



LIVING CONDITIONS ON DEATH ROW

Factsheet for Prison Staff

16th World Day Against the Death Penalty

On 10 October 2018 the World Coalition Against the Death Penalty and abolitionists all over the world will celebrate the 16th World Day Against the Death Penalty. This year, the World Day will focus on the living conditions of those sentenced to death. The World Coalition is addressing the issue because it is aware that regardless of the prospect of execution, the prison conditions for those sentenced to death in itself inflicts considerable physical and psychological suffering, which can in some cases amount to torture.

Striving for the complete abolition of the death penalty also means we cannot ignore the daily treatment that people sentenced to death endure and their anguish as they face execution.

Background

Although people on death row are entitled to the same basic rights and treatment conditions as other categories of prisoners, as set out in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)¹, many testimonies document the inhumane living conditions that people sentenced to death endure.

In addition, people on death row have very little contact with their family and lawyers, as access to death row is often very limited. Therefore, the conditions of detention affect not only the person sentenced to death but also their families and friends. The conditions of detention can also affect the prison staff's working conditions. **This briefing paper aims to help prison staff act professionally and in line with international standards when supervising people on death row, which will also improve their working conditions.**

Living Conditions on Death Row

Although prison administrations are not directly responsible for whether the death penalty is imposed or not, they are responsible for the conditions of those upon whom any sentence has been imposed. Conditions of prisoners under sentence of death are often much worse than those of their fellow prisoners. They are often held for many years when there are lengthy appeal procedures or when a state has suspended executions but has not abolished the death penalty or commuted existing sentences. Even countries that have abolished the death penalty in practice may still have prisoners on death row.

In most countries which retain the death penalty, prisoners under sentence of death are separated from other prisoners and have a special regime in the prison, including exclusion from rehabilitation programmes. They are generally confined to maximum-security areas, often in a specific building or wing, and are subjected to severe security measures which are rarely justified based on the real level of danger they pose. Isolation is often the worst aspect of the death row regime: to be cut off from family and friends is among the most acute pains of imprisonment. As a result of these

¹ See Penal Reform International's *Short Guide to the Nelson Mandela Rules* (revised UN Standard Minimum Rules for the Treatment of Prisoners) in multiple languages : <https://www.penalreform.org/resource/short-guide-to-the-nelson-mandela-rules/>

conditions, as well as the stress of facing a death sentence, death row prisoners are vulnerable to mental strain, legal frustrations, and often neglected for months, years, and even decades.

Effects of supervising death row prisoners on prison staff

Supervising a prisoner who has been sentenced to death is a stressful responsibility, especially once a date for execution has been set. The knowledge that a prisoner is awaiting an execution is likely to have an adverse effect on all around him/her, including prison staff. In some countries prison staff are required to carry out executions – which can be a harrowing experience.

Prison staff, including guards and medical staff, may feel psychological repercussions from working on death row and may be in need of support themselves. Prison staff working on death row may face the deplorable conditions of detention above on a daily basis, and are deeply affected by the environment, the constant suffering they face, and the role they play in this deadly scheme.

As death row prisoners are generally considered among the most dangerous prisoners and subsequently placed in maximum security conditions. As a result, prison guards must remain constantly vigilant and consider their workplace as "dangerous". The mental health impact from the living conditions, combined with prolonged incarceration and constant anxiety due to imminent death, sometimes leads prisoners on death row to be violent, meaning prison staff can fear for their own safety and even lives.

To mitigate the impact of working with death row prisoners, the prison administration should ensure minimum conditions according to the Nelson Mandela Rules are met, and take other measures such as:

- **Safety [Rule 1]**

The safety of prison staff must be ensured at all times.

- **Employment [Rules 74, 78]**

Prison staff should be appointed on a full-time basis and should have civil service status with security of tenure, subject only to good conduct, efficiency and physical fitness. To support prison staff in their job, prisons should employ an adequate number of specialists, including psychiatrists, psychologists, social workers and teachers.

- **Recruitment [Rules 74, 81]**

As prison management is a difficult task, careful selection of prison staff is required because professional prisons depend on their integrity, humanity, professional capacity and personal suitability. Only female staff should supervise women prisoners.

- **Training [Rules 75, 76]**

To enable them to professionally fulfil their duties, prison staff need continuous training opportunities. Such training should reflect evidence-based best practice, must be provided before and during their employment, and should include the use of force, working with certain categories of prisoners, and the concept of dynamic security. A dynamic security approach combines positive staff-prisoner relationships with fair treatment and purposeful activities for prisoners that contribute to their future reintegration into society.

Despite the stark conditions, death rows are still places where human connections form. In all but the most extreme solitary settings, prison staff engage with prisoners regularly, bringing them food and accompanying them when they leave their cells (for example to exercise, receive visits or attend

court hearings). Staff may spend more time with death row prisoners than with friends or family outside and can develop empathy towards the prisoners.

A **Tanzanian** prison officer described how he would ‘spend sleepless nights for a week before regaining my composure’² following an execution. One US guard reported at least a dozen occasions in which a prisoner about to go to the execution chamber would stick his hand out of the slot in the door to shake his hand and say something like: ‘Good to know you ... Thanks for being a good officer’.³

Modern prison management encourages the development of professional prison-staff positive relationships, in combination with an understanding of prisoners’ personal situations and any risk posed by individual prisoners.

Minimum Standards for prisoners on Death Row

It is important that prison staff understand how prisoners serving a death sentence should be treated according to criminal justice and human rights international standards. International standards are an important tool for making prisons better places both for people detained and the staff. They should be used by prison administrations (and monitoring bodies) to assess practice, and implement improved, more efficient and more humane ways to manage their institution.

Key issues:

- All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person (Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment [Principles on Detention or Imprisonment], Principle 1)⁴. It is important to remember that people in prison do not lose their basic human dignity. People in prison retain all human rights except for the right to liberty. **The conditions of imprisonment should not be used as an additional punishment or aggravate the inherent suffering of detention.**⁵
- Prison staff have a particularly important role in protecting human rights of people detained in their daily work, yet sometimes their own needs are overlooked. **Therefore, the Nelson Mandela Rules recognise the importance of ensuring staff member’s safety and include provisions on their employment conditions and training opportunities, etc (see page 7).**
- Prison officials are obliged to know, and to apply, international standards on the treatment of prisoners. This includes, among other international standards, the UN Nelson Mandela Rules and the UN Bangkok Rules.⁶

² Kiangiosekazi Wa-Nyoka, ‘Death penalty with its perceived deterrent effect’, Daily News website, 15 November 2014, accessed 27 November 2014 at <http://dailynews.co.tz/index.php/columnists/columnists/38290-death-penalty-with-its-perceived-deterrent-effect> (Perceived deterrent effect)

³ In United States Edgar Fincher, correctional officer on the Ellis Unit (Death Row) in Walker County in Texas

⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

⁵ Rule 3, UN Nelson Mandela Rules.

⁶ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (‘the Bangkok Rules’) were adopted by the UN General Assembly in December 2010, see Penal Reform International’s *Short Guide on the UN Bangkok Rules* in multiple languages: <https://www.penalreform.org/resource/united-nations-bangkok-rules-women-offenders-prisoners-short/>

The revised UN Standard Minimum Rules for the Treatment of Prisoners (**Nelson Mandela Rules**) set out the minimum standards for good prison management, including to ensure the rights of prisoners are respected. The Nelson Mandela Rules were adopted unanimously in December 2015 by the UN General Assembly; they are not entirely new, but an updated version of the 1955 Standard Minimum Rules for the Treatment of Prisoners (SMRs) to reflect standards that had emerged in correctional science and human rights since 1955.

Basic principles from the Nelson Mandela Rules [**Rules 1 to 5**]:

- Prisoners must be treated with respect for their inherent dignity and value as human beings.
- Torture or other ill-treatment is prohibited.
- Prisoners should be treated according to their needs, without discrimination.
- The purpose of prison is to protect society and reduce reoffending.
- The safety of prisoners, staff, service providers and visitors at all times is paramount.

Accommodating prisoners:

Accommodation for prisoners sentenced to death, in particular sleeping accommodation, shall meet the same health requirements as other prisoners. All detainees must have access to fresh air and sunshine, adequate lighting, minimum floor space, heating, and ventilation. The prison administration should ensure access to private and hygienic sanitation, bedding and water.

- **Hygiene** [**Rules 15, 16, 18-21**]

Every prison must have clean bathroom facilities in the interests of dignity and hygiene. Access to water, toilet items (including sanitary towels for women), adequate clothing and bedding must also be provided. [See also UN Bangkok Rules]

- **Food and water** [**Rules 22, 35, 42, 43**]

Prisoners must be provided with nutritious food of wholesome quality and also drinking water whenever they need it. Food and water cannot be restricted as a disciplinary sanction and must be provided without exception.

- **Sleeping** [**Rules 12-14, 42, 113**]

If accommodation is cell based, only one prisoner should be housed in each cell, and where there are dormitories, careful selection procedures must be used to decide on who is housed together. Pretrial detainees should be housed in single cells. Proper heating and ventilation, air, light and minimum floor space must be provided, without exception.

- **Children** [**Rules 28, 29**]

The decision on whether children are accommodated in prison with their parent should be based on the best interests of the child. Provision needs to be made for pre- and post-natal care, childcare facilities and healthcare services for children. Children housed in prison must never be treated as prisoners. [See also UN Bangkok Rules]

Physical and mental health:

- **Special needs** [**Rules 2, 5**]

Prisons must make adjustments to accommodate prisoners with physical, mental or other disabilities in order to ensure access to services and programmes on an equitable basis. Measures to address specific needs must not be considered discriminatory.

- **Access to healthcare [Rules 24-29, 31]**

As the state bears responsibility for those it deprives of their liberty, healthcare must be provided in prison and offered at the same level of care as in the community. In line with good practice, prison healthcare should be organised in close cooperation with community health services, including to ensure continuity of care. The Rules elaborate on what prison healthcare services should consist of, including for any children housed in prison with their parent.

- **Role of healthcare staff [Rules 25, 30-34]**

The role of healthcare professionals in prison must be clearly separate from that of the prison administration. The same ethical and professional standards apply to prison healthcare staff as those outside prison. Their role in prison is to evaluate, promote and treat the physical and mental health of their patients - prisoners. This includes treatment and care for infectious diseases, substance dependencies, mental health and dental care. Healthcare staff must not be involved in prison management issues, such as disciplinary measures, and their clinical decisions must not be overruled or ignored by non-medical prison staff. Prison healthcare staff have a duty to report any signs of torture or other inhuman treatment.

- **Advice on health [Rule 35]**

The competent public health body should regularly inspect and advise the prison director on a variety of issues impacting on the health and well-being of prisoners - as well as prison staff. This includes food, hygiene of the institution and of prisoners, sanitation, temperature, lighting and ventilation, and other conditions.

Day-to-day activities

Prisoners on death row should have access to the same activities and employment, educational and training opportunities as other prisoners. They should not be discriminated against in access to work: they should have the opportunity to work in the same manner as other prisoners.

- **Rehabilitation/resocialisation Programmes [Rules 4, 88, 89, 91-94, 96-108]**

Prisons should offer education, vocational training, work, and any other assistance needed for the purpose of rehabilitation/resocialisation and reintegration. This reflects the primary purpose of imprisonment to protect society and reduce recidivism. To be successful such programmes should be individualised. Prisons should recognise the key role staff play in the rehabilitation of prisoners.

- **Work [Rules 40, 96-103]**

Servitude, slavery or requiring prisoners to work for the personal or private benefit of any prison staff is prohibited. Any work should be useful for a prisoner's job prospects after release or be remunerated and take place in safe and legal conditions. Prisoners must not be employed in a disciplinary capacity.

- **Meaningful activities [Rules 4, 23, 64-66, 105]**

Providing meaningful activities supports prison management as well as the mental health and rehabilitation of prisoners. Opportunities for sport should be provided and at least one hour per day of outdoor exercise permitted. A prison library must be available, and prisoners should be allowed to practise their religion.

- **Education [Rule 104]**

As education plays an important role in preventing recidivism, learning opportunities should be provided to prisoners. Classes offered should be of the same level as the community education system and available to all prisoners. For illiterate or young prisoners, education is compulsory.

Discipline and sanctions

Security, disciplinary sanctions and Instruments of Restraint: Disciplinary sanctions for people on death row should not be more severe than those received by other prisoners. The use of restraints should only be used in line with the Nelson Mandela Rules, i.e. where there is a real security risk posed, not as a routine matter based on the status as a death row prisoner. Disciplinary sanctions should be proportionate and must never include the reduction of food, water or access to hygiene, and solitary confinement or segregation should never be used by virtue of sentence.

- Searches [Rules 50-53, 60]

Procedures for searches must be laid down in law or regulations and any decision on whether to conduct a search should consider whether it is necessary and proportionate. Search procedures must respect the dignity and privacy of the prisoner, and not be used to harass or intimidate. Invasive body searches should be the last resort, and the findings of searches need to be recorded. Searches of visitors, at a minimum must be subject to the same safeguards as searches of prisoners and take account of their status as non-prisoners.

- Disciplinary offences [Rules 36-43]

The Rules outline procedures and safeguards that should be in place to respond to allegations of a disciplinary offence. Laws or regulations must clearly define what constitutes a disciplinary offence, any sanction must be proportionate to the act, and prisoners must have the opportunity to defend themselves. The application of disciplinary sanctions must be recorded. The use of alternative dispute resolution mechanisms is encouraged to prevent disciplinary offences and resolve conflicts. When the interests of justice require, particularly in cases involving serious disciplinary charges, prisoners must be able to defend themselves in person, or through legal assistance.

- Use of restraints [Rules 43, 47-49]

Instruments of restraint that are inherently degrading or painful are prohibited. The use of any other instrument is subject to strict conditions: their use is only legitimate if no lesser form of controlling an actual risk is available and they must be removed as soon as possible. Restraints should be removed when a prisoner appears in court, and must never be used on women during labour, during childbirth or immediately after.

- Use of force [Rule 82]

Except in cases of self-defense or attempted escape, staff should not use force on prisoners. Any use of force must not exceed what is strictly necessary and should subsequently be reported. Only in exceptional circumstances should prison staff be armed. UN standards also require strict regulations on the use of force and that arbitrary or abuse of the use of force be punishable as a criminal offence. [See also UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.]

- Solitary confinement [Rules 43-46]

Given its devastating effect on physical and mental health, the Rules stipulate that solitary confinement should only be used in exceptional cases, as a last resort, for as short a time as possible, after authorisation by a competent authority, and subject to independent review. Indefinite and prolonged solitary confinement (of more than 15 days) is prohibited entirely. For some groups, eg. pregnant or breast-feeding women, any use of solitary confinement is prohibited. The Rules define solitary confinement as confinement for more than 22 hours per day without meaningful human contact. Interpretation of 'meaningful human contact' should recognise the suffering that any person will experience if isolated from and deprived of contact with other human beings. [See also UN Bangkok Rules and UN Havana Rules]

Contact with the Outside World

Communication with the outside world shall not be denied for more than a matter of days or restricted by virtue of sentence. Concerning written correspondence, as for other prisoners, there should be no limits imposed on the number of letters a prisoner may send or receive and the number of correspondents a prisoner may have.

Managing visits from family members can be emotionally tough for guards, especially when prisoners are banned from touching their visitors and visits take place through glass partitions or nets.⁷

The ‘most difficult thing’ as an attending guard is ‘to see on the other side of the glass ... the families. Children. Never be able to touch. Never be able to hug.’⁸

Final visits by families prior to execution can be even harder, as can the time when guards see the prisoner for the last time. When prisoners leave for execution, guards may become tense and uneasy;⁹ some have started crying after doing mundane tasks like taking a prisoner’s fingerprints.¹⁰

- Family and friends [Rules 43, 58-60, 68, 70]

Prisoners are allowed to receive visits and to contact their family and friends through other means such as by phone or letters. Visiting restrictions must not be used as a disciplinary measure, particularly for women prisoners and their children. Prisoners have the right to inform friends or family about their imprisonment, transfer and of serious illness or injury. If a near relative or spouse/partner falls seriously ill or dies, the prisoner should be authorised to visit or attend the funeral. Conjugal visiting rights should apply without discrimination. [See also UN Bangkok Rules]

- Embassies [Rule 62]

Foreign nationals must have the opportunity to get in touch with their consular representatives. This Rule recognises their specific situation which can include an inability to communicate in the common language of the prison, lack of information and knowledge of the legal system, and difficulties in contacting family members.

Access to Legal Assistance

For prisoners under a death sentence, there is the immediate threat of execution and therefore a great urgency to obtain effective legal representation. International standards are clear that anyone sentenced to death should have the right to an appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory. Anyone sentenced to death must also have the right to seek pardon or commutation of the sentence. Pardon or commutation of the sentence of death may be granted in all cases. Legal assistance in appeal processes is essential to guarantee the rights of prisoners to access justice. In practice, however, it is very common those sentenced to death to have had (and to continue to have) inadequate legal representation – both during the trial and after conviction.

Prison staff and administrations can help in ensuring access to legal assistance for prisoners on death row by keeping adequate records, responding promptly to requests for information, and allowing prisoners full access to legal aid and assistance.

- Legal representatives [Rules 41, 53, 61, 119, 120]

Prisoners must be given adequate opportunity, time and confidential facilities to meet with their lawyer. They should have access to effective legal aid, in accordance with international standards.

⁷ Oliver Robertson and Rachel Brett, *Lightening the Load of the Parental Death Penalty on Children*, Quaker United Nations Office, Geneva, June 2013, p. 20

⁸ Interview with Edgar Fincher

⁹ Information from India, 2015.

¹⁰ *Inmates aren't the only victims.*

Prisoners are allowed to have access to and keep their legal documents, so they are able to effectively participate in legal proceedings. [See also UN Principles and Guidelines on Legal Aid in Criminal Justice Systems]¹¹.

Acknowledgements:

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It primarily uses information from Penal Reform International's training resources 'Protecting the rights of those facing the death penalty and life and long-term imprisonment', 'The Short guide on the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)' and from the briefing 'Prison guards and the death penalty'.

To access the resources please click on the **following links**:

- <https://www.penalreform.org/resource/training-resource-protecting-rights-facing-death-penalty-life/>
- <https://www.penalreform.org/resource/short-guide-to-the-nelson-mandela-rules/>
- <https://www.penalreform.org/resource/prison-guards-and-the-death-penalty/>

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¹¹ https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf