

Response of the NHRCK regarding effect of over-incarceration and overcrowding on human rights

RE: “NV on HRC. Res. 24/12” on 2 of April, 2015

Overview

1. Over-incarceration in detention facilities, in principle, is prohibited.
 - a) Article 9 of the United Nations Standard Minimum Rules of the Treatment of Prisoners prescribes that every prisoner shall occupy by night a cell or room by himself.
 - b) Article 14 of Administration and Treatment of Correctional Institute Inmates Act prescribes that prisoners shall be placed in solitary confinement Provided that they may be placed in non-solitary confinement when the conditions of institutions are not adequate such as shortage of solitary wards.
2. State bears a responsibility to carefully select prisoners to be suitable to associate with one another, when they are placed in non-solitary cell due to restriction.

Current Status

1. Article 3 of 'Rule on Standard of Judicial Facilities' (Directive N.848 of Ministry of Justice, 29 December, 2011)

Standard Area in Correctional Facilities: Solitary Cell- **4.62 m²**, Non-solitary Cell -**2.58 m²**

* Standard area includes area for lockers and sink and does not include area for bathroom.

2. Status of Over-incarceration in major correctional facilities in Korea

	Area (m ²)	Capacity(ppl)	Current(ppl)	Density(m ²)	Note
Seoul Detention Center	7,462	2,200	3,124	4.55	
Seoul Southern Prison	4,253	1,100	1,083	2.77	
Busan Detention Center	4,804	1,480	1,866	4.22	
Daegu Prison	5,262	1,720	2,040	4.22	
Daejeon Prison	8,189	2,060	3,031	4.03	
Gwangju Prison	4,358	1,380	1,848	4.62	

* Refer to Status of Staff and Detainees in Correctional Facilities from the Ministry of Justice(12 January, 2015)

3. Density in other countries and international standard

- a) Solitary Cell: International Red Cross(5.40 m²), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT (7 m²), Germany(6~7 m²), Japan(10 m²)
- b) Non-solitary Cell: International Red Cross(3.40 m²), CPT(7 m²), Germany(7 m²), Japan(7.2 m²)

Problems(Impact on Human Rights)

1. Negative Impact on purpose of correction policy which is detention, correction and edification of detained criminals
 - a) Increase of number and density of incarceration could lead to increase of risk of accident including fight among inmates and lack of resources including process for correction/edification and medical treatment

- b) Increased number of inmates under supervision increases stress of prison guards due to long hours of work which undermines their ability to carry out duties for correction/edification
2. Increase of violation of principle of accommodation under Administration and Treatment of Correctional Institute Inmates Act
 - a) Over-incarceration undermines observance to principles of solitary confinement and individual treatment prescribed under the law for proper correction policy
 - b) Possibility of contagion of criminality during incarceration
 3. Over-incarceration is result of failure of the criminal justice system to be detailed
 - Frequent unnecessary detention by investigative agencies during prosecution and preference on imprisonment by judges inevitably lead to increase of number of prisoners

Improvement measures

1. Reduce number of prisoners to resolve over-incarceration
 - a) Efforts to reduce number of detainees (Reduction of statutory punishment, observance to the principle of investigation and trial without detention, expansion of alternative punishment such as a stay of execution and monetary penalty, minimization of detention for labor due to failure to pay fine, active prohibition of re-detention due to cancellation of a stay of execution or parole)
 - b) Efforts to reduce period of incarceration (Minimize period of detention during pendency, avoidance of long-term sentence, practical reduction of term of imprisonment through parole)
2. Expansion of facilities to address over-incarceration
 - a) Establishment of new prisons near mega-cities
 - b) Expand and observe minimum space for each person that can guarantee human dignity