

## Chapter 12 - Prisoners and Detainees - Human Rights Issues

### Internal Guidance -

#### Contents

#### Key Points and vulnerability

1. Prisoners overseas can be particularly vulnerable to human rights violations. Look out for the key concerns (see para 5 below) and **refer all cases where you think there could be human rights issues to the** Human Rights Adviser (HRA) in Consular Prisoners Team in Consular Directorate. The HRA (REDACTED) is an expert in human rights law and is responsible for providing advice on cases of British nationals overseas where there is concern about human rights. In particular:

Be aware of the international standards of **fair trials** and raise any concerns about the conduct of a criminal prosecution with Consular Directorate.

Ensure the Consulate is notified of any British national's detention and that consular access is granted. We should consider raising concerns if the host authorities do not meet their obligations around **notification and access** under the VCCR or any bilateral conventions.

Report immediately all cases where there are allegations of **mistreatment or torture** – including of dual nationals - to the Human Rights Adviser and the Head of Human Rights and Assistance Policy Team, the Head of Assistance Department and relevant desk officer in Consular Directorate and your Head of Mission.

As soon as there is any indication that a British national could face charges that carry the **death penalty**, consult Consular Directorate. Our aim in all these cases is to try and avoid the imposition of a death sentence and to have any imposed sentence commuted to a term of imprisonment.

Consult Assistance Policy and Prisoners Section about any detainee's appeal for **clemency** that might merit HMG's support. Ministers make the final decision on whether to support a clemency plea or not. Remember that we will provide consular assistance to dual nationals if there are human rights concerns.

2. This guidance is written in accordance with international human rights and treaties. Any decision to offer a different level of assistance than is set out in the guidance below must be cleared with London.

#### Assessing vulnerability

See guidance in Chapter 13 – Prisoners and detainees

#### Public Statement

#### British nationals in detention or prison overseas

If you are arrested or held in custody or prison overseas, the authorities in that country should ask you whether you want them to contact the British Embassy, High Commission or Consulate. However, you can also ask for this to be done, and should do so particularly if you are charged with a serious offence. We will aim to contact you, depending on local procedures, within 24 hours of being told about your arrest or detention. If you want us to, we will then aim to visit you as soon as possible.

We can put you in touch with Prisoners Abroad, a UK charity which supports British citizens detained overseas and their families ([www.prisonersabroad.org.uk](http://www.prisonersabroad.org.uk)).

Our staff are there to support you and to take an interest in your welfare. We aim to be sensitive and non-judgemental. We also aim to treat everyone in prison or detention the same, no matter what they are being held for, or whether they are on remand or have been sentenced. You should stay in touch with our staff and ask for their help, as they have experience in dealing with many of the problems you may face.

But, we cannot get you out of prison or detention, nor can we get special treatment for you because you are British.

If you want us to, we can tell your family or friends that you have been arrested. If you are thinking about not telling your family, please consider the distress it may cause them if they are not told where you are. It can also be a disadvantage to you if you need money for anything in prison or fall ill. Once we have told your family and friends, we can pass messages between you if phone or postal services are not available.

Although we cannot give legal advice, start legal proceedings or investigate a crime, we can offer basic information about the local legal system, including whether a legal aid scheme is available. We can give you a list of local interpreters and local lawyers if you want, although we cannot pay for either. It is

important to consider carefully whether you want to have legal representation and to discuss all the costs beforehand with the legal representative.

We can offer you information about the local prison or remand system, including visiting arrangements, mail and censorship, privileges, work possibilities, and social and welfare services. We can also explain where there are different regulations for remand prisoners and sentenced prisoners. For example, in some countries, prisoners are allowed to send more mail when they are on remand.

If appropriate, we will consider approaching the local authorities if you are not treated in line with internationally-accepted standards. This may include if your trial does not follow internationally recognised standards for a fair trial or is unreasonably delayed compared to local cases.

We can also help to put you in touch with the charity Fair Trials International ([www.fairtrials.net](http://www.fairtrials.net)).

With your permission, we can take up any justified complaint about ill treatment, personal safety, or discrimination with the police or prison authorities. Again, with your permission, we can make sure that any medical or dental problems you might have are brought to the attention of any police or prison doctor.

If you are in prison in a European Union country, or in Iceland, Liechtenstein, Norway, Switzerland, Canada, the USA, Australia or New Zealand, we aim to visit you once after sentencing and then after that only if there is a real need. In other countries, while you are in prison we aim to visit you at least once a year, although we may visit you more often if necessary.

Within certain limits, we can send you money from your family. In some cases, there may be a charge for this service. In some countries, depending on the rules of the prison where you are being held, we can help to buy essential items with money sent by your family, friends or other people.

We may be able to give you information about any local procedures for a prisoner's early release in exceptional circumstances. These procedures are generally known as pardon or clemency. We will only consider supporting pardon or clemency pleas:

- in compelling compassionate circumstances, such as where a prisoner or close family member is chronically ill or dying and this would leave no-one to care for dependants;
- in cases of minors imprisoned overseas;
- as a last resort, in cases where we have evidence that seems to point to a miscarriage of justice.

We oppose the death penalty in all circumstances. If you are facing a charge that carries the death penalty, or if you have been sentenced to death, we will normally raise your case at whatever stage and level we judge to be appropriate. We can also put you in touch with the charity Reprieve ([www.reprieve.org.uk](http://www.reprieve.org.uk)), who work to prevent the execution of any British national detained overseas.

We can explain to you how you may be able to apply to transfer to a prison in the UK if you are in a country from which prison transfers are possible. We have a leaflet called 'Transfers home for prisoners abroad' with more details.

The local authorities may have a policy of deporting foreign nationals after they have completed a prison sentence and we cannot prevent them from doing this, even if you had previously lived in the country before your prison sentence.

You should be aware that if you are arrested for certain serious offences, such as child sex abuse or drugs crimes, our staff must tell other relevant UK authorities.

We have a leaflet called 'In prison abroad' with more information. You will find more details of this leaflet, and the one on transfers, on [www.fco.gov.uk/publications](http://www.fco.gov.uk/publications).

### **If you are subject to a travel ban**

If you are subject to a travel ban, ie prevented from travelling or leaving the country for whatever reason, we may be able to offer assistance. For example, we can:

- provide you with a list of local lawyers;
- provide you with information about any organisations that may be able to help;
- contact family and friends in the UK on your behalf if you are unable to do so easily.

We may also consider approaching the local authorities, taking into account factors such as local law, the reason for the ban, and your personal circumstances.

#### *Note 9:*

*We keep and use information in line with the Data Protection Act 1998. We may release personal information to other UK government departments and public authorities.*

## **Intervention vs Interference**

### **Intervention**

3. HMG is normally entitled to intervene when we have concerns for the health, welfare or human rights of British nationals or fear they are being unlawfully or unjustifiably discriminated against. Consular officials at Post should:

- ☐ watch for these issues and take seriously any complaints they receive;

- ☐ consider possible grounds for intervention and the most appropriate and effective way of doing so;
- ☐ contact Consular Directorate and our Human Rights Adviser in Consular Prisoners Team for support and advice.

4. Note that we should avoid anything that constitutes interference.

#### **Grounds for intervention**

5. The criminal process differs greatly from country to country, and human rights issues arise at different stages in many different ways. Most issues are more appropriately and effectively addressed by the detainee or their lawyer. But there are also occasions we can and should consider intervening – (after consulting the HRA and (if appropriate) Post's Honorary Legal Adviser):

**Deaths:** Has a British national died in detention overseas? Has the death of a British national overseas in any circumstances not been promptly or adequately investigated? The State must refrain from unlawful killing and may be under a duty to investigate suspicious deaths. Concerns about cases of this nature should be raised with the HRA.

**Arbitrary detention:** Is a British detainee being held unlawfully? It is important to find out if a detainee has been informed promptly at the time of arrest, in a language they understand, the reasons for arrest and any charges against them. Equally, has the detainee been brought promptly before a judge and been able to challenge the lawfulness of detention? Any doubts relating to these matters should be referred to the HRA.

**Discrimination:** The HRA should be notified if you have concerns that a British national is facing unlawful or unjustifiable discrimination. Discrimination is any difference in treatment based on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status which aims at restricting or denying ones human rights and fundamental freedoms.

**Expressing Opinions:** Freedom of expression allows a person to hold opinions and to receive and communicate information and ideas without public authority interference. Restrictions that are lawful, necessary and proportionate may be imposed for various reasons, such as national security and the prevention of disorder, but all cases should be referred to the HRA for assessment.

**Religious Beliefs:** Has a British national been denied freedom of thought, conscience or religion? Has he / she been forbidden from practicing his / her religion in public or in private? Restrictions that are lawful, necessary and proportionate may be imposed for various reasons, but all cases should be referred to the HRA for assessment.

**Corporal Punishment:** We will consider registering our disapproval of corporal punishment (caning, lashes etc) even if it is legal in that country. (The defendant's wishes will also be taken into account.)

**Consular notification and Consular access:** See the guidance on notification and access below.

**Unfair Trial:** See the guidance on fair trials issues below.

**Torture and Mistreatment:** See the guidance on torture and mistreatment below.

**Death Penalty:** See the guidance on torture and mistreatment below.

6. This description of basic rights and standards is only intended as a general guide. **Post should note problems British defendants regularly face and local practices in those areas.** For example, are we regularly not notified of the detention of British nationals? Do British nationals regularly face severe delays in their trials? If there are systematic problems, Consular Directorate and Political Desks may want to lobby at a political level on that general point.

#### **Interventions: who & how?**

7. Once we have established the grounds for intervention we need to consider whether to intervene in a particular case. We do not have to intervene even if we have grounds to do so. There may be many reasons not to do so, not least because we may judge intervention to be likely to be counterproductive. Where we have the grounds and decide upon a course of action, interventions should be appropriate and as effective as possible. We should decide who we should intervene with, (eg the police, the prosecutor, the MFA) and how to do so (eg a discreet phone call, a note verbale, a ministerial letter). We should not do anything that constitutes interference in the internal affairs of a sovereign state (See Interference) and should be aware of other cases, relationships and priorities. But we should promote the human rights of British nationals and can remind local authorities of their international obligations.

- ☐ Consider to whom we should address our concerns. Who is best placed to make a difference: the police, the prosecution, the Ministry of Foreign Affairs?

- ☐ Understand the local systems - who is responsible for what, who can influence who - and develop strong relationships with key authorities. Remember, your relationships are only valuable if they are used to assist British nationals.
- ☐ Consider who should represent us at each stage: a consular official, the head of mission or a minister? It may be useful to leave some room to escalate the issue.

**REDACTED INFORMATION OUT OF SCOPE**

**Interference**

10. Under international law, we cannot interfere in the internal affairs of another State, including their judicial proceedings. Our own internal affairs are similarly protected from foreign interference. (See Article 55 of the Vienna Convention on Consular Relations and similar provisions in bilateral consular conventions.) On the other hand, we are entitled to intervene at appropriate stages and in appropriate ways, if we have grounds to do so. Judging whether our involvement is considered interference or intervention depends on the grounds on which it is justified, the objectives being pursued and the manner in which it is done. Weighing these factors calls for careful consideration.

11. As a general rule, expressing an opinion on the merits of a case such as the guilt or innocence of the accused, or on the interpretation and application of local law would not be appropriate and could be considered interference. But lobbying local authorities to ensure basic procedural rights are upheld, such as being tried without delay or the right of appeal may be appropriate intervention. If in doubt seek the advice of Consular Directorate. The following actions could be considered interference and should be avoided:

- ☐ taking a position on the merits of a case particularly before the national local courts have given final judgment;
- ☐ seeking inappropriately to influence the court's judgment in a case;
- ☐ seeking preferential treatment for a British national over others in a similar situation (unless necessary to meet international human rights standards);
- ☐ trying to run a case in a local court or act as a legal representative;
- ☐ lobbying against a particular punishment, except capital and corporal punishment;
- ☐ criticism of the verdict reached by a court following due process.

**REDACTED INFORMATION OUT OF SCOPE**

**Immigration Cases**

15. Consular staff should avoid involvement in the application of immigration policy, for a number of reasons:

In most countries, immigration decisions can be appealed in the courts. Pre-judging or otherwise challenging the decision of the courts would constitute interference.

We are unlikely to have first-hand knowledge of the applicant's case and in any case we should not attempt to assess whether the decision reached by the court is the "correct" decision.

The United Kingdom regards international interference with the decisions of its own immigration officials as unacceptable.

16. Notwithstanding the above, intervention can be considered where there is good reason to believe that it would be appropriate and effective in the circumstances. The HRA should be consulted.

17. For resource reasons, consular staff should not check on the progress of, or express interest in, immigration cases as a matter of course, but may do so in exceptional cases after consulting Consular Directorate.





**Fair Trial Concerns with Judicial Processes**

18. Try to become familiar with the legal system in your country. Read the **REDACTED** provided by Consular Directorate. This table is intended for guidance on when to refer cases of unfair trials back to Consular Directorate.

19. Complete the table with details about how the legal system in your county meets, or may fail to meet, the standards set out. Keep a copy of the table for future reference, keep it up to date, and make sure the Country Casework Team in Consular Directorate has a copy.

**Discriminatory detention**

20. Her Majesty's Government will consider making representations about the detention of British nationals where we take the view that their detention is discriminatory and breaches their fundamental human rights. This may include - though is not limited to - detention relating to:

-  sexual orientation;
-  religious belief;
-  political views; or
-  race or nationality.

21. As soon as a post becomes aware that any British national has been arrested or detained abroad for any such crime, please refer to the Human Rights Adviser (HRA) in Consular Directorate who will advise on next steps. These will be taken in consultation with HRDD on a case by case basis. The HRA will take account of a number of factors including the details of any alleged illegal activity – for example holding an illegal protest - local law and the country's international human rights obligations. As a general rule, if HRDD would lobby on the case, whether or not it was a consular case, we should lobby on the British national's behalf.

### Delays to trial

22. We can consider approaching the local authorities if it seems that a trial has not taken place within a reasonable time. Some relevant factors to take into account when considering whether delays in legal proceedings are "reasonable" may include the general situation in country (eg the efficiency of the judicial authorities, and the length of time similar, local cases may normally take), the complexity of the particular case, the progress of investigations, the conduct of the accused and defence lawyer, the length of any time spent in pre-trial detention, the likely penalty if found guilty, and any concerns about the detainee's health or welfare. As a general rule, if a prisoner has been waiting for a trial date for more than 2 years then Post should get in touch with HRA to discuss.

23. In most cases, the local lawyer will be best placed to advise on the legal process and on whether any delays in a case seem reasonable or not, and to take forward any concerns with the courts. If, however, we consider that there may be merit in intervening (eg if the lawyer has raised the issue of delay before the local courts to no success), consular staff at Post should assess whether any of the factors above are relevant, and they should then contact the Human Rights Adviser to discuss further. Before intervening, we should check with the British national and the lawyer that they consent to us approaching the authorities to raise the delay. In some cases, it may be that, despite lengthy delays, the local lawyer or the individual do not want or are not ready for the trial to proceed.

### Fair trial issues

24. Consult Consular Directorate when a British national claims they have not received a fair trial or you are concerned that the trial of a British national does not appear to be conforming to the standards set down in the fair trial guidelines table. The basic issues to look out for are:

**Discrimination:** Is the defendant being treated worse than local nationals? Or is s/he being discriminated against on grounds of sex, race or religion? **Note:** *British nationals should be treated the same as local nationals and in accordance with international human rights law, whichever is the higher standard. Equal treatment as local nationals is not generally a defence to a breach of international human rights standards.*

**Charges:** Defendants should be informed of the charges against them promptly, and in a language they understand. This is likely to be crucial in future proceedings.

**Preparation of defence:** Adequate facilities should be made available to prepare their defence. They should have access to necessary documents/evidence and the opportunity to consult with their lawyer in private.

**Legal assistance:** Defendants should be able to represent themselves or instruct a lawyer. If they are unable to pay, a lawyer should be made available free of charge, where it would be in the 'interests of justice' to do so.

**Assistance of an interpreter:** If required, defendants should have access to an interpreter free of charge during court proceedings. This includes the translation of documents and statements necessary to establish a fair trial.

**Independent and impartial court:** The court or tribunal must be established by law and free from interference. Judges must be and be seen to be impartial and independent.

**Innocent until proven guilty:** Defendants should be presumed innocent until proven guilty. Defendants have the right not to be forced to testify or confess guilt: any evidence obtained by force should not be used against them.

**Fair and public hearing:** Hearings should normally be held in public; members of the public and the press should be allowed to attend. There are limited exceptions to this, eg in cases concerning national security, public order and morals. Both parties should have a reasonable opportunity to present their case and call and cross-examine witnesses. Both parties should be treated equally.

**Right to be present at trial:** Defendants have a right to be present during their trial. This includes being able to hear, understand, and follow proceedings.

**Appeal:** Defendants have a right to have their sentence and conviction reviewed by a higher tribunal/court according to law.

25. Before we raise any fair trials issues we would normally expect all appeals to have been exhausted (though we might consider whether there has been an undue delay in the appeals process). However, individual circumstances should be looked at on a case by case basis. If there are compelling reasons why the detainee's lawyer cannot take the issue up at appeal, we should consider whether it is appropriate to intervene earlier. We may also be able to raise certain discrete points which can be remedied at an early stage, such as the lack of opportunity to instruct a lawyer or to have an interpreter, if appropriate.

**REDACTED INFORMATION OUT OF SCOPE**

## Consular Notification and Consular Access

### Vienna Convention on Consular Relations

47. Posts should know if their country has signed and ratified the VCCR (**REDACTED**) – or there may be bilateral consular conventions. Article 36 of the VCCR is below:

*“With a view to facilitating the exercise of consular functions relating to nationals of the sending State:*

*a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;*

*b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;*

*c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.*

*They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.”*

48. If a British detainee is not informed of his right to inform the British Embassy or Consulate of his detention, or if (s)he is denied the right to do so, Post may consider making representations to the local authorities, after consultation with the HRA. If the country has ratified the VCCR, Posts may want to remind the local authorities of their obligations under the VCCR. Alternatively, there may be a relevant bilateral convention. In addition, if you have concerns about the length of time it takes to obtain permission to access a detainee, raise this with the HRA. Occasionally, Posts may be denied access to British detainees. In the most extreme cases, the detainee may be held incommunicado. To be detained incommunicado is to be unable to communicate with the outside world. Such detainees are denied access to lawyers, consular officials, family and doctors. Those detained incommunicado may also be at risk of suffering further breaches of their human rights whilst isolated. There may also be a question of whether the detaining state has breached its obligation under the VCCR Article 36 in relation to consular access. Posts should consult the HRA immediately.

## Allegations of torture and mistreatment

49. Although torture or mistreatment can happen anywhere, it is most likely to occur during criminal investigations or state security processes. Prisoners are therefore more at risk of being tortured or mistreated, and can be especially vulnerable. Chapter 40 Torture and Mistreatment provides detailed guidance on how to handle allegations of torture or mistreatment.

**REDACTED OUT OF SCOPE**

Head of Human Rights and Prisoners Section: FTN: **REDACTED**

Human Rights Adviser: FTN: **REDACTED**

Consular Directorate Legal Adviser **REDACTED**

Last Updated: 7 February 2014

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