

Special Conference 1

Combating discrimination in the criminal justice system

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Criminal
Court



Forum	SPC 1
Issue:	Combatting discrimination in the criminal justice system
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Introduction

‘Justice is blind’, or so we hear, and for good reason. It is the reason justice systems are often separate from governments, judges are trained to be neutral and unbiased, and the jury represents the public’s opinion, making the entire process more trustworthy and reflective of regional or national norms. How then, can countries such as the United States of America, have 40% of their prisoners be black, while only making up about 13,4% of the United States population. Justice cannot be truly blind, as long as the people who judge others retain biases, consciously or not, on how trustworthy one can be simply based on appearance. To understand how to blindfold Lady Justice, we must understand what exactly the problem is, which this research report attempts to uncover.



Definition of Key Terms

Criminal Justice System

Judicial body that consists out of three main bodies in charge of the processing of criminals. The nature of the criminal justice system often differs greatly from nation to nation.

Incarceration

Detainment in a prison for a set amount of time, based on a ruling.

Parole

Parole is a form of conditional release granted to prisoners before their full sentence is served. During parole, individuals are supervised by a parole officer, a public official. Violating the conditions of parole can result in the person being sent back to prison. The conditions of parole typically include requirements such as finding employment, refraining from drug and alcohol use, avoiding contact with victims, maintaining good behaviour, and regularly reporting to the parole officer. If a parolee commits a violent assault, they are likely to be returned to prison. However, minor infractions such as running a stop sign would usually not lead to such consequences.

Jury

A group of people consisting out of civilians chosen to hear the facts presented in a court of law to help determine the innocence of the defendant. Help represent the public's general opinion, the so called 'Court of Public Opinion', hereby also increasing the trust the public has in the justice system. Most prominently found in the United States of America's justice system.

Judge

A judge is an individual who oversees court proceedings, either alone or as part of a panel of judges. The judge's role is to conduct the trial impartially and usually in an open court. The powers, functions, method of appointment, discipline, and training of judges differ significantly across various jurisdictions. They can be public officials authorized to decide questions presented before a court or appointed to make decisions in contests or competitions.



Trias Politica

The *trias politica* is the belief that there must be a strict separation between three independent powers in every nation: for legislation, administration, and jurisdiction.



General Overview

It is an undeniable fact that discrimination in the criminal justice system is a pressing problem, one that cannot be ignored. The justice system, however, is not one entity, but a body subsisting out of smaller organizations which lead to the eventual conviction. To understand the problems, one must first understand the justice system itself.

The Justice System

It is important to note that, although there are certainly similarities, each country's judicial system operates differently from one another. This research report will discuss the aspects of three justice systems from three different countries, comparing the similarities and differences.

The United States of America

The United States of America's somewhat infamous justice system has a very systematic and clear sequence of events when it comes to convicting a criminal. Starting obviously with the calling of law enforcement. Unsurprisingly, the American justice system does not respond to most crime, due to it simply not being discovered or reported to the police. Law enforcement learns about crime through the following, most often from reports by victims/civilian bystanders, from discovery by a police officer in the field, from informants, or from investigative and intelligence work. Once the law enforcement agency has established whether a crime has been committed or not, officers are called into action. A suspect is then apprehended at the crime scene, or released later when police determined that no crime was actually committed, detailed in *attachment 1*.

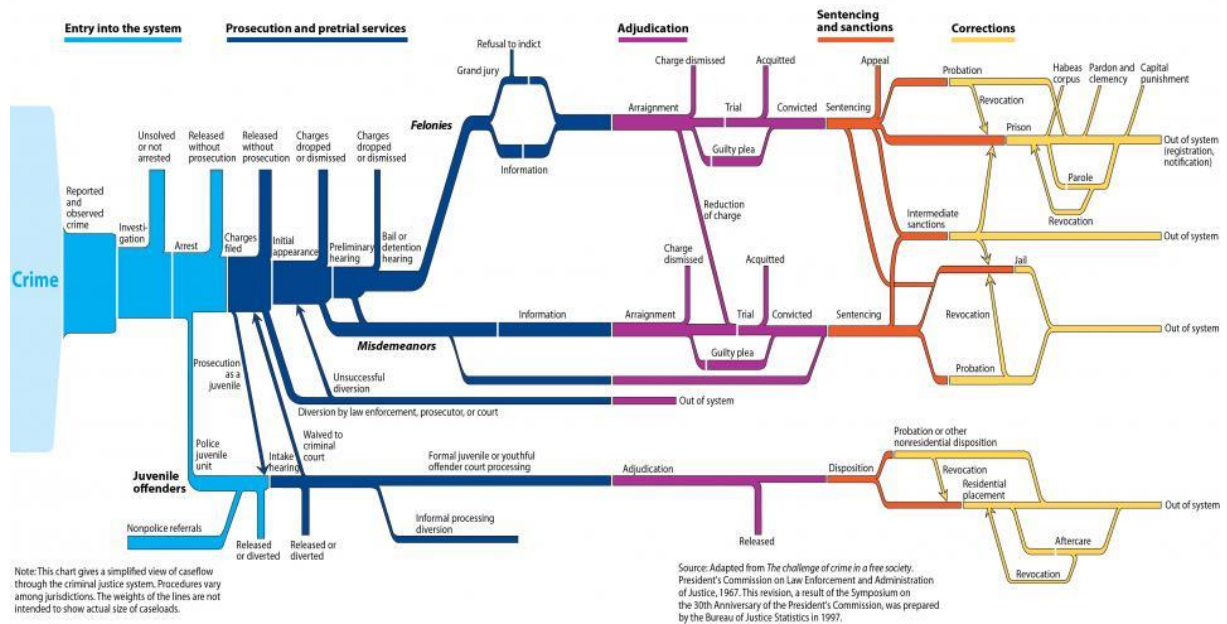
If this is not the case, an officer presents evidence to the court for why the defendant is guilty, and a prosecutor attempts to persuade the judge and jury of the defendant's guilt, whilst the defence, a lawyer representing the defendant, attempts to bring the evidence presented into question. The jury consists out of six jurors, people of the general public representing the court of public opinion. This is done to ensure that the judge does not have complete power over the decision, the beliefs of the public are represented, and the public continues to have faith in the court.

Finally, if the defendant is found guilty, they can either be fined or incarcerated. Considering that the United States of America has the highest incarceration rate and highest total people



in prisons, the latter is more likely.

What is the sequence of events in the criminal justice system?



Attachment 1

The Netherlands

The Netherlands has a justice system similar to that of the United States of America, with a couple of key differences. First of all, the Netherlands does not have a jury, but a single professionally trained judge. Although in more serious cases up to three judges can precede over a case. The justice system in itself is also slightly different, as The United States follows an adversarial system, where the prosecution and defence present their cases in an adversarial manner, and the judge or jury determines guilt or innocence. In contrast, the Dutch system follows an inquisitorial system, where judges play a more active role in investigating the case and gathering evidence. The judge takes on a neutral and impartial position and actively seeks the truth. The emphasis in the Dutch system is on the judge's decision-making based on the presented evidence, which brings us to the sentencing practices. Sentencing practices in the two countries also differ, The United States has a more punitive approach, with longer prison sentences and a higher incarceration rate compared to the Netherlands. The Dutch system places a greater emphasis on rehabilitation, community-based sentences, and alternative measures, aiming to reintegrate offenders back into society. This helps contribute to the fact that the Netherlands is number 91 on the list of total incarcerations.



The People's Republic of China

The Chinese criminal justice system is an integral part of The People's Republic of China's legal framework and operates within the context of The People's Republic of China's political and legal structure. It plays a crucial role in maintaining social order, upholding the rule of law, and combatting crime. The investigation of criminal offenses in China is primarily conducted by the police. The police have broad powers to gather evidence, question suspects, and make arrests. Suspects can be detained for extended periods, particularly during national security cases, before formal charges are brought. Once an investigation is completed, the procuratorate, a branch of the judiciary responsible for prosecution, evaluates the evidence and decides whether to proceed with the case, not dissimilar from what occurs in the United States of America. The procuratorate has the authority to approve arrests, file charges, and represent the state in court. The process of prosecution is heavily influenced by political and administrative considerations. The People's Republic of China has a hierarchical court system with multiple levels. At the bottom are the Basic People's Courts, which handle the majority of criminal cases. Intermediate People's Courts handle appeals from the Basic People's Courts, while the Supreme People's Court is the highest court in The People's Republic of China and oversees legal interpretation and review of judgments. Criminal trials in The People's Republic of China are predominantly conducted by panels of judges rather than juries, similar to the Netherlands. The judge(s) preside over the trial, and defendants have the right to legal representation. However, defence lawyers may face limitations on their ability to access evidence and fully represent their clients. Trials are generally closed to the public, although exceptions can be made for high-profile cases. Sentencing in The People's Republic of China can range from fines and probation to imprisonment, life imprisonment, or the death penalty, and although The People's Republic of China is ranked number 2 on most incarcerations, it has only double the amount of prisoners per capita compared to the Netherlands. While the United States of America has 12 times the amount of prisoners per capita compared to the Netherlands. The justice system. China retains the death penalty, although the number of executions has decreased in recent years. Sentencing is influenced by the severity of the offense, criminal history, and potential political considerations. The People's Republic of China has also implemented various measures to combat corruption and organized crime, which have influenced sentencing practices. The Chinese criminal justice system has faced criticisms regarding due



process, transparency, protection of individual rights, and political influence. Concerns have been raised about the limited independence of the judiciary, restrictions on defence lawyers, arbitrary detention, coerced confessions, and potential political motivations in legal proceedings. Human rights organizations continue to call for improvements in the protection of individual rights and the establishment of an independent judiciary.

Discrimination in the criminal justice system

Now that we understand the systems put in place, where do they fail? For The People's Republic of China it is perhaps less of an institutional problem and more of a law one. According to a UN report, they discovered that:

"Domestic law still not in conformity with the Convention and international standards"

- Lack of domestic legal definition of and appropriate criminalization of racial discrimination;
- Broad and vague definitions of terrorism, extremism, and separatism in current domestic legislation, leading to criminalization of religious expression and racial profiling of ethnic and ethno-religious minorities.

Ongoing reports of human rights abuses, large scale detentions, and targeting of ethnic groups

- Torture and ill-treatment of political protestors and human rights defenders of ethnic minorities;
- Mass surveillance and detention of large numbers of ethnic Uyghurs and other Muslim minorities in extra-legal facilities under the pretext of counter-terrorism and counter-extremism;
- Significant travel and movement restrictions on Tibetans within and outside of the Tibet Autonomous Region, with an almost complete ban on issuance of passports for foreign travel.

Reflecting the frustration of repeated requests for more relevant information throughout the review process, the Committee also expressed strong concern regarding the failure of the China delegation to provide meaningful information, in particular:

- Lack of data disaggregated by ethnic group on poverty statistics and unemployment rates;
- Lack of comprehensive statistics, surveys, and administrative records on the instances of racial discrimination, racist hate speech, and hate crimes, noting the possible lack of effective mechanisms or the existence of barriers for victims to seek recourse."

What this effectively means is that, even if the criminal justice system was in perfect accordance with Chinese law, the court of law would still be biased and discriminatory. Not only that, but because the court of law is under the complete control of the CCP, reformations independent of government influence and oversight is impossible.



If this is the case for The People's Republic of China, how come the United States of America suffers so greatly from this problem? US laws are less blatantly racist, if at all, yet in prisons, over 40% of the inmates are black, while African Americans only contribute to 13,4% of the population. There are a couple of possible contributing factors, a police force built for the very purpose of oppression that has not been reformed since, a jury consisting out of untrained citizens, and a prison incentivised to incarcerate.

Racism within the police force is a highly contested and debated view between both political parties in the United States of America, however, diverse studies have shown that African Americans are far more likely to be stopped unfairly by the police than white Americans. This is in part due to laws that unfairly affect certain ethnic groups, and that the law enforcement's original purpose was to suppress ethnic groups, and the institution has not been reformed since.

Additionally, the downside of a jury consisting out of American citizens is that they carry with them their stereotypes and biases into the court of law, and since they are not professionally trained, they are easily swayed by lawyers without them necessarily having hard factual evidence.

Finally, the mass incarceration is down to a sequences of laws that enable judges to give excessively harsh and long punishments. Two of the main factors are the 'The War on Drugs' and the 'Three Strike Rule'.

Beginning in the mid-1970s, and continuing through the 1980s and 1990s, lawmakers in response to rising crime rates and concerns about drug abuse, implemented harsh mandatory minimum sentencing laws. These laws, both at the federal and state levels, aimed to impose severe penalties for drug offenses and other crimes. Mandatory minimum sentences eliminated judicial discretion, forcing judges to hand out predetermined sentences without considering individual circumstances or the seriousness of the offense. Prosecutors gained significant power by leveraging the threat of lengthy sentences to discourage defendants from asserting their constitutional rights. Under federal law, most mandatory minimum sentences applied to drug crimes, with penalties based on the weight of the drugs involved. Some offenses, even relatively minor ones, could lead to life without parole sentences, especially when prior convictions were present. The U.S. Sentencing Commission was established in 1984 to create federal Sentencing Guidelines to reduce disparities, but they ended up setting harsh mandatory sentences that limited judges' ability to tailor punishments. Although the mandatory nature of the guidelines was found unconstitutional by the Supreme Court in 2005,



judges still had to use them for guidance. However, the ruling was not retroactive, leaving many offenders sentenced before 2005 serving mandatory prison terms. Similar laws were enacted in many states, imposing long mandatory sentences for nonviolent offenses, particularly drug-related crimes. Some states even introduced mandatory life without parole sentences for certain drug offenses. However, despite the intentions of curbing drug abuse and related crimes, these penalties have not been successful in reducing drug use or addiction rates, which have remained relatively stable. Instead, these laws have significantly contributed to mass incarceration. In state prisons, approximately 19 to 23 percent of inmates have been incarcerated for drug offenses, and in the federal system, between 55 and 60 percent of prisoners were serving time for drug offenses. Mandatory sentencing has resulted in extreme and disproportionate sentences in the United States. An ACLU study found that a large majority (83.4 percent) of surveyed prisoners serving life without parole for nonviolent offenses were subjected to mandatory sentencing. In many cases, judges expressed their opposition to the severe sentences but were legally bound by mandatory minimums, habitual offender laws, or other sentencing rules that prevented them from considering individual circumstances or overriding prosecutors' charging decisions.

And if that was not bad enough, in response to highly publicized murders in the early 1990s, lawmakers enacted habitual offender and "three-strikes-and-you're-out" laws in many states. These laws were intended to address public concern about violent crime by imposing lengthy prison sentences, including life imprisonment, for second or third felony convictions. However, what the public was not fully informed about was that the convictions triggering these extreme sentences did not always have to be serious or violent crimes. Under these laws, individuals could receive life without parole sentences for nonviolent offenses. Examples include stealing gasoline, shoplifting, cashing a stolen check, acting as a middleman in a small marijuana sale, or possessing drug paraphernalia with residue. The sentences imposed under habitual offender laws often led to substantial disparities compared to what the defendants would have received without the application of such laws. The three-strikes movement had a significant impact on sentencing practices nationwide and contributed to the increase in the incarceration rate. Currently, all 50 states, the federal government, and the District of Columbia have some form of habitual offender or three-strikes law. Many of these laws permit life without parole sentences for specific crimes, and some states even mandate life without parole for nonviolent offenses. Prosecutors often have discretion in deciding whether to charge someone under a habitual offender law, effectively determining whether an individual will face life imprisonment. These laws' application is problematic,



particularly considering that many offenses categorized as felonies are not inherently violent or serious. For instance, individuals in California received 25 years to life sentences under the Three Strikes law for crimes like stealing small change, socks, or a slice of pizza. However, there have been efforts to reform these laws. In 2012, California voters passed Proposition 36, which aimed to prevent life sentences for non-serious third strikes. Nonetheless, many individuals convicted under these laws for nonviolent offenses remain incarcerated, awaiting resentencing and release.

In summary, to truly tackle this complicated and delicate problem, it is not possible to tackle simply one aspect of the justice system. Rather, all aspects must be discussed and debated, keeping national differences in law in mind.



Major Parties Involved

The UNODC

The United Nations Office on Drugs and Crime (UNODC) is a UN body, focused on collecting data on criminal justice system from nations all across the world. The UNODC also aims to increase data transparency, and, most relevantly for this issue, develop an international standard for all criminal justice system.

The ICC

The International Criminal Court (ICC) is the UN justice system for some of the gravest crimes against humanity. Although not implicitly tied to this case, it could serve as an example as to how one should model a standard for criminal trials.

The United States of America

Discussed extensively in the general overview, the United States of America is an exemplary case in the worldwide failings of the criminal justice systems. However, the United States of America remains one of the most prominent advocates for freedom across the globe, two facts that seem contradictory.

The Kingdom of the Netherlands

Founding member of the European Union with openly progressive policies, the Kingdom of the Netherlands presents the unique opportunity in comparing it's justice system with primarily that of the United States of America, due to its stark differences despite largely having the same international policies and guidelines.

The People's Republic of China

Competing to become one of the world's most powerful economies, the People's Republic of China's increased influence could help set the stage for new international standards on ethics and law. A justice system that differs from the other two discussed primarily due to its practical absence of a 'trias politica'.



Timeline of Key Events

Date	Description of event
December 10 th 1948	Universal Declaration of Human Rights (UDHR) - The United Nations General Assembly adopts the UDHR, which serves as a fundamental document affirming the equality and non-discrimination principles in human rights, including the criminal justice system.
1946	The UN Commission on Human Rights - The UN establishes the Commission on Human Rights, which addresses issues related to discrimination and racism within the criminal justice system.
December 21 st 1965	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) - The ICERD is adopted by the UN General Assembly, aiming to combat racial discrimination in various fields, including criminal justice.
December 16 th 1966	International Covenant on Civil and Political Rights (ICCPR) - The ICCPR is adopted, recognizing the right to a fair trial and non-discrimination in the administration of justice. 1985: Basic Principles on the Independence of the Judiciary - The UN adopts the Basic Principles on the Independence of the Judiciary, which outline the importance of an impartial judiciary to prevent discrimination in the criminal justice system.
December 21 st 2012	UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) - The UN adopts rules specifically addressing the needs and rights of women in the criminal justice system, aiming to reduce gender-based discrimination.
September 25 th 2015	Sustainable Development Goals (SDGs) - Goal 16 of the SDGs calls for promoting peace, justice, and strong institutions, which includes combating discrimination in the criminal justice system.



Previous Attempts to solve the Issue

The UNODC was founded in 1997 to combat this very issue, however, most of the treaties and solutions the UNODC has created are more focused on the issues of drugs, less on the criminal justice system, something that still technically falls under its purview.

Member states individually have also attempted to resolve this issue, and it is highly recommended for delegates to research what themselves, but prominently in the United States of America, attempts to reform the police have been met with severe pushback. Notably, in 2010, the People's Republic of China's justice system underwent a series of reforms, that ultimately have been criticized as nothing more than masked political motives, with limited success.

Possible Solutions

Your main goal as delegates should be to: 'ensure a global standard is met in every member states justice system', learning from the mistakes that are present in current justice systems. Though this may seem as a tall order, looking to the ICJ and the ICC for inspiration is a clear way to ensure consensus between all member states, as these UN bodies are already international justice systems, so it stands to reason that there should not be resistance to the framework of these justice systems. One must be careful however not to infringe on the sovereignty of member states and impose certain member states ideologies on other member states.

Additionally, increased transparency on available data and increasing the international executive power of the UNODC are crucial in attempting to solve this issue, to oversee if any of the agreements implemented over the course of the debate are followed.



Bibliography

American Civil Liberties Union. *Overcrowding and Overuse of Imprisonment in The*. May 2015,

www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf.

Avant. "Dutch Legal Matters." *Bnlegal.nl*, 2023, [bnlegal.nl/en/dutch-legal-matters/dutch-legal-](http://bnlegal.nl/en/dutch-legal-matters/dutch-legal-matters/#:~:text=The%20Dutch%20legal%20system%20is%20not%20jury%20based%2C)

[matters/#:~:text=The%20Dutch%20legal%20system%20is%20not%20jury%20based%2C](http://bnlegal.nl/en/dutch-legal-matters/dutch-legal-matters/#:~:text=The%20Dutch%20legal%20system%20is%20not%20jury%20based%2C).

Accessed 20 July 2023.

Bureau of Justice Statistics. "The Justice System." *Bureau of Justice Statistics*, 3 June 2021,

bjs.ojp.gov/justice-system.

Costello, Cathryn, and Michelle Foster. "Race Discrimination Effaced at the International Court of

Justice." *AJIL Unbound*, vol. 115, 2021, pp. 339–44, <https://doi.org/10.1017/aju.2021.51>.

Accessed 29 Apr. 2022.

HRIC. "UN Experts Report on China's Implementation of International Obligation to Respect, Protect,

and Ensure Rights of Ethnic Minorities and Other Vulnerable Groups | Human Rights in China

中国人权 | HRIC." *Hrichina.org*, 2019, [www.hrichina.org/en/press-work/statement/un-](http://www.hrichina.org/en/press-work/statement/un-experts-report-chinas-implementation-international-obligation-respect)

[experts-report-chinas-implementation-international-obligation-respect](http://www.hrichina.org/en/press-work/statement/un-experts-report-chinas-implementation-international-obligation-respect).

International Court of Justice. *4 FEBRUARY 2021 JUDGMENT APPLICATION of the INTERNATIONAL*

CONVENTION on the ELIMINATION of ALL FORMS of RACIAL DISCRIMINATION (QATAR v.

UNITED ARAB EMIRATES). 4 Feb. 2021, [www.icj-cij.org/public/files/case-related/172/172-](http://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf)

[20210204-JUD-01-00-EN.pdf](http://www.icj-cij.org/public/files/case-related/172/172-20210204-JUD-01-00-EN.pdf).

International Criminal Court. "How the Court Works." *Icc-Cpi.int*, 2019, [www.icc-cpi.int/about/how-](http://www.icc-cpi.int/about/how-the-court-works)

[the-court-works](http://www.icc-cpi.int/about/how-the-court-works).

Sawyer, Wendy. "Visualizing the Racial Disparities in Mass Incarceration." *Prison Policy Initiative*, 27

July 2020, www.prisonpolicy.org/blog/2020/07/27/disparities/.



- Statista. "Topic: Crime and Penitentiary System in China." *Statista*, June 2020,
www.statista.com/topics/2253/crime-and-penitentiary-system-in-china/#topicOverview.
- suzanne.kunnen. "Crime and Criminal Justice." *Unodc.org*, 2018, www.unodc.org/unodc/en/data-and-analysis/crime-and-criminal-justice.html.
- UNODC. "UNODC Strategy 2021-2025." *United Nations : Office on Drugs and Crime*,
www.unodc.org/unodc/en/strategy/index.html.
- Walsh, Colleen. "Solving Racial Disparities in Policing." *Harvard Gazette*, 23 Feb. 2021,
news.harvard.edu/gazette/story/2021/02/solving-racial-disparities-in-policing/.
- "Why Is the International Criminal Court under Attack?" *BBC*, 30 Sept. 2018,
www.bbc.com/news/av/world-45670690. Accessed 25 Oct. 2021.
- Wikipedia Contributors. "Incarceration in the United States." *Wikipedia*, Wikimedia Foundation, 7
Mar. 2019, en.wikipedia.org/wiki/Incarceration_in_the_United_States.
- . "Judicial System of China." *Wikipedia*, Wikimedia Foundation, 5 Oct. 2019,
en.wikipedia.org/wiki/Judicial_system_of_China.
- . "Judiciary of the Netherlands." *Wikipedia*, 26 May 2022,
en.wikipedia.org/wiki/Judiciary_of_the_Netherlands.
- . "List of People Indicted in the International Criminal Court." *Wikipedia*, Wikimedia Foundation, 20
Sept. 2019,
en.wikipedia.org/wiki/List_of_people_indicted_in_the_International_Criminal_Court.
- . "United Nations Office on Drugs and Crime." *Wikipedia*, Wikimedia Foundation, 14 Oct. 2019,
en.wikipedia.org/wiki/United_Nations_Office_on_Drugs_and_Crime.
- World Population Review. "Incarceration Rates by Country 2023." *Worldpopulationreview.com*,



