

FACTSHEET

Prisoners' rights and the legal process

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This factsheet is intended is a starting point for those who want to know about the rights of prisoners, and legal processes around the world. It does not seek to answer every question you may have. It does, however, offer some suggestions of who may be able to give further assistance, and does offer some general advice about legal systems. It is not intended to be a substitute for local legal advice. There are factsheets about the criminal justice systems of certain countries available on the Prisoners Abroad website. Please note that Prisoners Abroad cannot give legal advice.

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1 How to choose a lawyer and fund your case

The first, and most important, step is to find a local lawyer to prepare your defence and advise you on the legal system and your rights. The decision to hire a specific lawyer is your responsibility. You may wish to consider whether a lawyer is:

- Experienced in your type of case
- Well regarded in the local legal community
- Able to talk to you in your language
- Willing to agree on a fee structure for the whole of the case, including any appeal procedures

Once you have identified a possible lawyer or a law firm, contact them by telephone or arrange to meet them to discuss of your situation. To prepare for this:

- Write down a diary of events for your case and put any paperwork you have in order; this will help the lawyer to understand your situation more quickly.

- Make a list for yourself of the questions you want your lawyer to answer. Make sure you ask all your questions and that you fully understand the answers you are given. Tick off each point as it is covered.
- Your lawyer will need to ask you lots of questions. Try to answer these clearly and accurately but also be as brief as you can.

After the first meeting/phone call, ask your lawyer to send you a letter confirming the following points:

- That they have taken on the work and confirm the advice they have given you
- The name/status of the person who will be dealing with your case
- How long the case is likely to take and arrangements for progress reports
- An estimate of legal costs (see below)
- Any more information you need to supply
- Who you should contact if you have a complaint about your lawyer's service.

2 Finding a lawyer

The following organisations may assist you in finding a lawyer:

The Foreign and Commonwealth Office

Consular Section
2 Old Admiralty Building
Whitehall
London SW1A 2PA
Tel: +44 (0) 20 7270 1500 (switchboard)

The Foreign and Commonwealth Office (or the local British Consulate, Embassy or High Commission) can provide you with a list of local private lawyers but will not recommend or endorse any of the lawyers that are listed.

www.martindale.com

This website provides directories of lawyers worldwide (over 1 million lawyers and law firms in 160 countries). They also provide access to biographical information and professional credentials of lawyers (including their own Lawyer Rating system for lawyers in USA and Canada based on peer review). However, they do specify that they do not recommend or endorse any of the lawyers listed. To find a lawyer on this website, click on "Lawyer Locator" then choose the "Location/area of practice" tab. Under "Select general area of practice" choose 'Criminal law' from the dropdown menu. Choose the appropriate country and specify "English" under "Languages spoken" if necessary. It will produce details of any relevant lawyers.

The Law Society of England and Wales

113 Chancery Lane
London WC2A 1PL
General Enquiries: +44 (0) 20 7242 1222
Community Legal Service (legal aid for England & Wales): 0845 608 1122
International Section: +44 (0) 20 7320 5942 or: +44 (0) 20 7320 5881

The Law Society is the professional body for solicitors in England and Wales. They can provide lists of lawyers from some foreign jurisdictions who are now based in the UK, lists of English solicitors working in some countries overseas and contact details for Bar Associations and Law Societies overseas. It should be noted that these are not necessarily lawyers with expertise in criminal law. However, some of these lawyers may carry out work overseas, or can link up with lawyers in the appropriate country.

Local Law Society or Bar Association in the country of detention

To find the details of the local Law Society / Bar Association, contact one of the UK Law Societies or:

The Bar Council
3 Bedford Row
London WC1R 4DB
Tel: +44 (0) 20 7242 0082

3 Lawyers' charges

When you are hiring a lawyer, it is important to establish an estimate for the cost of the work and how it will be paid at the first meeting/telephone conversation with them. Lawyers should tell you at the outset how much a case like yours is likely to cost and how they work out the costs. All legal fees and additional costs should be negotiated and agreed upon by you or your family and the lawyer before any work is done.

Bills are usually worked out on an hourly basis - the longer it takes, the more it costs. However, there are other options:

- You may want to agree a fixed spending limit
- You may want to be billed monthly rather than get a single bill at the end
- In particular, we recommend that you find out if there are any additional costs over and above the fee for the legal work, for example for Court applications.

4 Legal Aid

In some countries, prisoners may be entitled to state-sponsored free legal aid. The local British Consulate, Embassy or High Commission can advise you on whether you are eligible for this.

Even if there is legal aid provision, you may feel this is inadequate (for example if the lawyer provided does not speak English or does not have enough time or perhaps experience to provide a good service). Legal aid is not available in all countries. Although legal aid is available in the UK, you may not apply for representation in overseas cases.

5 Questions to ask your lawyer

The following are only suggestions, but you may wish to ask your lawyer to explain:

- Your rights during detention, e.g. can you apply for bail?
- Your right to consular access
- The seriousness of the case and the likely sentence if convicted
- When and how you will be given details of the case against you
- How will your case be prepared, e.g. who will be working on it? who will be responsible for its day to day running? who will see your witnesses?
- The general court procedure, e.g. will you be asked to enter a plea? will you be asked to give evidence before or at the trial? will you have an interpreter?
- The prison system and your rights to legal and family visits

6 Keeping in touch with your lawyer

Your lawyer should keep you regularly informed about progress and about the costs incurred so far. Your lawyer should ask you whether and how you want to proceed and should tell you if something has happened which will increase the costs. In turn, you need to let your lawyer know of any changes that could affect your case. If you haven't heard from your lawyer for a while, or are worried about anything, don't be afraid to get in touch. Do get in touch when you feel you need to, but don't overdo it; remember, time is money.

7 Bail

It is important to note that there are a wide variety of different bail systems and that the granting of bail will often depend on the nature of the offence and the person before the court.

Some countries provide a system of bail which allows for defendants to be released on condition they return for court hearings. Courts often impose other conditions such as the surrender of a passport, a surety (a sum of money which will be forfeited if you do not surrender at the next hearing) or a condition that you remain in the country until the trial is over.

Unfortunately, the situation is more complicated when you are not a national or resident of the country detaining you. Many courts fear that foreign nationals will leave the country and never return if granted bail. Thus, it is important to be aware that bail is very often refused in these cases, especially if you are charged with a serious offence.

You should ask your lawyer to advise fully on the relevant national bail system and your prospects of obtaining bail at the different stages of the investigation and trial process.

8 Your rights during trial and detention

Generally, if you have been arrested or detained you do not lose your entitlement to human rights protection. Various international human rights treaties actually contain provisions specific to criminal trials and detention. For example, international treaty provisions on fair trials typically state that individuals are entitled to a fair and public hearing within a reasonable time before an independent and impartial tribunal. They also normally specify that you should be considered innocent until proven guilty and provided with an interpreter without charge. Many international human rights treaties also prohibit torture and inhuman treatment or punishment and require that people in detention are treated with humanity.

International human rights treaties may be regional (e.g. European Convention on Human Rights and Fundamental Freedoms) or international (e.g. International Covenant on Civil and Political Rights). A country will only be legally bound by a particular treaty's provisions if it has signed and ratified the document. Information about international human rights treaties that are relevant for specific countries can be requested from Prisoners Abroad.

It is important to obtain proper legal advice from your lawyer in respect of your rights in the country in which you are detained. If you feel that your rights have been violated, it may be possible to take your complaint to an international body depending on which country has violated those rights. For example, the European Convention on Human Rights falls under the jurisdiction of the European Court of Human Rights. However, international procedures can be slow, costly and cumbersome and you will normally have to exhaust all available national remedies before taking your case to this level.

9 Legal assistance after conviction and sentence

If you wish to appeal against your conviction or sentence, you will need advice from your lawyer and you will need to submit an appeal within the time period allowed (which varies from country to country). You will need a lawyer to represent you during the appeal process.

If you wish to take a complaint about prison conditions and/or the fairness of the trial to an international human rights body, you will need to seek advice from an organisation which specialises in this kind of work. Prisoners Abroad has produced a separate factsheet giving details of organisations which may help.

If you require this leaflet in a large print format, please contact us. Our details are below.

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