

Prisoners' contact with the outside world is typically understood as central to the protection of prisoners' human rights; to the regulation of prison life; or, as a means of repression and punishment.¹ There exists a multitude of international legal standards, binding and non-binding, global and regional, governing the contact rights of prisoners and others deprived of their liberty. This factsheet is to underscore the importance of contact rights for ensuring prisoner wellbeing, as well as against the perpetration of torture and other ill-treatment. As with any crime, torture is a crime of opportunity. Denial of a prisoner's communication rights increases the perpetrator's opportunity.

FAMILY VISITS²

Visits are a means to safeguard social relationships, in accordance with the right to private and family life. Article 17 (1) of the International Covenant on Civil and Political Rights (ICCPR), mirroring article 12 of the UDHR, states that 'no one shall be subjected to arbitrary unlawful interference with his or her privacy, family, home or correspondence'. This principle is also echoed in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which provides that:

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations. [Principle 19]

Importantly, visitation rights are not solely for the prisoner but also for family and friends. According to the UNODC Handbook on Dynamic Security, they must be seen as 'entitlements rather than privileges', and, in turn, not used as reward or punishment.

Rules should be flexible (e.g. visit duration extended, teleconference facilities provided, or telephone rights increased) given that some families may not be able to visit regularly due to distance. Similarly, the term 'family' must also be viewed with some flexibility and breadth to allow for different cultural conceptions of what it constitutes.

Rules 68 to 70 of the Mandela Rules also concern the right of the prisoner to notify and to be informed of their imprisonment, his or her illness or death and those related to his or her family.

RESTRICTIONS ON CONTACT

Rule 58 (1) of the Mandela Rules qualifies the right to communication with 'under necessary supervision', entailing what would usually be visual control. A similar qualification is found in principle 19 of the Body of Principles which subjects the communication 'to reasonable conditions and restrictions as specified by law or lawful regulations'. On security concerns, the prison authorities are also afforded a degree of control over who is admitted for visitation. This is found in rule 60 of the Mandela Rules. According to rule 43 (3), while family contact cannot be prohibited, it can however be restricted for 'a limited time period and as strictly required for the maintenance of security and order'.

WOMEN PRISONERS

All aspects of these rights are to be provided without any discrimination.³ Recognising the prevailing practical needs, the Bangkok Rules (rules 26 to 43) provide authoritative guidance on better realising the broader international legal standards for women prisoners. Given that there generally exists fewer women's prisons compared to those for men, the distance required for family visits may render visits onerous. Particular emphasis is also placed on facilitating visits for those prisoners with children.

Whilst the foregoing legal standards in the Mandela Rules still apply, the Bangkok Rules underscore the importance of visits for the mental health and post-release social integration of women prisoners (rule 43). Also, of significance is rule 44 which provides that women prisoners should be consulted on their visitors lest visits be harmful and undesired, given that women are usually disproportionately subjected to domestic violence. Rule 23 of the Bangkok Rules prohibits punitive limitations to family contact, especially with children.

MOREOVER

- The **geographical placement** of the prisoner is also highlighted as an access issue. Rule 59 of Mandela Rules provides, reiterating principle 20 of the Body of Principles, that 'Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.'⁴
- **Conjugal Visits:** Rule 58 (2) of the Mandela Rules states that: where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity. Rule 27 of the UN Bangkok Rules echoes this principle in relation to women prisoners.
- **Religious Visits:** Rule 66 of the Mandela Rules provides that: So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.'⁵
- **Isolated Prisoners:** Rule 44 of the Mandela Rules defines solitary confinement as 'the confinement of prisoners for 22 hours or more a day without meaningful human contact'. There exist varying purposes for which solitary confinement is imposed, including as punishment and protection. Such restrictions do not necessarily entail denying affected prisoners any contact with the outside world, such as the right to visitation. Tailored, partial restrictions directly necessary and proportional to a legitimate purpose are however justified. International legal jurisprudence is clear that total isolation of a prisoner from other inmates and from the outside world can readily amount to torture or cruel, inhuman or degrading treatment.

REFERENCES

¹Whilst it is framed universally, this factsheet emerged from research undertaken for the Legacies of Detention in Myanmar Project. For a contextual analysis of prisoners' contact with the outside world, please visit . <https://legacies-of-detention.org/research-publications/>

² The recently revised UN Standard Minimum Rules, now referred to as the Mandela Rules, together with the deliberative support provided by the Essex Expert Group, provide specific guidance in relation to the minimum parameters within which contact rights should be realised.

³ Rule 2 (1) of the Mandela Rules.

⁴ The focus on rehabilitation is found again in rules 106 and 107, which provide that:

Rule 106: Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

Rule 107: From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family. The Mandela Rules enshrines the modality of this right, in rule 58 (1), as follows: Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and, (b) By receiving visits.

⁵ According to rule 65 of the Mandela Rules:

(1)If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis,

(2)A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times,

(3)Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.