

THE TREATMENT OF FOREIGN PRISONERS

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FOREWORD

When diplomats, people-of-means, missionaries or adventurers used to visit foreign lands they would comment on the unique culture and the hard-to-understand differences of the local people. When people from small villages or towns traveled to their nations' capital they would return with stories of seeing people in strange dress or hearing languages they could not understand or eating strange food from another land. This was a time not so long ago – less than 50 years. Even after World War Two, travel was the province of the relatively few, other than some immigrants. Immigrants also were restricted to a few nations and were not something known to many peoples of the world.

Improvements in communications, advancements in the availability of transportation and access to news from and about foreign lands have made travel more attainable. These same developments have allowed many more to travel for entertainment, business or education. Many living in conditions of poverty, degradation or even in conditions below what they have heard exists elsewhere have sought new homes in distant lands. The world truly has “shrunk” and even in the most distant lands has become more accessible.

It is no surprise that the increase in foreign visitors has been accompanied by an increase in crime committed by foreigners. Also, the lack of language skills, or confusion about cultural differences or laws dealing with customs, adds to the potential of foreigners violating local laws. When the numbers were small, often the solutions were simple – the person was taken to the border and turned loose. That has now changed. It is not uncommon to find prison populations in some nations consisting of nearly 50% foreign nationals. It also is not uncommon for those foreign prisoners to come from several different nations.

At the same time, prisons around the world have increased populations and often nations have had to stretch their national resources to cover a multitude of services. The summary of this, though far from unique to prisons, means more clients who need more diverse services, from a more sophisticated staff with fewer resources from which to draw. To argue the merits of more resources for prisons is a needed exercise for the political leaders and social lobbyists of the nations. However, those charged with running the prisons and jails must work with what they have today. The purpose of this booklet is twofold:

1. To help define what should, by international standards and common sense, be provided for foreign prisoners and some suggestions on how to obtain those services without burdening existing financial and staff resources.
2. To provide information for consideration by those who have been arrested or detained in a foreign nation and for their families and friends.

Many people from different walks of life and countries of origin will end up in prison or jail. All corrections professionals know that the basic principles of respect and ensuring the dignity of the individual and protecting human rights apply to all incarcerated people. However, foreign nationals might need additional policies and procedures put in place to ensure they are treated properly. This document is intended for anyone interested in conditions of incarceration, be they correctional administrators, line-level staff, legislators, judicial personnel, citizens or offenders and their families.

For purposes of this document, a “prisoner” is defined as a person who is deprived, by a governing authority, of his or her liberty upon any action, civil or criminal. This does not include prisoners of war.

THE BASIC INTERNATIONAL RECOMMENDATIONS ON THE TREATMENT OF FOREIGN PRISONERS

Adopted in 1984 by the United Nations Committee on Crime Prevention and Control:

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.
4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.
5. The religious precepts and customs of foreign prisoners should be respected.
6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted.
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or program staff and in such matters as complaints, special accommodations, special diets and religious representation and counseling.

8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations should be given the opportunity to assist foreign prisoners.
9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

It is easy to see that most of the above recommendations do not involve additional expenditures or much in the way of extra staff resources. Most can be accomplished with minor rule changes, community volunteers or resources available from foreign diplomatic, missionary or business personnel or government agencies responsible for attracting foreign business and tourism.

It must be noted that the above recommendations are a direct result of a nearly six-year effort by a Select Committee of the Committee of Ministers of the Council of Europe. The findings, recommendations and some of the commentary of that Select Committee are noted, where appropriate.

The Select Committee pointed out that though the situation of foreign prisoners differs according to whether they have gone abroad as occasional visitors (tourists, students, businessmen) or for the purpose of taking up employment or settling permanently (migrant workers, second generation immigrants), a number of problems are common to most foreign prisoners and those are what precipitated the specific recommendations.

The recommendations of the Council of Europe (Recommendation No. R(84) 12) included an Appendix which defines the term “foreign prisoners” for the purpose of the

recommendations as prisoners of a different nationality. However, this definition is qualified: the principles apply only to those foreigners who, on account of such factors as language, customs, cultural background or religion, may face specific problems. They do not therefore apply to foreigners who, for instance through long residence in the country of detention, have a command of its language, are assimilated to its culture and customs and have family and other social ties in that country.

The Council of Europe aim of the recommendations is to promote the social resettlement of foreign prisoners and they should be applied so as to ensure that the treatment of foreign prisoners is conducive to that aim. Thus, the preamble to the recommendations contained: “In implementing these principles, account should be taken of the requirements of the prison administration, including prison security, and the availability of resources according to the Council of Europe document. The principles should be applied so as to ensure that the treatment of foreign prisoners is conducive to their social resettlement. This might require adopting particular measures in relation to particular categories of foreign prisoners, taking into account such factors as nationality, language, religious precepts and customs, cultural background, length of sentence, and liability to expulsion. Every reasonable effort should be made to ensure that the treatment of foreign prisoners does not lead to their being disadvantaged.”

PRACTICAL CONSIDERATIONS AND IMPLEMENTATION STRATEGIES

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.

A. Implementation Concerns

It is possible that the normal isolation of a foreign national can be somewhat ameliorated by placing all those of the same culture, language ability or nation together. In nations with a limited number of staff having foreign language capabilities or with limited food preparation facilities, the provision of services needed by large numbers of inmates with the same religious food requirements or access to translation/interpretation services could be hampered by spreading foreign inmates out among several prisons or parts of a large single prison.

B. Implementation Strategies

The wording of the *Principles Concerning Foreign Prisoners* of the Council of Europe provides one of the best guidelines any nation might follow:

“The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone. If his allocation to a prison establishment is likely to alleviate his situation of isolation and to facilitate his treatment it may be effected according to his specific needs, particularly with regard to his communications with persons of the same nationality, language, religion or culture.”

Having said that, however, the Council of Europe goes on to say,

“When a foreign prisoner is likely to be able to remain in the country of detention and wishes to be assimilated into the culture of that country, the prison authority should assist him in doing so.”

2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.

A. Implementation Concerns:

The availability of qualified personnel with the necessary language skills to supervise, educate and train the foreign inmates could present some logistical and financial concerns.

B. Implementation Strategies

Contact with civic, religious, business and governmental agencies within the nation of detention may produce a wealth of individuals and resources able to help in acquiring language-specific material from the nation of the foreign prisoner. Volunteers can also be recruited from groups such as a local chapter of the United Nations Association to help compile a list of local resources that the prison administration can call on for help in this area. The building of such a list of human resources and the acquisition of appropriate printed material is an on-going process and one that should start long before the actual help is needed. All embassies and consulates within the nation should also be contacted to see what help they are willing and capable of providing nationals from their nation who are incarcerated.

3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.

A. Implementation Concerns:

Where the majority of nationals are likely to have family, friends or organizations willing to sponsor their leaves or to provide appropriate places for them to go, it is likely that foreign nationals might not be able to compile a list of eligible sponsors or find those same types of resources usually required for the granting of prison leave.

B. Implementation Strategies

The responsibility for reaching out to the community may lie with the correctional administration to compile a list of people and organizations that would act as sponsors for foreign prisoners (as well as nationals located far from family and friends). Some places, such as Spain, have organizations that have set up apartments for inmates who have no other places to go during a furlough. Churches often have available accommodations for their clergyman and guests. Some military bases and other government entities have guest housing that might be used under some type of cooperative agreement. Again, establishing such a system takes time and coordination and needs to be on going.

4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.

A. Implementation Concerns:

With people from so many nations traveling to various nations, having the capability to provide translation/interpretation services in a variety of languages, at all times foreigners are brought into jails or prisons, might cause some difficulties.

B. Implementation Strategies

The list of potential language resources referred to above should be augmented to insure compliance with this one. Prison rules should be sent to foreign governments, universities, trade commissions and similar sources asking that they be translated so they will be immediately available for foreign prisoners brought into the system. Even after such a library is acquired, it must be augmented with local individuals fluent in foreign languages to be able to work with foreign inmates who are illiterate in their own language.

5. The religious precepts and customs of foreign prisoners should be respected.

A. Implementation Concerns:

The ignorance of the various customs that accompany many religions, along with the vast array of “new” religions that often contain provisions about length of hair, types of dress, use of wine or narcotics in ceremonies, use of sweat lodges and special diets, can cause confusion. The potential of inmates to claim a particular religion in order to acquire certain rights or to challenge existing prison rules can be of concern to the institution.

B. Implementation Strategies

Establishing ties with ethnic minority and various religious groups within the local community can help acquire the needed personnel, resources and expertise to help meet this rule. Where religious practice conflicts with sound security concerns, the security of the institution takes precedence. However, it is possible that discrimination might be carried out in the name of security or by staff not being willing to exert extra efforts. Examples of a valid security concern might be the refusal to allow inmates to use drugs or alcohol for a religious ceremony in the prison. On the other side, the refusal to find ways to insure diets that meet the religious needs of prisoners, such as finding alternatives for those who cannot eat pork, is not acceptable. Religious locks or particular cuts of hair or beards or wearing certain garments for religious reasons have, in some correctional facilities, been eliminated for what was considered security concerns. Good searching techniques can overcome such concerns if the staff are well trained and do their job with precision. After all, in most pretrial or remand centers, prisoners' hair and dress is subject to only limited restrictions. Thus, this is a rule that can generally be met if the prison administration is willing to look for ways to accomplish it.

6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted.

A. Implementation Concerns:

Other than the previously mentioned potential difficulties of obtaining translation/interpretation services, this should present no special concern.

B. Implementation Strategies

The 1987 *European Prison Rules* include a provision that states:

“Prisoners who are nationals of states without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representatives of the state which takes charge of their interests or national or international authority whose task it is to serve the interests of such persons.”

If the detainee requests, it is the duty of the detaining authority to notify the consular authority without delay.

If the foreign prisoner has applied for asylum and there is no diplomatic relations with his/her country of origin, the United Nations High Commissioner for Refugees (UNHCR) can be contacted for guidance. UNHCR can be contacted at:

UNHCR is based in Geneva, Switzerland.
Address:
United Nations High Commissioner for Refugees
Case Postale 2500
CH-1211 Genève 2 Dépôt
Suisse.
Telephone number:
+41 22 739 8111 (automatic switchboard).
Electronic, via the Web:
<http://www.unhcr.org/>

7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or program staff and in such matters as complaints, special accommodations, special diets and religious representation and counseling.

A. Implementation Concerns:

This presents challenges in having the financial and staff resources to provide the necessary translation/interpretation services at the times they are needed. For some religions with a relatively small following, finding appropriate local religious representation might prove problematic.

B. Implementation Strategies

Cooperative arrangements with the general community, especially in the area of having translation available when dealing with medical services, should be pursued. Tourists and business people from foreign nations have the same needs when they get sick while visiting or when they have an encounter with the police. In their cases, hotels, hospitals, members of the International Bar Association and chambers of commerce provide referral help. International telephone companies also have on-line translation/interpretation services available in more than 100 languages and dialects. International credit card companies offer their card holders referral help, in a multitude of languages for a multitude of difficulties they might face while traveling. Cooperative arrangements should be explored with those and similar companies. Also, internet-based translation software is becoming more sophisticated and might provide some help in this area.

8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations should be given the opportunity to assist foreign prisoners.

Note: For the purposes of this recommendation, “Community Agencies” are agencies other than consulates, such as probation and social services, International Committee of the Red Cross, religious, after-care and welfare organizations both in the country of detention and in the prisoners’ home country.

A. Implementation Concerns:

This presents no special implementation concerns that do not exist for all prisoners held within the system.

B. Implementation Strategies

The 1987 *European Prison Rules* reminds prison administrations,

“In the case of foreign nationals, links with people of their own nationality in the outside community are to be regarded as equally important.”

The Council of Europe *Principles Concerning Foreign Prisoners* says,

“With a view to according adequate assistance to foreign prisoners, prison authorities should grant community agencies all necessary opportunities for visits and correspondence, provided that the prisoner consents to these contacts.”

When postal and telephone communications are disrupted or not available, foreign prisoners can inform their families of their situation and keep in touch with them by means of Red Cross messages. In time of conflict, the delegation of the International Committee of the Red Cross (ICRC) can be contacted to facilitate such a service. In any other situation, the Red Cross or Red Crescent National Society collects and forwards

such messages. The exchange of correspondence by this means continues until either normal means of communication are restored or the prisoner has been released.

9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

A. Implementation Concerns:

This poses only those “normal” implementation problems associated with the passage of any national legislation and the signing of any international treaty or agreement.

B. Implementation Strategies

This is covered extensively in a later section of this booklet. Note that the transfer of sanction treaties require the consent of the prisoner as well as the countries involved. A person should not be repatriated to a country where he/she will face persecution.

As should be obvious, though the implementation of some of these regulations brings additional work and expense, the only real barrier to their implementation would be a lack of desire on the part of the administrative entity. These are the types of rules that cry for cooperation with the civilian community and bring support to the corrections system beyond just the work with their foreign prisoners.

CONSULAR NOTIFICATION

The following is presented as an example. It comes from the United States.

The Vienna Convention on Consular Relations, along with bilateral agreements, conventions, or treaties, make up the body of international instruments that cover the following obligations of U.S. correctional personnel:

1. When foreign nationals are arrested or detained, they must be advised of their right to have their consular officer notified.
2. In some cases, the nearest consular office *must* be notified of the arrest or detention of a foreign national, **regardless of the national's wishes**.
3. Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.
4. When a government official becomes aware of the death of a foreign national, consular officials must be notified.

A *consular officer* is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, D.C., or to consular offices maintained by the foreign government in locations throughout the United States. In some cases the nation involved may use an "honorary consul" who is a citizen or lawful permanent resident of the United States who has been authorized by a foreign government to perform official functions on its behalf in the United States. At times a nation may authorize a diplomat (an officer of a foreign nation assigned to an embassy in Washington, D.C.) to perform consular functions. Diplomatic and

consular officers (including consuls and honorary consuls) have identification cards issued by the U.S. Department of State. The identification cards contain the person's photograph and identify it as an "Identification Card". If there is any doubt about the authenticity of a State Department identification card, it can be verified by calling the State Department's Office of Protocol at (202) 647-1985 during normal business hours or (202) 647-7277 at other times.

A consular officer may do a variety of things to assist a foreign national. The consular officer may speak with the detained foreign national over the phone and/or arrange one or more consular visits to meet with the detainee about his/her situation and needs. A consular officer may assist in arranging legal representation, monitor the progress of the case, and seek to ensure that the foreign national receives a fair trial (e.g., by working with the detainee's lawyer, communicating with the prosecutors, or observing the trial). The consular officer may speak with prison officials about the detainee's conditions of confinement, and may bring the detainee reading material, food, medicine, or other necessities, if permitted by prison regulations. A consular officer frequently will be in touch with the detainee's family, particularly if they are in the country of origin, to advise them of the detainee's situation, morale, and other relevant information. The actual services provided by the consular officer will vary depending upon the country's level of representation in the U.S. and available resources.

Consular officers are not permitted to practice law in the U.S. and cannot act as the legal counsel for a detained alien. However, they may act as "friends of the court" and assist in the alien's preparation of his or her defense. They may help obtain an attorney for the alien, but U.S. authorities should not assume that to be the case.

Consular officers are entitled to visit and to communicate with their detained nationals, even if the foreign national has not requested a visit. The consular officer must refrain from

taking action on behalf of the foreign national if so requested by the national, however. Law enforcement authorities may make reasonable regulations about the time, place and manner of consular visits to detained foreign nationals. Those regulations cannot, however, be so restrictive that the purpose of the assistance is defeated. The U.S. Department of State is very clear in its urging law enforcement authorities to grant foreign consular officials liberal access to detained persons, granting consular officers every courtesy and facility consistent with local laws and regulations. Liberal visiting privileges are particularly important when consular officers have to travel long distances to visit their nationals. Consular officers have to comply with normal prison security regulations including searches prior to visiting an inmate. However, those searches should not be unnecessarily intrusive. Consular officers who question having to follow particular security rules should be advised to address their questions to the U.S. Department of State, but in all cases they should be treated with respect when conducting prison visits.

A consular officer generally has the right to meet privately with the detained foreign national, but if security necessitates, correctional personnel can observe those visits. If the consular officer insists on a private meeting but the detained national objects to meeting privately, the U.S. Department of State should be contacted for guidance.

The guiding principle the U.S. Department of State suggests correctional personnel should follow is: ***In general you should permit a consular officer the same access to a foreign national that you would want an American consular officer to have to an American citizen in a similar situation in a foreign country.***

Informing the foreign national of the right to consular notification and access is the responsibility of the arresting or detaining officer. Notification must be given if the foreign national is arrested or committed to prison or to custody pending trial or is detained in any other

manner. Though a routine traffic stop would not trigger the need for consular notification, requiring a foreign national to accompany a law enforcement officer to a place of detention would if the detention lasts for a number of hours or overnight. This is true even if the foreign national is detained (not free to leave) in a hospital or detox facility.

In all cases, the foreign national must be told of the right of consular notification and access. The foreign national then has the option to decide whether he/she wants consular representatives notified of the arrest or detention, unless the foreign national is from a “mandatory notification” country. If a detained foreign national is a national of a country not on the mandatory notification list, the requirement is that the foreign national be informed without delay of the option to have his or her government’s consular representatives notified of the detention. *If the detainee requests notification, a responsible detaining official must ensure that notification is given to the nearest consulate or embassy of the detainee’s country without delay.*

In some cases, “mandatory notification” must be made to the nearest consulate or embassy “without delay,” “immediately,” or within the time specified in a bilateral agreement between the United States and a foreign national’s country, *regardless of whether the foreign national requests such notification.* Mandatory notification requirements arise from different bilateral agreements whose terms are not identical. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases. The notification requirement should still be honored, but it is possible to take precautions regarding the disclosure of information. For example, it may not be necessary to provide information about why a foreign national is in detention. Moreover, *under no circumstances should any information indicating*

that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.

Mandatory Notification Countries and Jurisdictions

Antigua and Barbuda	Malta
Armenia	Mauritius
Azerbaijan	Moldova
Bahamas, The	Mongolia
Barbados	Nigeria
Belarus	Philippines
Belize	Poland (non-permanent residents only)
Brunei	Romania
Bulgaria	Russia
China (does not include Republic of China – Taiwan- passport holders)	Saint Kitts and Nevis
Costa Rica	Saint Lucia
Cyprus	Saint Vincent and the Grenadines
Czech Republic	Seychelles
Dominica	Sierra Leone
Fiji	Singapore
Gambia, The	Slovakia
Georgia	Tajikistan
Ghana	Tanzania
Grenada	Tonga
Guyana	Trinidad and Tobago
Hong Kong	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom
Kiribati	U.S.S.R. (Passports may still be in use)
Kuwait	Uzbekistan
Kyrgyzstan	Zambia

Summary of Requirements Pertaining to Foreign Nationals

1. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
2. In some cases, the nearest consular officials *must* be notified of the arrest or detention of a foreign national, **regardless of the national's wishes**.
3. Consular officials are entitled to access to their nationals in detention and are entitled to provide consular assistance.
4. When a government official becomes aware of the death of a foreign national, consular officials must be notified.
5. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.
6. When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

Steps to Follow When a Foreign National is Arrested or Detained

1. Determine the foreign national's country of origin and citizenship. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.
2. If the foreign national's country is **not** on the mandatory notification list:
 - Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.
 - If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.
3. If the foreign national's country **is** on the list of mandatory notification countries:
 - Notify that country's nearest consular officials, without delay, of the arrest/detention.
 - Tell the foreign national that you are making this notification.
4. Keep a written record of the provision of notification and actions taken.

The U.S. Department of State says it another way: These are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance,

and prompt, courteous notification to the foreign national's nearest consular officials so that they can provide whatever consular services they deem appropriate.

INTERNATIONAL PRISONER TRANSFER TREATIES

One of the most effective methods for assisting offenders incarcerated in foreign jails that has been developed is the promulgation of treaties on the transferability of penal sanctions, which are commonly known as prisoner transfer treaties. Although these treaties do very little to solve the problems of prisoners while they are in foreign countries, they do allow those individuals to return home to serve out their sentences once their trials have been completed.

Generally, prisoner transfer treaties require that an individual must be a citizen of the country to which transfer is requested. However, the Council of Europe Treaty permits “nationals” to qualify and further permits each state to define “national.” This permits the potential inclusion of a broader range of individuals. In addition, pursuant to the Council of Europe Treaty the transfer process may be initiated by either the sentencing state or the receiving state.

In order to use a prisoner transfer treaty, the prisoner must have been sentenced and must have completed or waived all appeals and collateral proceedings. The sending country, the receiving country and the prisoner each must consent to the transfer.

The individual generally must also have committed an offense that is punishable as a crime under the laws in the home country (dual criminality) and must have at least six months left to serve on the sentence. Further, many treaties have certain offenses which are not transferable (e.g., military offenses).

The United States has bilateral transfer treaties with Bolivia, Canada, France, Hong Kong, Panama, Peru, Thailand and Turkey, and is party to the multilateral Council of Europe convention on the Transfer of Sentenced Persons. The Organization of American States has a multilateral treaty called the Inter-American Convention on Serving Criminal Sentences Abroad which the United States ratified on May 25, 2001. The United States also has prisoner transfer agreements with the Federated States of Micronesia, the Marshal Islands, and the Republic of Palau.

Countries with which prisoner transfer treaties of United States citizens are in effect are: Azerbaijan, Albania, Armenia, Austria, Bahamas, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Marshall Islands, Mexico, Micronesia, Netherlands (including Netherlands Antilles and Aruba), Norway, Palau, Panama, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Trinidad/Tobago, Turkey, Ukraine, United Kingdom (including B.V.I., Cayman Islands, other territories), and Venezuela.

Countries using the treaties offer advice and assistance to prisoners desiring to transfer. The consular officials in each involved country offer advice and help with the procedures. For more information the United States Department of Justice recommends the following Web sites: www.usdoj.gov/criminal/oeo/ -- United States Department of Justice, Criminal Division, Office of Enforcement Operations. This Web site gives detailed information regarding how the prisoner transfer program works in the United States.

www.bop.gov/ -- United States Bureau of Prisons. Prisoner transfer information for prisoners in the custody of the federal government of the United States. Once on the Bureau of Prisons home page, click on “FOIA/Policy,” then click on “5000 Series – Inmate and Custodial Management,” and scroll down to Program Statement “5140.34-Treaty Transfer of Offenders to or from Foreign Countries.”

[Http://travel.state.gov.transfer.html](http://travel.state.gov.transfer.html) -- United States Department of State. This site contains information intended to help Americans who are incarcerated abroad. It answers many questions that the Americans and their families may have about prisoner transfer.

[Http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=112&CM=8&DF=29/07/02](http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=112&CM=8&DF=29/07/02) -- Council of Europe (COE). The Council of Europe multilateral prisoner transfer treaty is treaty number 112. The Web site contains the language of the treaty and a detailed list of the declarations and reservations of each country that participates.

[Http://www.oas.org](http://www.oas.org) -- Organization of American States (OAS). The OAS has a multilateral treaty as well. The treaty number is A-57. It is called the Inter-American Convention on Serving Criminal Sentences Abroad. The Web site lists which countries have signed the convention and where they are in the ratification process.

ADVICE FOR INCARCERATED FOREIGN NATIONALS AND THEIR FAMILIES

The following general information and advice comes from information provided to Canadian citizens by their government. It should be adjusted as necessary for those from other nations.

Detainee/Prisoner

If you break the laws of another country, you are subject to the judicial system of that country. Being a foreigner or not knowing the local laws is not an excuse. Your country can neither protect you from the consequences of your actions nor override the decisions of local authorities.

If you are detained or arrested in a foreign country and you choose to talk to your consular officials, any information you give them may remain confidential if your nation has enacted an appropriate *privacy act*. If so, any information you give your consular officials will remain completely confidential and will not be passed on to anyone without your permission, other than consular officials concerned with your case. Canadians have the right, for example, to determine who will be notified of their situation, and who may act as their representative. Family and friends will not have access to any information without your consent. However, your national police have their own international contacts and may know of your circumstances through other sources.

If you are detained or arrested abroad and you wish to have your consular officials notified, you should clearly make that request to the arresting authorities. It is important to realize that the arresting authorities do not have an obligation to inform the diplomatic or consular officials of your nation of your detention or arrest unless you request it. Page 16 of this booklet indicated your rights under The Vienna Convention on Consular Relations.

Family and Friends

As a family member or friend of a person detained or imprisoned abroad, you should contact the Consular Affairs section in your nation. A consular official can provide you with general information about the country involved, prison conditions and the local justice system. You will not be given any details of the detention or arrest, or told how to establish communications with the person, unless the detainee/prisoner has authorized it.

You should resist the urge to take immediate action, such as visiting the detainee/prisoner, or sending money or parcels. You should discuss such actions with a consular official in your nation. That person will advise you on the feasibility of such initiatives and how best to proceed.

It is important to note that in many countries mail sent or received by detainees/prisoners will be opened and read by prison authorities. It is also not unusual for telephone conversations to be monitored. Care should be taken, therefore, not to discuss or put in writing anything that you would not wish to become public.

To the extent possible, you should make every effort to maintain direct contact with the detainee/prisoner through normal channels. Advice and information is available from consular officials both in your nation and at diplomatic or consular missions abroad; however, the range of other services will be determined by your own ability to provide support and assistance.

Hiring a Foreign Lawyer

The choice of legal representation in the country of your detention or arrest can be critically important and should be made with care and caution. As a first step, you should make contact

with a consular official from your home country who is located in the country of your detention or arrest.

Consular officials can provide a list of lawyers who have expertise in your particular type of case, and who may have represented others from your nation in the past. They cannot, however, make recommendations. You may, of course, prefer to engage a lawyer who is not on the list. The decision to hire a specific lawyer remains your responsibility. In either event, you may wish to consider whether a lawyer is:

- Experienced in your type of case;
- Well regarded in the local legal community;
- Able to communicate in your language of choice; and
- Willing to agree on a fee structure for the duration of the case, including any appeal procedures.

Should you be unable to raise sufficient funds to hire a lawyer, consular officials can give you advice on the availability of legal aid in the country in which you are detained or imprisoned. Consular officials may also help facilitate communications between you or someone you designate and your lawyer. However, all decisions affecting the conduct of the case must be made by you or your representative.