



Commonwealth Human Rights Initiative



July 20, 2018

JAIL MAIL: NELSON MANDELA DAY

Dear Friends,

Greetings from CHRI!

“No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones.”

-- Nelson Mandela

This week we celebrated the 100th birth anniversary of Nobel Peace Prize winner and former South African president, Nelson Mandela. In 1962, Mandela was imprisoned for a lifetime for conspiring to overthrow the Government in the course of his struggle for democracy. Mandela served 27 years in the prison. Throughout his life he fought against discrimination and promoted the idea of democracy, equality and a free society.

In 2015, the United Nations General Assembly decided to extend the scope of the International Nelson Mandela Day to be also utilised in order to promote humane prison conditions, to raise awareness about prisoners being a continuous part of society and to value the work of prison staff as a social service of particular importance. This coincided with the exercise to revise and update the United Nations Standard Minimum Rules (SMR) for the Treatment of Prisoners in 2015. In recognition of Mandela’s major support to the revision process and to honor his legacy, the rules were named **Mandela Rules**.

While SMRs are not legally binding like treaties or conventions, their purpose is to design or “set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.” A copy of the SMR can be downloaded from [here](#).

With the boundaries in the world being blurred with vast numbers of persons migrating due to reasons of war, strife, terror and ethnic cleansing and economy, Rule 62 of the SMR emerges as an important protection standard that has received little publicity. This rule sets out the provision of reasonable facilities of communication for a foreign national prisoner (FNP) with diplomatic and consular representatives of the State to which they belong. It further carves out protection for refugees and stateless persons, by extending them similar facilities to communicate with either diplomatic representative of the State willing to take charge of their interests or any national or international authority whose task is to protect such persons.

According to the Global Prisons Trends 2017 published by Penal Reform International, nearly one in every five prisoners in the European Union is a foreigner; in Middle-east the ratio is one in every two and in Asia, there has been a significant increase in FNPs due to surge in migration, human trafficking and transnational crime. Globally, the number of foreign national prisoners is around 460,000. With the rise of globalisation, trafficking, migration and transnational crimes these numbers too are on the rise.

The UN Handbook on Treatment of Prisoners with Special Needs classifies foreign nationals in four categories – those who travelled to another country to commit an offence, long term residents but have

not been granted citizenship, migrant workers who may commit an offence and finally persons incarcerated for illegal immigration. Foreign national prisoners comprise a particularly vulnerable group, due to the extremely adverse impact of separation from their families and the community, isolation and fear of abuse in pre-trial detention and prisons.

Despite the international legal basis for consular assistance to nationals in foreign prisons, in practice only a few countries facilitate such access. CHRI's experience of working on this issue in India also reflects a similar picture. In an ongoing study on FNPs in India, lack of consular access; insufficient means for communication with family; and inordinate delays in repatriation process have emerged as key challenges. Also worrisome are the number of stateless persons in detention in the eastern part of the country, and the fear of more numbers being added in lieu of the preparation of the National Register of Citizens in Assam.

To raise awareness around these issues, CHRI recently published three resources, viz.

- *Frequently Asked Questions by Foreign Nationals in Indian Prisons'* - which is prepared in order to raise awareness amongst foreign national prisoners, who are many times, in absence of prompt consular access by their embassies, unaware of the Indian laws, and prison rules on contacting their families etc. We hope you were able to go through the same. Click [here](#).
- *Defending Asylum Seekers and Refugees in Detention'* which addresses the issue lawyers may face in demarcating between Asylum Seekers, Refugees and Economic Migrants. It further describes the legal framework available in India. Click [here](#).
- *Guide for Prison Officers – Refugees & Asylum Seekers'* which is prepared to provide pertinent information especially for prison officers on laws and provisions governing their stay, detention and determination of status in India. Click [here](#).

(Do let us know if you require more copies of the publication for circulation to prison libraries in your state).

CHRI calls upon readers today to '*Take Action. Inspire Change. Make Every Day a Mandela Day*'. No matter how small your action, **Mandela Day** is about changing the world for the better, just as **Nelson Mandela** did every day. Let's make a difference, and do what we can to reinforce the need for ensuring humane and dignified conditions within our prisons, and to afford protection to vulnerable categories of prisoners, especially foreign nationals, asylum seekers and refugees. Towards this, you can:

1. Raise awareness about the standards spelled out in the SMR especially for the protection of vulnerable categories in addition to standards relating to living conditions, health and hygiene standards, contact with outside world, education initiatives, rehabilitation processes, prohibition of torture, access to legal representation among others so that it reaches the intended beneficiaries.
2. Write to concern authorities to render any support that you can offer in compliance of the standards set in Mandela Rules.
3. Spread the word and sensitise communities on foreign prisoners, especially asylum seekers and refugees, in order to afford protection to them from inhumane and degrading conditions of detention in camps and prisons.

Write to us at chriprisonsprog@gmail.com with your comments and suggestions. Please send us an email if you wished to subscribe to these updates.

Best Regards,

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About *Jail Mail*

Jail Mail is a regular series of Prison Reform Updates from CHRI for readers interested in the rights of prisoners and the reform of prisons as a matter of public concern. The engagement of civil society in the management and monitoring of prisons and the rights of prisoners is vital to the transparency of this traditionally closed institution and to ensure the practical realisation of the rights of those behind bars. *Jail Mail* invites discussion between civil society members and those entrusted to oversee and manage prisons.

Evidence-based research and watch reports of CHRI's Prison Reforms Programme, interviews with critical stakeholders, topical issues and developments concerning the liberty of prisoners, and health of prisons in India and around the world will form the sources of *Jail Mail*. Its periodicity will depend on the urgency of issues and the interest they generate.

About CHRI and the Prison Reforms Programme

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI, with the conviction that there was little focus on the issues of human rights within the Commonwealth although the organisation provided member countries a shared set of values and legal principles from which to work.

The Prison Reforms Programme of CHRI is more than 15 years old. The programme focuses on improving prison monitoring through the strengthening of undertrial review mechanisms and prison visiting system nationally, and ensuring early safeguards against unnecessary pre-trial detentions, specifically in Rajasthan and West Bengal. The programme also advocates for timely repatriation of foreign national prisoners and immediate release of asylum seekers. Evidence-based research, advocacy, capacity-building of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme

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