

Trends & Policies in Criminal Justice

No. 012 March 2021

Taegyung Gahng

Research Fellow
at Korean Institute of Criminology
(taegong@kic.re.kr)

Youngshin Choi

Senior Research Fellow
at Korean Institute of Criminology

Yeongjung Kim

Associate Research Fellow
at Korean Institute of Criminology

Jaeik Ko

Superintendent at Korea
Correctional Service of the Ministry of
Justice

Taehoon Lim

Head of Center for Military Human
Rights Korea

Hyungnam Kim

Director of Center for Military Human
Rights Korea

Hyerin Bang

Head of Counseling Team at Center
for Military Human Rights Korea

Sunyoung Park

Professor at Hanse University

Dami Lee

Researcher
at Korean Institute of Criminology

A Comprehensive Evaluation of Human Rights Competencies of Criminal Justice Institutions (II) : Evaluation of Human Rights Competencies of Penal Institutions

Necessity and Purpose

- To evaluate the role and function of the criminal justice institutions in ensuring human rights: Legislation needs to be enacted and amended in order for criminal justice institutions (the police, the prosecution, the Ministry of Justice, and criminal courts) for human rights protection in our society and to comply with international human rights instruments. For the organizational restructure of the institutions, comprehensive evaluation of the role and function of each criminal justice institution for the protection of human rights is necessary.
- Lack of research on a comprehensive evaluation of penal institutions' competencies for protection of human rights: Though the level of human rights protection of inmates at penal institutions is recognized as an indicator for the human rights protection in a society, there is a distinct lack of research on a comprehensive evaluation of penal institutions' overall competencies for protection of human rights (Several research have been conducted on evaluation of correctional treatment by specific category).
- To acquire fundamental data to develop a master plan on execution of punishment and treatment of inmates: Amendment of the Administration and Treatment of Correctional Institution Inmates Act serves as a legal ground for 'establishing and implementing a master plan for execution of punishment and treatment of inmates and therefore establishing basic data for the master plan is necessary.

- To explore the methods for comprehensive evaluation of penal institutions' competencies for protection of human rights and to improve their competencies: It aims to conduct comprehensive examination into whether penal institutions protect inmates' human rights adequately by figuring out the competencies of penal institutions in responding to human rights issues that arise in correctional facilities and detention centers (including military detention centers) and, based on evaluation results, it explores the methods for improving treatment of inmates.

Research Methods

Literature review

- Analysis of the international human rights instruments and related national laws on penal execution
- Analysis of the decisions made by National Human Rights Commission of Korea (from 2011 to 2019) and court rulings on penal execution
- Analysis of the results of the Ministry of Justice's survey on the condition in the detention centers (from 2010 to 2018) and petitions submitted to the Minister of Justice
- Analysis of the academic papers and policy research reports on penal execution
- Analysis of the articles of the five major newspapers on penal execution
- Review foreign cases to strengthen penal institutions' competencies for protection of human rights

In-depth interview and survey

- In-depth interview with inmates
- In-depth interview with correctional officials, military correctional officers, and correctional soldiers
- Survey on (864) correctional officials' perception of human rights issues
- Actual condition survey on the Military Correctional Institution and military correctional facilities at six military camps (examination of facilities and their operating conditions)

Findings

Framework for evaluating penal institutions' competencies for protection of human rights

- Penal institutions' competencies for protection of human rights: Combination of institutional, material, and personnel resources of penal institutions that enable inmates to retain their dignity as humans and exercise their rights by preventing violation of their human rights that may occur during the penal execution
- 'Institutional' competencies to protect human rights of inmates: The level of systematic and detailed reorganization of the guidelines on not only *the Administration and Treatment of Correctional Institution Inmates Act and the Act's Enforcement Decree and Enforcement Rule* but also the performance of duties when human rights issues arise during the penal procedures.
- 'Material' competencies to protect human rights of inmates: The level of financial resources and organizational structure resources which can be used to prepare the physical facilities, equipment, and items necessary for management and treatment of inmates and for improving physical conditions.
- 'Personnel' competencies to protect human rights of inmates: Correctional officials' competencies to perform their duties that are evaluated based on the level of awareness of regulations, precedents, and decisions necessary for their law enforcement (knowledge), performance of their duties in compliance with such knowledge (skills), and willingness to understand and address the demand of inmates and their special situations (attitude)

Penal institutions' 'institutional competencies' to protect inmates' human rights

- Evaluation targets and methods: Reviewing how faithfully the core elements of the international norms related to correction are reflected in national laws
- Evaluation results: (1) Concerning basic living conditions of inmates, laws on medical treatment need to be amended; Concerning treatment of inmates, laws on safety of correctional

institution's works and programs made for successful return of sentenced inmates to society need to be amended; Concerning protection of inmates' rights, applicable laws that help inmates get support from lawyers need to be enacted. (2) Concerning juvenile inmates, laws on maintaining order, treatment of inmates, and performance of duties by correctional workers need to be amended comprehensively. And (3) Concerning female inmates, relevant regulations need to be amended to take into consideration the characteristics of female inmates distinct from those of male inmates.

Penal institutions' 'material competencies' to protect inmates' human rights

- Evaluation targets and methods: Physical elements necessary for basic lives of inmates at correctional facilities, medical infrastructure to protect their right to health, environmental improvement at correctional facilities, efforts to resolve overcrowding, and review of managerial conditions of correctional officials [based on the survey results of inmates' satisfaction with material elements from "Actual Condition Survey of Detention Centers under the Ministry of Justice" (from 2010 to 2018), Correctional Statistics Yearbook, and internal documents of Korea Correctional Service of the Ministry]
- Evaluation results: (1) As for provision of food and goods necessary for basic lives of inmates and creation of safe and convenient environment for inmates, penal institutions have demonstrated their competencies for these material issues. (2) However, as for medical infrastructure necessary for protection of inmates' right to health, penal institutions had weaknesses such as shortage of medical personnel and insufficient base required to treat inmates with mental illness. (3) As for overcrowding, penal institutions have demonstrated their competencies in enlarging and remodeling correctional facilities but showed lack of competencies in mediating disputes between themselves and external stakeholders including local communities when it comes to relocation and construction of correctional facilities. And (4) Chronic shortage of personnel at penal institutions is suggested to increase the stress of correctional officials and to degrade service.

Penal institutions' 'personnel competencies' to protect inmates' human rights

- Evaluation targets and methods: Survey on 864 correctional officials working at 19 correctional facilities nationwide (including those in charge of human rights related complaints and petitions at 52 locations) into their various experiences and opinions about protecting human rights of inmates
- Evaluation results: Correctional officials who responded to the survey (1) Perceived human rights condition of inmates at correctional facilities as generally positive; (2) Made limited interpretation of the scope of human rights protection of inmates and perceived that the minimum level of treatment is appropriate for inmates; (3) Feared the possibility that they could be accused or charged by inmates and that a correctional accident could happen while they are carrying out their duties; (4) Most frequently got angry when appeals or petitions are filed against them or they are accused or charged by inmates (they feel bothered or annoyed as they have to be under investigation); (5) Showed a strong tendency to think that inmates abuse appeals or petitions as an excuse to spend their time at correctional facilities comfortably; (6) Considered that unsubstantiated or false accusation and charge should be dealt sternly to prevent the abuse of complaints or petitions; (7) Showed that, though most of them are well aware of the latest decisions made by National Human Rights Commission of Korea, a relatively higher percentage of the respondents (15 to 30%) said such decisions does not reflect the actual situations at correctional facilities; (8) Were generally satisfied with the human rights education related to their duties and felt that they do not need extra education (the weak points were shown in terms of conservative interpretation of regulations, distorted view about the right to see a lawyer, and lack of knowledge about HIV); and (9) Pointed out that what is most needed for enhanced protection of inmates' human rights under the current condition of correctional treatment are improvement of correctional facilities such as 'resolution of overcrowding' and 'environmental improvement of dilapidated correctional facilities'.

Military penal institutions' competencies to protect military inmates' human rights

- Evaluation targets and methods: Visits to the Military Penal Institution and military correctional facilities (at six military camps) for an actual condition survey of correctional facilities and their operating condition and to conduct in-depth interview with military correctional officers and correctional soldiers as a means to evaluate military penal institutions' competencies to protect military inmates' human rights
- Evaluation results: (1) (Systematic competencies) The systematic competencies have been rated low due to lack of laws on penal execution. The findings reveal that 'standardization of basic lives and treatment of military inmates', 'amendment of *the Act on the Execution of Criminal Penalties in the Armed Forces and the Treatment of Military Inmates* in line with the international norms related to correction', and 'legalization on the authority and responsibility of the officials in charge of military criminal administration' are necessary. (2) (Material competencies) Modernization and standardization of military correctional facilities are urgently needed. Currently, the environment of each facility differs except that they are dilapidated in general, which makes it difficult to conduct a quantitative evaluation of the facilities. And (3) (Personnel competencies) Capacity building of the officials in charge of military penal institutions is urgent

Policy Suggestions

Measures to enhance penal institutions' 'institutional competencies' to protect inmates' human rights

- Legislation of laws and guidelines on the treatment of inmates with disability and gender minority inmates, which were marked 'insufficient' or 'usually good' in the survey.
- Enactment of the Framework Act on Human Rights and special act to prevent human rights violations among inmates
- Building cooperation with the inmate supporting civil society organizations

Measures to enhance penal institutions' 'material competencies' to protect inmates' human rights

- Allocation of the budget for improvement of the currently old facilities and equipment in addition to the relocation and construction plan
- Construction of a correctional complex which includes specialized facilities for medical support
- Enhancement of material competencies through institutional competencies
- Formation of a government-wide consultative body to resolve overcrowding of correctional facilities and shortage of personnel at the facilities

Measures to enhance penal institutions' 'personnel competencies' to protect inmates' human rights

- Preparation of the countermeasures against abusive use of complaints and petitions by inmates
- Extension of on-the-job education for newly recruited correctional officials and enhancement of human rights education for correctional officials
- Development of a training manual for human rights protection based on research
- Provision of enhanced supporting measures to improve correctional officials' mental health

Measures to enhance military penal institutions' competencies to protect military inmates' human rights

- Enhancement of institutional competencies: Unification of offices in charge of military correctional facilities by establishing Correction Division under General Counsel Bureau of the Ministry of National Defense; Establishment of a legal basis for the duties of (senior) judicial police officers necessary for maintaining order in military penal institutions and military detention centers; Reorganization of the current military correctional system composed of military correctional officers and correctional soldiers to establish a new position titled civilian military correctional employees (to reinforce their expertise); and revision of the *Act on the Execution of Criminal Penalties in the Armed*

Forces and the Treatment of Military inmates in line with the newly amended Administration and Treatment of Correctional Institution Inmates Act.

- Enhancement of material competencies: Cessation of operating military correctional facilities at military camps in peacetime and construction of military correctional facilities at each region to accommodate military detainees pending trial; Allocation of more budget to make spaces for workout in Military Penal Institution scheduled to be built in 2022; Improvement of facilities and equipment to enhance the quality of basic lives of military inmates and to make them maintain hygiene and health; Establishment of the methods for cooling and heating systems and Reinforcement of medical facilities and equipment.
- Enhancement of the personnel competencies: Reinforcement of on-the-job training for military correctional officers (to be ‘civilian military correctional employees’ in the future) (by outsourcing their training to Institute of Justice) and recruitment of the correctional soldiers in charge of surveillance, convoy, and correctional administration as military specialists (capacity building through on-the-job training).

Policy Expectations (Expected Implications)

Fundamental data for establishing and promoting a ‘Master Plan on Execution of Punishment and Treatment of Inmates’

- The results of this study are expected to be used as useful fundamental data for establishing and promoting a ‘Master Plan for Execution of Punishment and Treatment of Inmates’ (Article 5-2 of the *Administration and Treatment of Correctional Institution Inmates Act*)

Strategy for designing human rights friendly penal system

- In reality, human rights issues concerning inmates are likely to invite negative opinions from the public. In this situation, the results of this study provide an objective and comprehensive analysis framework in seeking the strategies to establish and implement firm correctional policies for the protection of rights and interests of correctional officials as well as for the enhancement of inmates’ human rights.

Keywords

※ Penal institutions, inmates, correctional officials, competencies to protect human rights (institutional, material, and personnel competencies), treatment, and working conditions



Change

Human Behaviors
Community Response
Social System