

PRISONERS' RIGHTS AND INTERNATIONAL HUMANITARIAN NORMS: A LEGAL EXAMINATION

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Abstract

This paper examines the legal architecture protecting persons deprived of liberty where international humanitarian law (IHL) and international human rights law (IHRL) intersect. It sets out the principal treaties and soft-law standards (Geneva Conventions/Common Article 3; ICCPR; Convention Against Torture; and the UN Standard Minimum Rules / "Nelson Mandela Rules"), surveys enforcement mechanisms, surveys leading jurisprudence, and presents a focused case study on Guantánamo litigation (Rasul; Hamdan) to illustrate how IHL/IHRL tensions play out in practice. The paper concludes with concrete legal and policy recommendations to strengthen protections for detainees and ensure compliance with humanitarian norms. Key primary materials and case law are cited throughout.

Keywords: *prisoners' rights, international humanitarian law, human rights, Geneva Conventions, Nelson Mandela Rules, Guantánamo, torture, overcrowding.*

1. Introduction

Persons deprived of liberty—prisoners, pretrial detainees, interned persons, and persons detained in armed conflict—are especially vulnerable to rights violations because the State exercises near-complete control over their lives. Two complementary bodies of international law govern their treatment: international humanitarian law (IHL), governing detention in armed conflict, and international human rights law (IHRL), which applies at all times and contains guarantees for detainees. The interplay between these regimes raises doctrinal and practical issues: which rules apply when, how to reconcile derogations (in emergencies) with non-derogable rights (e.g., prohibition of torture), and how domestic courts interpret and enforce international norms. This paper maps the legal landscape and examines jurisprudence to show how states and courts have navigated these tensions. (Primary normative texts cited below.)

2. Legal framework: IHL and IHRL applicable to persons deprived of liberty

2.1. International Human Rights Law (IHRL)

International Covenant on Civil and Political Rights (ICCPR): Article 9 (liberty and security), Article 10 (humane treatment of persons deprived of liberty), and procedural guarantees underpin detainee protections. The Human Rights Committee interprets Article 10 as applying to all those deprived of liberty.

Convention Against Torture (CAT): Prohibits torture and cruel, inhuman or degrading treatment and requires prevention, investigation, and remedies. Non-derogable obligations and obligations to prosecute and provide redress are central.

Soft law — Nelson Mandela Rules (UN Standard Minimum Rules, 2015): Authoritative guidance on prison conditions (accommodation, healthcare, discipline, segregation, rehabilitation) and a benchmark for States and monitoring bodies.

2.2. International Humanitarian Law (IHL)

Geneva Conventions (Common Article 3; Third and Fourth Conventions): Apply in armed conflicts; Common Article 3 sets minimum humane treatment standards for persons not actively engaged in hostilities in non-international armed conflicts; the Third Geneva Convention governs POWs; the Fourth Convention protects civilians. IHL includes procedural protections for prisoners of war and forbids torture, outrages upon personal dignity, and

summary execution. IHL and IHRL are complementary: IHRL applies at all times, including during armed conflict, while IHL contains special rules tailored to conflict circumstances. (See case law in Section 6.)

3. Core substantive norms and standards Prohibition of torture and cruel, inhuman or degrading treatment (absolute, non-derogable). CAT and regional human rights systems enforce this.

Humane conditions of detention: Adequate space, sanitation, nutrition, healthcare, ventilation, and exercise — as articulated in the Nelson Mandela Rules and interpreted by courts (ECHR jurisprudence on overcrowding).

Procedural safeguards: Prompt judicial review of detention, access to counsel, prompt and fair trial, and avenues for complaint and remedy. ICCPR guarantees and domestic judicial enforcement are essential.

Special protections for vulnerable detainees: Women, children, the ill and mentally ill, and persons with disabilities require tailored protections (Nelson Mandela Rules and treaty monitoring bodies).

4. Mechanisms of accountability and enforcement

Domestic courts: Often first-line enforcers of detainee rights (habeas corpus, writs of habeas corpus, constitutional remedies). Landmark domestic cases can spur reform. (Examples below.)

Regional courts and treaty bodies: European Court of Human Rights (ECHR) enforces Article 3 (no torture) and Article 5 (right to liberty), and has issued “pilot judgments” to remedy systemic problems (e.g., *Torreggiani v. Italy* on overcrowding) (43517/09 (ECHR, 08 January 2013)). UN treaty bodies (Human Rights Committee; CAT Committee) review State reports and individual communications under some procedures.

International humanitarian law mechanisms: IHL violations (war crimes) may be tried domestically or by international or hybrid tribunals; the ICRC plays a monitoring and advocacy role in conflict detention contexts.

5. Leading jurisprudence (selected cases with brief notes)

Sunil Batra v. Delhi Administration (1978) 4 SCC 494): The Indian Supreme Court asserted its power to protect prisoners from inhuman treatment and ordered judicial oversight of prisons, shaping domestic remedies for ill-treatment.

Hussainara Khatoon v. State of Bihar (1980) 1 SCC 81): Landmark PIL recognizing right to speedy trial and prompting release/processing of large numbers of undertrials; key for access to justice and free legal aid.

Aydin v. Turkey (ECtHR, 1997): Found rape of a detainee by state agents amounted to torture; established state responsibility for sexual violence in custody.

Torreggiani and Others v. Italy (43517/09 (ECHR, 08 January 2013)). Held that severe overcrowding and poor conditions violated Article 3 (prohibition of inhuman/degrading treatment) and required systemic remedial measures.

Rasul v. Bush (542 U.S. 466 (2004) & *Hamdan v. Rumsfeld* (548 U.S. 557 (2006) Key decisions on availability of habeas corpus to Guantánamo detainees and on applying Geneva Convention protections and domestic law limits to executive-created military commissions. These cases illustrate judicial pushback where executive detention policy conflicted with IHL/IHRL and domestic law.

6. Case study — Guantánamo Bay: *Rasul v. Bush* & *Hamdan v. Rumsfeld*

6.1. Background and legal questions

Following 9/11 the United States detained numerous persons as foreign “enemy combatants” at Guantánamo Bay (Cuba). The government argued that detainees fell outside the reach of U.S. habeas corpus jurisdiction and that special military commissions could try them, often

invoking unique wartime executive authority. Critical legal questions included: (a) do foreign detainees held at Guantánamo have access to U.S. courts to challenge detention? (b) do international humanitarian norms (Geneva Conventions) apply and can they constrain executive action? (c) what procedural protections must any tribunal afford?

6.2. *Rasul v. Bush* (542 U.S. 466 (2004))— summary impact

In *Rasul v. Bush*, the U.S. Supreme Court held that federal courts have jurisdiction to hear habeas corpus petitions brought by foreign nationals detained at Guantánamo because the U.S. exercises “complete jurisdiction and control” over the base. The decision opened U.S. judicial review to challenge executive detention policies and was a watershed in detainee rights litigation.

6.3. *Hamdan v. Rumsfeld* (548 U.S. 557 (2006)) — Geneva Conventions and procedural limits

In *Hamdan v. Rumsfeld*, the Supreme Court held that the military commissions set up by the executive violated both the Uniform Code of Military Justice and the Geneva Conventions, because they lacked the procedural safeguards required by U.S. law and the law of war. The Court emphasized that even in wartime the executive is constrained by law; Geneva protections (including Common Article 3) could be invoked and enforced by domestic courts. The ruling forced legislative change (Military Commissions Act) and further litigation (e.g., *Boumediene*), but the immediate effect was to reaffirm that IHL norms can place binding constraints on detention practices and that domestic courts are venues for enforcing those constraints.

6.4. Lessons from the Guantánamo litigation

Judicial oversight matters: Courts can be critical to enforcing both international humanitarian standards and domestic law against executive excess. *Rasul* and *Hamdan* illustrate judicial correction when detention policy strays from legal norms.

Overlap of IHL and IHRL: The Court’s willingness to treat Geneva protections as enforceable demonstrates the practical convergence of IHL and human rights obligations when it comes to core protections (humane treatment, fair procedures).

Policy responses may be legislative rather than remedial: Following judicial setbacks, legislatures and executives may seek statutory or policy fixes that alter access to remedies—highlighting the need for continuous monitoring and rights-based advocacy. Recent reductions in the Guantánamo population show policy shifts but not a full resolution of legal and ethical concerns.

7. Comparative observations: lessons from Europe and India

7.1. Europe — systemic remedies for structural violations

The ECHR has developed robust remedies for detention-related abuse, including “pilot judgments” (e.g., *Torreghiani*), which require systemic state reform rather than only individual compensation. The Court’s line of cases on overcrowding and inadequate conditions underscores that prolonged poor conditions can amount to Article 3 violations and trigger state responsibility to implement systemic corrective measures.

7.2. India — Public Interest Litigation and enforcement of detainee rights

Indian jurisprudence (e.g., *Hussainara Khatoon* and *Sunil Batra*) demonstrates the role of domestic courts and PIL mechanisms in remedying mass or structural injustices: securing speedy trials, free legal aid, and judicial oversight of prisons. These cases catalysed administrative and judicial attention to large-scale undertrial populations and to custodial cruelty.

7.3. Comparative takeaway

Both regional systems and domestic courts are effective when they (i) treat detainee rights as fundamental, (ii) deploy structural remedies where violations are systemic, and (iii) insist that

non-derogable rights (torture prohibition) be enforced in practice. International norms provide the standard; domestic and regional courts are the primary enforcers.

8. Contemporary challenges

1. **Overcrowding & poor conditions:** Persistent in many jurisdictions and a frequent source of ECHR/ICCPR violations; requires systemic policy and resourcing responses.
2. **Indefinite detention / lack of procedural safeguards:** Detainees held without charge (or without timely trial) raise legal and moral problems—illustrated by Guantánamo and by undertrial populations in some domestic systems.
3. **Torture and ill-treatment in custody:** Despite absolute prohibition, instances persist and require effective investigation and criminal accountability (*Aydin v. Turkey*).
4. **Insufficient legal aid & access to remedies:** Especially for marginalized detainees; domestic jurisprudence (e.g., *Hussainara*) highlights the impact of legal aid on speedy trials.
5. **Tension between security policies and rights:** Counter-terrorism regimes have frequently strained detainee protections; judicial checks are necessary to prevent executive overreach. Guantánamo litigation is emblematic.

9. Recommendations

9.1. Legal & policy reforms

Incorporate Nelson Mandela Rules into domestic law and penitentiary regulations (clear statutory minimums for cell size, healthcare, segregation, and solitary confinement restrictions).

Ensure prompt access to counsel and legal aid for all detained persons; adopt automatic legal-aid triggers for undertrials and those in prolonged detention. (Domestic precedents show large impact.)

Prohibit indefinite administrative detention; ensure judicial review within a strict, short time frame and meaningful periodic review mechanisms.

9.2. Institutional & monitoring measures

Independent prison inspectors and Ombuds institutions with power to inspect, report publicly, and recommend prosecutions for custodial abuse.

Data collection & transparency: Publish regular data on prison populations, health outcomes, and disciplinary measures; use data to target overcrowding and reform sentencing practices.

9.3. Judicial and accountability tools

Enable individual and collective remedies (class actions, PILs, and pilot-judgment mechanisms) where systemic violations occur; follow ECtHR pilot model where appropriate.

Criminalize and prosecute torture and serious ill-treatment with independent investigations and victim reparations consistent with CAT obligations.

10. Conclusion

Prisoners' rights lie at the intersection of human dignity, rule of law, and state power. International humanitarian norms and human rights instruments together provide a robust framework for protecting persons deprived of liberty, but effectiveness depends on domestic implementation, judicial enforcement, and political will. Landmark cases—from *Hussainara* and *Sunil Batra* to *Rasul* and *Hamdan*, and regional decisions such as *Torreggiani*—show how courts can vindicate detainee rights and prompt systemic change. The path forward requires integrating international standards into domestic law, strengthening inspection and remedy mechanisms, and ensuring that security policies never eclipse fundamental, non-derogable rights such as the prohibition of torture.

11. References

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