days to 3 years, and 3 or more years, respectively.

Lebanon has long been plagued by bouts of virulent, hardly controllable terrorist activity, from car bombs all the way to aircraft hijackings, all but encouraged by the ineptitude of its security forces to enforce the rule of the law and by the apparent lack of political will on the part of the forces governing the country over the years.

During the years of the civil war, atrocities and grave crimes were committed on a large scale and went unpunished, especially after the Pardon Act. Genocide, crimes against humanity, and civil wars took place during those years and were perpetrated by both parties of the conflict.

Starting in October 2004, more than 30 bloody attacks by booby-trapped cars took place, with 12 of these definitely political assassinations.

As a consequence of the recent surge in political tensions, which have caused many to fear that another civil war may be in the making, there has been a sizable increase in arms trafficking, with many resorting to the black market in the hope of better protecting themselves from the dangers looming on the horizon, and with security forces fighting an anti-smuggling battle that seems to have been already lost. The price of a traditional AK-47 (Kalashnikov) increased from US$400 before 2005 to more than US$1,500 at the peak of the tension during 2007 and 2008.

Other forms of criminal activity heavily affecting the Lebanese people's perception of their own security include car theft and car-napping, with organized groups based in the northeast stealing motor

vehicles that they then offer to return to their legitimate owners in return for a ransom.

The government has increased attention to the problem, and the practice seems far more under control. In charge of fighting corruption in the public sector is the Central Inspection Directorate, whereas private sector corruption falls within the purview of the district attorney's office. Corruption in public administration plagues the whole country's system, and no solutions or limitations are looming. The perception of corruption remains one of alarming proportions, with the 2007 International Corruption Perception Index putting Lebanon in a disheartening 99th position out of 180, and the 2001 UN Corruption Report estimated losses to the local economy at a staggering $1.5 billion, nearly 10 percent of the gross domestic product.

On April 20, 2001, in an effort to counteract the pervasive presence of money-laundering activities oftentimes operated in connection with the illegal drug business, Parliament passed Legislative Act Number 318 / 2001. Article 1 of the act defines the types of conduct it applies to, and article 6 foresees the creation of a Special Investigation Commission (SIC) as an independent legal entity with the Bank of Lebanon, the sole Lebanese agency officially entitled to collect confidential client information from within the banking system.

Despite a disturbing increase in the number of cases of domestic violence reported by the press, the Lebanese penal code still does not include a provision expressly aimed at fighting these acts, even though there is a penal provision generically punishing the battery of women with up to three years in jail. The special nature of these acts of violence, mainly perpetrated under the veil of domestic privacy and thriving on the victim's fear of losing everything she has, including her respectability, leads one to believe that the available statistics reveal only the tip of the iceberg. Furthermore, religious courts have no jurisdiction over this matter; they are only involved if the victim files a divorce lawsuit. The state of Lebanon offers free legal assistance, but no free medical care to female violence victims who cannot afford it. Another alarming side of domestic violence is that it is often directed against foreign domestic workers, mostly of Asian nationalities, who are more vulnerable than Lebanese women owing to the fact that they do not speak Arabic and are looked down upon.

Prostitution in Lebanon is illegal; however, it is widely practiced, as law enforcement is not efficient to curb it. Women from Eastern Europe form part of this secret prostitution and are often victims of abuse and exploitation by Lebanese pimps.

Despite the lack of any provision expressly prohibiting and punishing the practice of human trafficking, the Lebanese penal code generically states that "any person depriving another person's freedom either by abduction or by any other means shall be sentenced to a term of temporary hard labor. If the person abducted or kidnapped is also compelled to prostitution or is sexually assaulted, the term should not be less than seven years in prison." Forced prostitution is punished by from two months to two years in prison.

Foreign workers do enjoy the protection of Lebanese law as do Lebanese workers. However, foreign domestic workers almost lack any protection of their work rights. Their passports get seized by employment agencies upon their arrival at Beirut airport to make it easier for the police to chase down those who do not show up for work or who even disappear for good, which usually takes place under the pretense of criminal allegations falsely formulated by their employers. In 2009, the ministry of labor enforced a unified contract for domestic workers that protects them from abuse by the employers, but wide violations persist.

Owing to a significant decrease in illegal drug production starting from the early 1990s, Lebanon has recently been removed from the U.S. list of major illicit drug-producing countries, and the reason for this decrease ought to be ascribed to the Lebanese government's zero-tolerance approach to drug production. The efforts did not prove as effective, though, at curbing the massive amounts of opium poppy and cannabis still harvested in the remote Bekaa Valley, in spite of the many raids conducted by the police on that very area.

Furthermore, the ineffective and inefficient allocation and spending of funds provided by the

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United Nations International Drug Control Programme (UNDCP) aimed at encouraging the transformation of illicit drug cultures into cereal cultures prevented these initiatives from yielding any appreciable results.

In 1998, the Lebanese Parliament passed an anti-narcotics act. The act prescribes, among other things, that drug traffickers be severely punished and that all resources and instruments connected or resulting from their operations be seized by the government. But the act lacks a provision allowing authorities to exercise any scrutiny on relevant banking records, casting serious doubts about its overall efficacy.

As for the chemical precursors needed to extract a number of illegal substances, and pursuant to DEA guidelines, the Lebanese Ministry of Health, the Ministry of Industry and Commerce, and the Lebanese Customs Department require that their importation be subjected to the issuance of specific authorizations and that the domestic production thereof be fully traceable at every stage of the process.

Drug use among Lebanese citizens has increased lately, triggering calls from prominent figures to crack down strongly on this crime. Besides a private program called "Oum al Nour" that enjoys some help from the government, there are very few drug-addiction prevention and rehabilitation initiatives in the country. As for the amounts sold to the end consumer, the decrease in hashish consumption has been more than compensated for by a surge in the demand for synthetic drugs such as amphetamines. To counter this trend, the Lebanese Narcotic Drugs and Psychotropic Substance Act was passed by Parliament on March 16, 1998.

As of 2010, and in spite of this act's uncompromising approach to the issue of narcotics possession regardless of the amounts at stake, no improvements of any appreciable relevance seem to have originated from this much-touted "new deal."

In addition to the creation of specialized detoxification and rehabilitation centers and of social rehabilitation programs (see article 182), this law now also contemplates the presence of a Drug Addiction Committee (article 199) that would consist of a presiding judge, a Ministry of Health physician, a social policy expert, a police officer with the narcotics division, and a member chosen by the National Council on Drugs (NCD). None of this has eventuated.

Another initiative worth mentioning is the so-called *sokun* ("silence") program, which aimed at shifting the whole perspective on drug-addiction issues from a punitive and repressive one to one centered on medical and psychological therapeutic care.

As for the substances listed as illegal, the law makes a fundamental distinction between those whose sale and consumption is illicit under any circumstance and those that may be possessed and used if authorized or prescribed.

In the year 2002, and to the effect of discouraging drug use, the government launched an all-round campaign that included placing into school textbooks educational resources meant to increase drug awareness. According to many nongovernmental organizations, the demographics of drug use in Lebanon have been gradually shifting toward younger age groups ever since the end of civil war, with the problem now mainly affecting teenagers and college students. From the end of the 1990s to the year 2004, the incidence of addicts age 24 or less in the general population resorting to the assistance of counseling and rehabilitation services increased dramatically, with heroin being the most widely consumed substance, followed by synthetic drugs such as amphetamines and Ecstasy.

There are only two male and one female rehabilitation centers in the whole country, with a total capacity of 70 residents and offering psychiatric, medical, and social assistance, but no drug replacement programs. However, several new facilities of this kind are currently under development, as in the case of the Zahleh, Bekaa Valley, and Mercy and Justice centers, the latter in the form of an NGO

Crime Statistics

In the virtual absence of government-provided statistical data, it is especially hard to fathom the

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extent and specificities of crime in Lebanon. The data provided by the Beirut-based ISF Directorate-General, gives a rough indication of the Lebanese crime situation within the time frame of 2005 to August 2008. The number of grand theft auto offenses dropped in 2006 only to increase again in 2007, with the 2008 number returning close to the 2005 level. A similar tendency seems to characterize the figures relative to recovered cars, with 75 vehicles retrieved out of 143 reported stolen (52.4%, the highest yearly percentage recorded since 2005). As far as homicide is concerned, the year 2008 featured the highest numbers ever recorded, especially if we consider that the fourth quarter had not yet been factored in when these numbers were provided: 198 killings, 74 of which were committed in May and 30 in July, in contrast to the slightly decreasing trend that had appeared in recent past years. The same seems to be true for the number of cases of substance trafficking and abuse. Although the 2008 monthly rate of the former substance trafficking reached the 2006 end-of-year watermark as soon as August 2008, with notable peaks in the months of April and June, the number of cases of substance abuse in the same final month of August was already as high as the number registered in record-year 2005 (44 versus 45 monthly rate cases).

The same negative tendency also seems to apply to robberies and qualified thefts. In fact, robberies reached the monthly rate of 42 cases at the end of August 2008 (versus 50 cases in the year 2005) and qualified thefts reached 145 cases in the same month (compared to 205 cases for 2005).

Conversely, a downward trend seems to characterize the misdemeanor arrest figures (1,265 monthly arrests as of August 2008, the smallest number in four years). It may be worth mentioning that the ISF data at issue do not allow for any recent/current trend analysis of the rape and aggravated assault prevalence, and the ISF definition of "qualified thefts" encompasses both burglaries and larcenies. The territorial distribution of the different offense types is variable at best, with a greater incidence of homicides in urban areas and of thefts in rural ones.

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Finding of Guilt

Owing to the principle of due process, a suspect is to be brought before a judge within 24 hours of being arrested and by the officers carrying out the arrest, and the suspect may be held in custody without the authorization of the DA for a maximum of 48 hours (that could be extended to 72 hours upon the DA's approval) if at least one witness was present on the crime scene.

Under the 2001 LCPP, the same police officers are to be held responsible and punished for holding a suspect in custody if they did not take the suspect to be interviewed by a judge with 24 hours. If a suspect is held for the sole reason of engaging patrolling officers in a pursuit, he or she must be brought before a judge, who will, in turn, decide whether he or she is to be held in custody. The same code also provides suspects with a whole array of guarantees that have long been part of Western penal systems only, such as the right to legal assistance by an attorney, to medical attention whenever appropriate, to communication with loved ones, and to release on bail.

Although expressly prohibited by law, torture was applied on a wide scale to extort information and/or confessions from persons of interest during the times of Syrian presence, which ended in 2005, and especially within the 1991–2005 period; methods included bashing suspects and suspending them in the air with their arms tied behind their back.

According to the LCPP, a defendant must enjoy the assistance of an attorney during the whole trial process, regardless of his or her income status. However, the suspect can refuse the appointment of an attorney and the trial would proceed. There is no such thing as trial by jury in Lebanon, where crimes, even the most heinous and socially alarming ones, are tried before a mere three-judge court, and convictions may be appealed only before the three-judged Cour de Cassation or Supreme Court.

Hearings are held either publicly or behind closed doors; in either case, the defendant has the right to attend them, to consult with his or her attorney whenever necessary, to cross-examine witnesses if expressly authorized to do so, to get access

to evidence relevant to the case at hand, and to appeal against a conviction or sentence. If put on trial for posing a threat to national security (most of the cases brought before this court are assassinations of political figures), the defendant must appear before the Judicial Council, under procedural conditions identical to those just described except that there is no appeal against the council's decisions.

Interestingly for a Middle Eastern country, the testimonial soundness of female witnesses is by no means deemed inferior to that of male witnesses. As for insane defendants whose trials end in a criminal conviction, they shall serve their sentence in a specialized correctional facility.

Before being tried, felony defendants may be held in custody for up to two months in normal cases, or four months in situations requiring complex investigation and trial preparation activities. As for criminal defendants and felony defendants whose records include at least one jail term in excess of one year, the time limits are 6 and 12 months, respectively, provided they did not commit murder, a drug-related crime, or any other of the offenses that the Lebanese system deems especially heinous and/or detrimental to national security, in which case there are no time limits to custodial incarceration. However, in practice, it is not uncommon to find suspects who have spent more than three years in prison without trial before a court.

In spite of the principle requiring that an arrest be based on a valid warrant, the practice of arbitrarily arresting and detaining people of interest still continues, especially in connection with operations conducted by military intelligence and in cases of espionage, betrayal, arms possession, and draft evasion. In 2004, the Lebanese Parliamentary Commission for Human Rights estimated that one-third of the 5,000 inmates sitting in Lebanese jails had not been convicted of any wrongdoing.

As for the organization of the judiciary, judge appointments and rotations fall within the purview of the Supreme Judicial Council and the minister of justice. The Supreme Judicial Council is composed of 10 judges; 7 of them are nominated by the political authorities, directly and indirectly. Hence, the political authority has clout over the judiciary. To be a criminal judge, one has to have a degree in law; have a criminal record clean of major felonies or crimes; be fluent in Arabic, French, and English; pass an exam; and attend a three-year training course held at the Ministry of Justice's Institute for Judicial Studies, upon completion of which he or she will become an assistant judge and be appointed to a civil or criminal court based on the Supreme Judicial Council's decisions. Remarkably, female judges constitute currently more than 50 percent of the total number of judges.

Juveniles

A new juvenile code was issued in 2002, which considers as juveniles persons below 18 years old. The new law envisions a number of educational, protective, and correctional measures all intended to guide juveniles at risk of becoming career criminals onto a path of personal and social recovery. The protective and educational measures apply to juveniles 7 to 12 years old; they may last for a definite period of time and consist of releasing the juvenile to the custody of his or her parents or relatives (relatives other than parents may come into play in the absence of parents or whenever the judge deems the parents' contribution less than useful). Correctional measures, on the other hand, include the juvenile's transfer to either a reeducational facility or a disciplinary institution, where, in addition to schooling, he or she will receive moral, religious, and physical education and be taught a job skill. If assigned to a disciplinary institution, juvenile detainees are housed in dedicated sections to prevent dangerous promiscuity with older inmates. In addition to this, specific treatment options are offered to juveniles with psychiatric or addiction problems.

Minors younger than seven years old are considered exempt from punishment (article 3) and must be released to the custody of a parent or relative; should a minor's rebel attitude make that approach appear unviable, he or she shall be sent to a reeducational facility and be housed there for at least 1 year or until 18 years old, which is also the first and only option available to treat minors between the ages of

12 and 15 who have committed a crime or a felony offense, and the third and last resort for minors of the same age group who committed only a misdemeanor offense. Minors stay subject to the monitoring of a social assistant who reports to the judge every three months on their situation.

The Special Tribunal for Lebanon

The assassination of prominent former prime minister Rafik Hariri, former economy minister Bassel Fleihan, 6 bodyguards, and 10 civilians on February 14, 2005, in a huge car bomb loaded with more than 1,500 kilograms of high-power explosives, led to an uprising that in turn forced Syrian troops out of Lebanon after some 29 years of rule over the whole country. As a direct consequence of the international community's resolution to bring to justice those responsible for this crime, the UN Security Council established a special investigative commission. Soon thereafter, the Special Tribunal for Lebanon, an international criminal court specially mandated with trying those suspected of having ordered and carried out the assassination, was established under chapter VII of the UN charter pursuant to UNSC Resolution 1664 (2007).

For the first time ever, a UN-appointed international tribunal "based on the highest standards of criminal justice" (UNSC Res. 1664) would be dealing with the trial for a crime committed against specific individuals rather than against an unspecified group of people and would be doing so by applying Lebanese criminal law (except for the death penalty and forced labor) as opposed to international criminal law (article 2 of the Special Tribunal's statute). Furthermore, its chambers consist not only of international judges but also of a number of Lebanese judges, a composition pattern similar to the one previously experimented with for the Special Court for Sierra Leone (article 8, SSTL).

So far, the tribunal, which is currently headed by a Canadian member in the role of prosecutor general, has issued eight reports, the first of which established a connection between the Syrian and Lebanese intelligence apparatuses and the assassination of Prime Minister Hariri and his economy minister, together with the aforementioned 6 six bodyguards and 10 bystanders, a view, needless to say, shared by many political observers and commentators. The Syrian regime along with pro-Syrian politicians in Lebanon, for their part, see the tribunal as instrumental to an American and French strategy to put pressure on Syria to withdraw its support for organizations such as Hamas and Hezbollah.

Punishment

Types of Punishment

The LPC foresees five separate ranges of punishment options depending on an indictable offense's qualification as a crime, as a felony of either a common or a political nature, or as a mere misdemeanor. Misdemeanors are usually punished by 1 to 10 days of arrest or fine. Major felonies and their punishments are shown in the following table.

It may be worth mentioning, though, that male perpetrators who kill their wives if they see them in the state of committing adultery or sexual intercourse are subject to especially lenient treatment. Despite a 1999 legislative initiative to strengthen penal treatment of such heinous practices, nothing seems to have changed as of this writing.

Concerning the death penalty, despite a 1998 moratorium, three executions were held in 2004, and 69 inmates remained on death row, according to the European Neighbourhood Policy program.

Since Lebanon became independent, 51 executions have taken place by either hanging or shooting; in a few cases, and for the sake of dissuasion, hangings were staged at the exact location where the crime leading to the execution had been perpetrated, which in turn led to vocal criticism from many political observers and human rights watch groups.

Other Punishments

Article 44 of the penal code mandates that, unless provided differently, the term duration for hard labor, imprisonment for a definite term, expulsion/deportation from the country, forced residency, and

OFFENSE	TYPE OF PUNISHMENT
Murder, first degree	Capital punishment (article 549)
Murder, second degree	15 to 20 years of hard labor but practically always punished with life in prison (article 547)
Murder, third degree	6 months' to 3 years' imprisonment (article 564)
Honor-motivated infanticide by the victim's mother	3 to 15 years imprisonment. More than 5 years' imprisonment if intentional (article 551)
Consensual homicide	Maximum of 10 years' imprisonment (article 552)
Instigation to suicide	Maximum 2 years of imprisonment if the victim actually commits suicide; 3 months' to 2 years' imprisonment if the attempt results in a permanent injury (article 553)
Theft	Ordinary theft: 2 months to 3 years imprisonment (article 636) or hard labor for life or for a definite term (dependent on circumstances)
Violent theft	Hard labor for a definite term of unspecified duration or at least 5 years of hard labor under particular circumstances
Sexual assault	Minimum 5 years' hard labor (minimum 7 years if the victim is under 15 years old)
Drug selling	Hard labor for life in addition to fine of 25 to 100 million Lebanese pounds (Act 673/1988, article 125)
Co-conspirator; Consumer of drugs	Prison term ranging from 3 months to 3 years and fine of 2 to 5 million pounds, regardless of the amount of illegal substance found in the person's possession. Alternatively, a 6-month rehabilitation program can be served instead of a prison sentence (only if this is the first such offense).
Assassination/terrorism	Death penalty.
Human trafficking	No provision beyond kidnapping expressly prohibiting and punishing the practice of human trafficking in the Lebanese penal code.

loss of all civic rights may not be less than three or more than 15 years; the specific type or form of forced labor imposed on any particular convict, to be performed either within or outside a correctional facility, must be suitable for his or her age and sex.

Expulsion and deportation orders must be complied with within 15 days of their issuance, and convicts caught on national territory again before their ban have expired are subject to a prison term ranging from a minimum coinciding with the amount of time left on the ban at the time of reentry to a maximum of twice that duration (article 47).

Forced residency (article 48) may not be served at the convict's domicile or place of residence; at the place where the victim or one of his or her first-, second-, third-, or fourth-grade relatives resides; or in the location where the offense was perpetrated.

Loss of civil rights (article 49) may also be integrated with an additional three-month to three-year prison term, which is always the case when a foreign national is convicted.

Disqualification from holding a civic office (article 50) is imposed, as a complementary punishment, on all convicts sentenced to forced labor or to a prison term.

Forced residency for felony convicts may last from a minimum of three months to a maximum of three years. A convict may at any time exercise his or her option to pay a fine by installments, provided the due date has not yet expired; if still unpaid as of 30 days after the sentence has become executed, the fine is converted into a prison term that may not exceed one year in duration (article 52, 53, and 54).

When the convict is a pregnant woman, the prison term is deferred until the sixth week following delivery; a similar rule applies to offenders who have a pregnant dependent family member under the age of 18, provided the latter has a fixed domicile (article 55).

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Prisons

While the law provides that prisons should be under the supervision of the justice ministry, it is the interior ministry that controls it currently. According to a joint plan between the ministry of interior and ministry of justice, the authority over prisons will be actually transferred by 2012. According to the report of the director-general of ISF on August 26, 2009, published in the Annahr newspaper on September 25, 2009, the Lebanese prison population was at that time 5,324 inmates with an incarceration rate of 150 per 100,000of the overall population of the country estimated to be four million inhabitants. The percentage of the detainees in Lebanese prison who are awaiting trial stands at a high rate of more than 66 percent, according to a report of the director-general of ISF on August 26, 2009. The percentage of foreign detainees who have served their sentence and are still in prison reaches 13 percent, according to the same report. This prolonged detention happens mainly because the state cannot afford to buy air tickets for foreigners who are also unable to afford them, so that they can be deported back to their countries of origin. Starting from 1993, occupancy rates featured an upward trend that still persists today. As for the inmate population's composition, 62.5 percent of those detained in a Lebanese correctional facility are in pretrial custody, which clearly exposes the local system's weaknesses. As of November 12, 2004, only 3.9 percent of inmates were female, and data collected on December 22, 2005, showed that minors and aliens accounted for 2.4 and 42.1 percent of the overall prison population, respectively.

There are 30 correctional facilities in the nation, 22 of which are penal facilities and 8 of which are functioning as temporary detention centers. As of December 12, 2005, overall correctional capacity was running at approximately 120.9 percent, which explains the many complaints external observers and inmates have voiced over time.

Decree Number 14310 of February 12, 1949, as amended by a number of ensuing legislative provisions, including the decree issued on March 30, 1995, provides a regulatory reference for everyday life within Lebanese correctional facilities, which applies to suspects under arrest, to convicted inmates, and to convicts sentenced to a term of hard labor (article 59).

Although inmates usually live in groups (article 61), some do live in solitary confinement subsequent to discretionary orders issued by the competent authority for a duration ranging between 3 and 15 years, to be materially served on a farm or at selected factories (article 77). Sentences may entail or not entail hard labor and may be as lengthy as life in prison (article 62); those who have to work and those who do not are segregated from one another even during outdoor time, regardless of the amount of courtyard space actually available.

All inmates have to keep their own cells clean, and only those distinguishing themselves for their good conduct may serve as cooks or as nurses, provided, needless to say, that the jail doctor and the jail director deem them fit for the job.

The elective work that inmates may do outside of their correctional facility and under the constant surveillance of prison guards may be only of a community service nature; aside from those sentenced to hard labor, no work duty may be imposed on any inmate unless he or she expressly asks for some, in which case the inmate will be burdened with it until the end of his or her sentence (articles 46 and 61). It falls to the jail doctor to ensure that jail work is carried out by healthy inmates in a clean and suitable environment.

Inmates are entitled to three hours of outdoor time each day, to be enjoyed under the direct supervision of prison guards, unless ordered differently by the jail director, and they may read books and magazines, but no newspapers (article 60).

Whenever transferred to court, to the visiting room, or to the interrogation room, inmates must always be escorted by prison guards; they may see their attorneys during daytime visiting hours as defined by the director or, exceptionally, by an appropriate judge. Inmates have to make use of their own blankets and other basics because prisons do not cover these items. Prisoners may receive presents, money, and correspondence only up to a certain

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limit; they may normally send off no more than two letters a week, a threshold that does not apply to attorney correspondence (article 63). Money from relatives may be spent only within a certain weekly amount, unless explicitly authorized otherwise by the Ministry of the Interior. Inmates may purchase a selection of items from prison stores located within their facilities and may pay for the goods by issuing stamp-like receipts previously signed by the jail director (article 65) under the condition that the inmates have no outstanding debt toward the government (article 66). Two times a year, on June 15 and December 15, inmates who have conducted themselves in an outstanding manner may see their residual sentence lengths reduced or even be released from prison (article 108). As of 2010, this provision is currently not implemented, but the ministry of justice has launched an initiative to enforce it.

As for alternative measures of punishment, Decree Number 1760 only contemplates monasteries for Christian juveniles and the Home of Muslim Orphans for Muslim juveniles.

Article 52 defines who may serve as part of a prison medical staff (doctors chosen by the Ministry of Interior in accordance with the Ministry of Public Health, registered public physicians, and if necessary, common practitioners) and mandates that, once a week, dentists be available for inmates to consult at a rate of one for every three hundred potential patients; doctors, for their part, have to be present three days a week (article 53, as unified by Decree Number 6394 of January 6, 1967). All doctors have to record their work and send the information to the prison director and to the public health minister once every three months (article 54). Jail doctors are assisted by army soldiers or by inmates featuring an outstanding conduct record. No psychiatric services are available (article 55).

Inmates suffering from particular conditions may be transferred to civil hospitals provided enough personnel are available to guard them throughout their stay (article 74). The real prison conditions as outlined by sources external to the department of corrections, differing from those portrayed by Lebanese legal provisions, reveal a situation characterized by systematic disregard for the physical and psychological health of inmates, along with indifference toward the inhumane practice of torture.

Despite the high number of deaths among prison inmates, the police usually abstain from investigating these occurrences and justify this by referring to the previously precarious health conditions of the deceased. Additionally, hygiene conditions are dreadful, and torture is used by prison guards to extort confessions or discipline "unruly" inmates. This is how the Lebanese Parliament's Human Rights Commission, which visited Zahle Penitentiary following the escape of 10 inmates on February 24, 2008, described it in their own words: "It is a prison for those sent to death, one of the worst prisons where it is unfit to be a ranch for animals, it requires radical solution." A new prison facility meeting international standards replaced the old one in Zahle starting in May 2010,

In April 2008, a protest that took place at Romyeh Penitentiary drew public attention to the inhumane living conditions of inmates, to the utter severity of punishments, and to the lack of security inside correctional centers. Due to the lack of enough human resources and guards and corruption, many inmates are not transferred to the courts for the hearings, and because courts adjourn hearings for more than two months at a time, these inmates end up spending more than three or four months before being brought to trial.

The condition of female inmates does not notably differ from that of men. The 2001 Amnesty International Report denounced conditions of dirt and heavy overcrowding and the constant occurrence of threats, beatings, and torture of a physical and psychological nature (Lebanon accepted the UN Convention against torture in 2000) amid repeated violations of the rights granted by the new 2001 LCPP.

The largest correctional facility of the Country is Romyeh, completed in 1964 and located five miles east of Beirut, which consists of four different blocks. According to the previously mentioned report of the director-general, Romyeh has an original capacity of 1,050 inmates, but more than 3,500 are detained there.

Under normal conditions, this prison hosts more than 3,000 convicts and suspects. It also includes a specialized juvenile section, which is usually so crowded that many juvenile offenders end up serving their sentence amid dangerous career criminals.

Work within correctional facilities is mandatory only for some inmates, while it is an option for others. Although the system does not provide inmates with any educational opportunities, an information technology (IT) training program has been in place for some years to prevent long prison terms from becoming unjustly prejudicial to a convict's future as a member of society.

Visits, including those by lawyers, must be authorized by the district attorney. Before being allowed to enter a correctional facility, all visitors must pass a security check; in the cases of transfers or exchanges of prisoners, this procedure applies only to foreign inmates.

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Libya

Legal System: Civil/Islamic
Murder: Medium
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

Libya, formally known as the Great Socialist People's Libyan Arab Jamahiriya, is 679,363 square miles in size, with a relatively small population of just over 5.5 million. It borders the Mediterranean Sea and lies between Egypt and Tunisia in northern Africa.

Libya was the stage for numerous battles between the Axis and Allied forces, and the country came under the control of the British and French after World War II. In 1951, it gained its independence through the United Nations, and a constitutional monarchy was formed under King Idris. The Al-Fateh Revolution in 1969 toppled the pro-Western King Idris. The leaders of the coup set up the Revolutionary Command Council (RCC), which ran the country, headed by a 28-year-old officer, Mu'ammar al-Qadhafi. The RCC, eventually replaced by the Arab Socialist Union, abolished the monarchy and declared the Libyan Arab Republic, which promoted Arab unity and the liberation of Palestine.

Judicial System

Prior to Italy invading the country in 1911, Libya had a dual judicial system, which distinguished between religious and secular matters. The majority of cases for Muslims—those involving individual personal status, such as marriage and inheritance—fell within the jurisdiction of religious courts, which applied Islamic law, or sharia. The courts, directed by an Islamic religious judge, a *qadi,* are organized into original jurisdiction and appellate levels. Cases involving secular matters, such as civil, criminal, and commercial law, were tried in a separate court system, which reflected Western influence in general and the Napoleonic code in particular. After the 1911 invasion, the Italians maintained the dual judicial system structure. The post-independent Libya attempted a merger of religious and secular

legal systems in 1954, resulting in the subordination of Islamic law to secular law. Popular opposition led to a return to separate legal jurisdictions in 1958. However, in 1971, the Legislative Review and Amendment Committee was created to make existing laws conform to sharia in civil, criminal, and commercial law, as well as personal matters. A second postrevolutionary body, the Higher Council for National Guidance, was created in 1972 to present Islamic moral and spiritual values in such a way that they would be viable in contemporary Libyan society.

Police

The Libyan police force has an estimated 10,000 policemen and women (there is at least one women's police academy). Called the People's Security Force, the police perform the usual law enforcement functions such as investigating crimes, arresting criminals, and maintaining public order, but they are also responsible for the administration of prisons and assisting with passports and identity cards. Special police units are also assigned to counterespionage duties.

The original prerevolutionary mission of the Libyan police system was the same as those in many other Muslim and non-Muslim societies. The traditional concept of police, or *shurtah,* was a broad one. Domestically, the *shurtah* were primarily responsible for suppressing dissidence and insurrections as well as performing other internal security duties. The latter duties typically embraced the kinds of administrative and law enforcement functions often required of urban and rural police, such as the prevention of crime, investigation and arrest of criminals, and maintenance of public order.

After the 1969 military coup, Qadhafi reorganized the police force where military officers were temporarily integrated into key police administrative positions to guard against another coup attempt. All policing functions were consolidated under the Ministry of the Interior. In 1971, new separate agencies designed to handle civil defense and fire protection were provided for by law. Other units were also established by the Interior Ministry, such as the Central Department of Criminal Investigation, the Central Traffic Department, the Arab International Criminal Police Bureau, the Ports Security Department, the Police Training Department, and the Identity Investigation Department. A new police law in January 1972 not only spelled out the new functions of the police, but also gave them a new name: the Police at the Service of the People and the Revolution. In addition to the standard domestic functions, the new functions of the police were to take responsibility for the administration of the prisons, civil defense activities, and passport and nationality matters. Individual police units were under the jurisdiction of regional security directorates throughout the country, with primary responsibility for enforcing the laws and administering the police falling under the minister of the interior and his deputy.

There is a visible presence of uniformed police throughout the country, though the force appears to be understaffed, inadequately resourced, and ineffective. Sometimes the police forces are supported by members of the Libyan external and internal security personnel. Local police are supported by neighborhood volunteers, who have even less training and resources.

Finding of Guilt

Penal Code

Qadhafi's proclamation involved a reorientation of Libya's entire criminal code. Libyan legal and religious scholars attempted, in an extensive and slow-moving process, to minimize the obvious contradictions in the two systems. Amendments to the criminal code after 1973 addressed both moral issues related to Islamic beliefs and purely secular matters. Government announcements in 1973 and 1974 stated that lashings and imprisonment of adulterers, imprisonment of homosexuals for up to five years, and floggings for those transgressing the fast of Ramadan were issued as laws "in line with positive Islamic legislation." Any Muslim who drank or served alcoholic beverages could receive 40 lashes. Non-Muslims could receive fines

or imprisonment for alcohol-related offenses, and fines and jail terms were set for possession of or trafficking in liquor.

The criminal code was further revised in 1975 to further strengthen state security. Actions such as revealing state or defense secrets, "scheming" with foreigners to harm Libya's military or political position, facilitating war against the state, infiltrating military reservations, and possessing means of espionage were made subject to harsh penalties, including life imprisonment and death. The number of actions that may result in execution has grown, including membership in political parties that oppose the principles of the 1969 revolution or economic crimes, such as damaging oil installations or stockpiles of basic commodities.

In 1994, the Purge Law was created to fight corruption, black marketeering, drug trafficking, and atheism, enforced by the government's "purification" committees since June 1996. Hundreds have been arrested arbitrarily on charges of corruption, dealing in foreign goods, and funding Islamic fundamentalist groups, and dozens of shops and firms have been closed.

In 1997, the government passed a law, pushed by Qadhafi, that provides for "collective" guilt. The Libyan General People's Congress approved a law that provides for the punishment of accomplices to a range of crimes, including instigating and practicing tribal fanaticism; possessing, trading in, or smuggling unlicensed weapons; and damaging public and private institutions and property. The 1997 law could find small or large groups, including towns, tribes, or families, guilty and subject to severe punishment such as denial of water, fuel, food supplies, and participation in local assemblies. The law, passed by the General People's Congress in March 1997, formally codified the government's previous threats of punishment for families or communities that aid, abet, or do not inform the regime of criminals and oppositionists in their midst. In May 1997, Qadhafi declared that if any member of a family was found guilty of an offense, the individual's entire family was to be considered guilty and punished as well. According to Human Rights Watch and the U.S. Department of State, Libya's human rights record remains poor, and it continues to commit numerous serious abuses.

Court Structure

Libya no longer has a dual court system. With the primacy of Islamic law and the merging of Islamic doctrine into the secular system, the dual religious-secular court structure was no longer necessary, and in 1973, the religious judicial system of *qadi* courts was abolished. The secular court system was retained, but its jurisdiction now included religious matters conforming to sharia, the religious jurisprudence. In 1987, the court system had four levels: summary courts (sometimes referred to as partial courts), courts of first instance, appeals courts, and the Supreme Court.

Courts in the lowest level, summary courts, are located in most small towns in Libya. In a summary court, a single judge hears cases involving misdemeanors. Misdemeanors are disputes involving amounts up to 100 Libyan dinars (LD), about US$78). Most decisions are final, but in cases where the dispute involves more than LD20, the decision can be appealed to the next higher level of courts, the courts of first instance.

Courts of first instance hear appeals from lower-level summary courts and have original jurisdiction over all matters in which amounts of more than LD100 are involved. A panel of three judges in each court rules by majority decision and hears civil, criminal, and commercial cases and applies sharia to personal or religious matters that were formerly handled by the *qadi* courts. The People's Court is a special court of first instance to which crimes against the state (alleged attempted forcible overthrow of the ruling regime or otherwise rallying opposition to it) are referred.

The three courts of appeals sit at Benghazi, Tripoli, and Sabha. A three-judge panel rules by majority decision and hear appeals from the lower courts. Sharia judges who previously sat in the Sharia Court of Appeals prior to the merging of the dual court system were assigned to the regular courts of appeals and continue to specialize in sharia appellate cases. Regardless of whether the People's Court

acquits or convicts the defendants, both prosecution and defense have the right to appeal the judgment before the court of appeals in Tripoli. The decision of that court, too, can be challenged before the Libyan Supreme Court, whose judgments are final.

The Libyan Supreme Court is located in Tripoli and comprises five chambers: criminal, administrative, civil and commercial, constitutional, and sharia. A five-judge panel sits in each chamber and also rules by majority vote. The court is the final appellate body for cases coming from the lower courts. The Supreme Court can also interpret constitutional matters. All justices and the president (also seen as chairman) of the court are appointed by the General People's Committee; probably the general secretariat makes the actual selections. Before its abolition, the RCC made Supreme Court appointments.

Other Judicial Bodies

Some of the agencies involved in the administration or the enforcement of justice are situated outside the regular court system. For example, the Supreme Council of Judicial Authorities is an administrative agency that coordinates the various courts.

The People's Court

In 1971, a People's Court was established to try political, economic, and security crimes against the state. The People's Court also included an appeals court and a prosecution service, the Popular Prosecution Office. A member of the Revolutionary Command Council presided over the court, which also included one representative each from the armed forces, the Islamic University, the Supreme Court, and the police. Many of those tried were charged under violations of Law 71, which bans any person or group activity based on political ideology opposed to the principles of the 1969 revolution.

In January 1977, a new People's Court was formed to try political detainees for crimes against the state. Such crimes may be referred to a people's court, but plots and active conspiracies against the state are usually referred to special military courts created on an ad hoc basis for that purpose. The military courts and the people's courts have been criticized by human rights groups such as Human Rights Watch for routinely violating the legal rights of defendants in political cases. The Constitution provides "all necessary guarantees" for the defendant's defense and prohibits the subjection of the accused or imprisoned to "mental or physical harm." Realistically, however, and in spite of what the Constitution says, due process and individual rights of defendants are routinely ignored prior to, during, and after trials. Human Rights Watch interviewed five prisoners who were convicted under the People's Court. Four of the five complained of physical torture during the investigation, as well as due process violations, such as restricted access to lawyers representing them. Human Rights Watch asked the Libyan government on October 12, 2005, if it had conducted an investigation into the allegations of the prisoners, but as of January 10, 2006, the government had not responded. The General People's Congress voted in January 2005 to abolish the People's Court. A Libyan official told Human Rights Watch that the People's Court had performed a particular role after the 1969 revolution and that it was no longer required, due to changing circumstances. He did not specify which circumstances, or how they had changed.

The Revolutionary Courts

Special courts were established in 1980 to try political offenses. Such trials are often held in secret. The Revolutionary Courts normally abrogate many procedures and rights ensured by the traditional court system. The UN Special Rapporteur noted in 1996 a lack of fairness in capital trials. With the regime's blessing and encouragement, revolutionary committee members established courts that held (sometimes) public, occasionally televised trials of those charged with crimes against the revolution. A 1981 law prohibited private legal practice and made all lawyers employees of the Secretariat of Justice. Therefore, as of 1981, all lawyers worked for the government. In these courts, the accepted legal norms—such as due process, the right to legal representation, and the right of appeal—were

frequently violated. According to Amnesty International, Libya held 77 political prisoners in 1985, of whom about 18 were held without trial or remained in detention, some incommunicado, after having been acquitted. Libya also sanctioned the murder of political opponents abroad, a government policy reaffirmed on March 2, 1985, by the GPC.

The security forces have the power to pass sentences without trial, especially in cases involving governmental political opposition. In the past, Qadhafi has incited local security forces to take extrajudicial action against suspected opponents. On May 6, 2004, 16 health professionals who were charged in 1999 with infecting 400 Libyan children with HIV were sentenced to death. Their defense attorney complained that he had been allowed to meet with his clients only twice since their incarceration.

Crime

The Libyan Criminal Code of 1954 identified crimes in increasing order of seriousness as contraventions, misdemeanors, and felonies. Under the Islamic sharia, though, an act could be, in increasing order of seriousness, mandatory, commendable, permissible, reprehensible, or forbidden.

Since he came to power in 1969, Qadhafi has regarded crime as an anomaly in complete conflict with his revolutionary goals and ideals, given that all Libyans are expected to contribute to the common good of society and its economic, social, and political development. Partially because of this, the government rarely publishes statistics on any crimes in the country. The U.S. Department of State rates Libya a medium threat for criminal activity. Notwithstanding the lack of specific statistics, crime has remained a problem in recent years with an understaffed, underfunded police department and a slow, inefficient legal system that has not demonstrated any effectiveness at preventing crime or prosecuting criminals.

Crime against foreigners is a growing problem in Libya, according to the U.S. State Department. The most common types of crime are auto theft and theft of items left in automobiles, as well as burglary. Pickpocketing and home invasion are also on the increase. The availability and increasing use of drugs and alcohol by both Libyans and non-Libyans have contributed to the increase in crime in the past few years. Women routinely face verbal harassment. Although physical violence is not common, there have been instances of assault against women, particularly women foreign to Libya. These assaults can range from sexual groping or assault/battery to attempted rape.

Although precise statistics are not available, ~~incidents of~~ residential burglary against foreigners is by far the most common crime reported to the Regional Security Office (RSO) by expatriates in Libya. Police officers are generally ill-equipped and poorly trained to investigate these incidents. Response time also varies and can be lengthy depending on the type of incident.

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Trafficking in Persons

Libya is a transit and destination country for men, women, and children from sub-Saharan Africa and Asia trafficked for forced labor and sex; many victims willingly migrate to Libya en route to Europe with the help of smugglers, but may be forced into prostitution or work as laborers or beggars to try to pay off their $800–$1,200 smuggling debt. A U.S. State Department report notes that laborers from Egypt, Sudan, and Ethiopia are reportedly trafficked to Libya for the primary purpose of labor exploitation.

Pickpocketing

Pickpocket teams are known to operate in crowded venues of the cities, particularly hotels frequented by foreigners. Examples noted by the U.S. Department of State include the bus station adjacent to the Corinthia Hotel in Tripoli and the nearby Burj Al-Fatah Tower complex. Pickpocketing is carried out by teams of two and involves one pickpocket agent and one "security" person. The agent carries out the theft, while the accomplice waits poised to assist. Libyan victims who have resisted have reported being jabbed by a small pointed object on the opposite side from where their valuables are located—that is, the assailant is not meaning to cause grave bodily harm, as much as he is interested

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in getting the attention of the victim while the crime is perpetrated.

Vehicle Theft

According to the U.S. Department of State, vehicle theft is a problem, as is breaking into cars through auto windows and/or doors, particularly in the larger cities such as Tripoli. This type of crime is opportunity-driven and not specific to any particular nationality. Crimes of this nature almost always happen when an automobile has been left unattended in a vulnerable area. One U.S. Embassy employee was victimized after leaving an automobile unlocked on the street near his home. Thieves are primarily interested in car stereos. Other incidents have been reported by Corinthia Hotel staff, who park their privately owned vehicles along the unprotected Medina Wall. There were no reported incidents of carjacking in Libya during 2006.

Residential Crimes

According to the U.S. State Department, there were residential crimes (burglaries) reported by U.S. Embassy Tripoli personnel during 2006. Specific numbers were not available.

Punishment

Applying Islamic law to contemporary law and society sometimes presents problems in administering punishments. For instance, the administration of traditional Islamic physical punishments, such as the severance of a hand for the crime of theft, raises many issues. Argument arises over whether "severance" should mean actual amputation or simply impeding the hand from future crime by removing need and temptation. Literal religious interpretations are usually adopted, but their actual imposition as legal punishment is usually restricted by exemptions and qualifications, based (roughly) on Islamic tenets. In October 1972, though the government enacted a law providing for the amputation of the right hands of convicted thieves, this penalty has not been commonly imposed. A thief's hand would not be amputated, for example, if he truly repented of his crime or if he had committed the crime under some duress, such as to feed a starving family. Traditional sharia punishments such as limb amputation and flogging are seen as inhumane in Libya. Without formally rejecting sharia punishment, Libyan criminal justice utilizes modern forms of punishment instead, such as various terms of imprisonment. The death penalty is also regularly imposed, despite repeated appeals to Muammar Qaddafi by humanitarian groups such as Human Rights Watch and Amnesty International to abolish it.

The Death Penalty

Qadhafi has for years publicly stated that Libya should abolish the death penalty. In private, however, he either argues for it or at least does not argue against it. The "Green Book" revision of 1988 states that "the goal of the Libyan society is to abolish capital punishment"; however, the government has not acted in any way to abolish the death penalty, and the government's use of the death penalty has increased over the years. Many crimes, including political offenses and economic crimes, are punishable by death. A 1972 law mandated the death penalty for any person "associated with" a group opposed to the principles of the 1969 revolution, as well as for other acts such as treason, attempting to change the form of government by violence, and premeditated murder. A new criminal code was adopted in 1973, and it further criminalized certain acts against the security of the state and introduced the death penalty for "offenses against the principles of the revolution." After the attempted coup in 1975, the Libyan General People's Congress amended the criminal code, criminalizing as capital offenses conspiracy with foreigners against the state, divulgence of military or state secrets, and possession of devices to engage in espionage.

After an apparent increase in economic crimes nationally, in 1996 a law went into effect that applies the death penalty to Libyans who speculate in foreign currency, food, clothing, or housing during a state of war or a blockade and to crimes related to drugs and alcohol.

In 1997, two civilians and six army officers were executed after having been convicted in capital trials, the civilians by hanging and the army officers by firing squad. At least five others were given prison sentences, all convicted on charges of being American spies, committing treason, cooperating with opposition organizations, and instigating violence to achieve anti-revolutionary political goals. The UN Rapporteur on Extrajudicial, Summary, or Arbitrary Executions noted in 1996 that capital punishment is extensively imposed because of a lack of fair trial standards.

Penal System

The Libyan penal system is a responsibility of the Secretariat of the Interior and is administered by the judicial police. The judicial police agency is independent of the police and within the Ministry of Justice, not the Ministry of Public Security. Three institutions—the Central Prison at Tripoli, Kuwayfiyah Prison at Benghazi, and Jdeida Prison outside Tripoli—are known to exist, and smaller facilities in other cities are known to be part of the system. Prison conditions are poor. Qadhafi granted permission for visits by Amnesty International to several prisons in the late 1970s, but the necessary arrangements were never made by Libyan authorities. The prison system was reorganized under Law No. 47 in 1975, which (theoretically) changed the prisons from institutions of "punishment and terror" to ones where inmates were afforded "education and training" as part of a program to try to rehabilitate offenders.

Libyan security personnel routinely torture prisoners. In addition, Libya routinely prevents any human rights organizations from visiting prisons in the country. In April 1999, the UN Committee against Torture reported that it continued to receive allegations of torture by Libyan authorities. According to the United Nations, methods of torture reportedly used by the Libyan security forces include clubbing, applying electric shock, breaking fingers and allowing the joints to heal without medical care, suffocating with plastic bags, depriving inmates of food and water, hanging by the wrists, suspending from a pole inserted between the knees and elbows, burning with cigarettes, attacking with dogs, and beating on the soles of the feet.

Amnesty International (AI) reports that political detainees are held in cruel, inhumane, or degrading conditions and are denied adequate medical care, which has led to several deaths in custody. In July 1996, inmates protested poor conditions at the Abu Salim prison in Tripoli, run by the Internal Security Agency. According to an ex-prisoner interviewed by Human Rights Watch, the prisoners went on a hunger strike to protest the lack of medical care, overcrowding, and inadequate hygiene and diet provided at the facility. The prison held between 1,600 and 1,700 inmates at the time of the uprising. Security units were dispatched to suppress the uprising, and as many as 1,200 inmates were killed by security forces according to the witness, who worked in the prison kitchen. According to the former prisoner interviewed by Human Rights Watch and Libyan human rights groups abroad, the guards responded to the uprising at the prison by going from cell to cell, shooting prisoners as they went. The Libyan government claims that the police responded appropriately after the uprising and an escape attempt in which approximately 400 prisoners escaped, some of them leaving Libya. As of August 2005, the government officially had not released information about the incident or the names of the dead inmates but said it had established a committee to investigate the incident. The Libyan government does not permit regular prison visits by human rights groups or representatives. Hundreds of political detainees, many associated with banned Islamic groups, reportedly are held in prisons throughout the country (but primarily in the Abu Salim prison in Tripoli). Many are held for years without charge.

Jeffrey Dailey

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Morocco

Legal System: Islamic/Civil
Murder: Low
Corruption: Medium
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Maybe
Corporal Punishment: No

Background

The Kingdom of Morocco constitutes a part of the Great Arab Maghreb. An official Arab state, at 172,402 square miles (446,550 square kilometers), it became independent from France on March 2, 1956. A bicameral legislature was formed in 1997, primarily as a result of political reforms. The Moroccan Constitution provides for a monarchy with a parliament and an independent judiciary. Ultimate authority rests with the king, who, in addition to being the head of the military as well as the country's religious leader, appoints the prime minister following legislative elections; presides over the Council of Ministers; appoints all members of the government; and, at his discretion, may terminate the tenure of any minister, dissolve Parliament, call for new elections, or rule by decree.

The legal system in Morocco is based on Islamic law and French and Spanish civil law systems. A series of constitutions, drafted in 1962, 1970, 1972, 1992, and 1996, preserve the monarchical nature of the Moroccan regime. Modeled after the French Constitution of 1958, the Constitution of 1962 granted even greater powers to the head of state. The Constitution created a bicameral parliament consisting of a chamber of representatives (two-thirds of which were directly elected) and a senate-like chamber of politicians nominated through electoral colleges. This parliament was considered relatively strong insofar as both chambers were to be consulted prior to the implementation of any royal legislative decree (article 72). However, Hassan II held the upper hand at all levels: the king had the capacity to dissolve the chamber of representatives (article 27) and thus to paralyze Parliament.

Since 1996, the bicameral legislature consists of a lower chamber, the Chamber of Representatives, which is directly elected, and an upper chamber, the Chamber of Counselors, whose members are indirectly elected through various regional, local, and professional councils. The councils' members themselves are elected directly. The powers of Parliament were expanded under the 1992 and 1996 constitutional revisions to include budgetary matters, approval authority, and the establishment of commissions of inquiry to investigate the government's actions. In addition, the lower chamber of Parliament may dissolve the government through a vote of no confidence.

Police

The Moroccan police force, known as the Sûreté Nationale, was created on May 16, 1956, after Morocco gained its independence. As part of Morocco's ambitious program to improve law enforcement efficiency, several new police services will be created by

2017 with 3,000 new policemen set to join the force. The plans call for almost 90 new provincial police districts, 131 police departments, 6 law and order enforcement units, 16 quick intervention squads, 10 mobile circulation units, 6 search and intervention police, several training centers, and a bomb sweeping unit. The police departments provide protection for Morocco's 16 regions, subdivided into 62 prefectures and provinces.

Judiciary

Article 82 of the Morocco Constitution holds that judicial authority is independent from both the legislative and executive powers. According to article 1 of the 1-74-388 law issued on July 15, 1974, it shall be composed of common laws, special courts, and specialized courts.

The Moroccan judiciary is independent. Given the support of the Moroccan Constitution's sanction, specifically article 82, the judiciary shall be independent from the legislative and executive powers. Additionally, sentences shall be passed and executed in the king's name (article 83).

According to the latest Constitution, the Supreme Council of Magistracy shall be presided over by the king and ensures the implementation of the guarantees granted to magistrates regarding their promotion and discipline (article 87).

The Courts

Article 1 of the 1-74-388 decree issued on Joumada II 24, 1394 (July 15, 1974), determines the judicial organization of the kingdom. Common law jurisdictions are Supreme Court, courts of appeal, first instance tribunals, and communal and district courts. Specialized jurisdictions are administrative tribunals and tribunals of commerce.

The judicial organization concerns all the tribunals and courts of the kingdom. The term "tribunal" indicates inferior courts such as the courts of first instance, and "court" refers to superior courts, such as the courts of appeal. According to article 82 of the kingdom's Constitution, the judicial authority shall be independent from the legislative power and the executive power

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Drug Crime

According to the CIA, Morocco is one of the world's largest producers of illicit hashish; shipments of hashish produced in the country are mostly directed to Western Europe. The country is also a transit point for cocaine from South America destined for Western Europe and a significant consumer of cannabis.

Punishment

Death Penalty

Morocco is progressively moving toward settling the issue of capital punishment. According to the

Crowds gather at the Sidi Moussa jail, where 49 inmates were killed and about 80 injured when a fire broke out early on November 1, 2002. Located in El Jadida, 90 miles south of Casablanca, Morocco, the prison was known to be severely overcrowded. (AP Photo/Abdeljalil Bounhar)

Moroccan justice minister, this will be accomplished first by reducing the number of verdicts and then by ordering suspension of their execution before abolishing the practice once and for all. In Morocco, there is great disagreement about capital punishment, hence the need for continuing the debate on this issue, the minister said. He recalled a colloquium held by the Ministry of Justice in 2004, which recommended adopting a progressive approach in settling this issue, noting that following this meeting, the new penal code halved the number of crimes punishable by the death penalty from 22 to 11.

Since 1973 and 2007, 133 people were sentenced to capital punishment, two of whom were executed, the last case of which took place in 1993, the minister said, adding that the number of people sentenced to this penalty now amounts to 125. In Morocco, the death penalty, although still used as a sentence, is rarely actually carried out. Morocco was expected to ratify the abolition of this sentence by April 2008.

Punishment of Homosexuality

Homosexuality is criminalized under section 489 of the penal code (of November 26, 1962), which provides a penalty of between six months and three years' imprisonment and additional fines from 120 to 1,000 dirhams for "lewd or unnatural acts with an individual of the same sex."

(about US $117)

Corrections

According to a report by the BBC in 2001, Morocco's 44 prisons are extremely overcrowded, with unhealthy conditions belonging to another age. The Moroccan Prison Observatory, an umbrella organization that incorporates a number of human rights groups, speaks of a prison regime immersed in corruption, violence, disease, and the sexual abuse of children as young as 12. According to the latest data from the International Centre for Prison Studies, t prison capacity in Morocco is at 155.1 percent. The number of penal establishments is as follows:

Penitentiary	1
Agricultural penitentiaries	4
Local prisons	38
Center for reform and education	1
Total detainee capacity	36,500

The BBC claims that at any one time, Moroccan prisons hold as many as 80,000 inmates, in a system designed for less than half that many. Although a few prisons are not full, others have so many people that the only place left to sleep is the toilets. Hygiene is minimal, medical care nonexistent, and disease rife. One example of this was the prison fire in 1997 at the Oukacha Prison complex in Casablanca that killed 28 inmates, in a cell designed to hold only 8 inmates. Located in the industrial area of Casablanca, the prison, one of the most modern in Africa, has a 33-foot-high wall for increased security. One of the most alarming aspects of the report deals with evidence that children as young as 12 are being kept in the prisons and are regularly being victimized. Legally, no one under the age of 16 is allowed to be in prison in Morocco. This is just one aspect of a comprehensive climate of corruption. Additionally, the only food available to inmates is that which is brought in by friends or relatives who must first pay a bribe to prison wardens.

A report from UPI from October 2008 notes that Al Qaeda inmates are seeking to dominate life in Moroccan prisons by using intimidation and the threat of death. This is particularly true in prisons around Casablanca, where the majority of Al Qaeda insurgents have been held, according to the Med Basin Newsline. Security sources told the news agency that opponents of the Al Qaeda inmates were intimidated or assaulted until they were transferred or accepted Al Qaeda's rule, which includes strict adherence to sharia law. Some who have opposed the Islamic militants, most of whom were convicted of terrorist offenses, have been strangled to death. According to the Med Basin Newsline, the Al Qaeda inmates also have succeeded in intimidating the prison authorities, who have allowed self-appointed investigators (inmates) to search prison cells for liquor or other contraband that violates Islamic law.

Jeffrey Dailey

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Oman

Legal System: Islamic/Common
Murder: Low
Corruption: Low
Human Trafficking: High
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

A former British protectorate, Oman is a constitutional monarchy. It is the only Muslim country with an Ibadi (a sect of Shia) ruler and majority population (75 percent). In addition, 21 percent of the population consists of immigrant workers, primarily from South Asia. With only 3 million people, Oman is one of the most thinly populated countries in the world. The country is divided into six regions and two governates. Most of the country is desert with little or no rainfall, although coastal areas receive some rain. Oman is located at the Straight of Hormuz where the Indian Ocean meets the Arabian Gulf.

Arabic is the official language with English as a second language. In addition, Southern Arabian is spoken, a Semitic language distantly related to Arabic, and more closely related to languages found in Eritrea and Ethiopia. A minority of Omanis speak Swahili.

In the premodern era, tribes formed the dominant social and political structure as people organized to maintain and control irrigation systems (*aflaj*). Arabian Gulf tribes were united by an unwritten code of honor (*sharaf*) and loyalty (*shaff min dun*) in a patriarchal, hereditary social structure. Omani tribes are derived primarily from two competing blocks, the Hinawi and the Ghafiri. The ruling Al Bu Said family, of which Sultan Qaboos is a part, does not belong to either of these groups because the ruling family must be acceptable to both tribes.

Tribal leaders (*shaykhs*) first signed treaties with the British colonial power in the late 18th century. British control originally extended only to the coastal areas of Muscat and Salalah, with tribes in the interior maintaining their independence, under the leadership of imams. The intersection of tribal and religious leadership has long characterized the indigenous Omani approach to political organization. In the 1950s, tribal leaders (*shaykhs*) negotiated with the British-based Omani Petroleum Country to grant access to the country's oil resources. Today, oil income composes 80 percent of the country's gross domestic product.

Prior to 1970, Sultan Said bin Taymur kept the country closed, restricting foreign travel and education and maintaining Oman's protectorate status with the British. A bloodless coup aided by the British brought the sultan's son, Qaboos bin Said al-Said, to power in 1970. The country achieved its independence from Britain in 1971; however, senior positions in government continued to be staffed by British advisors until the 1990s. In recent years, Oman has developed its national administration and infrastructure in an effort to balance tribal, regional, and ethnic interests.

In 1996, the Basic Law of the state, Oman's first written constitution, outlined the governmental structure, including a bicameral legislature called the Council of Oman. The lower chamber is the Consultative Council (*majlis al-shura*), and the upper chamber is the Council of State (*majlis al-dawlah*). The sultan is the head of state, assisted by a council of ministers (*majlis al-wuzara*) who are appointed usually from the ranks of Muscat's merchant families. Since 1991, members of the *majlis al-shura* have been elected. Universal suffrage for people age 21 years and older was implemented in 2003. That year, 74 percent of those registered voted in national elections during which two women were elected to seats in the *majlis al-shura.* Currently, Oman has three women ministers.

Legal System

Legal thought draws heavily on *fiqh,* a doctrine that states that the ultimate law-giver is God. As such, humans, under the leadership of the sultan, strive to understand (*faqiha*) law. The Ibadi interpretation of sharia (Islamic law) dominates, and constitutional jurisprudence is performed regionally by the *wali* and *qadi,* a judge who has attained that position either by graduating from an Islamic law college or by studying and training with local religious experts.

Oman's criminal law borrows from English common law as well as sharia. A system of criminal law case precedents prevails. Despite the systematic and developed nature of the indigenous Islamic law, colonial powers dismantled those structures through gradual marginalization to exert their own social and political control. In postcolonial times in Oman, there has been only a partial return to Islamic legal structures. As such, and according to the Omani Constitution as well, no criminal law can be passed that runs counter to sharia law. However, Islamic law in practice rarely acts as the dominant influence on criminal justice. Crime in Islamic law falls into three categories: crimes against God (*hadd*), homicide and assault (*qisa*), and the remaining crimes (*ta'azir*). In theory, there is no discretion in punishment for *hadd* and *qisa* violations, which are explicitly spelled out in the Koran. For example, *qisas* are punishable by retaliation or blood money (*diya*). *Ta'azir* crimes, however, allow for judicial discretion in sentencing. In the Omani penal code, crimes are divided into two groups: *junha,* which are crimes punishable by less than three years' incarceration or fines, and *junaiyah,* which are crimes punishable by three years or more.

Crime and Punishment

According to INTERPOL data, the murder rate in 1997 was 0.91 per 100,000 people. The United Nations reports that the country had 1 murder per 100,000 people in 2003. Reported rape was 3.73, and aggravated assault was 1.87. The larceny rate was recorded as 12.2. Between 1995 and 2000, the murder rate fell by 3.2 percent from 0.94 to 0.91. The rate for rape decreased by 16.4 percent while aggravated assault increased 10.7 percent. The rate of larceny grew from 2.92 to 12.2, an increase of 317.8 percent.

According to a 2001 Ministry of Health report, there were unspecified increasing rates of children and teenagers abusing illegal substances in Oman and a number of cases involving child neglect, including drowning and other accidents. Human rights observers have noted that there has been a decline in children being exploited for use as camel-jockeys, a trend that was prevalent a decade ago.

Prostitution is illegal due to strict cultural norms, and authorities report that it is rarely found in Oman. Homosexuality is prohibited and punishable by up to three years in prison. Abortion under any circumstances is also illegal.

Female genital mutilation (FGM) is illegal in Oman and condemned by international health human rights standards. A few communities in the interior of the country and in the Dhofar region have had cases of FGM in recent years; however, it is believed to be declining annually.

Terrorism is criminalized under article 132 of the Omani penal code. In addition, the Comprehensive Security Agreement among the States of the Gulf Cooperation Council has provisions that criminalize terrorist behavior, such as providing weapons to terrorists. It is illegal to establish agencies, associations, political parties, or organizations that directly oppose the social, political, or economic systems of any other country. The penal code also prohibits the financing, arrangement, preparation, perpetration, or supporting of terrorist acts under the money laundering laws. Moreover, the law allows for the confiscation of funds and the freezing of assets shown to be the product of any unlawful act, including terrorism.

Oman is a destination country for South Asian migrants who are the victims of human trafficking schemes, including involuntary servitude as domestic workers and construction laborers. The Omani penal code further stipulates that anyone who conceals a person who has committed a crime, or who assists someone in escaping detection by authorities,

is punishable under the law. According to executive respondents of the World Economic Forum's Global Competitiveness Survey, Oman is considered to have low levels of governmental corruption.

Finding of Guilt

Traditionally, crime and punishment were considered private matters to be handled within families and tribes. Intertribal allegations of crime, such as homicide, were handled by negotiation and, when this failed, blood feud (*diya*). The exception to this involved policing marketplaces. Men who policed and safeguarded the marketplaces in each district (*wilaya*) were known as *al-askar.* Modern-style policing was introduced in the country in the early 20th century by the British.

Today, the Royal Office handles the country's internal and external security. Under this umbrella, the Internal Security Service controls internal security while the Sultan's Special Force maintains border security and combats smuggling. The Royal Oman Police (ROP) manage airport security and immigration matters and oversee the coast guard. Police accountability is provided by the ROP's Directorate General of Inquiries and Criminal Investigation, which investigates claims of police abuse.

Policewomen compose 4.5 percent of the Royal Oman Police, approximately the same rate of female participation as in the United Arab Emirates and Qatar. Today they are employed as security screeners in airports and investigators in cases involving child and female offenders, and they provide assistance to women and children victims and witnesses. Policewomen entered the field at the time of independence from British power and were considered a part of the project of bringing Omanis into government positions.

Arrest and Detention

In Oman, the police do not need to procure a warrant to make an arrest. An individual can be detained for 48 hours without charges, after which the police must either refer the matter to public prosecution or release the suspect. If referred to prosecution, within 24 hours, a formal arrest must be made and court orders obtained to hold a defendant in pretrial detention. Typically, the court awards the prosecution 14 days for investigation.

Legal representation is provided to indigent defendants, although judges sometimes have to order this specifically, as well as remind police to allow attorneys and family members to meet with defendants. Oman's public prosecution office was created in 2000. Headquartered in Muscat, it has offices in 24 regions in the country. The office is responsible for investigating and bringing to trial court cases from initial processing until sentencing.

Courts and Trials

Oman boasts an independent judiciary, yet practically speaking, courts defer to the wishes of the sultan. Judges are appointed by the sultan and serve at his discretion. The sultan himself can act as a court of final appeal, an authority he primarily exercises over matters of national security. He has never overturned a magistrate court decision.

The judiciary is composed of magistrate courts and sharia courts and is managed by the Ministry of Justice. There are 42 courts of first instance in which judges hear criminal, civil, and commercial cases. Above these are six courts of appeal in which three judges hear each case. The Supreme Court is the highest court in Oman. It reviews decisions of the lower courts, provides oversight of judges, and decides matters of law and legal principles. Additionally, appeals can be made directly to the sultan, who has the power to pardon or mitigate sentences. *sharia* courts handle cases involving family law and personal status, such as child custody, divorce, and inheritance.

Under the 1996 Basic Law, which outlines criminal procedure, Omanis have the right to a fair trial and legal defense for crimes punishable by over three years in prison. The presumption of innocence is a cornerstone of the law. *Junaiyah* cases are handled at the central magistrate court and

are presided over by the president and vice president of the magistrate court as well as two judges. This panel also takes appeals coming from all the courts of first instance. The sultan has established rules of procedure pertaining to evidence and provisions for a public trial. For example, the police must state the charges against defendants, who have the right to present evidence and confront witnesses. The prosecution and the defense examine witnesses under the direction and participation of the judge, who decides all verdicts, often within one day of the end of a trial. For cases involving abuse of governmental authority, the *diwan* of the royal court reviews cases and has the power to award compensation to victims. The state security court hears cases about national security or high-profile criminal matters.

In 1997, the sultan created a committee to regulate the activities and appearances in court of all lawyers. Lawyers typically have studied at the College of Sharia and Jurisprudence for a three-year period. Afterward, students are employed in the Ministry of Justice or in the courts but can also choose to continue their education in sharia jurisprudence to become a deputy judge in an Omani court. Moreover, the Gulf Cooperation Council (GCC) has implemented a judge-inspection program in which announced and unannounced visits by legal experts will be made to courtrooms in the GCC countries (Kuwait, Saudi Arabia, Qatar, United Arab Emirates, Bahrain, and Oman). Judges' adherence to the laws in the countries will be the subject of the outside review.

Prison

At the age of 9, criminal responsibility attaches. However, minors between 9 and 13 years of age can be sentenced only to detention in a juvenile facility until he or she reaches 18 years of age. In Oman, punishments meted out by courts are primarily fines or incarceration. For example, in 2005, a state security court sentenced 31 people to between 1 and 20 years' imprisonment for attempting to overthrow Oman's sultan and create a purely Islamic state. Approximately 100 suspected religious extremists were arrested across Oman earlier that year.

Prisons are administered by the General Directorate of Prisons, which is a part of the Royal Oman Police. Prisons are located near Mabella and in Nizwa. Independent oversight of prisons is not generally allowed by the government; however, conditions reportedly meet international standards. According to the ROP, the objective of incarceration is rehabilitation and reform of prisoners. Each prisoner has a different color ribbon sewn on his or her clothes that represents the crime for which he or she was convicted. Prisoners participate in a variety of activities. Men's prisons have carpentry and farming, and women detainees have weaving and other traditional crafts. These items are sold at an annual exhibition that aims to inform the public about what prisoners can accomplish. In addition, Omani prisoners are encouraged to use their time to memorize the Koran.

The death penalty is a legal form of punishment for murder, but it is rarely used. Extradition of noncitizens facing criminal charges in another country is permitted except in the case of political asylum. Omani citizens cannot be extradited.

Staci Strobl

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Palestinian Territories

Legal System: Islamic/Civil/Customary
Death Penalty: Yes
Corporal Punishment: Yes

Background

Occupied by the Ottoman Empire since the mid-17th century, "Mandate Palestine" was eventually claimed by the British following the end of World War I. Increasingly disenchanted by its imperial possession, the United Kingdom decided to withdraw from the Middle East in 1948, and Palestine was almost immediately seized by a combination of Jordanian and Egyptian forces. The territories' status again transformed dramatically with Israel's momentous defeat of the Arab nations in the 1967 Six-Day War, and the Jewish state's subsequent seizure of the Gaza Strip from Egypt and the West Bank from Jordan.

Although two decades of both internal and external tension ensued, Israeli control went relatively unabated during this time period. Although Yasser Arafat's Palestinian Liberation Organization

Palestinian police officers wave Palestinian flags as they are mobbed by cheering crowds upon arriving in the West Bank town of Jenin, on November 13, 1995. Thousands of Palestinians welcomed the police officers after Israeli soldiers pulled out before dawn. (AP Photo/Santiago Lyon)

launched a series of foreign attacks against the Jewish state, it failed to either mobilize international support or win any significant concessions. This changed dramatically with the first intifada (or uprising) of 1987, which began in the Jabailia refugee camp and spread dramatically throughout the territories. Met with the Palestinian peoples' increasingly violent demands for greater control and autonomy, the Israeli government agreed to finally consider the possibility of Palestinian statehood in the early 1990s. This eventually led to the signing of the 1993 Oslo Peace Accords and Palestinian governance over certain portions of the West Bank and Gaza Strip.

Established to gradually help steer its people toward eventual statehood, the Palestinian Authority quickly found itself plagued by both uncertainty and an inability to translate its demands into concrete reality. Following the collapse of the 2000 Camp David Accords, a second and even more violent intifada erupted, which both weakened the Palestinian Authority further and strengthened more radical groups such as Hamas. This culminated with Yasser Arafat's death in 2004 and Hamas's dramatic victory in the 2006 parliamentary elections. A potential coalition between the terrorist/resistance group and the Palestinian Authority quickly fizzled, with the former organization laying claim to the Gaza Strip and the latter to the West Bank.

Although the de facto ruler of the Gaza Strip, Hamas is still considered a terrorist organization by much of the outside world and has done little to dampen this image. An acronym for "Islamic Resistance Movement," Hamas was created in 1987 by Sheik Ahmad Yassin during the first intifada and was responsible for a string of suicide bombings across Israel. Although many of Hamas's central leaders have been assassinated by Israeli forces (including Sheik Yassin himself), the organization's horizontal structure has made it incredibly difficult to dismantle and defeat. The reasons for the group's success in the 2006 Palestinian parliamentary elections are likely twofold: Hamas has successfully acted as a sort of welfare organization to many Palestinians in need, and it has long exhibited a degree of discipline (and lack of corruption) wholly absent within the larger Palestinian Authority.

Demographic and Political Context

The Palestinian territories are generally considered to encompass three main areas: the West Bank, the Gaza Strip, and East Jerusalem. The West Bank is governed solely by the Palestinian Authority and contains a population of approximately 2,400,000. Mahmoud Abbas succeeded Yasser Arafat as president of the Palestinian Authority in 2004 and has generally steered a sort of middle path, fervently demanding Palestinian statehood while also agreeing to work with Israel against Hamas. Following the elections of 2006, the Gaza Strip has been almost exclusively governed by Hamas and is estimated to have a population of approximately 1,400,000. Although Gaza's de factor leader, Hamas is, as noted earlier, nevertheless considered a terrorist organization by Israel and the United States and is therefore rarely accepted internationally as an official governing body. Led politically by Prime Minister Ismail Haniya, Hamas refuses to recognize Israel's right to exist and continues to threaten the so-called Zionist entity with existential destruction. Following a brief but brutal war in Gaza from December 2008 to January 2009, the two parties declared unilateral ceasefires and (for the most part) have ceased aggressions. Although East Jerusalem remains under serious dispute, it is currently controlled entirely by Israel and consequently lies outside the scope of this entry.

Legal Context

The Palestinian territories are neither controlled nor unified by a single legal schema, a phenomenon that has become even more complicated following the electoral successes of Hamas. As one scholar has described, Palestine is essentially governed by three legal frameworks: (1) statutory legislation (or the laws "on the books"), (2) common law and precedent (often predicated upon sharia or Islamic law), and (3) tribal adjudication (know in Arabic as *al-qada al-ashari*). To make matters even more convoluted, statutory legislation generally consists of multiple legal traditions, including

Ottoman legislation (from before British control), British Mandate acts, various laws constructed by the Palestinian Authority, and even lingering Israeli military orders. Whereas the West Bank technically adheres principally to the Jordanian penal code of 1960, the Gaza Strip officially (at least before the rise of Hamas) shuns the pre-1967 Egyptian law. Further, there is little internal coherence to what criminal laws are applied in any given situation; adjudication is inherently politicized, and different offenders may receive entirely diverse sentences based on their given social status and geographical location.

Policing

Up until the early 1990s, the Palestinian territories were entirely policed by the Israelis. This changed dramatically with the 1993 signing of the Oslo Peace Accords and the establishment of a separate and (technically) autonomous Palestinian police force. The West Bank is specifically broken into three separate zones: Zone A (which encompasses the majority of West Bank towns) is placed entirely under Palestinian control and administration; Zone B (which contains around 40 percent of the Palestinian population) is dually policed by Palestinian and Jewish forces; and Zone C (which contains only a small percentage of the West Bank's Palestinians and the majority of Jewish settlers) is exclusively controlled and administered by Israel.

Although Palestinian policing has changed dramatically through the years, it has remained under the exclusive control of the PA president and his ministers. The civil police force received international aid and professional training throughout the 1990s and during this time period was generally considered a competent police force. This changed dramatically with the second intifada, however, and the subsequent low-level warfare between Israel and the Palestinian territories. Attempting to consolidate potential soldiers, President Arafat chose to integrate the Palestinian Civil Police into the general Security Forces (widely known as Fatah), and both groups were subsequently identified as enemy combatants by the Jewish state. In a matter of months, scores of Palestinian police officers were consequently injured or killed, many West Bank and Gaza police stations effectively destroyed, and the police's formally solid communication networks rendered virtually obsolete. Indeed, according to Human Rights Watch, despite the eventual dwindling in aggression, the current Palestinian police force has yet to recover from Israel's substantial assault; police units continue to lack "technical capacity," have neither the personnel nor the equipment to operate effectively, and are only recently beginning to rebuild their physical infrastructure.

Yet it would be inaccurate to trace present weaknesses in the Palestinian Civil Police to the Israelis alone. Many officers began their careers as resistance fighters and continue to act more as political henchman than neutral investigators (especially against suspected Israeli or Hamas collaborators). This is further complicated by the Palestinian president's unchallenged authority over the civil police and his ability to undermine or outright reject court rulings or decrees of lower magistrates he finds objectionable. Further, up until 2002, no clear legislation existed to govern the relationship between the police and the courts, and judicial decrees continue to be tenuously interpreted or strategically ignored by individual officers. Recognizing that an independent and effective police force is integral for upholding internal security, the United States and European Union have recently pledged both considerable financial aid and physical aid to the Palestinian police. What form this aid will take, however, and how quickly it will materialize remains to be seen.

Although it is difficult to determine the continually shifting status of the Palestinian Civil Police, it is nearly impossible to provide any definitive account of policing in the Hamas-controlled Gaza Strip. According to the latest Human Rights Watch Report, Gaza's internal security is currently broken into two main sections: the police and the Internal Security Forces. Whereas the former's task is to control and investigate everyday crimes, the latter is directly modeled after the Palestinian Authority's National Security Forces. Both organizations often blend into one another, however, and it remains unclear how extensively each was damaged in the

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2008–2009 Israeli invasion. Further, the police force is often used purely as a political weapon and has been accused of intimidating and even murdering suspected Fatah or Israeli collaborators.

Crime

Classification of Crimes

Although a person's prosecution and punishment may vary considerably depending on whether they are located in Gaza or the West Bank, both regions recognize a similar litany of criminal offenses. Most serious are homicide, rape, sexual offenses, and assault. These are followed by theft, fraud, and drug-related crimes. Less serious, although still considered criminal matters, are road traffic accidents and so-called immoral offenses. Rape is not recognized within marriage, and acts of theft and fraud also include more serious offenses such as embezzlement and robbery. Immoral offenses are said to encompass any "violation of honor and ethical deterioration, including any ethical abuse, sexual abnormality or violation of a duty against another or the society in general," according to the Palestinian Central Bureau of Statistics, 2007. Although there is no separate juvenile justice system, offenders under the age of 18 are recognized as differing in culpability from more "mature persons."

Crime Statistics

The Palestinian Central Bureau of Statistics has attempted to record and schematize the territories' criminal statistics, but much of this data remains either rudimentary or incomplete. The most recent survey, performed from 2004 to 2005, sampled approximately 7,563 Palestinian households throughout the West Bank and Gaza Strip. Data revealed that approximately 11.3 percent reported being exposed to criminal offenses, with 1.2 percent exposed to theft and 1.5 percent exposed to property damage and assault. Individual Palestinians reported considerably higher levels of victimization, with theft/ robbery attempt around 20 percent and those exposed to threat/assault at about 13.1 percent. Nearly 60 percent of respondents reported having been harassed or assaulted by Israeli soldiers and settlers. The West Bank generally recorded lower rates of crime than the Gaza Strip, likely because of the formers' greater stability. The reported rates for homicide and sexual assault were 0.09 percent and 0.03 percent (per 1,000), respectively, although it is unclear how these statistics were gathered and calculated. The percentage of reported immoral offenses was not listed.

Violence against Women

Violence against women has proven particularly difficult for the Palestinian criminal justice system to effectively handle. According to a 2006 study by the Palestinian Central Bureau of Statistics, more than 60 percent of Palestinian women had encountered some form of abuse, with only a pittance of these cases properly recognized and addressed by the proper authorities. Perhaps most troubling were the high rates of domestic abuse and women's fear that reporting such incidents could lead to police apathy and even retaliatory attacks. Indeed, many of the existing laws actually encourage rather than deter violence against Palestinian females. Convicted rapists can often be exonerated if they agree to simply marry their victims, and women and girls who report rape or incest have been murdered by family members to remove this "horrible stain" from the family's reputation. So-called honor crimes are even more frequent against women suspected of engaging in improper behavior (such as talking to a man who is not her husband or direct relative) and frequently lead to lenient sentences or complete exemptions for the suspected perpetrator.

Drug Crimes

The increasing prevalence of substance abuse has also gained considerable attention. Although the Palestinian territories' number of drug users is believed to have increased substantially within the last few years, reliable statistics are frustratingly difficult to come by. According to one study, approximately 30,000 to 40,000 drug addicts are projected to exist in Palestine, with heroin accounting for the vast majority of addictions. Those who smoke marijuana are generally believed to be considerably younger, and synthetic narcotics such as

LSD and Ecstasy are reportedly becoming progressively popular among Palestine's youth. Because drug use remains taboo among Palestinian families, there is generally strong pressure to deny its existence. Interestingly, attitudes toward drugs can differ considerably based on their effects. Whereas stimulants such as cocaine are considered to be foreign and almost universally reviled, sedatives such as heroin or quaaludes are viewed as more "natural" and consequently less egregious. Drug use of any sort is rarely investigated by the police, however, and drug trafficking remains relatively (and fortunately) undeveloped.

Courts

General Overview

The Palestinian court system has proven significantly more stable than that of the civil police. This may be for a number of reasons. First, whereas the hodgepodge of Palestinian procedural laws offers only vague provisions regarding proper police structure and protocol, the court system has a more traditional hierarchy. Second, and perhaps more importantly, the courts have rarely been directly targeted by Israeli forces and have had to neither rebuild their infrastructure nor replace important personnel. Despite its relative stability, however, the Palestinian judiciary also suffers from a variety of setbacks. Judges are often seen more as political toadies than balanced arbitrators and are consequently distrusted by much of the Palestinian public. Second, the incredible convolution of Palestinian laws grants no clear rights to the accused, and therefore, the nature of appeals often remains ambiguous. Many citizens thus attempt to bypass judicial authority altogether and settle their disputes through tribal law rather than official adjudication.

The Palestinian Court Structure

The Palestinian justice system is inquisitorial, modeled primarily after the Jordanian and Egyptian systems of jurisprudence. Public prosecutors first investigate a crime, determine whether there is significant evidence to proceed to trial, and if so (generally) appear before a regular criminal court. Lowest are magistrate courts, which rule over all contraventions and misdemeanors and are composed of a single judge. One level up are first instance courts, which preside over felonies and are composed of a three-judge panel (usually chaired by the most senior among them). The Palestinian territories also contain three courts of appeals (although only two are presently functional), whose duty is to review objections filed in the first instance courts. Finally is the High Court, whose number of magistrates is left statutorily undetermined, but must be proportionate to the total amount of judges in Palestine. There is no distinct court for Palestinian juveniles, although punishments for minors are supposed to be both less severe and more attuned to rehabilitative goals. Although the preceding courts have technical control over all criminal offenses, the High-State Security Court has recently grown in prominence. Controlled entirely by the president of the Palestinian Authority (and set up by him on an ad hoc basis), this court generally presides over the most serious of cases, from those that carry the death penalty to accusations of treason or sabotage.

Specific Weaknesses

Although the function and structure of the Palestinian justice system is more straightforward than that of the police, it is also hampered by a number of serious deficiencies. First, there are not enough public prosecutors or judges to deal with the extraordinary number of cases that come before them. Lawyers can also be difficult to obtain and are often poorly trained and unprepared. Second, judges are almost always appointed by politicians and receive only minimal pay, which has led to a great deal of political and financial corruption. Third, although the Jordanian penal code guarantees certain (basic) rights to the accused, the intermingling of different (and even contradictory) Palestinian laws make it unclear how and when these are to be enforced. The amount of time served for a particular crime can also vary significantly based on the specific

sentencing provision applied. Finally, courthouses receive only minimal funding from the state and subsequently lack many of the resources necessary to provide complete and comprehensive trials. Indeed, when asked in 2004, over 50 percent of the Palestinian people reported having no confidence in the judicial system "at all" and believed it neither reliable nor independent.

Tribal Justice and Sharia Law

Weaknesses in the Palestinian court system have led to the increasing popularity of tribal justice, which has long been practiced within certain segments of the Palestinian (and especially Bedouin) population. Although there are myriad forms of tribal adjudication, such practices generally involve a form of conciliation between the perpetrator and the victim conducted and mediated by a respected community member. Although tribal justice is generally quick and cost-effective, it has been criticized for leading to both archaic penalties and inconsistent resolutions. The official court system has nevertheless recognized certain tribal conciliations as legitimate forms of justice and has even accepted some minor judgments as legally binding.

Although tribal justice often entails elements of sharia (or Islamic) law, this form of jurisprudence has never actually enjoyed widespread practice in the Palestinian territories. The 2002 Palestinian Basic Law contains elements of sharia law, but it is more a potential constitution for a future Palestinian state than any sort of concrete procedural document. Although sharia law may grow more widespread with Hamas's seizure of the Gaza Strip, early reports of a purely Islamic-based jurisprudence have yet to be substantiated. Of course, many Palestinian legal schemas (such as the Egyptian and Jordanian penal code) claim foundational legitimacy only through their greater adherence to sharia because this is believed to provide a necessary framework for promoting a proper moral order.

Punishment

As described earlier, Palestinian criminal law is broken into a variety of different (and often conflicting) legal statutes and historical provisions. Although this makes it difficult to calculate the exact nature of particular offenses, especially unclear are many of the reasons for and actual rates of incarceration.

Penal Statistics

According to a survey conducted by the Palestinian Bureau of Statistics in 2006, approximately 3,934 individuals were imprisoned within the Palestinian territories (excluding East Jerusalem), with 2,529 held in the West Bank and 1,405 in the Gaza Strip. The most common offense recorded was theft (approximately 25.8%), followed by assault (approximately 17.3%), and "using or trading narcotic drugs" (approximately 10.7%). Murderers and rapists accounted for 3.2 percent and 0.4 percent of those incarcerated, respectively. Least common were those imprisoned for kidnapping (2%), immoral offenses (1.9%), disturbing public order (1.9%), and failing to meet financial obligations (1.8%, though the grounds for this offense go unexplained). Although the Palestinian Central Bureau of Statistics (PCBS) should be commended for its attempt to gather viable data, one must be extremely cautious when considering the preceding statistics. Left unrevealed is how these numbers were gathered, and the largest imprisonment category is simply labeled "Others." Further, the PCBS records only the rate of imprisonment, and it is therefore entirely unclear how many offenses were settled through either fines or more informal proceedings. Finally, these statistics exist prior to Hamas's takeover of the Gaza Strip and have likely changed considerably following this critical event.

Prison Conditions

Many Palestinian prisons date back to the Ottoman Empire and are therefore in incredibly poor physical condition. The second intifada resulted in the destruction of a number of major detention facilities, and those that remain often show substantial damage from years of Israeli bombing

campaigns. Overcrowding is common in nearly every prison, and there are widespread complaints of physical abuse and even torture. Further, it is difficult to separate those persons incarcerated for purely criminal offenses from those there for political reasons. Finally and perhaps most troublingly, recent reports show that nearly 88 percent of those incarcerated have yet to be charged with any formal crime.

Capital Punishment

Of continuing controversy is the application of the death penalty within the Palestinian territories. Although the Jordanian penal code allows capital punishment for 17 separate offenses, in the West Bank, death is almost exclusively administered for the crime of murder. Traditionally, only the High-State Security Court can issue such a serious sanction, which then has to be reviewed and approved by the Palestinian president. Hamas has also shown considerable enthusiasm for capital punishment, often allowing "blood vengeance" to be carried out by victims' families. Although both the PA and Hamas claim the majority of death sentences are not politically motivated, this has been undermined by a number of state-sanctioned executions of collaborators on both sides. Further, political "murders" may not be openly endorsed by the authorities, but many are nevertheless believed to enjoy tacit approval by certain government figures.

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Persia. See Iran

Qatar

Legal System: Civil/Islamic
Murder: Low
Corruption: Low
Human Trafficking: High
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

Qatar protrudes northward into the Persian Gulf for about 100 miles and has a maximum width of 50 miles. It shares its border with Saudi Arabia in the south and the United Arab Emirates toward the east and covers an area of 6,439 square miles. The capital of Qatar is Doha (Ad-Dawhah), which is the major administrative and commercial center of the country. Qatar was a poor British protectorate that derived its income from pearling. The economy was transformed with the discovery of oil and natural gas reserves in the 1970s. Consequently, the economy was crippled during the 1980s and 1990s as a result of the continuous siphoning off of petroleum reserves by the amir who came to power in 1972. In 1995, he was overthrown by his son in a bloodless coup. Due to its oil and natural gas, Qatar has one of the highest per capita incomes in the world. According to the 2007 estimates, Qatar has a population of 907,229. A majority of the population is in the 15–64 age group, with a median age of 31.9 years. The ethnic composition consists of 40 percent Arab, 18 percent Indian, 18 percent Pakistani, 10 percent Iranian, and 14 percent other.

Qatar is a sovereign state with executive power vested in the amir, who holds the post of prime minister. Most of the members of the government are members of the royal family. Their ancestry has been traced back to the Bani Tamim, one of the sharif tribes of ancient Arabia. The executive branch consists of a council of ministers and an

advisory council of 35 appointed members. The advisory council represents businessmen, farmers, and landowners and reviews litigation that is given to them by the council of ministers. The amir appoints an 18-member council of ministers in addition to the aforementioned 35-member advisory council. The government does not allow political parties. There is a 29-member central municipal council that is elected by the people and that provides advice on municipal services.

On April 29, 2003, Qataris held a referendum to approve a new constitution. The Constitution was approved by 98 percent of the population. This new constitution became effective in 2005. Accordingly, it establishes a 45-member parliament in which 30 members are to be elected by the people and 15 members are to be appointed by the amir. It allows both men and women to vote and hold office. The first parliamentary elections were held in 2006–2007.

The government consists of 15 ministries, 7 councils, 20 authorities, and 9 institutions. The ministries include the Ministry of Justice, Ministry of Interior, Ministry of Labor and Social Affairs, Ministry of Defense, and a range of other ministries concerning education, finance, education, and foreign relations.

The seven councils consist of the following: Advisory Council, Council of Ministers, Supreme Council for Economic Affairs and Investment, Supreme Council for Family Affairs, Supreme Council of Information and Communication Technology, Supreme Education Council, and Supreme Judiciary Council. The 20 authorities include a wide range of organizations that administer charitable affairs, social security, and various other activities of government.

The nine institutions consist of the following: Aspire, Family Consultancy Center, Hamad Medical Corporation, Institute of Administrative Development, Kahramaa, Qatar Foundation for Child and Women Protection, Qatar General Post Office, Qatar Red Crescent, and Qatar University.

The Constitution stipulated that Qatar would be divided into 10 electoral districts. Each district was required to elect 4 candidates. From this pool of 40 candidates, the ruler would select 20, with 2 being drawn from each district. The selected 20 candidates formed the Advisory Council. It was incumbent upon the members to represent all the Qatari people and not merely their own districts. In 1975, the size of the Advisory Council was increased to 30 members.

Judicial System

Prior to the implementation of the Constitution, the ruler's legislative authority often overlapped or encompassed judicial functions, given that the ruler personally adjudicated disputes and grievances that came to him. The Constitution was an attempt to organize the judiciary. The secular courts were composed of a higher and lower criminal court, a civil court, an appeals court, and a labor court. In 1971, a civil code, a criminal code, and a code of judicial procedure were introduced. The secular courts have the authority to adjudicate on all cases that deal with the civil and criminal law. Because very few of Qatar's codes and judicial customs were applicable to the contemporary labor relations, a labor court was created in 1962.

Qatar's legal system has sources in sharia law, Ottoman law, and European law. Personal law is governed by sharia, but criminal law, though influenced by sharia, is not governed by it. The sharia courts and the secular courts are overseen by the higher Judicial Council. There are many lower courts, and there is a system of appeal courts. The final court of appeal is the amir.

One of the oldest elements of Qatar's judiciary is the sharia courts. These courts follow the precepts of the Hanbali school of Islam. The judges from this school follow a narrow and rigid interpretation of the Koran and the Sunna. Initially, these sharia courts had jurisdiction in all civil and criminal matters between Qatari nationals and other Muslim subjects. From 1960 onward, this jurisdiction came to be restricted by decree. In 1984, the sharia courts were restricted to adjudicate only in family matters, such as divorce, property, religious morality, and inheritance. A non-Muslim was tried in the sharia court only if married to a Muslim. During

1984, Qatar had three sharia courts with a total of six judges who also acted as notaries.

Finding of Guilt

The Constitution guarantees the legal presumption of innocence and also prohibits the use of ex post facto laws. According to the Constitution, judges are required to be independent in the exercise of their powers, and no party is permitted to interfere in the administration of justice. The judiciary was apparently independent not solely because of the constitutional guarantee but also because its jurisdiction was least likely to confront the power of the ruler. Adjudication in the secular courts was conducted on the basis of the ruler's past decrees, and the sharia courts were limited to questions of family life and personal behavior. There was no facility to judicially review the constitutionality of legislation or to make landmark judicial decisions that would challenge the ruler's plans or wishes.

Though there are sharia and civil courts in Qatar, only the sharia courts have jurisdiction in criminal cases. Because of a paucity of permanent security courts, these cases are tried by specially established military courts. Criminal cases are tried according to the sharia, and the proceedings of these trials are closed to the general public. Under the sharia system, lawyers merely prepare the accused for trial and do not play any formal role in the actual court proceedings. After the parties present their cases, and witnesses are examined by the presiding judge, the case is decided expeditiously. There is no bail; however, in minor cases, the accused can be released to the custody of a Qatari sponsor. Flogging as a method of punishment is prescribed and administered according to sharia, but physical mutilation has not been permitted since 1980.

The communications of suspects and security risks are routinely monitored by the police. Warrants are normally required for conducting searches, but these are not necessary when national security is involved. There are reports of security forces using torture and excessive force while investigating security-related and political cases. There are also some instances where suspects can be incarcerated without charge. According to the U.S. Department of State, there have been improvements in standards of police conduct. In 1991, there was a report of an incident in which a group of Qataris were detained without charge for two months for the unauthorized publication of articles and letters that were critical of the government. One of the members of this group happened to belong to the ruling family and was also reported to have been beaten.

Police

A police force of about 2,500 members has been controlled by the Ministry of the Interior since 1990. Responsibility for enforcement of the laws and arrest of violators rests with the local police forces. In 1991, the Criminal Investigation Department was replaced by the General Administration of Public Security, which was charged with the investigation of crime. The Mubahathat (secret police) are an independent part of the Ministry of the Interior that is responsible for dealing with espionage and sedition cases. The national army does not have the responsibility for maintaining internal security. However, in the contingency of serious civil disturbances, the army can be called in for assistance. The Mukhabarat constitutes a separate agency that has the task of providing intelligence and is under the jurisdiction of the armed forces. It endeavors to keep political dissidents under surveillance and to stop and arrest terrorists.

Crime

According to the eighth United Nations survey of crime and criminal justice systems, Qatar had ~~an average~~ a recorded homicide rate of 0.4 per 100,000 in 2002, and there were a total of 5,838 crimes. Of these crimes, 145 were acquitted, and 3,610 were convicted.

Because many men and women from South Asia and Southeast Asia willingly migrate to Qatar, there is a problem of human trafficking and involuntary servitude as domestic workers and laborers. There are also cases of commercial sexual exploitation.

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The most common offense is that of forcing workers to accept worse contract terms than those under which they were recruited. There are also problems regarding employers withholding pay, bonded labor, arbitrary detention, restrictions on movement, and sexual, mental, and physical exploitation.

Though the amirate has had little internal unrest, a potential source of instability emanates from the large number of foreigners who constitute a majority of the workforce. The state attempts to neutralize this threat by maintaining control over their activities and limiting the influence they have on the population. Just before the first Gulf War, many Palestinians, who worked in Qatar as businessmen and civil servants, were expelled after Kuwait was invaded by Iraq. Another potential source of instability and problems are Iranian Shiites because they are regarded as potential subversives. Foreigners also have complained of arbitrary police action and harassment and have of mistreatment upon arrest.

Punishment

According to the World Prison Population List, Qatar had a prison rate of 95 per 100,000 in 2003, of which 11.8 percent were women. It has a high population of foreign prisoners, with 55.6 percent of its prisoners being foreigners.

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Saudi Arabia

Legal System: Islamic/Civil/Common
Murder: Low
Corruption: Medium
Human Trafficking: High
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

The Saudi Arabian legal system and criminal laws are unique in many ways. Saudi Arabia is one of the few countries in the world that emphasizes a legal system based on Islamic law. This is not surprising given that Saudi Arabia is the birthplace of Islam and its Prophet and the location of two of the most sacred holy places—Mecca and Medina. Because of the emphasis on Islamic law, the country's secular laws are closely intertwined with religious laws that have the full force of the government behind them. Saudi Arabia has been an Islamic state, adhering to Islamic law, since its founding in 1926. Prior to 1926, and back to the 13th century, the Ottoman Empire ruled the country. The Ottomans, headquartered in modern Turkey, took over from Islamic caliphs who ruled from the seventh century CE. The modern Kingdom of Saudi Arabia resulted from the conquest of warring factions led by Sheikh Abdul Assiz, with the support of the British, after World War I. Since his death in 1953, a succession of Saudi kings has ruled the nation.

Islamic law is based on the rules of conduct revealed by God within two primary sources: sharia and the Sunna. The sharia (literally, "the way") are the body of rules of conduct revealed by God (Allah) to his Prophet (Muhammad) that direct people in how to live their life. The sharia is the current term used to describe the actual law that is practiced in Saudi Arabia, and it is considered the sole permissible source of legislation. For those who

believe in Islam, it is important that the law be consistent with Islamic doctrine because the religion is considered as a way of life and not just a religious practice. In addition to the conventional issues of law, including property, contracts, and inheritance, sharia is concerned with many aspects of individual behavior, including dress, food, etiquette, and religious worship. The most important source of sharia is the Koran, the Muslim holy book. The Koran is not in whole or even in part a code of laws. Only a small percentage of the Koran includes any writings that may be construed as legal rules. Therefore, to deal with many legal matters not specified in the Koran, other sources of law are considered. Some of these are traditions derived from the statements and actions of the Prophet that were recorded in the Sunna.

The Sunna (also called the Hadith) is the second major source of Islamic law. It contains those decisions of the Prophet Muhammad that deal with issues not directly addressed in the Koran. It is important to mention, however, that in addition to the Sunna and sharia, there were, and remain, sources of law developed by different schools of Islamic law in the centuries after the death of Muhammad in CE 632. These were writings that stated the common consent of Islamic jurists (called Ijm'a) and cases decided through a process of reasoning by analogy (called *qiyas*). The latter is applied when a case or legal question is not clearly answered by the primary sources of the Koran, Sunna, or Ijma. When there is a conflict between traditional Islamic law and modern legal needs, a Judicial Council consisting mainly of a number of religious leaders will reconcile the matter. In addition, the king may supplement sharia through decrees when conditions require such extension.

There are actually four major schools of Islamic law, derived from religious leaders living in different areas and facing different problems in the two centuries following the death of Muhammad. These schools are Hanafi, Hanbali, Maliki, and Shafi'i. The main differences between these schools are in matters of emphasis, whether on tradition, judicial reasoning, or the elaboration of the Koran. Different countries tend to follow one or another school of Islamic law. The primary legal tradition in Saudi Arabia is the fundamentalist Hanbali school, named after the great theologian and jurist Ahmad Ibn Hanbal (CE 780–855). It is believed that the Hanbal school of Islamic law was adopted by Sheikh Abdul Assiz because that was the school adhered to by the Wahhabi (and Sunni) sect—the fundamentalist Islamic sect that he favored.

Because the country is governed according to the sharia, there is no separate and formal constitution, although some Saudis consider the Koran, the holy book of Islam, to be the constitution. In 1993, a document called the Basic Law (*nizam*) was introduced that articulates the government's rights and responsibilities. Although not a formal constitution and lacking some of the basic principles of other nation's constitutions, such as the rights of assembly and diverging religious expression, it fulfills many of the same purposes of such a document. Today, Saudi Arabia is an absolute monarchy governed by the Islamic law (sharia) and the Basic Law. The king is the prime minister and the guardian of Islam, and he appoints the Council of Ministers, which then selects the officials of the Ministry of Justice, which then presides over the sharia-based criminal justice system. In Saudi Arabia, the Council of Ministers makes decisions on the basis of majority vote, but the king must approve all final decisions. The criminal justice system is administered according to the sharia through religious courts whose judges (called *qadi*) are appointed by the king on the recommendation of the Supreme Judicial Council, which is made up of 12 senior jurists. The independence of the judiciary is protected by law. The king acts as the highest court of appeal and also has the power to pardon. Islamic law reflects the inquisitorial system through the strong cooperation between the judge and the investigator of the particular criminal offense and a lesser adversarial nature of defense attorneys.

World events, such as the terrorist acts of September 11, 2001, in the United States, have created complications for the Saudi government. Although Saudi Arabia remains a strong ally of the United States, economic and cultural ties with individuals

and groups associated with terrorism have caused both countries to question the safety of Saudi and American interests in the region. Saudi Arabia has taken a number of steps to improve its internal security and support the fight against terrorism. Among the measures taken has been the implementation of international agreements to disrupt money laundering, the freezing of assets of individuals and groups believed to be linked to terrorist organizations, and working closely with the Untied States to root out terrorist networks. In addition, Western influences have begun to call for a liberalization of politics and social policies such as better treatment of women and more human rights for criminal offenders. However, religious extremists have moved strongly, even to the point of violence, to remove Western influences from the country. As a result, the Saudi government has now the difficult task of keeping internal peace while maintaining positive relations and upgrading its international reputation.

On October 31, 2003, a Saudi woman adjusts her veil in the food court of a Riyadh, Saudi Arabia, shopping mall. Saudi religious police patrol the malls to enforce strict segregation of the sexes and to ensure that women are properly covered. (AP Photo/Hasan Jamali)

Police

Saudi Arabia's highly centralized police force was formally developed by royal decree in 1950 by King Abd al Assiz. The minister of the interior, who is appointed by the king, is responsible for the administration of all police matters. The main police force is actually called the Department of Public Safety. Police in the Department of Public Safety handle most of the daily law enforcement functions in the country. The department is divided into the regular police and the special investigative police of the General Directorate of Investigation (GDI)—the *mubahith,* or secret police. The *mubahith* conduct criminal investigations and handle matters pertaining to domestic security and counterintelligence.

Saudi Arabia is divided into 14 provinces or emirates that make up the country's administrative divisions. Each of the provinces is run by a governor, but the police are directly administered by a general manager who controls the activities of the police within that area. The managers are responsible to the provincial governors, who are directly answerable to the director of public safety. The director is actually the head of the Saudi police and is a high-ranked official in the Interior Ministry. The director appoints most of the managers and officers of the local police forces. Under the provincial forces, there are also municipal forces.

In addition to the Department of Public Safety police, Saudi Arabia also has a "morals force," the religious police known as *mutawa* (or *mutaween*), which ensures that Saudi citizens live up to the rules of behavior derived from the Koran. This agency, also called Saudi Arabia's Commission for Promotion of Virtue and Prevention of Vice, has a membership of around 20,000 men; they are

usually bearded men who wear traditional Arabic white robes (*kamees*). They are not armed and not trained as law enforcement personnel. Their roles are many and outlined in the commission's regulations, including to maintain strict separation of the sexes in Saudi public life, pressure women to wear the traditional long black robes and face coverings, and stop women from driving cars. The *mutawa* also ensures that businesses are closed during prayer hours, cover up advertising that depicts attractive women, and regulate alcohol use. They also have been known to disperse gatherings of women in public places designated for men and to prevent men from entering public places designated for families. One of the more surprising rules that the *mutawa* enforces is that women are not allowed to buy music from music stores; in fact, music in general is suspect in the highly puritanical Saudi society. Although the regulations do include a variety of behaviors describing what is "right and wrong," the *mutawa* are sometimes left to their own interpretation of the regulations. As a result, there are numerous reports of the mistreatment and harassment of many Saudi citizens, especially women, and foreign workers. Police have been known to be very aggressive in their investigation and arrest techniques.

When it comes to handling large crowds, the Saudis use what is called the Pilgrims and Festivals Police Force. This special force is used to control the large throngs that gather during the annual pilgrimage to the cities of Mecca and Medina. When these police are unable to handle problem situations, the National Guard and Saudi Army are called in.

Crime

Classification of Crimes

The Saudi government does not actually publish or disseminate a penal code, code of criminal procedure, or code of judicial procedure, and only a limited number of other laws exist in any published form. As mentioned previously, all legal decisions must be made under the auspices of Islamic (sharia) law, and all are subject to the approval of government-appointed religious leaders. However, that does not mean that there is no classification of crimes in Saudi Arabia. Crimes are classified according to whether they are acts against God or crimes against others and society. Crimes against God (*hudud* crimes) are very serious and seen as violations of "natural law"; they include theft, robbery, blasphemy, apostasy (voluntary renunciation of Islam or its rules), rebellion, and defamation, as well as drug offenses and sexual crimes such as adultery, sodomy, and fornication. These crimes are all tried in the sharia courts. As for punishments (called *hadd*) for these crimes, there are specific punishments implicit in the sharia.

All other crimes are private wrongs against individuals or against society and are called *ta'azirat* (or *tesar*) crimes. Those crimes include murder, manslaughter, or personal assault. If the crime is one that threatens a family's livelihood, as may be the case in murder, manslaughter, or assault, then *qisas* (retribution) or *diya* (compensation or fines) may be required. The blood money is given to the victim or the victim's family. In the case of *hudud* crimes, the state must initiate prosecution; in *ta'azirat* crimes, the victims or heirs theoretically must bring a complaint and serve as prosecutor. In practice, however; the state usually initiates these proceedings as well. Nor is the distinction between *hudud* and *ta'azirat* crimes as great as it seems, given that all criminal cases in Islamic countries are decided in government-run courts, and most punishments are fixed by the courts in accordance with religious or traditional rules. In cases where the punishments are not fixed, the judge (*qadi*) prescribes the sentence.

A third category of crimes deals with infractions not covered by the sharia such as personal disputes, labor law, trade law, corporate law, taxation, oil and gas, and immigration issues. These crimes and their punishments have developed over the years as Saudi Arabia has become more industrial and modern and, as a result, has needed additional codes of behavior to regulate public order and security. Until recently, these matters were handled administratively by secular tribunals set up by the king. But in 2007, a new legal decree was written called the Judiciary Law and Court of Grievances. The decree sets up specialized circuit courts that will

address personal, trade, and labor disputes. It also calls for the development of new courts of appeals and a new High Court. The new High Court will replace the Supreme Judicial Council, which will now handle only some administrative matters such as judicial appointments. This new decree is seen as a significant development in the Saudi criminal justice system because it provides additional levels of courts and theoretically more legal guarantees for those seeking legal protection or redress.

Saudi Arabia does not have a separate juvenile justice system, so age is not an issue relative to criminal responsibility. Saudi authorities determine both whether a juvenile should be treated as an adult and the appropriate sentence for a juvenile based on the individual child's physical characteristics (e.g., having reached puberty) at the time of trial, sentencing, or execution of sentence. This is part of the judges' wide discretion to interpret the sharia. Strict punishments, the same as used for adults, remain the standard in Saudi Arabia. Included in this list are the imposition of the death penalty and corporal punishments that include amputation and flogging. In fact, corporal punishment is viewed as having a strong deterrent value, so it is often used in punishing juveniles.

Critics have charged that the Saudi method of dealing with juveniles is contrary to recent legal developments in international law relative to the treatment of juveniles. As a result, there has been a call within the international community and within Saudi Arabia itself to move the government to set a unified age of majority for both criminal and civil matters to 18. In 2008, Saudi officials responded by drafting a law that contained 24 articles, including provisions defining the term "child," prohibiting abuse in the home and in institutions, and prohibiting children's use in sexual exploitation, begging, and trafficking. However, the law has not yet been formally passed, and it is unlikely that the law will pass international standards because it still would not prevent judges from issuing death sentences for crimes committed while the offender was under age 18. Instead, it will require only that execution be postponed until the child turns 18. In January 2006, however, the government of Saudi Arabia informed the UN Committee on the Rights of the Child that it had raised the minimum age of criminal responsibility to 12 years for males. Young girls are not protected by any minimum age of criminal responsibility. Nevertheless, if true, this would represent a significant advance on previous practice, which had set the minimum age of criminal responsibility at 7 years.

Crimes Challenging to Saudi Arabia

Terrorism

Terrorism in Saudi Arabia revolves around religious factionalism. This should come as no surprise in a country where religion and religious orthodoxy are major preoccupations. As explained earlier, the prevailing religion in Saudi Arabia derives from the conversion in the late 19th century of King Abdul Assiz to the fundamentalist Wahhabi sect, which is tied to the Sunni branch of Islam. One of the deepest divisions within Islam is between Sunnis and Shiites. In Saudi Arabia, as well as in Bahrain, Oman, and Yemen in the Arabian peninsula, radical Shiites have used terrorist tactics to destabilize the Sunni regimes, spread Shiite fundamentalism, and combat secularism and Western (especially Israeli) influences.

In recent years, the most serious acts of terrorism in Saudi Arabia has taken two forms. The first are attacks clearly directed at the United States. For example in June 1996, 19 people were killed and 500 wounded when a truck bomb exploded at the U.S. military base near Dhahran. More recently, in May 2003, suicide bombers in booby-trapped cars filled with explosives drove into the Vinnell, Jadewel, and Al-Hamra housing compounds in Riyadh, killing 9 U.S. citizens. The second are isolated terrorist attacks aimed at Saudi institutions and governmental offices. For example, in April 2004, a suicide car bomb exploded at Saudi Arabia's national police headquarters, killing 4 and wounding 125. In each of these cases, Al Qaeda was blamed for the attacks although there was no claim of responsibility by any group. The increasing volume of these kinds of incidents, along with some public dissent from citizens and foreign nationals who are unhappy with

the American invasion and occupation of Iraq, has raised concerns about terrorism for Saudi authorities. In the past, because terrorists did not appear to be highly organized or to have much connection to each other, acts of terror were seen as isolated incidents. This is no longer the case, and it is now believed that terrorists are targeting not only foreigners but also the nation itself.

The Saudi police have begun a crackdown on terrorism including the 2003 investigation and arrest of people believed to be linked to bin Laden's terrorist network. Since May 2003, the Saudi government has claimed they have captured or killed most of Al Qaeda's Saudi-based senior leadership, operatives, and most wanted individuals. During 2007, the Saudi government announced the arrest of more than 400 terrorists and their supporters, including terrorist financiers and those advocating extremist ideology over the Internet. Government officials have indicated that more than 9,000 suspected terrorists and their supporters have been arrested since 2003, and more than 3,100 remain in custody.

Human Trafficking

Another crime that is known to occur in Saudi Arabia with some regularity and in violation of international law is human trafficking. Saudi Arabia is a destination country for trafficking of men and women. More specifically, men and women voluntarily come from numerous countries in Asia and Africa to Saudi Arabia for the purposes of gaining employment as domestic servants or other low-skilled laborers, but what results is involuntary servitude, commercial sexual exploitation, restrictions on movement, withholding of passports, threats, physical or sexual abuse, and nonpayment of wages. In addition, Saudi Arabia is also a destination country for Nigerian, Yemeni, Pakistani, Afghan, Chadian, and Sudanese children who after arrival are trafficked for involuntary servitude as forced beggars and street vendors. The government of Saudi Arabia does not fully comply with the international minimum standards for the elimination of trafficking. As a result of the lack of attention to this matter, the U.S. Department of State has designated Saudi Arabia as a Tier 3 violator of the standards set in the Trafficking Victim Protection Act of 2000 passed by the U.S. Congress. The Saudi government states that it does not believe that trafficking of persons is a problem because foreign workers come to the country of their own volition. The government similarly does not take law enforcement action against trafficking of persons for commercial sexual exploitation, nor does it take any steps to provide victims of sex trafficking with protection.

Crime Statistics

It is somewhat difficult to summarize the nature and extent of crime in Saudi Arabia. There are at least three reasons why this difficulty persists. First, crime is often underreported in Saudi crime statistics because the sharia promotes informal and nonlegalistic responses to criminal behavior. As a result, cases are often handled "unofficially" by the police and courts. This method of dealing with offenders exacerbates the problem of gaining verifiable data about the true extent of crime in Saudi Arabia. Second, there is the problem of determining crime rates over the course of the calendar year. The Arabic lunar calendar (Hijri) is based on the Islamic year, which has only 354 days rather than the Gregorian standard of 365. This slight difference over time makes crime measurement and comparisons problematic. Finally, it is well known that much of what goes on in the area of social policy and government in Saudi Arabia is not always released as public information. In this way, Saudi Arabia, like other countries that are not generous with sharing social data, believes that certain information such as crime data should not be made public. Saudis consider information about crimes and drug usage as state secrets and believe that withholding such information may be necessary for reasons of "internal security." Crime data are only one of the many areas in which we have limited knowledge about the Saudi criminal justice system.

In spite of the obstacles to measuring crime in Saudi Arabia, one can still state with confidence that crime is very low in comparison to most countries.

As with other countries with low rates, there is probably a combination of factors contributing to the low crime rates in Saudi Arabia. One possible explanation is that Saudi Arabia in some ways still is not a highly developed country and is certainly not highly urbanized, despite its great wealth per capita. For example, a sizable portion of the population continues to be nomadic Bedouins, who are unlikely to resort to a formal legal system to settle their disputes and resolve their crime problems. This way of living may be changing, however, as the country becomes more modernized and grows in relative wealth.

Another explanation offered by some criminologists and the Saudis themselves is that the harsh corporal punishments they employ, which are based on a philosophy of retribution, serve as effective deterrents to crime. For example, it is possible that the harsh punishments for drug traffickers, including the death penalty, may help to control the drug problem. A third explanation is that the low crime rate likely reflects the way the Islamic religion, most notably the sharia, permeates every aspect of society. There is no disconnect between Islam, the views of the government, and the society at large when it comes to behavior. Any violation of law is seen as an affront to not only the laws of society but also to the laws of God.

By any measure, and even in comparison to other Islamic countries, Saudi Arabia has a minuscule crime rate. Crime statistics compiled by the 8th United Nations Crime Survey reveal the most recent (2002) available statistics for Saudi Arabia, showing that the nation had an overall crime rate of 386.54 per 100,000 population, including a (completed) homicide rate of less than 1 (0.92) per 100,000 population. Rape (0.27) and auto theft (85.52) were also rare occurrences in Saudi Arabia. According to 2000 INTERPOL crime data, robbery rates in Saudi Arabia are also very low, at 0.14 per 100,000 population.

Although not as large a problem as in other countries, drug crimes have increased in recent years in Saudi Arabia. INTERPOL reported in 1988 that Saudi Arabia had a crime rate of 35.6 per 100,000 population for drug crimes. United Nations data for 2001 reflected an increased rate to 48.83 per 100,000. However, interestingly, the rate dropped to 5.74 in 2002. According to some sources such as the CIA, there has also been an increase in the consumption of heroin and cocaine in Saudi Arabia in recent years. However, because of the dearth of crime data made available from Saudi Arabia, it is difficult to obtain an accurate read on the extent or rate of crime.

Finding of Guilt

Rights of Accused

The question of rights of the accused in Islamic law has been debated by both Islamic and non-Islamic scholars. Saudis, in particular, have long felt that the "rights" of accused persons are not overly important in terms of formal procedure in Islamic law but exist more in terms of the need for justice and community welfare. In response to claims that they fall short of international standards, the Saudis have responded that the universal principles of the Koran protect humans better than current international treaties and conventions. Hence, legal officials have historically turned to this source for guidance with respect to criminal procedure. However, in recent years, two major developments have indicated a change in the way that the Saudis view the treatment of those accused of crime. In 2001, the Saudi government enacted a new code of criminal procedural law for those accused of the commission of crimes. The published document, called the *Protection of Human Rights in Criminal Procedure and in the Organization of the Judicial System* (hereafter called the criminal procedure law), addresses the treatment of offenders through each step of the criminal justice process from criminal investigation through the trial and dealings with those found guilty of crime. With the publication of this document, the international community hopes that the Saudis will address many of the human rights violations reported by such groups as Human Rights Watch and Amnesty International, as well as complaints lodged by individual citizens. Among the 225 articles of the criminal procedure law are the following:

- An arrested person "shall not be subjected to any bodily or moral harm" or to "any torture or degrading treatment."
- Any person arrested or detained shall "be advised of the reasons of his detention."
- Interrogation "shall be conducted in a manner that does not affect the will of the accused in making his statements."
- Notification of the reasons for detention should be prompt.
- Suspects have the right to contact their lawyer or legal representative to exercise their right of defense.
- The accused must be informed of charges, must understand the nature of the proof, and must have the opportunity to reply to the charges.

A second important development that may impact the future of Saudi criminal procedure occurred in January 2003 when the Saudi government for the first time allowed an official Human Rights Watch delegation to visit the kingdom. The reform of the criminal justice system was one of the main areas of discussion with Saudi ministers and other senior officials.

Investigation

The investigation and subsequent prosecution of criminal cases in Saudi Arabia are carried out during the initial (pretrial) stage by the Public Investigation and Prosecution Department. First, the criminal investigation officers conduct the necessary inquiries about the alleged offense, including obtaining evidence, conducting interviews of complainants and witnesses, and preparing the report that is sent to the Public Investigation and Prosecution Department, where the investigator determines whether the case should proceed to trial and what level of freedoms and rights should be given to the suspect. For example, here it is determined by the investigator whether a suspect should be remanded to custody while awaiting a formal trial. At this stage, proof and evidence are collected for the indictment brought before the examiner, and the results of the investigation will determine what level of crime the suspect will have to dispel at the trial stage. Thus, an investigation that results in more serious crime charges will undoubtedly lead to a more difficult case to defend against. Because of the importance of the role of the investigator, the criminal procedural law specifically states who shall conduct criminal investigations: members of the Public Investigation and Prosecution Department; police chiefs and their assistants; officers of the Border Guard, the Special Security Forces, the National Guard, and the Armed Forces; heads of governorates and administrative centers; captains of Saudi naval vessels and aircraft; public officials and persons vested with criminal investigation powers under the terms of special regulations; and heads of local Committees for the Propagation of Virtue and the Prevention of Vice.

Pretrial Detention

The issue of length of stay prior to formal adjudication is a controversial one in the Saudi criminal justice system. Technically, there are regulations governing questioning, arrest, and remand in custody. After the arrest, the investigator (also called the examiner) may remand the suspect to detention for 5 days. But the investigator is allowed to extend the detention after filing a request with the local branch of the Bureau of Investigation and Prosecution. The extension of the detention must not exceed the total of 40 days from the period of arrest. The suspect must be released by the end of 40 days unless another request is made to the Bureau of Investigation and Prosecution for another 30-day extension. These extensions should not last beyond 6 months. By the end of that period, the suspect should be released or sent to the appropriate court for adjudication.

If suspects are remanded in custody, they should not be detained where there are those already adjudicated, and the period of their remand in custody must be deducted from the period of their sentence if they are found guilty of the offense. The problem arises, however, in the application of these rules, especially as of late, with the growing number of terrorism examinations and prosecutions in

Saudi Arabia. Numerous accounts of Saudi citizens and foreign nationals being kept for long periods of time have been documented. Because of the emphasis on the need for confessions in Islamic criminal process, there are also serious suspicions and verbal accounts about the way confessions are retracted during the examination stages of the process.

Trials

Trials in Saudi Arabia are held without jurors and are generally closed. Justice is dispensed in Saudi Arabia solely by "*qadi* justice," that is by an Islamic judge who makes decisions on a discretionary case-by-case basis. The qadi receives his authority through adherence to the Koran and the legal traditions developed by various schools of legal jurisprudence. The judge has no need to justify exclusion of outsiders—they may be excluded to protect the privacy of the parties or for the sake of morals.

The standard of proof is high in Saudi Arabia, and the courts generally follow the stringent rules of Islamic law. The rules require a number of witnesses of particular kinds, and the accused is considered innocent until proved otherwise. For some *hudud* crimes (acts against God), which include apostasy, rebellion, theft, adultery, defamation, and drug offenses, the standard of proof is especially high—so high that it is not often adhered to in Islamic courts. For example, proving adultery requires the testimony of four witnesses (who must be male Muslims) or a confession. But confessions can be easily retracted, so such a standard of proof is not easy to obtain. For apostasy, which is the renunciation of Islam by a Muslim, two witnesses or a confession is required as proof. For crimes against persons, witnesses or confessions are also required as proof. Various types of homicide, assault, and fraud usually require two witnesses. Further, not just any witness is acceptable in the Islamic courts; non-Muslim testimony is not accepted, and witnesses must be male (although in some cases two females can be substituted for one male) and have sound mind and character.

Alternatives to Going to Trial

Plea bargaining in Saudi Arabia is available, although it is not applied nearly as much as in other countries such as the United States. In matters where offenders may be likely to receive some form of corporal punishment, the better alternative may be to plead guilty to the lesser offense to lighten the physical punishment. Many of the cases in which pleas are sought are in matters related to corruption or illegal business practices. In those matters, corporate officials request being charged for lesser offenses in exchange for paying large sums of money as fines.

The new criminal procedural law also provides for "special therapeutic measures" for mentally disturbed offenders. These therapeutic measures consist of confinement in hospitals for mental illnesses. In accordance with the provisions in the sharia, any person who is insane at the time of his commission of an offense cannot be held criminally responsible. However, if he becomes mentally disturbed after committing the offense, the offender must be transferred to a hospital for mental illnesses.

Courts

Under the king, the Saudi court system employs at least 700 judges. The largest part of the Saudi court system is the sharia courts, which have traditionally been organized into four levels: courts of the first instance (called summary and general courts), the Court of Cassation, and the Supreme Judicial Council. The summary courts, also called *musta'galah* courts, are convened by one judge (*qadi*) and are found in almost every town; where there are none, the general courts gain jurisdiction. Summary courts deal with minor domestic matters, misdemeanors, and small civil claims. The general courts, also called *kubra* courts, are convened generally by one judge. but in more serious matters, three judges preside. They have original jurisdiction over all criminal and civil cases that fall outside the jurisdiction of the summary court, such as those strictly regulated by a statutory law and cases that may require capital punishment and amputation and monetary damages (for crimes) exceeding one-third of the *diya* (blood money). The summary and general courts

have jurisdiction over *ta'azirat* (discretionary punishment) cases and over *hadd* (Koranic prescribed punishment) cases. The general court cannot issue a death sentence by way of *ta'azirat* (discretionary) unless there is a unanimous vote by three judges. If there is a dissenting vote, the minister of justice will assign two additional judges (total five) who can issue the death sentence by a majority vote.

The Court of Cassation has traditionally served as a court of appeals for lower court judgments, and it consists of different divisions (criminal, civil, administrative). The head judge, called a president, oversees the selection of vice-president judges who are appointed on seniority basis. Three judges are involved in each division, headed by the president or a vice president, except in cases involving offenses punishable by death or amputation, in which case decisions are handed down by five judges. The Court of Cassation actually serves as an automatic review of the lower courts in cases where death, amputation, or serious flogging is involved.

The Supreme Judicial Council, also called the Higher Council of the Judiciary, provides the next level of the Saudi court system. This council has served as a level of appeal in addition to being the agency that makes regulations and policies for administering the court system of the country as a whole. Supervising the courts and serving as the main decision-making body for hiring, promoting, and transferring judges are major responsibilities. The court is composed of 11 members: a president and five full-time and five part-time members. Any verdict by the Supreme Judicial Council is subject to the review of the king.

With the 2007 reforms to reorganize the judicial system, the Saudis will soon include a new judicial arrangement abolishing the existing courts of appeals and establishing new courts of appeals in all 13 provinces. These courts will divide their caseloads among specialized labor, commercial, criminal, personal status, and civil circuits.

Qualifications of Judges

Not surprisingly, judges in Saudi Arabia require significant training and study in Islamic law. Aspiring lawyers and judges are required to attend religious preparatory schools for five years prior to attending the sharia institutes or colleges. After graduation, future judges must attend a judicial academy and an institute of public administration at which they will learn their craft, including two months of training in the commercial, labor, and criminal procedure laws and other relevant regulations. In addition to their educational legal training, Saudi Arabia assigns newly appointed judges to a court for a two-year probation period so that they can become acquainted with its working procedures. During the probation period, the judges are given simple cases and settlements that are referred to them by the court's presiding judge, who reviews and approves the judgments before they are handed down.

Juvenile Justice System

Saudi Arabia has few laws or regulations that explicitly address juvenile offenders. However, Saudi Arabia does have juvenile (only) courts staffed by sharia (adult court) judges. The kingdom also operates 13 social observation facilities used to hold Saudi and foreign boys ages 12 to 18 who are under investigation, facing trial, or being detained per a judicial order. There are also four welfare institutions used to hold girls and young women under age 30 who are under investigation, facing trial, or being judicially detained.

However, even with these special courts and facilities, there is in reality no clear "separate system" where juveniles are clearly treated differently than adults from the beginning to the end of the criminal justice process. The way the system for juveniles actually works is based on the broad discretion of criminal justice officials who use the basics of Islamic law (sharia and the Koran) to make legal decisions. Saudi officials determine to use many of the same criteria for arresting, detaining, and punishing juveniles as they do for adults. Consequently, some juvenile offenders are subject to arbitrary decisions that some would argue are in violation of individual rights. In Saudi Arabia's new law of criminal procedure passed in 2002, procedures were specified for adult offenders, and the law also specified

that the investigations and trials of juvenile offenders, including young females, would be conducted in accordance with the set laws and regulations. However, the Saudi government has yet to issue laws and regulations specifically addressing arrest, investigation, trial, and sentencing procedures for juveniles.

Punishment

Types of Punishment

For those who commit serious offenses in jurisdictions with Islamic law, the punishments prescribed are in the Koran and are often very harsh, with emphasis on corporal and capital punishment. Under sharia law, imprisonment is in fact the punishment of last resort. But that does not mean that there are no other forms of punishment that are at least available for offenders, especially for lesser offenses. Some of the alternatives to corporal and capital punishment include the following:

- *Suspended sentences.* These can be used by judges in cases where the offense is not very heinous and the offender appears to have a sincere desire for rehabilitation and when their personal circumstances warrant consideration for such a sentence.
- *Probation.* Probation is provided for offenders in Saudi Arabia after they have served time in prison and when they have shown that they were willing to follow the rehabilitation program provided while incarcerated and that departure from prison would enhance that person's rehabilitation further. The Prison and Detention Regulations of the Kingdom, specifically article 25, provides for release on probation.
- *Release on health grounds.* Saudi Arabia has found that for humanitarian reasons, an offender can be released from prison based on health grounds.
- *Pardon.* An infrequent sentencing option, one used after sentencing or during the period of incarceration, is the pardon. The pardon is granted by the king and would most likely occur during the religious holiday of Ramadan. Interestingly, a number of prisoners facing the death penalty are pardoned by relatives of the murder victims and saved from execution.
- *Semi-liberty.* This is provided when an offender is sentenced to incarceration but is assigned to work outside the prison. The prisoner is permitted to leave every day in the morning but must return in the evening.
- *Prison.* Prison is not the conventional sentencing recourse in Saudi Arabia, but nevertheless, prisons do exist to house those awaiting trial and also those criminal offenders who are not deterred by the corporal punishments.

Death Penalty

Although there is an international trend away from the death penalty, Saudi Arabia is one of the countries that not only has retained its use but also has used it with considerable frequency. In fact, during 2007, Saudi Arabia was one of five countries, along with China, Iran, Pakistan, and the United States, that accounted for almost 90 percent of the known documented executions carried out throughout the world, according to an Amnesty International report.

The sharia allows for the death penalty for a variety of capital offenses such as adultery, sodomy, apostasy, drug trafficking, rebellion, and armed robbery. Executions are usually by public beheading, although executions for adultery may be by stoning. The severity of the punishment (*hadd*) is due to the fact that these crimes are seen as crimes against God (*hudud* crimes) and thus are very serious, seen as violations of "natural law." At the same time, murder and manslaughter as well as other crimes are considered not particularly as crimes against God, but more so against persons, so the punishment is more at the discretion of the court. With these crimes, called *ta'azirat* crimes, the courts can still call for the death penalty.

In cases such as murder or manslaughter, the victim's family can support the sentence and call for retribution (*qisas*) or mitigate the sentence and ask for monetary compensation (*diya*) or even a pardon. However, as mentioned earlier in this chapter, the

real distinction between *hudud* and *ta'azirat* crimes is minimal. All criminal cases in Islamic countries are decided in government-run courts, and most punishments (*hadd*) are fixed by the courts in accordance with religious or traditional rules. In cases where the punishments are not fixed, such as with *hudud* crimes, then the judge (*qadi*) prescribes the sentence.

It is very difficult to know how many people in Saudi Arabia receive the death penalty because official statistics are not available. What we do know is provided by a variety of sources, most notably by human rights groups such as Amnesty International (AI), although AI has not been granted formal access to Saudi Arabia. The most recent data indicate that the Saudis executed at least 158 persons during 2007. The same sources indicate that the rate of executions for the beginning of 2008 was actually higher than in 2007. Additional information that is available tells us that the 158 executed in 2007 is almost double the number executed in 2005, when there were "only" 86 known executions.

What may be most troubling, however, about the use of the death penalty in Saudi Arabia is its use on juveniles. In January 1996, Saudi Arabia ratified the United Nations Convention on the Rights of the Child (CRC), undertaking not to execute anyone for offenses committed when they were less than 18 years of age. However, according to recent reports, child offenders continue to be sentenced to death, and in 2007, some cases the punishment was carried out.

Prisons and Prison Inmates

According to the Eighth United Nations Survey on Crime Trends, the 2002 Saudi prison population was reported to be 28,612, with a rate of 132 per 100,000 persons in the population. Almost 6 percent (1,639) of the inmates were female, and almost 47 percent were foreign inmates. This 2002 rate is up from 1998, when 23,088 were incarcerated with a rate of 114 per 100,000, and a considerable increase from figures reported in 1994 that listed 7,939 inmates and a rate of 46 per 100,000. To house the almost 30,000 inmates, the Saudi government claims support for 104 adult correctional facilities. These totals probably do not include juvenile offenders who are detained in one of the 17 (13 male) special juvenile correctional facilities. Recent figures (2004) place around 13,000 juveniles in detention in that year.

There are many mixed reports about the conditions of prisons in Saudi Arabia. Anecdotal reports, often published by individual citizens or human rights organizations, frequently claim poor treatment of offenders relative to quality of prison conditions. However, according to the most recent (2005) Saudi Arabia Country Report on Human Rights Practices posted by the U.S. Department of State, "prisons and detention centers [in Saudi Arabia] were generally acceptable, according to international standards." However, problems do exist with some prisons that have "below-acceptable standards in hygiene, food, medical, and social services . . . jails remained overcrowded, and some detainees were allowed family visits only after a significant period of time after their initial incarceration."

The largest prison in Saudi Arabia is the Al-Ha'ir Prison, located 25 miles south of Riydah. The prison incarcerates offenders convicted of common criminal offenses and some Al Qaeda operatives who have been convicted of terrorism activities. Because of the growing number of those arrested and convicted of crime and terror-related activities, the Saudis have recently begun construction on five new high-security prisons, each able to accommodate 1,200 inmates. The prisons are designed to separate the common criminal from Al Qaeda and other terrorists. The prisons will also provide "rehabilitation" programs to terrorist insurgents through the use of dialogue and Islamic indoctrination. The buildings of the new prisons are also part of a larger movement by the Saudis to improve prison conditions and treatment of offenders, especially in light of allegations of abuse and prisoner maltreatment at facilities, in particular Al-Ha'ir Prison.

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Sudan

Legal System: Islamic/Common
Murder: High
Corruption: High
Human Trafficking: High
Prison Rate: Low
Death Penalty: Yes
Corporal Punishment: Yes

Background

The Republic of Sudan is the largest country in Africa. Although Sudan's Arab population is only 39 percent, and the black African population is 52 percent, Arabs continue to control the government, military, and police forces. The Sudanese criminal code was formerly based on British law and the penal code of British colonial India. As a former British-Egyptian colony, the Sudanese legislative lawmaking assembly was established in 1948, in the aftermath of a weakened British empire following World War II.

Justice System

The legal structure of Sudan has been in constant transitional tribulation. Although attempts have been made to form a democratic nation with a constitution and parliament, this feat has never been fully realized because of ongoing economic problems, government corruption, and rebellion. Although a parliament theoretically exists, there is little southern representation, and most of the government has been appointed by President Bashir. Historical attempts to create a democracy in Sudan have been short-term and interrupted by numerous military coups. Today, Sudan is considered to be an authoritarian republic.

Legislature

The legislature consists of 24 representatives with some elected and some appointed by the president. Today, the legislative authority within Sudan is divided into two chambers. The Transitional National Assembly (Majlis Watani) consists of 450 appointed members who represent mainly the National Congress (NIF) ruling party and, in smaller number, the Sudan People's Liberation Army (SPLA) and other opposition political parties. The Council of States (Majlis Welayat) has 50 members who are indirectly elected by state legislatures. Members of the national legislature serve six-year terms. Friction between SPLA political representatives and members of the ruling National Congress are constant with noted police raids on SPLA offices in Khartoum.

Judiciary

In the aftermath of the 1991 military coup, the NIF organized a 15-member (reduced to 12 members in 1991) Revolutionary Command Council for National Salvation (RCC) under the leadership of President Bashir. The RCC declared a state of emergency across the country and granted itself broad policing powers. Bashir's government reintroduced sharia laws to the southern provinces by passing a new penal code known as the Criminal Act of 1991. Harsh punishments that included amputations and public stoning were reinstituted. By 1993,

all non-Muslim judges in the south were replaced by Muslim judges from the north. Emergency tribunal and public order courts were established by the Bashir government in 2001 under a state of emergency. Due process is severely restricted in the emergency courts, and targeted behaviors include suspicion of prostitution, alcohol consumption, improper dress, and improper movements. Public order courts are administered by a single judge with preliminary jurisdiction over civil, criminal, and personal-matter cases when appropriate. There are 133 public court judges according to the Sudan judiciary. These judges also have appellate jurisdiction on judgments of magistrates who are third- and second-grade criminal cases judges. Trials in public order courts are often led by hostile prosecutors who are also junior military officers with little legal training. Presumptive guilt under sharia laws is common, and cases tend to be dealt with very quickly without adequate cross-examination of witnesses by the defense. Flogging remains active, usually consisting of 40 lashes for offenses consisting of sex and alcohol. Theft of anything valued over US$40 can result in the right hand being amputated. Public hangings have taken place for crimes such as armed robbery as well as adultery and homosexuality. However, convictions within the sharia courts for capital cases require large burdens of proof, preventing executions for many of the death penalty cases. Alongside public order courts are special security courts formed by military governors. These courts have three-member panels that include military and civilian judges. Although defense attorneys are permitted to sit with defendants, they do not normally address the court. Several hundred prominent politicians, academics, and journalists have been detained through the special security and public order courts.

Today's Sudanese judiciary is linked between civil and sharia branches. The civil branch includes a Higher Judicial Council that appoints all judges. Cases are tried mainly in the northern region of Sudan by Islamic judges (called *qadis*) who receive their training in Sunni Islamic legal schools. Under the 1973 Judiciary Act, civil cases are decided by provincial courts, courts of appeal, and the Supreme Court. Members of the Supreme Court are appointed by the president after advisement from the Supreme Council of the Judiciary. The Supreme Court reviews cases of the lower courts in civil, criminal, and personal matters in addition to theoretically providing interpretations of the Constitution when the Sudanese government recognizes its democratic institutions. The Supreme Court consists of 70 judges and operates through panels of three. Four circuits of the Sudanese Supreme Court operate outside the capital in the western, central, and eastern states. Decisions are reached by a majority and subject to revision only if the senior member of the three-judge panel deems that an infringement of Islamic (i.e., sharia) laws has taken place. If the chief justice determines a violation of Islamic law has occurred, the sharia branches of the judiciary convene with a five-member panel. The majority of this panel must not have participated in deciding the initial dispute. Formally, courts rely on statutes in determining guilt and punishment, and their formal decisions are published in the *Sudan Law Journal and Reports*. Legal statutes are published in the *Sudan Gazette*.

There are 28 judicial organs in Sudan, 3 in Khartoum and the rest distributed in the 25 states. Each state judicial organ has its own administrator, who is assisted by court presidents and senior officials. However, the court systems are not autonomous from the central government. The administrators of the court organs are appointed by members of the Supreme Court or courts of appeal. Appointed administrators preside over their organ's courts of appeal and judicial circuits in addition to distributing judicial work or deciding on judicial transfers. There are 130 appeal court judges who function in 28 appeal circuit courts distributed among 26 states, with each consisting of 3 judges. Decisions in the appeals courts are reached through a majority of opinion. Case appeals arise from public courts, preliminary judgments of first-grade judges in civil courts, and criminal/personal matter courts.

Informal legal practices or popular court justice is encouraged and exercised frequently throughout Sudan. There are 98 town courts, 897 rural courts,

and 67 intermediate courts for civil and criminal proceedings. Members of popular courts are chosen by citizens in town and rural areas who are judged to be in good standing. Memberships include tribal chiefs known as sultans. Administrators of tribal courts consult with the heads of their respective judicial organs and executive authorities when trying to create new popular courts. Moreover, administrators of rural and town courts study local customs for the purpose of creating a unified legislative system of laws. The formal judiciary relies on community justice for solving disputes through tradition and reconciliation. The courts are located in regions without district courts. Customary laws vary throughout Sudan and are based on diverse customs, traditions, and tribal systems of justice that may not be consistent with the formal legal system or public policy.

Ethnic, religious, and political factors all play a role in the judiciary. Informally, communities rely on local chiefs, known as sultans, to resolve neighbor disputes. Because there is little standardization regulating informal justice in Sudan, and the country consists of a diverse ethnic and religious population, justice varies throughout tribes and communities. Formal courts and legal systems are utilized more fully in the northern region of Sudan. Although the Constitution calls for the judiciary to be unbiased and an independent fact finder, the reality is quite different. The Sudanese judiciary lacks independence, evident by the frequent dismissal of judges, attorneys, and law officers who work within the court system.

Judicial Treatment of Women

Despite the increased use of public order courts, the treatment of Sudanese women has not improved. For example, although rape accusations are prevalent, women who report rape are frequently blamed for being too complicit. Male witnesses are required to testify before a rape case can be proven before the court. If male witnesses are not available, the defendant has the option of bringing defamation charges against the complainant that can result in the woman receiving public flogging. Because of these rulings, judges frequently advise women not to bring cases alleging rape before the judiciary. Unmarried women who are pregnant or admit to having sexual relations have also been known to receive flogging of 80 lashes. In some villages, flogging is allowed to take place without formal judicial rulings. A religious body known as the Group to Enjoin Good and Forbid Evil has been authorized to flog offenders for suspected immoral behavior without due process.

Throughout the 1950s and into the 1970s, Sudanese women made great strides by gaining the legal right to vote, to decide on their own marriage partners, and to receive equal pay. During this period, women became physicians, judges, lawyers, engineers, diplomats, journalists, and professors. However, by the late 1970s, the Muslim Brotherhood (later the NIF) had successfully persuaded Sudanese leader Nimeiri to institute more conservative Islamic laws and violently shut down the Sudanese Women's Union (SWU). Female leaders and their husbands were arrested or killed. Sudanese women's rights have been further curtailed under the Bashir government, which has targeted not only disadvantaged minorities but also middle- and upper-class women. Today, law enforcement officers are allowed to exercise enormous discretion against women under strict interpretable Islamic laws. Women are forbidden from being seen in public with men other than family members or approved guardians. The 1991 Public Order Act, part of the Bashir regime's new penal code, was intentionally framed to challenge any social gathering with mixed genders. According to the legislation, these gatherings could be considered places for potential fornication, and the government can exclude women from any male-dominated public location. The "Family Law" portion of the 1991 Public Order Act requires women to obtain their husband's consent before visiting her family or friends. Other areas of Sudan have disallowed women to be on the streets at all during specific hours of the day.

Women are expected to act modestly and cover their bodies head to toe in an Iranian-style chador. Women who refuse to comply with the government regulations are subject to arrest and public flogging.

In July 2009, media attention was directed at a female journalist working for the United Nations who faced 40 lashes for wearing trousers. Ten other Sudanese women wearing trousers were given lashes at a Sudanese police station; however, UN workers are frequently given immunity.

The Sudanese media (government-controlled) advises women in chastity, male obedience, and being a good domestic. The National Islamic Front (NIF) argues that Islam is incompatible with females being employed outside of the home. Ironically, women head many Sudanese households because of males being involved in migrant farming labor, being soldiers in the government or rebelling factions, or being killed in the ongoing conflicts. Most of the widowed Sudanese women have been denied pensions after their husbands were killed in battle. The Islamic stance barring females from most outside occupations provides great conflict in families where the males are absent. Women attempt to make money through a variety of options. Some form groups attempting to sell tea, peanuts, and other food items from licensed public kiosks. However, sellers are frequently questioned and challenged by government officials regarding their licenses. Other women attempt to brew alcohol, a violation of Islamic laws, and often face prison and public flogging. Legal recourse against these women is considered hypocritical given that half of northern Sudanese males are suspected of consuming alcohol brewed by women in southern Sudan and the Darfur region. Reports indicate that Sudanese police officers have consumed alcohol at illicit drinking establishments and later returned to conduct raids at these locations. Police officers are frequently bribed to drop charges. Even more disparaging, Sudanese police have reportedly targeted women with sexual advances and, when denied, have hypocritically arrested the women on allegations of prostitution or illegally running a distillery.

Police

There are approximately 11,000 law enforcement officers in Sudan who are divided into regions led by regional commanders. Police patrol and response consists of foot and mounted brigades, with some patrolling on camels or mules. The ratio of officers in the population is about 1.5 per 1,000. Police operations are mainly directed toward traffic/riot control, animal theft, and tribal conflicts. Police officer cadets are known to receive two years of training at the Sudan Police College near Khartoum and four months of training at their respective provincial headquarters. The Sudan Police College also serves as a training school for the military. Police training includes general duties, criminal law interpretation, clerical duties, and specialized training in fingerprinting, use of small arms, and crime scene photography.

Several organizational changes in policing Sudan occurred during the Nimeiri administration. The Police Act of 1979 allowed for centralized command with direct reporting to the president. Today, the director-general of the police reports to the minister of interior. The Ministry of Interior centrally administrates policing in Sudan and exercises authority over applications for citizen travel using a committee composed of NIF loyalists, while exercising martial law (i.e., military police control) in government-controlled areas throughout Sudan. The Ministry of State Security, with the responsibility of collecting information on state security, also has its own police force. Central police headquarters is located in Khartoum and organized into divisions, with each commanded by a police major general. Each division is responsible for conducting criminal investigations, training, passport control, security, and public affairs.

The government's internal security force, known as the Popular Defense Forces (PDF), has been accused of numerous human rights violations while acting under extralegal authority of emergency powers through the security courts. The PDF's primary task is to carry out surveillance, and they are given the authority to arrest and imprison anyone considered to be a national threat. Often the popular police (public order) forces receive information from Salvation Popular Committees, established throughout Sudan, about how loyal local community members are to their national government. Enforcement from the PDF and public order police

officers is often directed toward women's conformity to Islamic laws and potential rebel groups. Those arrested and incarcerated by the PDF are not entitled to due process.

Darfur—External Police Force

The main police presence in Darfur has come from the African Union Mission in Sudan (AMIS), originally called the Ceasefire Commission (CFC). AMIS was created in the aftermath of the Humanitarian Ceasefire Agreement in April 2004 between Sudan's government and the two rebel groups in Darfur—the Sudan People's Liberation Movement/Army (SPLM) and the Justice and Equality Movement (JEM). AMIS police advisers have had little impact in creating peace or addressing humanitarian needs. In late 2006, the United Nations sent supporting personnel to Darfur.

Sudanese security forces continue to detain displaced citizens from various refugee camps throughout Darfur. Estimates from the UN claim over 2 million people are gathered in refugee camps (referred to as internally displaced persons—IDPs) in Darfur, with 100,000 having been killed and 200,000 having died by hunger or disease between 2003 and 2007, since the conflict arose between Sudan and western rebel groups. AMIS police advisors are attempting to protect IDPs from Janjaweed ("men on horseback") militant attacks throughout the refugee camps. The Khartoum government has blamed the refugees for being the catalyst for the hybrid AMIS-UN contingency in Sudan, and international aid has been curtailed following reports that much of the aid never reaches the IDPs. Resistance from the Sudanese government and Sudanese Armed Forces (SAF) has kept AMIS police advisors (who are vastly understaffed and unequipped) out of several Darfur refugee camps. Moreover, the SAF continues to force relocation of many IDPs amid complaints from Amnesty International and international legal authorities.

The original mission for AMIS in Darfur did not include civilian police (CIVPOL) detachments. However, because of the resistance from the SAF, several meetings were held by the Peace and Security Council of the African Union, authorizing more than 1,500 civilian police officers to supplement the AMIS advisors already in Sudan. CIVPOL is internationally represented from police-contributing countries (PCCs) throughout Africa. AMIS also runs a training program for police advisors deployed to Darfur. Upon arrival, all officers undergo training introducing them to the conflict, AMIS policies and procedures, and expectations for police-advising duties throughout Darfur. After six weeks in Darfur, CIVPOL officers undergo collaborative training at El Fasher, CIVPOL headquarters, with the goal of pooling ideas and advice. Specific training has included case investigation, crime analysis, and gender-based violence.

Community Policing Attempts

Advisors have increasingly instituted models of community policing in Darfur through the leadership of CIVPOL. with a push toward grassroots social reconciliation. Historical distrust of the Arab-led government in Sudan has existed for centuries and has been heightened in the aftermath of the Darfur genocide. Community policing initiatives, if fully implemented, would allow law-abiding community members an opportunity to provide input to the justice process and assist in problem solving. Strategies for creating collaboration have included using CIVPOL female officers to arrange and lead regular women's forums inside refugee camps. The forums deal with child care and wellness during and following pregnancy. In addition, CIVPOL has organized community soccer and volleyball games with open invitations. Engagement of the community is critical for effective policing. In line with this principle, CIVPOL has moved toward a more broadly defined notion of safety and community building. Officers have run numerous educational sessions within the refugee camps. Examples include how to treat snake bites and how to prevent fires. A CIVPOL contingent from Uganda taught IDPs how to construct a clay stove that not only reduced fire risk but also used less fuel and wood. Darfur schools have been increasingly supported, and adult education centers have opened and are supported by AMIS trainers and equipment. As part

of a joint peacekeeping consortium, AMIS and the UN have been working with Sudan to select, train, coordinate, and advise community police officers. These officers are expected to be more effective at gaining back Sudanese trust and operating according to internationally accepted standards.

The mandate authorizing CIVPOL does not give them express authority to enforce laws in Darfur or to protect civilians. Instead, CIVPOL employees are only supposed to monitor the Sudanese government police forces and assist other components that are attempting to create a secure environment. The CIVPOL officers reside with other African Union (AU) military advisors and are supposed to carry out investigations on alleged violations of the ceasefire agreement. Additionally, preventive escorts are arranged through CIVPOL to protect women and IDPs who leave the refugee camps to gather firewood for their stoves or to travel to surrounding markets to find food and water. Regular policing meetings are held with CIVPOL, military officers, humanitarian agencies, IDPs, and local police officers to coordinate proper security for the refugee camps. Victimization reports are brought to the attention of CIVPOL officers throughout their IDP camp patrols. Most of the female victims have been raped and are encouraged to file a criminal complaint with the Sudanese government's police force. However, AMIS human rights training has caused CIVPOL to shift its policies toward providing advice and counseling with more sympathy directed toward victims. As part of the CIVPOL mandate, reports are created on the outcome of cases prosecuted (or not prosecuted) through Sudanese police authorities. In mid-2004, the United Nation's Children's Fund (UNICEF) began to train Sudanese police on how to investigate sexual violence among child victims throughout Darfur. The initiative followed a visit to Sudan from UNICEF director Carol Bellamy, on which she heard testimonies of villages being burned, parents being killed, children being raped, and villagers being forced to flee. Jordan's police trainers have assisted in some of the training directed toward child victims of sexual violence.

The Darfur Peace Agreement has continually deteriorated despite the efforts of the AU, UN, and AMIS/CIVPOL. International recognition has found that these groups are not adequately resourced and do not have a sufficient mandate to operate or assist with an adequate justice system. Collaborative meetings to analyze staffing needs recommended additional support of AMIS/CIVPOL, and these recommendations were eventually supported by President Bashir. However, arguments were also presented to transition leadership assistance away from the AU and more toward a UN operation, and this has been rejected by the Sudanese government. The 2006 Addis Ababa meetings further strengthened the ceasefire, gave joint leadership to the AU and the UN, and allowed for varied support mechanisms to AMIS/CIVPOL from the UN, including additional UN police advisors. In 2006, the sixth African Union Summit took place in Khartoum, Sudan, despite threats from the AU to change locations. In lieu of the Khartoum summit, President Bashir advocated that he become chairman of the AU, replacing President Olusegun Obasanjo of Nigeria. Bashir's offer was rebuffed by AU administration. In February 2008, Tanzanian president Jakaya Mrisho Kikwete became chairman of the AU.

Crime

Although there is little information available about the type and extent of "traditional crime" such as property offenses and assault, these crimes are surely overshadowed by the genocide and ethnic cleansing–related crimes that have been largely prosecuted, amid great difficulty, through the International Criminal Court.

International Criminal Court (ICC)

The International Criminal Court (ICC) was established in 2002 with the purpose of prosecuting individuals for genocide, crimes against humanity, and war crimes. Darfur has become a target for ICC investigations. In March 2009, the court's chief prosecutor issued an arrest warrant for President Bashir for crimes against humanity. The arrest warrant, issued to the Sudanese government, is not expected to be executed. Over 100 governments have become members of the court, with the notable exception of China, India, Sudan, and the United States. In

response to the formation of the ICC, President Bush signed the American Service-Members' Protection Act, allowing the United States to use military force to protect any Americans from future prosecution by the ICC.

The ICC has opened investigations into three other situations besides Darfur: Northern Uganda, Congo, and the Central African Republic. Although the court operates out of The Netherlands, proceedings can take place anywhere. In May 2007, the ICC's prosecutor in The Hague (Netherlands) issued arrest warrants for Sudanese humanitarian affairs minister Ahmad Muhammad Harun and Janjaweed militia leader Ali Kushayb for war crimes and crimes against humanity. The warrants followed a 94-page document that followed a 21-month investigation within 60 countries focusing on crimes committed in 2003 and 2004. (The ICC can investigate only crimes that have occurred after 2002.) Sudan has argued that the court lacks jurisdiction and that the men will remain in Sudan without extradition. The ICC does not have a police force and relies on targeted governments to carry out arrest warrants, which is not likely in Sudan given that the government rejects the ICC jurisdiction. Moreover, the Sudanese media, controlled by the government, has reported that the international community is using the ICC to plan future invasions of Sudan and that the United States is behind the court prosecutions.

A number of other obstacles exist for informing the Sudanese people about the process of international justice because the Khartoum government refuses open access to ICC personnel within Darfur refugee camps. Instead, ICC prosecution investigators and other outreach personnel operate in neighboring Chad, where Darfur refugee camps now exist, as a means for continuing to inform the Sudanese people about their mission. The goal of the outreach initiative is to inform the populous about international law and justice and solicit feedback from the Darfur community. The ICC has made progress in translating legal documents into Arabic as a means of providing the media with updates on court activities and broadcasting radio updates into the refugee camps. Despite these efforts, the Human Rights Institute of the International Bar Association (IBA) has argued that the ICC outreach in Sudan needs to increase significantly. However, much of the ICC investigatory efforts remain secretive so as to not endanger partners who are supplying the court with necessary legal information.

The United States is in a difficult position of supporting the UN stance on genocide and refusing to support the ICC. The Bush administration revoked the previous Clinton administration's treaty that helped establish the ICC on the basis that the court may attempt to exercise future frivolous legal actions against Americans abroad. The ICC's outreach to Darfur includes a focus on the rights of the victims throughout the proceedings, which includes a presentation of their view and concerns at all stages, regardless of whether they formally testify as witnesses. Consequently, members of the ICC prosecution have made limited contact with Darfur refugees in various camps to understand the extent of the genocide. The ICC prosecutors linked Khartoum with the Janjaweed (horseback) militias, claiming the Sudanese government bankrolled the genocide throughout Darfur. Additional warrants are expected from the ICC linking Khartoum to the genocide in Darfur.

As a response, in late 2005, Sudan established a special criminal tribunal and a national court for conflict-related crimes in Darfur to investigate and prosecute human rights abuses. Questions remain about how willing the tribunal will be to carry out prosecutions against those who hold positions in the government. The Sudanese government argues that the tribunals negate the authority of the ICC. In addition, the Sudanese government has sent a group of attorneys to London for training sessions on how to adequately represent and advocate for victims in Darfur during the tribunals. However, Amnesty International stated that the Sudanese-backed tribunal courts would fail unless there were legal reforms to ensure judicial independence and oversight from the government in Khartoum.

Prisons

Supervision of the Sudan Prison Service is carried out by the director-general of prisons. The central prisons are Kober in Khartoum, Shalla in Al Fashir

(Darfur), and Port Sudan on the Red Sea. With an organizational structure similar to that of the police, provincial authorities manage jails in their administrative jurisdictions. According to Justice Africa, a U.K.-based research group, and the U.S. State Department, Sudanese jails and prisons operate in overcrowded and harsh environments. Most of the prison property is without roofs, so prisoners use sheets to shade themselves from the sun. Rather than having individual cells, some Sudanese prisons consist of a large yard surrounded by four walls.

There have been reports of persistent beating and torture, but it is believed that this treatment has predominantly been inflicted by federal security officials and not provincial (local) prison guards. Sudanese prisoners frequently go without beds, clean drinking water, quality food rations, or proper hygiene. Relatives of prisoners are allowed to bring food and water to the prison, but officials arbitrarily deny prisoner visits. Prisoner treatment varies widely, with some prisoners restricted to shackles and others sentenced to day reporting and allowed home in the evening. High-ranking political prisoners are reported to enjoy better conditions than lower-class prisoners. Sudanese government administrators have frequently refused prison inspections by international agencies. Amnesty International has been allowed to visit a select group of prisoners in Kober following reports of prisoner torture. However, it is believed that Kober is in better condition than other prisons in Sudan, and the government self-selected this prison for Amnesty review.

The largest women's prison in Sudan, Omdurman, is filled mainly with women convicted of selling alcohol. Women prisoners reportedly have been raped by guards demanding sexual favors in return for allowing visitations. An estimated 75 percent of incarcerated women are pregnant or caring for young children, and one in five are widows. Female prison populations have grown considerably because of the sharia laws, with major overcrowding issues. In October 1994, the Sudanese government announced the release of most women incarcerated in the Omdurman women's prison as an act of clemency. However, it was suspected that the women were released after they rioted. Non-Muslim women are frequently given early release if they convert to Islam.

In September 2007, southern Sudan opened the Lologo Prison Regional Training Center for 550 former soldiers of the SPLA. Following the peace agreement with the Sudanese government, former soldiers sought employment and found jobs in the prison service. It is estimated that 1,500 former soldiers joined the Sudanese prison service. The training courses offer a three-month orientation and specialist training courses in management and medical care The establishment of additional prison service training centers is the start of a wider strategy to revise dilapidated infrastructures throughout the Sudanese prison system under a Multi-Donor Trust Fund (MDTF).

Brandon Kooi

Further Reading

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Syria

Legal System: Civil/Islamic
Murder: Medium
Corruption: High
Human Trafficking: High
Prison Rate: Low
Death Penalty: Yes

Background

Syria was previously ruled as a French mandate after the ruling Ottoman Empire disintegrated

A blindfolded activist, opposed to the Syrian government, participates in a sit-in in Beirut, Lebanon, to protest Syria's use of torture on prisoners, December 10, 2009. The so-called Committee of Torture Victims in Syrian Prisons used props to illustrate the tools used by Syrian authorities to torture prisoners. Human rights groups have long accused Syria of torturing prisoners. (AP Photo/Bilal Hussein)

following World War I. Syria gained its independence in 1946 as a parliamentary republic, the Syrian Arab Republic. Civil, commercial, and criminal codes were promulgated in 1949, primarily based on French legal practices. Since then, the legal and judicial systems have been the resulting combination of these French and Ottoman traditions combined with Muslim sharia law and Arab tribal customs. Syria's ordinary courts operate in a three-tiered system under the auspices of the Ministry of Justice. Magistrate courts, courts of first instance, juvenile courts, and customs courts operate at the local level. There is also an intermediate tier of appeals courts. Above those, sits the Court of Cassation in Damascus, the highest court of appeal, which deals with disputes over jurisdiction and judicial matters. Syria also relies upon personal status courts based on sharia law to deal with family matters such as marriage, child custody, and divorce. The Druze and non-Muslim population have their own family courts.

The Baath Party's political dominance and its long-running conflict with Israel have greatly influenced the development of the country's criminal justice systems. Amid international conflict over Israel, Syria's two-year union with Nasser's Egypt ended in 1961. In 1963, the pan-Arab Baath Party seized power and has held it since. That same year, the regime instituted its Emergency Law, which suspended constitutional principles in the judicial systems when the executive deems it necessary to

protect state security. The measure remains in effect today.

Although Syria is formally a parliamentary republic, in practice, it has not been so since the 1963 Baath seizure of power. The Baath Party dominates state and society, and power is highly concentrated among Baathist elites, drawn mainly from its Alawite minority sect, located within the presidency, cabinet ministers, and the military.

The 1973 Baathist Constitution vests the party with leadership functions in state and society and grants very broad powers to the president. From 1970 until his death in 2000, Hafez al-Asad was president, and his young son assumed power upon his death. True opposition parties are prohibited, and officially recognized non-Baath parties must vow to support the Baathist constitutional principles of "socialism" and "Arab nationalism."

Although the Constitution does not declare Islam to be the state religion, it does mandate that the president be a Muslim, and Islamic jurisprudence is the main source of legislation. A civil society with independent associations and political parties is almost nonexistent. Citizens have no right to peacefully assemble because all organizations much be licensed, and all nonreligious meetings must be registered in advance. Both requests are regularly denied.

As analysts at the American-based Freedom House observe, the problem of civil and political rights in Syria, given the nature of both political power and cultural traditions, is particularly pronounced for both women and minorities. Both groups face systemic discrimination. Although the Constitution grants women full participation in Syrian life, in practice they lack any meaningful legal or organizational protective measures. The nation's largest minority group, the Kurds, is also severely marginalized.

The regular police forces are organized within the Ministry of Interior. The emergency police operate through roving patrols and respond to 911 calls. The local neighborhood police deal with nonemergency community problems. There are also traffic and riot control police departments. But Syria's well-developed security forces are what really define Syrian criminal justice and social life more generally.

The Political Security Directorate (PSD), Syrian Military Intelligence (SMI), General Intelligence Directorate (GID), and Air Force Security (AFS) all operate independently. Only the PSD is formally under civilian control via the Ministry of Interior. Yet the 1963 Emergency Law remains in effect, and thus the minister presides as the president's delegated martial law governor. Under the permanent state of emergency, all citizens are subject to arbitrary arrest, detention, or exile.

Syria also relies on an exceptional security court system outside the ordinary courts. Accountable only to the minister of interior, these extra-constitutional courts are controlled by military officials according to military dictates. The Economic Security Court (ESC) hears cases involving economic crimes, and the Supreme State Security Court (SSSC) hears those dealing with national security.

These security courts and police forces have long contributed to the very poor human rights situation in Syria. Syria emerged from its long political isolation in 2008 when it was visited by a French presidential delegation. But as Amnesty International (AI) and Human Rights Watch (HRW) report, Syria still has a very grave human rights record marked by strict censorship, harassment of human rights activists, warrantless and arbitrary arrests, prolonged detention without trial, torture in detention, fundamentally unfair trials in the security courts, and a largely corrupt and inefficient police and judiciary.

Crime

The Syrian penal code was promulgated in 1949. At the local level, peace courts deal with minor law violations, while the courts of first instance deal with more serious crimes. Syria appears to have a low murder rate. According to the Ninth UN Survey of Crime Trends and Operations of Criminal Justice Systems, Syria had just 212 completed, intentional homicides in 2004, which is about 1.14 per 100,000 civilians. The U.S. State Department regards Syria as a low-crime country but warns that certain crimes such as ATM fraud, credit card theft, and the physical harassment of women appear to be rising.

The penal code affords women special protection from verbal and physical harassment and violence perpetrated by men. Rape is a felony punishable by at least 15 years' imprisonment. Prostitution is illegal, yet it is not considered to be widespread.

Still, women's rights advocates strongly criticize both Syrian laws and criminal justice authorities for regularly unequally protecting women. Although Syria has ratified the Covenant to Eliminate All Forms of Discrimination against Women (CEDAW) in 2003, it has done so with numerous serious reservations, and the penal code, Personal Status Act, and National Act are all said to have discriminatory provisions warranting repeal.

Under article 508 of the penal code, rapists can have their charges dropped if they marry their victims. Victims cannot effectively refuse since because families generally pressure them to agree so as to avoid public scandal. As well, so-called honor killings are tolerated. Article 548 of the penal code allows prosecutors to exempt offenders from further prosecution when they have killed their own female relatives whom they believe have had sex without their permission. When offenders are prosecuted, article 192 allows judges to reduce penalties for "honor" killings from the minimum 15 years' imprisonment to a maximum of 1 year.

Adultery is a crime, but here too genders are dealt with unequally. Evidentiary standards for proving female adultery are lower than they are for male adultery, which must actually have occurred inside the marital home. Women are punished with from 3 months to 2 years' imprisonment, whereas men can receive just 1 month to 1 year.

The Personal Status Code dealing with family and inheritance issues regards women as legal dependents of their male relatives, denying them full adult status in cases involving marriage, divorce, and child custody disputes. This customary status with respect to sharia law influences their status elsewhere even though they are formally entitled to equal status under the civil and criminal law.

Although abortion is criminalized in the penal code, marital rape is not, and there are no laws protecting women against domestic violence. According to Freedom House, there are no reliable statistics measuring these crimes. Male-dominated police departments, influenced by traditional customs, strongly discourage women from formally complaining and pursing arrests.

Indeed, nongovernmental organizations dedicated to women's rights are usually denied official licenses needed to operate independently, and it was not until 2007 that one was able to open the country's first hotline for abused women. A year later, the country opened its first officially licensed shelter for battered and abused women. Syria also has not ratified the UN Trafficking in Persons Protocol, and there is concern that the country is a destination and transit country in this trade. Critics assert that authorities have largely failed to deal with the problem, instead arresting, prosecuting, and deporting victims.

Although it does not appear to be a particularly serious problem in Syria, officials mete out severe penalties for drug crime. Drug possession is punishable with heavy fines or imprisonment. The death penalty may be meted out for growing, processing, and smuggling. However, this can be reduced to a minimum of 20 years' imprisonment.

Given its ongoing conflicts with Israel, as well as those in Lebanon and Iraq, Islamic terrorism is a concern. Syria has entered into several antiterrorism conventions. The penal code also imposes severe penalties of 15 to 20 years' imprisonment at hard labor for terrorism convictions. Thos convicted of engaging in terrorist acts that cause deaths through the destruction of buildings or vehicles are to be executed.

Finding of Guilt

Arrest procedures for most ordinary offenses are processed similarly to those in Western countries. Arrestees are processed and detained until trial dates are set. However, military prosecutors decide whether civilian defendants will be tried in the civilian courts or the military security courts. When civilian defendants go to the ordinary courts, investigating magistrates decide what cases go to trial.

Defendants have the right to be presumed innocent. They are also to have public trials except for

juvenile and sex offense cases. They also have the right to choose their own attorneys, and courts appoint attorneys to defend indigent clients. At trial, defendants have the right to submit evidence and challenge their accusers. This former French mandate does not have jury trials. Judges preside and render verdicts. Convicts can appeal, but these tend to be difficult to win because courts do not keep verbatim transcripts, instead relying on presiding judges to summarize trial proceedings.

There do not appear to be reliable official statistics enumerating the number of Syrian court officials such as prosecutors and judges. The Baathist Constitution has included provisions, such as those in articles 131 and 133, formally guaranteeing judicial independence, making them autonomous and subject only to the law. However, the president clearly has great power in both the formulation and the implementation of law.

Circumstances are different with the extraordinary security courts, the SSSC and the ESC. Both military courts operate under the state of emergency, and neither acknowledges usual constitutional due process rights. Neither is independent of Baathist executive authority. As well, the military reportedly operates field courts outside of established courtroom locations, where it is believed that even fewer procedural rights are observed than in established security court sites.

Human rights observers continue to condemn these extra-constitutional courts for their persecution of political dissidents and severe human rights abuses. These courts combine with various suppressive laws that the authorities use to criminally charge political dissenters with "scheming with a foreign country, or communicating with one to incite it to initiate aggression against Syria" or belonging to a "secret organization," "publishing false news," " inciting sectarian strife," "broadcasting of false news," "taking action or making a written statement or speech which could endanger the state or harm its relationship with a foreign country, or expose it to the risk of hostile action," or simply "insulting the president." Authorities often prosecute and punish a wide range of individual behavior and group affiliations under these provisions in these courts systems.

According to HRW, authorities have tried thousands of people under these emergency conditions. These often have been communists, pan-Arab Nasserites, Iraqi Baathists, and most commonly, members of the banned Muslim Brotherhood. Those affiliated with Al Qaeda and individuals wishing to enter Iraqi as jihadists are also arrested and tried. Syrian Kurds, who are often denied citizenship, even when they are born in Syria, are often criminalized for expressing their ethnic identities or aspirations toward nationhood. Independent regime critics such as bloggers, those operating censored Web sites, and members of activist groups have suffered warrantless arrests, travel bans, and incommunicado through the security systems.

Although the penal code prohibits torture, it remains a standard practice that security services use to extract "confessions." Further, Syrian officials are actually legally protected from criminal prosecution for crimes they commit while on the job. If torture victims can identify their torturers, they must themselves file civil lawsuits against the perpetrators. Naturally, these fail.

Moreover, Syria has been a junior partner to the American government's so-called rendition program. In this program, American operatives abduct suspected "terrorists" and then deliver them to regimes such as Syria's, where security services hold them incommunicado and torture "confessions" from them. HRW documented Syria's involvement in at least 39 cases in 2007, one of which was the well-publicized case of Canadian Maher Arar.

Syrian agents have caused the "disappearances" of an unknown number of persons since the early 1980s. Despite official denial, human rights groups contend that there have been some 17,000 such "disappearances," mostly members of the Muslim Brotherhood and Syrian activists, but also many Lebanese citizens and stateless Palestinians. AI reports that when the security courts do try detainees, trials are fundamentally unfair, falling far short of international human rights standards.

Lawyers in security courts are forced to serve only "ceremonial" roles despite their competence or effort because they are denied access to their clients until the last minute and are only then allowed

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an extremely brief opportunity to learn about their cases. Judges regularly shout defendants down before summarily rendering their verdicts based on little or no evidence. Appeals are not allowed. In 2009, HRW counted 153 of what it calls "sham trials" since January 2007 and has called for the elimination of Syria's security courts. Some individuals have been detained for more than 20 years without trial, and Middle East Watch has concluded that fundamental reforms are needed if fair trials are ever going to be guaranteed in Syria.

Punishment

Apart from typical punishments such as fines and imprisonment, Syrian authorities retain, and use, the death penalty. It is available for such crimes as drug trafficking and terrorism. The penal code actually calls for the death penalty for members of the banned Muslim Brotherhood. According to Syrian journalist and death penalty abolitionist Nedal Naeiseh, this provision was introduced in 1980 after bloody clashes with the group. But now the law has been semi-suspended, with members instead receiving prison sentences.

Still, public hangings occur. AI reports that in 2007, for example, at least five persons were publicly hanged, and two of them were juveniles. They were reportedly hanged after unfair trials in field military courts without legal representation or appeal. The media reported that they had committed "various murders, and armed robberies, and had terrorized innocent citizens."

Syria appears to have a relatively small prison population and low prison rate. According to statistics provided by the Eighth World Prison Population List, Syria had a prison population of 10,599 in 2004, for a rate of 57 prisoners per 100,000 civilians. Pretrial or remand prisoners represent about half of the prisoner population. Females and foreigners make up 7.4 percent and 7.3 percent, respectively. There are separate facilities for men, women, and juveniles, although some juveniles have been incarcerated with adults.

The official prison system capacity of the 35 penal institutions is estimated to be 16,161. If true, this would make Syria unusual for having a prison system that is actually well *under* capacity when so many countries' prison systems are *over* capacity. But there are conflicting reports that cast doubt on official estimates. The International Committee of the Red Cross (ICRC) has reported that Syrian prisons are actually very overcrowded and face a shortage of beds. Syrian officials no longer allow the ICRC to inspect their prisons.

The Syrian Human Rights Committee asserts that the largest prison, Adra prison in Damascus, actually handles up to 10,000 prisoners despite being built in 1987 to house just 5,000. Further, despite being meant to house ordinary-crime convicts, Adra holds many political prisoners, mainly Muslim Brotherhood members, leftists, Palestinians, Islamist militants, and detained Syrian army soldiers.

HRW considers Syrian political prisoners to be "some of the most isolated in the world" in that they mostly have no contact at all with their families and suffer incarceration entombed inside windowless underground cells or crammed into giant communal cell blocks covered with open-mesh roofs, all while security services refuse to even acknowledge that they are in custody. This continues despite periodic amnesties in which many prisoners are released to commemorate Baathist national anniversaries. Inadequate medical care is also problematic, as is the severe restriction on politically sensitive literature including the Muslim Koran.

The penal code prohibits the use of corporal punishment. Yet it remains a disciplinary tool inside prisons. Forced labor also has been reported. The Syrian Human Rights Committee (SHRC) contends that prison officials use multiple methods of torture with impunity though it is illegal.

Tadmor (Palmyra) Prison had been particularly infamous for its frequent "extremely brutal abuses" since 1980. According to the SHRC, it was the site of the massacre of 1,000 Islamist prisoners on June 27, 1980. Since then, many political prisoners have been coerced into signing statements repudiating their past political activities as a condition of their being released. Thousands are believed to have been systematically murdered at Tadmor over the years.

Former Syrian defense minister Mustafa Talas told a German newspaper that he had ordered the murder of 150 Islamists *per week* for many years.

Although Tadmor closed in 2001, there are reasons to remain skeptical that human rights conditions inside Syria's prisons will improve. According to the Arab Organization for Human Rights, Abdul Karim Dhaon, an official at the Ministry of Health, wrote a report documenting the poor prison conditions. He was summarily arrested and imprisoned.

Paul Schupp

Further Reading

Amnesty International: http://www.amnestyusa.org.

Human Rights Watch: http://www.hrw.org.

The Jurist: http://jurist.law.pitt.edu.

Freedom House: http://www.freedomhouse.org.

Tunisia

Legal System: Civil/Islamic
Murder: Medium
Burglary: High
Corruption: Medium
Prison Rate: High
Death Penalty: Maybe
Corporal Punishment: No

Background

The Republic of Tunisia is located in the northernmost part of the African continent. It is surrounded by the Mediterranean Sea on the north and the east, by Libya on the south, and by Algeria on the west. The population of Tunisia is around 10 million, and Arabic and French are the major languages. This African nation is one of the smallest North African countries and also one of the richest. Politically, Tunisia is a multiparty, parliamentary democracy with a republican form of government. The Constitution of Tunisia was established in 1957, and it went through major amendments in 1998. The Tunisian legal system is based on French civil law and Islamic law.

The president is the chief of the executive branch of the state, and also the head of the state. The president is elected for a term of five years and can be reelected twice consecutively. The president has to be a Muslim and has to have been a Tunisian national for at least three generations. Other components of the executive office include the prime minister and members of the Cabinet. The Tunisian legislative branch consists of a unicameral Chamber of Deputies (Majlis al-Nuwaab), of 189 seats, and the Chamber of Advisors, which consists of 126 members. All members of the Chamber of Deputies are elected by popular votes and serve five-year terms. Eighty five members of the Chamber of Advisors are elected by municipal counselors, deputies, mayors, and professional associations and trade unions. The remaining 41 members are presidential appointees. All members of the Chamber of Advisors serve six-year terms.

The third branch of the government in Tunisia is the judiciary. The Constitution of Tunisia provides for an independent judiciary, though the president and the executive branch of the government can influence the judiciary. The president is the head of the Supreme Council of Judges. The executive branch appoints the judges. The court system consists of the civil and criminal courts and includes district courts, courts of first instance, courts of appeal, and the Court of Cassation. The district courts are the base of the Tunisian judicial structure, hearing civil cases of lesser value, and there are 51 of them. In these courts, a single judge hears the cases. The courts of first instance serve as the appellate courts for the district courts. Each region of Tunisia has a court of first instance, and it is composed of a panel of three judges. These courts hear all civil and commercial cases from small claims to claims involving large sums of money. The function of the courts of appeal is to serve as appellate courts for decisions made in the courts of first instance.

The Court of Cassation, or the Supreme Court, is the ultimate court of appeal in Tunisia. The High Court in Tunisia is above the Court of Cassation

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and is used to prosecute members of the government accused of high treason. Conflicts between the citizens and the state and public authorities are resolved at the Council of the State. There are also military tribunals within the Defense Ministry that try cases involving military personnel and civilians accused of national security crimes. A military tribunal consists of a civilian judge from the Supreme Court and four military judges.

Both the civil and the criminal court in Tunisia are influenced by the French system of judiciary and by Islamic law. The sharia courts were abolished in 1956, and since then, Tunisia has a unified judiciary structure. There has been a steady reform of Islamic legislations, such as abolishing polygamy, in Tunisia.

Police and Law

The police and the paramilitary National Guard are responsible for internal security in Tunisia. The police system operates in the capital city of Tunis and in few other urban areas. In the areas that are outside the urban areas, the police share or transfer their policing duties to the National Guard. Both the police and the National Guard are under the control of the president and the Ministry of Interior. The security forces in Tunisia have come under tremendous criticism because of allegations of human rights abuse, particularly in their involvement in suppressing speeches that are considered to be antigovernment or promoting ideas of terrorism. Freedom of expression is widely curtailed by the police, and there is also a special team of cyber police that monitors Web content.

As discussed previously, Tunisian law is based on French legal code and on Islamic law. From the time of independence in 1956, Tunisian law has promoted equality between men and women legally. The Code of Personal Status is a series of progressive laws that were introduced during that period and further reinforced by the amendments in 1993.

Tunisia was one of the first Arab nations to give equal rights to women. Polygamy along with prostitution is illegal in the nation, and women are guaranteed equal rights with men in matters of suffrage, marriage, and divorce. Women can also be elected members of the Chamber of Deputies in the legislative branch of the government.

Lesbian, gay, bisexual, and transgendered individuals face criminal prosecution in Tunisia. Under article 230 of the penal code, modified in 1964, individuals can face up to three years in prison for practicing homosexuality.

Tunisia established the Code for the Protection of Children in 1995 to strengthen laws on child abuse, abandonment, and exploitation of children. Even though child labor is banned in Tunisia, children are employed in the handicraft industry and as domestic help. Tunisia does not have a juvenile justice system, and corporal punishment is prohibited in the penal system. However, it is permitted in schools and at homes.

Crime

The crime rate in 2000 was 520.96 per 100,000 population. The homicide rate was 1.18, the rate of rape was 3.49, and the burglary rate was 80.31. According to the annual crime surveys, the rate for some index crimes—major assaults, rape, and burglaries—decreased between 1995 and 2000 in Tunisia. However, the rate for homicides has increased in recent years.

Drugs

Tunisia has no national survey data on drug abuse. The country is a part of all international drug conventions. There are no reports of significant production of drugs, and the government of Tunisia has claimed that it irradiated the production of cannabis. However, because of its strategic geographical location, Tunisia is high on the list for potential transit trafficking for cannabis to Europe, from its production center in Morocco. According to the United Nations Office on Drugs and Crime, there are reports that trafficking of heroin from Libya is also increasing in the country. However, because of the lack of data on drugs in Tunisia, these reports cannot be fully substantiated.

To control for drug-related corruption, Tunisia's 1992 drug law provides for sentences to be doubled if the drug enforcement officials, individuals involved in the administration and security of drug warehouses, are involved in drug crimes.

Finding of Guilt

The criminal court system in Tunisia is very similar in structure to the civil court system. Misdemeanor offenses are handled by the district courts, and all other criminal offenses, except felonies, are submitted to the courts of first instance for determination. Felony crimes are first heard by a grand jury. Felony crimes are submitted to the criminal courts division of the appeals courts after an indictment has been issued by a judge based on the findings of the grand jury (Chambre dMises en Accusation). Once a judge issues an indictment based on the grand jury proceedings, the case is submitted to the criminal court division of the appeals court. The criminal division of the Court of Cassation serves as the final appellate court for criminal matters. There is also a system of military tribunals with jurisdiction over military personnel and crimes related to national sovereignty.

The penal code of Tunisia prohibits the use of torture and other cruel and inhumane forms of punishment. However, human rights activists have reported that security forces in Tunisia, both the police and the paramilitary, have used coercive force to make detainees confess. According to Amnesty International, the courts in Tunisia are notorious for ignoring investigations of allegations of torture and mistreatment. The courts have also accepted confessions extracted under torture as evidence.

The government of Tunisia responded to the concerns of the United Nations and Amnesty International by amending the penal code. In 1999, it adopted the UN definition of torture and reinstated the rights of the detainees, such as medical rights and maximum detention period. However, these amendments are seldom followed in reality.

The police do not need warrants to arrest on charges of suspicions or for crimes in progress. Thus, arbitrary arrests and detentions that result from them are problems. Because of the penal code amendment in 1999, the maximum that an individual can be detained is three days, and the detainment can be renewed only once by the prosecutor, for a maximum of six days. The new amendment also required the arresting officers to inform the detainees and their family members of their rights. However, as mentioned before, the new amendment on the rights of detainees has often been ignored in reality, in the context of both common criminals and political detainees.

By law, the accused has the right to be present at trial, to be represented by counsel, to question the witness, and to appeal. Accused persons also have the right to request a trial in a different judge's court if they believe that the judge is not impartial. However, human rights activists have claimed that the judicial system in Tunisia is not fair, and sentences are harsher for defendants charged for political crimes. Human Rights Watch indicates that there is no definitive information regarding the number of political prisoners and that the number could be in the thousands.

Punishment

Overcrowding in prisons is a serious problem in Tunisia, with 40 to 50 prisoners typically placed in a single cell that is less than 200 square feet. Prison conditions are very poor, with serious sanitation problems, and do not meet international standards. For political prisoners, the conditions are much worse.

The government of Tunisia does not permit international organizations or the media to visit the prisons. In 2001, the government showed some interest in introducing prison reforms and transferred the authority of the prison system to the Ministry of Justice. However, there are no significant changes in the conditions of prisoners at the time of this writing. According to the Centre for Prison Studies, Kings College, London, Tunisia had 263 prisoners per 100,000 population in 2008.

Soma Chaudhuri

Further Reading

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United Arab Emirates (UAE)

Legal System: Islamic/Common
Murder: Low
Corruption: Low
Human Trafficking: Medium
Prison Rate: High
Death Penalty: Yes
Corporal Punishment: Yes

Background

The United Arab Emirates consists of land and many islands in the Persian Gulf covering an area of about 51,460 square miles. It is bounded on the west and south by Saudi Arabia and on the west by Qatar. Toward its eastern border, it is bound by Oman. It has about 404 miles of coastline on the northern border that faces the Persian Gulf and the Gulf of Oman.

According to a 2009 estimate, the population is projected to be 5.06 million. Only about 19 percent of these are Emiratis; about 81 percent of the residents of UAE are non-Emiratis. This group of non-Emiratis consists of Arabs and non-Arabs. The Arabs consist of Palestinians, Egyptians, Jordanians, Yemenis, and Omanis. The non-Arab groups consist of Indians, Pakistanis, Bangladeshis, Afghanis, Iranians, Filipinos, and West Europeans. According to 2006 data, the nation has a workforce of 2.97 million, of which 93 percent of the workers are foreign, ranging in age from 15 to 64 years. Out of the UAE population, 3.08 million are males, and 1.4 million are females, according to the 2007 data. The 2009 estimate projects this to be 3.5 million males and 1.58 million females.

Political Context

Originally, each of the seven emirates of the UAE had separate treaty relationships with Britain and were referred to as the Trucial states until 1971; the British withdrew by the end of 1971, and six of the sheikhdoms came together to form the UAE on December 2, 1971; the seventh sheikhdom, Ras al Khaimah, acceded to the union in February 1972.

Government

From an administrative point, the country is composed of a loose federation of seven self-governing city-states—Abu Dhabi, Ras al-Khaimah, Dubai, Ajman, Fujairah, Sharjah, and Umm al-Quwain—with each having its own ruler. The government of the UAE consists of a federation of these seven emirates. As per the Constitution of December 2, 1971, each individual emirate retains considerable powers, including control over mineral rights (such as gas and oil) and revenues. Under this arrangement, federal powers have developed gradually. According to the Constitution, the president is the head of the state, and the president and vice president each serve five-year terms. The prime minister is the head of the government and is assisted by a Council of Ministers, a supreme council of rulers, and a 40-member Federal National Council (FNC). The FNC functions as a consultative body and has half its members elected and the other half appointed by the emirate rulers.

The political and financial power of each emirate is reflected in the provision of positions that are allotted in the federal government. Because the emirate of Abu Dhabi is the biggest oil producer, its ruler acts as the president of the UAE. The emirate of Dubai is the commercial center, and as such, its ruler is the vice president and prime minister. Each emirate retains substantial autonomy, although a significant percentage of each emirate's revenues is supposed to be devoted to the central budget of the UAE.

There are no political parties in the UAE, and the rulers exercise their powers based on their dynastic positions, and their legitimacy is obtained through a system of tribal consensus. As a result of modernization, advances in education, and the huge influx of the foreign population, there have been profound changes in the society. Limited elections, for the first time, were held in December 2006 to select half the members of the Federal National Council. As a result of these elections, there were significant gains for women. One woman was elected to the FNC, and seven other women were appointed as council members.

According to the Constitution, Arabic is the official language, and Islam is the official religion of the UAE. It also lists the fundamental rights and liberties of its citizens. The Constitution delineates a separation of powers between the executive, legislative, and judicial branches of the United Arab Emirates. There is a further separation of executive and judicial powers into federal and local jurisdictions. Some powers are exclusively reserved for the federal government, and the individual sheikhdoms exercise the residual powers.

In 1984, the separation of powers remained nominal, given that the Supreme Council of the Union (SCU) functioned as the highest federal authority in the legislative and executive capacities. The executive branch is made up of the SCU, the Council of Ministers, and the presidency. The SCU consists of the rulers of the seven emirates. This union elects from among its members a chairman and vice chairman, who both serve five-year terms. The SCU is responsible for the formulation of general policy, for the ratification of federal laws and decrees such as the annual budget and fiscal agreements, and for consent to the appointment of the prime minister and Supreme Court judges. The chairman of the SCU is the president of the UAE and also the head of state. The chairman also officiates as the supreme commander of the federation in the capacity as chairman of the Supreme Defense Council. The president convenes the SCU and appoints the prime minister, deputy prime minister, cabinet ministers, and other civil and military officials. The president also has the power to proclaim martial law. The Federal National Council (FNC) is below the Constitution. The FNC is the main legislative authority; however, its main role in the governmental process is limited to consultation. The ruler of each emirate appoints its members for two-year terms. For purposes of administrative implementation, the laws of the UAE are divided into two major categories: union law and decrees. Bills that are drafted by the Council of Ministers for deliberation by the FNC and then submitted to the president for assent and the SCU for ratification become union law upon promulgation by the president. Decrees are issued jointly by the president and the Council of Ministers between the sessions of the SCU.

The federal judicial system that was established under the Constitution has both a Supreme Court and a lower court. The president, with the approval of the federal supreme council, appoints the judges.

Division of Powers

According to article 120 of the Constitution, the federal government has exclusive legislative and executive jurisdiction over foreign affairs, national defense, internal security, federal finances and taxes, communications, highways and aviation, nationality, education, public health, public information, the census, currency, electric power, and weights and measures. The Constitution also assigns the federal government responsibility for legislation on labor relations; social security; banks; the penal code; civil and criminal proceedings in courts; printing and publications; copyrights; the protection of cultural, technical, and industrial property; the delimitation of territorial waters; and navigation of the high seas.

Crime

Legal System—Judiciary

As per article 94 of the Constitution, citizens are guaranteed an independent judiciary under the aegis of the Supreme Court of the Union. This body consists of a president and no more than five

The Dubai Courts in Dubai, United Arab Emirates, where a British couple accused of public indecency is to be tried, September 9, 2008. The couple is accused of having sex on a Dubai beach. (AP Photo/Aziz Shah)

judges who are appointed by the UAE president, upon approval from the SCU. The Supreme Court has been vested with the power of judicial review and original jurisdiction for adjudicating cases involving federal-emirate matters as well as disputes between emirates. The court also has been empowered to try cases of official misconduct that involve cabinet and other senior federal officials. There is also a provision for the establishment of union courts of the first instance to handle certain civil, commercial, criminal, and administrative cases; judgments from these courts are appealable to the Supreme Court. The local courts in each of the emirates have jurisdiction over areas that have not specifically been allotted to the union courts in the Constitution. In 1978, judicial authority was formally transferred from the emirates to the federal government.

According to the Constitution, sharia is the basis of all legislation. Legal codes are based on the sharia. There are four major schools of Islamic law—Hanafi, Shafii, Maliki, and Hanbali—and three of these four are present in the societies of the UAE. The majority of the indigenous population adheres to the Maliki legal school, but many of the residents of Fujairah observe the teachings of the Shafii school, and nearly one-half of the population of the city of Al Ayn are Wahhabis and therefore follow the precepts of the Hanbali school of law. According to observers, the belief is that if and when a legal code is adopted, it will conform to the Maliki school but will not be objectionable to the adherents of the other sects. During the 1980s, the judicial procedures were based on a synthesis of Anglo-Saxon, civil (European), and Islamic models. Many of the magistrates were Egyptian nationals.

Drug Trafficking

On account of laws that came into effect in January 1996, those convicted of drug trafficking are liable to get the death penalty. After January 2006, possession of even small amounts of illegal drugs has resulted in prison sentences of up to four years for foreign nationals who are transiting the UAE. Drugs normally taken under a doctor's prescription in the United States and even some of the common over-the-counter medications in the United States are regarded as narcotics in the UAE and are illegal to possess. A person is liable to arrest and prosecution if possession of medicines comes to the attention of the authorities. Poppy seeds are also on the list of controlled substances, and their possession and importation are strictly prohibited. Individuals who are found to possess even small quantities of controlled substances are subject to prosecution and liable to imprisonment for up to 15 years.

Terrorism

Laws were enacted in 2004 to criminalize the funding of terrorist organizations. On account of the law, the time that public prosecutors could hold terrorism suspects without charge was extended from 21 days to 6 months. Terrorism cases are referred to the Federal Supreme Court, which can extend the detention period indefinitely. In 2006, a cyber-crime law was passed to criminalize the use of the Internet to either promote terrorist ideologies or finance terrorist activities. The Dubai Ports Authority was the first Middle Eastern port to join in the U.S. Homeland Security Container Security Initiative in 2004. This program is aimed at preventing materials that could be used by terror groups from entering the United States in shipping containers. Pursuant to this program, U.S. customs officers and the Dubai Customs Intelligence Unit jointly screen suspicious cargo transiting Dubai's ports that are bound for the United States. To prevent money laundering for terrorist purposes, legislation was adopted in 2002 to give the Central Bank the power to freeze any suspected account for seven days without prior legal permission. All banks have also been cautioned to carefully scrutinize transactions that pass through the UAE from Pakistan and Saudi Arabia.

Human Trafficking

The trafficking of girls and women, to be eventually used as prostitutes and domestic servants, and of men, to be used as servants, laborers, and unskilled workers, continues in spite of promises by the government to end these practices. A federal law was enacted (UAE Federal Law 51 of 2006) to criminalize and combat human trafficking. Article 16 of the law lays down stiff penalties against traffickers that may range from one year to life in prison and fines of up to $275,000. This law was also specifically aimed at criminalizing the use of persons under age 18 as camel jockeys. Between 2005 and 2006, more than a thousand children who were identified by the UAE and the United Nations as victims of trafficking were repatriated to their home countries. There are social support and human rights offices in all police departments in the UAE to assist female and child victims of abuse. However, there is a perception that the government is not effective in protecting women from abuse.

Finding of Guilt

Court Structure

On account of its federal structure, the United Arab Emirates is unique in the Arab world. As of 1971, most judicial structures remained primarily at the emirate rather than federal level. In 1973, a Supreme Federal Court was created, and in 1978, some judicial matters were transferred from member emirates to that court. In 1983, a comprehensive law governing the federal judiciary was passed, creating a full-fledged federal judicial system. However, the member emirates retain significant and varying degrees of judicial autonomy. Laid on top of this federal structure is another distinction between civil and sharia judiciary. This gives the UAE quite an intricate judicial structure. There are two networks of civil court systems in the UAE: the federal system and the local systems. Although most emirates have given up civil jurisdiction from the

local to the federal level, there are networks of sharia courts that still operate in each emirate. The federal court system has three levels: primary courts, appeals courts, and the Supreme Court. This system was set up on a framework proposed by the judiciary itself. The provisions of the UAE Constitution did not delineate how the federal system could establish a structure of federal courts beyond the Federal Supreme Court. The Ministry of Justice requested direction from the Federal Supreme Court regarding interpretation of the Constitution. The interpretation that was offered by the court paved the way for the three-tiered federal court system. The local systems are much older; they date back to the pre-independence era and in some cases even earlier. The local court systems generally consisted of two kinds of courts: sharia courts and rulers' courts. The sharia courts mostly operate on the assumption that they have general jurisdiction like the Saudi courts. The courts of the rulers of the member emirates originated out of the belief that settling disputes was an integral part of governing. These courts were formalized to different degrees, with some being staffed by professional judges and operating on the basis of codified law.

After the establishment of the federal system, all but two emirates (Dubai and Ras al-Khaimah) opted to cede their jurisdiction over civil, criminal, and administrative cases. Sharia courts continue to function, however, throughout the UAE.

In spite of the absence of any codification of personal status issues, there is not much dispute that personal status cases are to be dealt with in accordance with the Islamic sharia, and the sharia courts therefore are the main court in personal status matters.

All across the UAE (with the partial exception of Abu Dhabi), the relationship between the sharia courts and the civil courts (local and federal) has not been clarified in legislative texts. This fact may lead to some overlap of jurisdiction, though civil courts accept the jurisdiction of sharia courts in personal status cases. Further, civil judges are required to rely on the sharia in the absence of clear legislative texts.

The law of the Federal Judicial Authority establishes the rules of the sharia among the sources of authority over judges. This reduces the potential for conflict between the two judicial systems.

Prosecution System

The *niyaba* system operates in UAE. As such, investigation and prosecution of crimes is considered to be a judicial function. The attorney general heads the *niyaba* and is supervised by the Ministry of Justice. Qualifications for a *niyaba* position are analogous to those for a judgeship. The attorney general and members of the niyaba are appointed by the president of the UAE upon nomination by the minister of justice.

Integration of Administration in the Emirates

The main principle on which the rulers of the United Arab Emirates envisioned the development of political institutions was based on the concept of functionalism as espoused by the political scientist Enver Khoury. It was defined as a process that commenced with the integration of some noncontroversial areas such as social services and communications within the federal framework. Khoury believed that with the gradual development of a national identity, the individual emirates would gradually cede control over more controversial administrative and political sectors to the central government. He postulated that when the proposed federal system gained more responsibilities and power in the economic, social, and technical fields, this would lead to an enhancement of the political integration. There was an assumption that there would be convergence, due to functionalism, and not a growth of different identities. Up until the 1980s, this process of functionalism had reached a stage where crucial federal institutions such as the central bank and the central judicial structure had been set up. However, because of the rivalries and suspicions between the emirates, this process of integration has not gone any further. There were questions about the benefits of functionalism. Some of the emirates sought to opt for a restricted federalism wherein each of the emirates held on to its independence.

level up columns

Interpretation of the Law

Article 7 of the UAE Constitution is referred to as the Constitutional Clause, and it deals with the position of sharia within the state legal system. According to the legislature, it is the theoretical basis for the Islamization of laws. However, this clause is ambiguous because it is amenable to varying juristic interpretations and has created tension and uncertainty within the state legal system and undermines its unification. With respect to interpretation of the Constitutional Clause, Arab jurists and legal commentators fall into two different camps—the Islamists and the Liberals. According to the Islamists, this clause elevates the sharia above all other sources of law. On the other hand, the liberals place the sharia on an equal footing with other sources of law. Though the Supreme Court has repeatedly held that recourse to Islamic sharia is a matter of policy within the purview of the federal legislature, the court has announced that all federal legislation should be derived from Islamic sharia. The court has adopted the position of the Islamists, according to which any legislation violating the sharia should be considered unconstitutional. Though there is strong evidence of an apparent conflict between the Constitution and the laws dealt with by the Supreme Court judgments, the court was reluctant to declare the laws unconstitutional. While interpreting and applying article 7 of the Constitution, the court distinguished between civil and criminal matters. While considering the legality of bank interest, the court considered the application of the sharia as a matter of policy to be left to the legislature, and not for the judiciary to decide. Regarding the application of the sharia in criminal matters, the court declared that the lower federal courts should apply the punishments prescribed by the sharia in *hadd* offenses. In practice, the UAE applies the sharia in the sphere of criminal matters only. It does not apply to commercial matters, especially with respect to commercial law. The sharia rules are applied regarding *hudud* offenses, but the sharia rules regarding bank interest are not. The reason for this seems to be a matter of practicality: the Supreme Court has stayed away from applying sharia where it would threaten orderly economic development and modernization of its institutions. However, the application of *hadd* punishments, by comparison, does not threaten any such disruption.

Sharia is the main source of law and applies to all family and criminal law matters. In criminal cases, the penal code is applied if the evidentiary standard required by sharia is insufficient. The UAE does not have a formal system for bail. Defendants are given legal counsel only after police have concluded their investigation. Though defendants are not guaranteed a speedy trial, they are entitled to a fair public trial and are presumed to be innocent until proven guilty. All trials are conducted before judges instead of juries. Trials that involve national security and issues involving public morality are heard only by the Federal Supreme Court and are not open to the public. There is an appeals process from all the courts. The military court system is used solely for trials of military personnel and is independent of the other courts.

Police

The police do not publish regular crime statistics. Police General Directorates throughout the emirates are supervised by the UAE Ministry of Interior. Each emirate maintains its own police force and is responsible for supervising its police stations. The total strength of the UAE police force is estimated to be 10,000 personnel. Police stations receive complaints from the public, make arrests, and transfer all cases to the public prosecutor, who forwards these cases to the courts for further processing. In 2007, the Ministry of the Interior announced plans to establish a new crime bureau, along with affiliated offices in the individual emirate police departments, to address problems such as money laundering, terrorism, and drug trafficking.

Human Rights

According to the annual report of the U.S. Department of State, the UAE has taken modest steps in the protection of human rights. However, there remain some concerns regarding many practices and

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policies. The UAE does not have democratically elected political parties or institutions. There are restrictions on free assembly and association, and the rights of workers are abused. However, this has been changing as a result of some high-level administrative reforms that got underway in 2004. Steps were taken to enhance public participation in government through the introduction of indirect elections to the country's parliament—the Federal National Council. Formerly, the 40 members of the FNC drawn from the seven emirates were appointed by the rulers. However, under these reforms, each ruler selected an electoral college for each emirate, with its members being at least 100 times the number of FNC members needed for each emirate (eight each for Abu Dhabi and Dubai, six each for Sharjah and Ras al-Khaimah, and four each for Fujairah, Ajman, and Umm al-Qaiwain). The respective electoral colleges were then tasked with electing half the FNC members, while the other half were appointed. This process got underway in 2006. In the resultant new FNC, there are 9 women out of a total of 40 members, representing 22.5 percent of the total.

Although the UAE Constitution guarantees freedom of speech and press freedom, in reality, these rights are limited. All publications are licensed by the government, and only approved editors are appointed. There are laws that regulate press content. Negative comments regarding Islam, the government, the ruling families, or UAE citizens by expatriates are punishable with imprisonment. Because the press normally practices self-censorship, this regulation rarely needs enforcement. With respect to cyberspace, the government restricts access to some Internet sites and also scrutinizes imported printed material for content. It places restrictions on the distribution of material that is considered to be excessively violent, pornographic, derogatory to Islam, or contrary to the foreign policy of the UAE government.

Punishment

Very strict punishments are meted out for morals offenses and violations of decency such as drug use, nudity, and gambling. The country has very strict drug laws with respect to illegal drugs/narcotics. There is very low tolerance for drug use. The standard minimum sentence for possession of drugs is incarceration for four years. Being increasingly concerned about illegal drugs in the mid-1990s, the UAE dramatically increased the penalties for smuggling, possessing, and using illegal drugs. This fact was illustrated in a high-profile case in 2001 when five Britons were arrested and tried on drug charges. Three of them were charged with importing drugs and faced the death penalty if found guilty. The group was charged with importing, possessing, and using cocaine and hashish. The case was heard in the sharia court of the traditional and conservative emirate of Ras al-Khaimah. Drinking or possessing alcohol without the requisite permit from the Ministry of the Interior also is illegal and subject to arrest and fines and/or imprisonment.

Open displays of affection are not permitted. Sexual activity outside of marriage is considered illegal in the UAE. In 2009, a British businesswoman was charged with having sex outside marriage, engaging in indecent behavior in public, and being drunk in public. Michelle Palmer was arrested in 2008 along with another Briton for having sex on a beach. She was faced with a sentence of up to six years in prison.

In another case in 2004, the police in the emirate of Sharjah arrested 61 Chinese men and women on charges of gambling. The group was arrested while they were engaged in casino-style gambling. This activity is illegal throughout the UAE. Not only were the members of the group liable to 2 years in prison or fines of up to $5,500 and deportation, but the tenant of the apartment was also liable to a punishment of up to 10 years in prison.

Prison

There is no information published regarding prisons or the number of prisoners in prisons in the UAE. According to the World Prison Population list, the prison population total in 1998 was 6,000, with a prison population rate of 250 per 100,000.

Farrukh B. Hakeem

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Official UAE Web site: http://uaeinteract.com.

Library of Congress. "United Arab Emirates" Country Studies—Federal Research Division:. http://lcweb2.loc.gov/frd/cs/cshome.html.

Yemen

Legal System: Islamic/Civil/Common
Murder: Medium
Corruption: High
Human Trafficking: Medium
Prison Rate: Medium
Death Penalty: Yes
Corporal Punishment: Yes

Background

Located in the southwestern part of the Arabian Peninsula, Yemen comprises approximately 328,000 square miles of rugged, mountainous terrain in the north and coastal plains in the south. It is the poorest of the Arab countries and has a population of 22 million people, mostly Sunni Muslim, with a minority Shiite population in the north. Economically, the country relies on dwindling oil resources.

Historically, the country was split into north and south. The northern part of Yemen was part of the Ottoman Empire, and the south belonged to the British Empire beginning in the 19th century. In 1918, the north declared independence from the Ottomans and gradually became a republic, but the British remained in control of the south until 1967. In 1970, Marxists took over southern Yemen, and a civil war was waged between southern and northern Yemen, fueled by the Cold War. The Soviet Union backed the south, and the United States provided aid to the north. Yemen was subsequently unified in 1990.

Today, a low-level insurgency continues in the north, led by Shiites seeking to install a theocratic government. In August 2009, the government began an offensive against the Zaidi Shiite Houthi rebels in Saada and Amran provinces, involving airstrikes and artillery fire, killing many civilians.

Yemen is a constitutional republic and has a president and prime minister with a cabinet. There is a bicameral legislature made up of the Shura Council (appointed) and an elected House of Representatives. The Yemeni government is known for its corruption. At the same time, international observers note that the country has made substantial progress toward democracy and has cooperated with international efforts against terrorism.

Crime

Yemen's homicide rate averages 3 per 100,000 inhabitants yearly, according to information released by the National Statistical Office of Yemen in 2004. Crime is reportedly increasing each year in Yemen. According to statistics released by the Ministry of the Interior, 936 crimes were reported in the Sana'a governate in 2005, up 15 percent from the year before. Among the crimes, 307 were violent crimes. Experts believe that this grossly underrepresents the true figure of crime because nonreporting remains a problem. Two factors that the government believes contribute to the lack of reporting are the distance between police stations in rural areas and the public perception that the police will not do anything to help.

Because of the patriarchal nature of Yemeni society, many human rights experts have expressed concern over the prevalence of domestic violence. Among a sample of 111 women who live in Sana'a, one domestic violence victimization survey found that 50.9 percent of women had experienced verbal threats of violence from a male member of their family, and 54.5 percent had suffered physical abuse. In addition, 17.3 percent of the sample reported being sexually abused, and 28.2 percent had their freedom restricted. In 1996, according to official Yemeni records reported in the *International Review of Victimology,* 64 women were victims of shooting.

Yemen is known in the West as the site of the Al Qaeda bombing of the USS *Cole* in 2000, which killed 17 service personnel. In addition to Al Qaeda, there are two Yemen-based terrorist organizations

operating in Yemen, the Islamic Jihad Movement and the Aden-Abyan Islamic Army. Other terrorist attacks in the country include a car bombing at the U.S. Embassy in Sana'a on September 17, 2008, which took 18 lives. In 2002, a French oil tanker was bombed, followed by the killing of foreign missionary doctors the same year. Yemeni extremists bombed a hotel in Aden in 1992, which killed a European tourist and a hotel employee.

Off the coast of Yemen, in the Gulf of Aden, pirates have been operating in increasing numbers. During the first half of that year, there were more than 40 attacks on other vessels, and 23 pirate vessels were seized by the government. In 2008, there were more than 60 attacks. Most often, the pirate vessels are from Somalia. Yemen's transportation minister announced that a regional center to combat piracy would be initiated in 2008 with the help of 20 other countries and the International Maritime Organization. A lack of naval and coast guard resources in Yemen has made it difficult for the country to protect against piracy activities. Problems with coordination of these efforts with the Yemeni army and policy have also been cited. Piracy in the Gulf of Aden has reportedly cost the country $350 million, including $200 million in losses taken by Yemeni fishermen who have stopped fishing in the pirate-infested waters for safety reasons. In addition, attempting to secure the Yemeni coastline has cost the government $150 million according to the *Yemen Post.*

Yemen is known for having the largest market for arms in the Middle East. It is estimated to have around 20 million guns within its borders. According to the Interior Ministry, 293,000 unregistered weapons were seized between July 2009 and August 2007, when a ban against carrying weapons was put in effect. Government corruption contributes to the viability of the burgeoning market that supplies arms to terrorist groups in the region, including Al Qaeda.

Kidnappings are relatively common. In the Saada governate in 2009, nine foreigners were kidnapped, and three were later found dead. The rest have not been found. Additionally, according to the U.S. Department of State, carjackings were on the rise in 2009.

It is traditional to chew khat leaves, a stimulant, in social settings. The drug is legal in Yemen but illegal in most other countries. An illegal market for marijuana and heroin is also present in Yemen.

Police

The Police Corps Act of 2000 states that the Yemeni police are intended to protect citizens' life and property; however, the national police force does not have control over all the rural spaces within Yemen. In some areas, tribal, customary forms of policing prevail, according to a report of the 2003 International Crisis Group.

Most major criminal investigations are handled by the Criminal Investigations Division (CID), which is housed in the Ministry of the Interior (MOI). Most high-ranking members of the ministry are related to, or tribally affiliated with, Yemen's president, Ali Abdullah Saleh. One wing of the MOI, which reports directly to the president, investigates government opposition leaders and has been criticized by human rights organizations. Yemen is a member of INTERPOL.

Yemen employs women as police officers and support staff as part of its mission to provide services to women and children. In 2000, policewomen numbered 1,476 and were represented among the ranks, although not at the highest rank of brigadier. The first policewomen were recruited into the national force in 1980. Yemen had 324 policewomen working in the capital, Sana'a, in 2000, including 59 who worked in the Ministry of Interior office, 46 in the supply office, 27 in civil affairs and registration, 26 in the women's prison, and 11 in the CID. Among their duties is acting as airport security screeners for women, interrogating women and children, liaising with INTERPOL, and completing the civil registration of women.

Legal System

Yemen's Constitution, ratified in 1991, provides for an independent judiciary. The judicial system is divided into three levels: first instance (*ibtida'iyya*), appeals, and the Supreme Court, located in Sana'a. The Supreme Court is a constitutional court in

addition to being used for the adjudication of high officials and to handle election disputes and interjurisdictional court conflicts. There is also a separate military division of the court system. The executive branch's Supreme Judicial Council, whose members are appointed, exercises authority over other members of the judiciary.

Unlike many Arab Muslim countries, Yemen does not have a distinct personal status court. Cases of divorce and custody are heard in the general courts. There are, however, separate chambers within courts to hear juvenile criminal cases.

Journalism as Crime

Increasingly, journalists are being tried, convicted, and imprisoned for crimes related to writing articles that purportedly defame the government. Article 103 of the Press and Publications Law indicates that journalists must respect bans on the following:

> Anything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds; Anything which might cause tribal, sectarian, racial, regional or ancestral discrimination, or which might spread a spirit of dissent and division among people or call on them to apostatize; Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to the national unity or distorting the image of the Yemeni, Arab or Islamic heritage; and freedom of the individual by smears and defamation.

In 2009, the Supreme Judicial Council decided to set up a special court, the Press and Publications Court, for media-related cases. Members of the judiciary expressed concerned about the way the media was reporting on political violence in the south of the country, and seven newspapers were banned by the government that year. Journalists publicly protested the establishment of a separate court to try newspapers, publishers, and writers. Despite protests, the court tried its first case in July 2009. On July 15, 2009, Yemeni journalist Anis Mansour was sentenced to 14 months in prison for "separatism and attacking national unity" for his articles in the *Al-Ayyam* newspaper.

According to human rights reports, defense attorneys report regular unfair trials in which they do not have full access to the defendants' files. Some defendants have indicated that their confessions were obtained under torture.

Yemeni lawyers and judges are trained at the High Judicial Institute in addition to having law degrees. The institute, established in 1981, offers a three-year program in specialized and advanced legal training for practicing in Yemeni courts. There are female judges in Yemen, although the government has not released figures as to how many. In 2007, the Yemeni Parliament voted to ratify the International Criminal Court statute.

Punishment

In 2002, there were 14,000 people incarcerated in Yemen according to NationMaster, 2006. Under Yemeni law, nonmarital sex is punishable by 100 lashes and up to 3 years in prison. The sentence extends to 15 years if one of the parties is under 18 years of age. According to Amnesty International (2009), these sentences are frequent. Slandering the Yemeni president is punishable by up 2 two years in prison. Illegal drug exportation and importation can be punishable by the death penalty. For drug abuse in general, the punishment is a mandatory minimum of 25 years in prison.

A 2009 report from the National Forum on Human Rights revealed inhumane violations in Yemeni women's prisons. Although the deployment of women correctional officers is intended to safeguard women in custody, the report cites the frequent use of male guards for female prisoners as leading to sexual abuse of female inmates. In addition, the *Yemen Times* reports that houses and wings of police stations have been used for long-term detainment, and inmates have complained of unsanitary conditions, lack of food and mattresses, and juvenile inmates being held with adults. Yemen has capital punishment. In 2008, 13 people were executed.

Staci Strobl

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European Society of Criminology: http://www.esc-eurocrim.org. This site provides a lot of relevant information on crime and punishment in Europe, including the programs of the annual conferences.

European Sourcebook of Crime and Criminal Justice Statistics: www.europeansourcebook.org. This site provides databases on police, prosecution, conviction, and correctional statistics since 1990 as well as some data on victimization.

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International Court of Justice: http://www.icj-cij.org/.

Library of Congress Area Studies: http://www.loc.gov/rr/.

Nationmaster: http://www.nationmaster.com/index.php. This interesting interactive site allows comparative statistics of countries on a wide range of topics, including criminal justice. However, the crime statistics tend to be outdated.

The New York Times Countries and Territories: http://topics.nytimes.com/topics/news/international/countriesandterritories/index.html. These pages contain both general background information and links to recent media stories.

United Nations Interregional Crime and Justice Research Institute (UNICRI): http://www.unicri.it/wwd/analysis/icvs/data.php. A wide variety of information, particularly data for many countries participating in the International Crime Victim Survey (ICVS), is available.

United Nations Office on Drugs and Crime: http://www.unodc.org/. This site contains a wealth of information on crime, with extensive databases of crime statistics from the UN Surveys of Crime and Criminal Justice Systems.

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U.S. Library of Congress Country Studies: http://lcweb2.loc.gov/frd/cs/. These are much more detailed than the usual country profiles, such as the CIA Factbook.

U.S. National Institute of Justice International Center: http://www.ojp.usdoj.gov/nij/international/. This site offers a variety of reports, articles, and descriptions of transnational and international crime and justice.

Wikipedia: http://wikipedia.org/. There is much information on countries, including interesting descriptions of crime and criminal justice issues. One has to be careful of the sources, but often there are links that lead to useful and reasonable resources. This is particularly good for tracking down internal national news media Web sites (i.e., local newspapers and TV stations) that almost always have news on local crimes.

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