

PRISONERS' CONTACT WITH THE OUTSIDE WORLD IN MYANMAR

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FOREWORD

The collection of articles you have in your hands or on your screen is the product of a collaboration between Justice for All Law Firm (JFA) and DIGNITY – Danish Institute Against Torture. The collection addresses the important topic of prisoners' contact with the outside world in Myanmar with a focus on the experience of prisoners and their family members and the relevant national and international legal provisions. It features an introductory article, four thematic research papers, a review of the legal provisions and a commentary on that review. We are proud to present this case study which is part of a larger project called Legacies of Detention in Myanmar (<https://legacies-of-detention.org/>).

The collection really is a collaborative effort though key persons have been responsible for each article and this is indicated at the beginning of each text. We acknowledge the unique contribution of each team member. We have all learned much from each other. We are grateful to many people who have helped us during the course of the project, first and foremost to the former prisoners and their families as well as the state officials who were willing to share their experiences with the research team. We acknowledge the courage and sometimes vulnerability of those who have shared with us. We would also like to thank Angelina Tarik Fattah of DIGNITY's Documentation Centre for helping us access relevant literature and Janne Tornsberg and Mon Mon for support with the logistics and finances that allow for the collaboration.

One of the aims of the Legacies of Detention research project is to stimulate conversations between civil society, academia, and state authorities. This collection is imagined as a conversation starter. By bringing together a series of articles and analysis we have sought to demonstrate how social science and field research can contribute to understanding the past and the unfolding present. Looking at the way imprisonment has been used and experienced in the past offers an important lens on the changing relationship between citizens and the state in Myanmar. The team's ongoing research will continue to explore this. Whether you have enjoyed the read or simply found it thought-provoking we welcome your input.

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NEWS IS MORE IMPORTANT THAN CURRY

Introducing an ethnographic case study of prisoners' contact with the outside world in Myanmar

Andrew M. Jefferson and Tomas Max Martin

“News is more important than curry” is a catchphrase used by former political prisoners in Myanmar that emphasises the importance of having contact with the outside world during imprisonment. It expresses the value that prisoners place on having visits and accessing media, on knowing what goes on in society and about the processes that affect their freedom. It stresses the significance of staying in touch with family and friends for survival. By prioritizing news over curry, the use of the phrase illustrates the way news – like food – can sustain a prisoner otherwise cut off from the world at large. It is a strong statement, which reminds us that contact is fundamental to human beings and therefore also a human right, like the right to food. It also reminds us that in prison systems challenged by poverty many prisoners do not even have adequate food. In fact, ‘curry’ and ‘news’ are often connected in the sense that contact with the outside world is the main source of nutritious food, which is brought into the prison by the prisoners’ families (together with other goods from the outside that can be traded for salt, sugar, tea, soap and other basic necessities). The phrase also hints at the fact that prisoners in Myanmar have over the years faced many difficulties in maintaining contact with the outside world. Such difficulties are to a great extent inherent to the deprivation of liberty in general, but in Myanmar lack of ‘news’ may have been more intense and caused more suffering than elsewhere – especially among political prisoners, held under strict regimes and in solitary confinement, but also among poor prisoners, whose families struggle to bear the financial burden of caring for them or even getting to visit them at all, given the challenges of approaching a closed, intimidating and uninviting prison system.

The crucial importance of prisoners’ contact with the outside world is also reflected in the research literature, in human rights standards and in best practices for prison management, but the issue has not received much attention in Myanmar so far. This case study aims to remedy that with special emphasis on describing and understanding the experiences of the prisoners and families, who strive to maintain meaningful connections across the prison walls.

INTRODUCTION

The four articles presented here are the result of a collaborative case study on prisoners' contact with the outside world. The study is part of a broader research programme called *Legacies of Detention in Myanmar*.¹ This programme aims to use data generated about experiences, technologies and politics of imprisonment as a lens through which to study broader social and societal processes in Myanmar. The case study speaks to the overall goal of the *Legacies of Detention* project by examining one concrete aspect of the state - subject relationship, namely the way contact between its incarcerated subjects and the world beyond the prison wall is practiced and experienced by the people involved and affected.

It aims to help us better understand the everyday effects and consequences of imprisonment and the way relations with the outside world impact on people during imprisonment.

The case study had four primary goals

- 1) To develop capacity among researchers in Myanmar to conduct fieldwork-based research.
- 2) To generate new knowledge about imprisonment in Myanmar that is based on empirical findings and informed by social science theory.
- 3) To conduct a review of the national and international legal framework related to prisoners' contact with the outside world.
- 4) To share this knowledge with involved stakeholders and contribute to a constructive and locally anchored dialogue on prison reform.

We know from research conducted in the west that contact with the outside world has great significance for prisoners' ability to cope with their incarceration (Duwe and Clark 2013, De Claire and Dixon 2017). Contact with the outside (family, news, books, lawyer, monitoring bodies etc.) is a source of hope and sustenance, but it can also be a source of disturbance and disruption. There is no research-based knowledge of this issue in Myanmar though we know from reports and ex-prisoners' autobiographies that it is a topic of great concern for prisoners (e.g. AAPP 2016).

The case study set out to map the various forms and points of contact that prisoners have with the outside world, in Myanmar today and in the past, and to explore their significance. At the same time, we also wanted to test the case study methodology, that is assess the value of this

¹ Read more at <https://legacies-of-detention.org/>

multi-dimensional, explorative approach to data generation with future studies in mind. Finally, we wanted to see how this kind of analytical knowledge could complement and/or initiate discussions about prison reform in Myanmar in new and fruitful ways.

This introductory paper is structured as follows. First, we consider further why the issue of prisoners' contact with the outside world is worthy of attention. Then we introduce the case study methodology including some reflections on the value of field-based empirical analysis. After that, using broad brush strokes, we introduce the penal context in Myanmar and the changes that can be currently perceived before briefly introducing the topics of the four papers. We end with a discussion of lessons learned and implications and by proposing a series of advocacy points.

Why is the issue of prisoners contact with the outside world worthy of attention...?

There are three common ways of thinking about prisoners contact with the outside world. The first is informed by ideas about prisoner's well-being and human rights. Prisoners need and have a right to contact with the outside world. Refusing any form of contact between inside and outside of prisons would be inhumane and go against the claim that prisons are supposed to rehabilitate as well as punish and that it is the deprivation of liberty that is the punishment not any additional qualities of the prison experience. This way of thinking rests on the idea that prisoners do not lose their rights or status as members of wider communities 'just' because they are in prison (UN 2016, rule 58, 61). They are sentenced to imprisonment and therefore temporarily removed from society, but most are likely to return to their families and their communities and expected to re-join the labour market and hopefully live a life without crime. Maintaining a connection between themselves and their families is crucial not only to make prison life bearable, but also to make this return to society successful.

With this in mind, international human rights law defines prisoners' contact with the outside world as key to the protection of prisoners' rights. Contact with the outside world facilitates prisoners' opportunity to maintain family ties and social networks, ensures that they can have meaningful legal representation prior to sentence or should they wish to appeal, and enables external oversight of prison life as a safeguard against abuse. Families and friends, legal practitioners, and prison inspectors or monitors: these are the key people involved in contact between prison and community but there are also other routes, namely letters, tv, radio and internet-based media as well as the print media.

Other actors who represent a form of contact attuned to prisoner well-being include religious organisations who often offer both spiritual succour and material support, and other non-governmental agencies who enter the prisons with material provision or programmes aimed at meeting other needs of prisoners, such as the need to enhance levels of literacy or education.

From a human rights perspective, all these actors, institutions and laws play an indispensable role in the protection of prisoners' rights according to a foundational belief that there is a risk that punishment by imprisonment is very likely to have unintended negative consequences. When you lock people up, disempower them and put other people in more or less total control of their lives, abuses are likely to happen and ensuring that there is some contact between inside and outside is a way to mitigate those consequences.

The second common way of thinking about prisoners' contact with the outside world is informed by ideas about how prisons ought to be run and what is required to manage a population often perceived as challenging, unruly and disorderly. Whereas the first way of thinking is normative and linked to rules, rights and values, this other way of thinking is more instrumental (Coyle 2009, Mitchell, Spooner et al. 2016). It is not about maintaining the inherent dignity of the prisoner and her family but ensuring the smooth running of the prison. This way of thinking is espoused by penal policy-makers and prison managers and studied and written about by criminological researchers. From this perspective, allowing for contact between the prisoner and the outside world is a means through which to maintain stability and order in the prison. Visits can, for example, be withdrawn in the event of bad behavior or offered as an incentive for good behavior, as can access to educational or cultural programmes or vocational training or drug/alcohol rehabilitation (often run by 'outsiders'). Additionally, this perspective recognizes an inherently positive value in allowing prisoners contact with their families and others. It gives them something to look forward to. It breaks up the daily routine of prison life. It is a potential source of hope and antidote to despair and it may have a positive role to play with regard to encouraging the prisoner to avoid crime in the future and successfully reintegrate into society. In countries challenged by poverty, or simply budgetary limits, prison managers' support for contact with the outside world is also quite pragmatic. Prisons simply cannot be adequately run without relying on outsiders – families providing food and medicine and development organisations and charities providing funds, and other services. In such contexts prisons and prisoners have a dependent and necessary relationship with outsiders (which may also be a key source of corruption).

What both these ways of thinking express is that full closure and total separation is dangerous. It potentially leads to destructive dehumanization, institutional demise and, in many parts of the world, even fatal consequences².

Finally, there exists also a third and opposite approach to prisoners' contact with the outside world, which is punitive and authoritarian. This approach seeks to actively deprive people of contact by disallowing visits and communication (often for exaggerated security reasons) or by holding people incommunicado in so-called 'black sites' or interrogation camps, where rules don't apply and in violation of international standards, either as a form of punishment or torture or general repression (Simon 2007, Gregory 2009). Such approaches have certainly featured in Myanmar's not so distant past and exist as an ongoing specter haunting prison practice today.

The data collected for this study suggests that these ways of thinking about contact fail to tell the full story. They fail to take into account the way prisoners and visitors experience contact with the outside world and the significance they ascribe to it. Contact, we suspect is both richer and more complex and nuanced than they allow for. A fuller account is required, informed by first-hand perspectives of those caught up in these complex dynamics between inside and outside. In this view the interface between prison and society is not simply characterized by the conditions of contact that the prison provides or curtails, but by practices of connecting that prison actors generate – often in ephemeral ways and through struggle.

Our concern in the case study was thus how the contact between prisoners and the outside world was meaningful. How did it matter to people and how did they talk about it? Interestingly, and connected to the first way of thinking outlined above, the term 'meaningful human contact' exists in (soft) law but is only defined (in relation to solitary confinement) in terms of what it is not. It is not a prison officer delivering food, for example, or prisoners shouting at each other through walls or air vents. It is defined this way because legislators and formulators of expert guidance have something better in mind when they think about contact as meaningful and what is necessary to dilute the pains of solitary confinement. They positively load the term meaningful: "the contact needs to provide the stimuli necessary for human well-being, which implies an empathetic exchange and sustained, social interaction... Meaningful human contact is direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue" (PRI 2017). Terms like 'well-being', 'empathetic' and 'genuine' seek to qualify

² The rise and spread of supermax prisons must thereby be informed by an alternative way of thinking than the two we identify here.

meaningfulness from a legal perspective, but in the light of our case study, we would argue for a more expansive and localised understanding of what it means for contact to be meaningful. Our point is that meaning is created in practice and that it is ambiguous and not pre-given and may change over time and from person to person.

In sum, prisoners' contact with the outside world is typically understood as central to the protection of prisoners' human rights, their well-being and opportunities after release; to the regulation of prison life; or, conversely, as a means of repression and punishment. Our goal was to supplement these understandings with experience-based perspectives from Myanmar. Our research takes place in Myanmar for a number of reasons which we will explore in the following section.

Prison and Myanmar

The prison features heavily in accounts of Myanmar's history of repression. The fact that Myanmar's current de facto leader Aung San Suu Kyi was herself held for many years in house arrest regularly brought the theme of imprisonment to the world's attention (Popham 2011). Pro-democracy activists in exile were vocal about the conditions and injustices associated with incarceration. Organisations representing the interests of former political prisoners have become increasingly visible in the domestic penal landscape, where reforms have recently been applied. Increasing numbers of international actors are involved in this process (UNODC, ICRC etc.) and civil society organisations are seeking entry points through which to promote human rights, promote legislative and institutional reform and prevent abuses. A new Prison Act is, for instance, under review and the NLD government has expressed a desire to end the practice of political imprisonment. Formal conditions around prisoners' contact with the outside world have also been subject to reform interventions: Myanmar's largest prison, Insein Prison in the capital Yangon, has expanded the visiting time from 15 to 30 minutes and lifted the twice-per-month cap on the number of visits a prisoner may have. Some visiting rooms have also been renovated and despite unequal distribution and uneven implementation prisoners' access to televisions, books and other written materials has increased gradually over the last decade.

Yet, it is equally clear that legacies of the authoritarian past are massive and pervasive not least as evidenced in the lives of former prisoners struggling to adjust. The history of silencing, non-transparency and stifling of public voice seems to continue to impact discourses on punishment and detention. The appropriation of 'rule of law' as 'law and order' in Myanmar's

legal and juridical field with ensuing diffusion and depreciation of fair trial and individual rights also seems to continue in the practices of justice sector actors – including prison authorities (Cheesman 2015). And the use of draconian colonial legislation to detain regime critics – most notably journalists – is also continuing (Frontier 2017).

In this context, we considered it both timely and pertinent to focus our first case study on the situation and practice where this interface between prison and society manifests itself most concretely: prisoners contact with the outside world.

Our original research questions were as follows:

- What opportunities do prisoners in Myanmar have for interacting with the outside world and how important is this for them?
- What rules and actors govern prisoners' contact with the outside world?
- How has contact with the outside world changed over time?

In the articles that follow we are not able to answer all these questions comprehensively – especially with regard to the third question - but we are able to give a flavor of this important field with specific reference to the lived experience of prisoners and their families and to illustrate the value of empirical data collection and analysis.

First some remarks on methodology.

METHODOLOGY

At the same time as this was a data generating and knowledge generating exercise it was also a first step in developing local research capacity through a jointly designed collaborative study.

The first phase of the project ran from May to December 2017 and involved recruitment of Myanmar research staff, design of the study and staff training, review of existing literature, as well as data collection (through fieldwork) and thematic analysis of transcripts. The Myanmar research team consisted of two researchers U Than Htaik and Kyaw Lin Naing; two research assistants Aung Lin Oo and Nwe Ni; and one supervisor Khin Maung Win³. Input to the study was provided by the Danish-based members of the legacies of detention research team – most notably Andrew M. Jefferson (principal investigator and project lead), Tomas Max Martin (post

³ The supervisor role was taken over by Kyaw Min San 1 January 2019.

doc), Liv S Gaborit (PhD fellow) and Ergun Cakal (legal advisor) as well as the project assistants Sarah Auener and Clara von Stöcken.

Data was collected through analysis of laws and standards and other secondary sources (including archival materials and prisoner and staff autobiographies) and through interviews with stakeholders and those with relevant knowledge. The team conducted four fieldtrips to sites with which they already had some connections and therefore opportunities to access people with a stake in the topic under consideration. Fieldtrips guaranteed that the data was not skewed by an urban or Bamar-only focus though we can still not claim to have sampled representatively across the whole country or all groups.

The interviews were semi-structured with an average length of 1 hour, often conducted by two interviewers and included both individual and group interviews (e.g. with a group of lawyers or with ex-prisoners and their family members). Questions were open-ended and sought to establish visiting experiences and practices and their impact on well-being, family and prison life. A total of 75 interviews were conducted covering men and women ex-prisoners and their family members and including both former criminal and political prisoners. Formal and recorded interviews were also conducted with criminal lawyers, but the handful of interviews with prison staff, were only informal and ad-hoc.

The research team also observed visiting practices and detention facilities, most notably around court and police lock ups, but also at a few prisons and labour camps (e.g. in connection with donation activities or informal visits).

In parallel with the fieldwork activities, U Than Htaik and Nwe Ni conducted a legal review with support from Ergun Cakal. The review collates relevant national legislation, rules and procedures and assesses the quality and consistency of the legal framework – including the identification of gaps according to international standards and principles.

The second phase of the project involved further reading and transcription of interviews, identification of topics for analysis, team training, individual mentoring and ultimately the write up of the four papers that this introduction sets the scene for.

To conduct ethnographic research is first and foremost to be attentive to what people do in real life situations and what they say about what they do (Dewalt and Dewalt 2011). It is a form of qualitative research informed by first-hand observations and first-hand accounts. The ethnographer's data is primarily what they see and hear (and sometimes read in secondary

sources such as autobiographical accounts, policy papers or archives). The point of departure for this case study is that this kind of empirically-grounded, field-based knowledge is highly valuable for the development of policy, practice and public opinion, since it brings forward local concerns and lived experiences that are crucial to understand, develop and maintain positive change in practice (Merry 2009). Yet, this kind of knowledge is too often muted or overruled by powerful decision-makers – either because it is unwelcome or considered insignificant. It is also a type of knowledge that is informed by theory and produced according to international research standards.

INTRODUCING THE FOUR PAPERS

Each article in this collection can be read alone and makes its own contribution but they also supplement one another. They deal with the following specific topics:

Differences in Visitation Practice in Different Sites. This paper compares visiting practices in police lock-ups, court custody, prisons and labour camps. As well as illuminating the ways in which visiting practices vary across these sites the article also makes a contribution to existing literature that conducts comparative analysis of sites of confinement as it presents to the reader details of these four distinct sites. Nwe Ni reminds us that sites of confinement are not uniform in function; nor are they experienced uniformly.

The Value of Visits: An Investigation of the Factors Affecting the Quality of Prison Visits. This paper examines the way in which prison visits are structured, organised and experienced. In conversation with literature on the experience of visits in Scotland, UK and Russia. Aung Lin Oo argues for the importance of space, time, and privacy as factors that affect the quality of visits from the perspective of family members and prisoners. Based on accounts of crowded, brief and non-private encounters between prisons and their visitors Aung Lin Oo argues for the necessity of making improvements in the quality of visits focused on these factors if visits are to have their desired positive effects.

The Circumstances of Prisoners Who Do Not Receive Visits. This paper explores an area related to visits that is neglected in the wider literature. It focuses on those who, for various reasons, do not receive visits. The paper's unique contribution is to develop a typology of the circumstances under which prisoners in Myanmar do not receive visits (or have not in the past). Through presentation and analysis of these circumstances U Than Htaik speaks to the pre-

existing literature on vulnerable prisoners but with attention focused not on their identities but on specific circumstances that can lead to anyone in prison becoming vulnerable.

An Examination of the Unequal Distribution of Prison Visits. This paper analyses the way in which access to visits is not equally available to all and examines the factors at play in deciding who is able to get visits and who is not. Kyaw Lin Naing explores the effects and influence of the length of sentence, the negotiating skills of the prisoner/visitor, and the quality of the relationship with prison staff as crucial to understanding variation in access to visits.

IMPLICATIONS AND LESSONS LEARNED

Together with this introduction the collection sheds new light on an issue of contemporary relevance given the changing terrain of criminal justice policy and practice in Myanmar. This is a change we hope to contribute to via the presentation and analysis of data-driven articles.

It is customary to come with a series of recommendations for policy and for practice. Often such recommendations are rather generic in nature and if one looks at reports coming from different parts of the world one can identify many similarities between them. This is especially the case in studies that compare practice with the norms and standards meant to govern that practice, where what is identified is the classic (and rather predictable) gap between theory and practice, that is between the way the world ought to be and the way it is (Feldman 2009). This case study has not been a study of norms and standards but an actor-oriented study of people's experiences maintaining relationships while being incarcerated.

So, before we come to a series of data-driven recommendations we wish to draw out a series of implications or lessons learned from the case study:

We believe it has forged new ground in at least two ways. Firstly, by addressing a theme that is not much talked about; secondly by adopting a methodology that involved a local team of researchers going into the field to observe and discuss with people their experiences. By so doing the case study has privileged the voices of those with direct experience of the issue with which we were concerned. In a sense the study can be understood as an exercise in listening. This stands in stark contrast to what might be characterised as decades of silencing the voice of the people.

We have not however simply listened and repeated what we have heard. We have sought to analyse, interpret, and situate the opinions and perspectives that people shared with the team. The topics of each of the papers presented here were not predetermined but emerged from the research process itself. They grew out of and thus reflect the core concerns of those the team spoke with.

We were fortunate to be able to take advantage of the network of *Justice For All* to help with initial access to relevant persons. The team at JFA were in a sense ideally placed to access relevant gatekeepers in the field sites who could help them access relevant persons to talk with. The team were able to strike the right balance between being close enough to access the right people and not so close that they were simply discussing with old friends.

This study was experimental in a number of respects. We were testing the waters of what was possible under conditions the involved researchers were relatively unfamiliar with and we were introducing the Myanmar researchers to a methodology that was new to them. One might expect that introducing social science research methodology to a group of mainly lawyers might be challenging. In our case the challenge was exacerbated by language limitations and the necessity to supervise from a distance but ameliorated by the whole team's enthusiasm, commitment and desire to learn. We would suggest that such a model of partnership, while it can be quite demanding, is a viable alternative to the oft-used model of international researchers parachuting in for hit and run analysis. It is our conviction that long-term engagements between national and international researchers carry rich potential for knowledge generation.

In a limited way the four papers engage with existing literature on prison visits from the field of criminology. In line with findings from other countries documented in this literature this case study reiterates the significance of contact between prisoners and the outside world. If we simply think about the lengths that family members go to visit their loved ones, we get a glimpse of how invested they are in maintaining connections under very difficult circumstances. We have scratched the surface and further research is required and we would suggest the following areas are worthy of further attention:

- Current conditions for contact versus previous conditions for contact: what has changed and what stimulated that change?
- The effects at the level of experience of the new ICRC-supported visiting facilities at Insein prison

- The extent to which people are imprisoned close to their homes or far away

These themes for further research map on to a series of advocacy points we hereby bring to the attention of policy makers and officials:

1. Understanding local logics of change and the affected people's reactions and concerns is an important point of departure for policy-making and implementation.
2. New visiting facilities are to be welcomed but it is important to document the intended and unintended consequences of them, especially from a user perspective.
3. We have learned that infrastructure really matters to people so investment in visit rooms makes sense and is to be welcomed but should be spread across the country not just limited to urban centres.
4. It is clearly in the interests of families and prisoners that prisoners are held in locations as close to their families as possible. Transfers to far off locations should never be used as a (formal or informal) disciplinary sanction.
5. Given the importance of prisoners contact with the outside world it is important to better understand the reasons behind why some people are starved of such contact so that initiatives can be put in place to counter this.
6. Comparison of different types of detention facilities illustrates variation in space, time and procedures. We have learned that in police lockups, for example, facilities for visiting are poor but the opportunity to visit is actually quite good as long as information is provided to family at the time of arrest. Comparison is a good mechanism through which to identify best practices.
7. Authorities should avoid holding people incommunicado and policies should be implemented that ensure that family members are informed of people's arrest as quickly as possible both as a means of protection and a form of care.
8. Knowing better which types of people get no visits could enable the prison authorities to target interventions to reduce the vulnerability of these prisoner groups in prison. We are particularly alert to the situation of poorer prisoners for whom poverty accelerates lack of access to visits and imprisonment accelerates poverty in the form of taking breadwinners / carers out of families and due to stigma or lack of opportunity for ex-convicts reducing the possibility of employment on release.
9. Deeper questions about the politics around punishment are also raised when we realise that poorer members of society are overrepresented in prison. We would advocate that serious consideration of decarceration strategies be considered.

10. Present day labour camps feature somewhat ambivalently in our data: their poor reputation historically is confirmed by some of the data for example in relation to the potential exploitation of labour but they appear progressive in other areas for example with regard to access for lengthy and conjugal visits. Exploitative practices should be discontinued and progressive policies that facilitate good quality access to family members should be implemented in other places of detention.
11. Governance of contact is often informal, subject to discretion, and open to exploitation leading to uneven distribution of rights. Those who can pay end up better off with regard to contact with the outside world than those who cannot. While we recognize that there will always be informal dynamics at work in prisons it is important to implement the principle of equal before the law and ensure that visiting opportunities are distributed equally.
12. In our view 15 or even 20 minutes is an inadequate amount of time for a visit. We recommend that a minimum of 30 minutes visit be permitted and where possible longer. Visits should always be a right and not a privilege and never subject to sanction or used as a disciplinary tool.
13. While we advocate for equality before the law in line with solid principles of justice we believe it is also important to differentiate between prisoners. There is often a risk that prison managers define living conditions and visiting conditions with the most dangerous people with the highest adjudged security risk in mind. Most prisoners are not high risk and are not a huge threat to security. Visiting procedures should reflect this.
14. Outdated laws should be reviewed: see Legal Review

This case study has been a collaborative endeavour. By putting in writing a selection of our findings in the form of research papers we demonstrate a commitment to producing knowledge *and* putting knowledge to work. One ambition of the *Legacies of Detention* project, of which this case study is a part, is to create a platform for dialogue between various constituencies, for example government, civil society, and academia. We hope that this publication can be read as an invitation to further dialogue between relevant stakeholders.

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PART I: LEGAL REVIEW & COMMENTARY

LEGAL REVIEW ON PRISONERS' CONTACT WITH THE OUTSIDE WORLD

UNDER MYANMAR AND INTERNATIONAL LAWS

U Than Htaik and Nwe Ni Aung

with support from Ergun Cakal

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PART I – PRELIMINARY NOTES

1. Introduction

Contact with the outside world is a primary human right for those deprived of their liberty. The right consists of a number of components: the right to access to a lawyer, to a doctor, to family and other social visits, to religious services, and to notify one's detention to a family member. These are significant because they have long-allowed a degree of oversight on the detainee's situation as well as having a positive impact on the detainee's health and well-being.

This document reviews prisoner contact rights (to communication with the outside world) under Myanmar and international legal frameworks. Following an overview of the legal and prison systems in Myanmar, the review will outline the relevant legal processes relating to the right to contact especially family visitation. This is followed by an international review.

1.1 Limitation and Scope

This review is solely focused on contact rights of prisoners in institutions under the purview of the Prison Department, under the Ministry of Home Affairs (MOHA), namely labour camps and prisons. Laws specifically relating to individuals deprived of their liberty in custody, holding-cells, police lock-ups, military custody and prisons and related military facilities will not be included, nor will those under the control of ethnic armed groups. The primary focus is on national laws currently in effect in Myanmar, with the secondary being the international. That said, references will be made to local notifications, gazettes, orders, rules and regulations where helpful.

Detail and depth will differ between different sections. The Burma Jail Manual has been reproduced where relevant. It should also be noted that due to time and resource limitations, the document at hand does not purport to be an exhaustive review. It is hoped, however, that gaps will be addressed in time.

Finally, the review will conclude with the authors' observations, recommendations and related conclusions.

1.2 Terminology and Keywords

Contact	Communication; visit; visitation; interview; meeting; investigation
Family	Parents; children; kin; husband; wife; brother; sister; relative
Law	Notification; Rules & regulations; Order
Outside	Outside world/Society; Outside of prison
Prison	Jail; Labour Camp
Prison Authority prison staff	Ministry of Home Affairs; Department of Prisons; prison officers;
Prisoner	Inmate; detainee; offender

Keywords: Prison/Camp Visitation, Prison Laws, Human Rights, Comparison of National Laws and International Conventions, Legal Rights and Human Rights of Prisoners

PART II – DEFINITIONS

2.1 Defining 'Prison' in Myanmar

Different terminology is used to denote places of detention which house people who are awaiting trial, who have been sentenced or who are subject to different situations of security. In Myanmar, for instance, places which hold persons who are awaiting trial at different courts or who have been sentenced to different crimes are usually referred to as prisons and labour camps. Those holding convicted prisoners under sixteen years old according to the *Child Law*, are often called training schools and temporary care stations. Pre-trial and under-trial children who are accused of having committed a crime, those in remand juvenile holding are called temporary care station under/by the decision of juvenile courts or township courts.

According to section 3 (1) of the *Prisons Act*, prison refers to:

any jail or place used permanently or temporarily under the general or special orders of the president of Myanmar for the detention of prisoners,

and includes all lands and buildings appurtenant thereto, but does not include –

- (a) Any place for the confinement of prisoners who are exclusively in the custody of the police;
- (b) Any place specially appointed by the president under section 541 of the Code of Criminal Procedure; or
- (c) Any place which has been declared by the president, by general and special order, to be a subsidiary jail.

Section 2(b) of the *Prisoners Act*, defines 'prison' as including "any place which has been declared by the president of Myanmar, by general or special order, to be subsidiary jail".

The definition of prison provided by the section 2 (a) *Draft Prison Law* of July 2015 is:

a place used permanently or temporarily upon the decree issued by the Ministry of Home Affairs with the agreement of the Government of the Republic of the Union of Myanmar cabinet permanent or temporary for the detention of prisoners and includes all defined territories, lands, buildings and parts of a building defined as prisons, camps and police lockups.

Notably, any place for the detention of prisoners which is not under the administration of the Prison Department is not included in this definition.

The word 'prison' is used for all kinds of detention in the previous section. According to the *Prisons Act III* (1-a-c) prison includes a variety of institutions such as labour camps (police camps), manufacturing centres, agriculture and livestock breeding vocational training centres, but does not include custody of court and police station (lock-up), or the custody facilities of ethnic armed forces and rebels such as KNU, KIA, TNLA, etc. There exist separate institutions for men and women.

2.2 Defining 'Prisoner' in Myanmar

Beyond the distinction between convicted criminal prisoners (see section 3(3) of the *Prisons Act*) and civil prisoners (section 3(4)), the *BJM* thoroughly delineates between prisoners such as convicted or un-convicted persons, criminal prisoners, civil prisoners, sick prisoners, lunatic prisoners, leper prisoners, etc. Furthermore, section 275 of the *BJM* details three grades of

convict officers, namely: night watchmen, overseers and warders. Section 420 divides convicted prisoners into three classes: A, B and C, and further divides C into 'casual' and 'habitual'.

Section 3 of the *Prisons Act* defines the respective classes of prisoners as follows:

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial

(3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure

(4) "civil prisoner" means any prisoner who is not a criminal prisoner

Section 724 of the *BJM* lists six classes of civil prisoners as follows:

1. Persons committed to the civil prison by order of a Civil Court under section 32 (d) of the Code of Civil Procedure, 1908.
2. Defendants committed to the civil prison after arrest before judgment.
3. Judgment-debtors detained under an order of a Civil Court in execution of a decree.
4. Revenue defaulters under Act II of 1876, or Regulation III of 1889.
5. Persons imprisoned under order of a Criminal Court under section 318, 332 or 514 of the Code of Criminal Procedure.
6. Persons detained in the civil prison under any other law for the time being in force (724 of BJM)

2.3 Separation and Categories of Prisoners

According to the Notification⁴ No.121, 4 May 1940, prisoners are classified as follows:

⁴ These classifications are no longer used.

1. "Class 1 prisoner" means a thug, a robber by administration of poisonous drugs, or a professional, hereditary, or especially dangerous criminal convicted of heinous organized crime, such as dacoity.
2. "Class 2 prisoner" means a dacoit or other person convicted of heinous organized crime, not being a professional hereditary, or especially dangerous criminal.
3. "Class 3 prisoner" means a prisoner other than a class 1 or class 2 prisoner.

According to section 27 the *Prisons Act*, prisoners are to be separated as follows:

1. In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;
2. In a prison where male prisoners under the age of 21 are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;
3. Un-convicted criminal prisoners shall be kept apart from convicted criminal prisoners;
4. Civil prisoners shall be kept apart from criminal prisoners.

(See also *BJM* section II, Classification and Separation of Prisoners)

Section 694 of the *BJM* distinguishes between two categories of 'undertrial' prisoners 'based only on previous standards of living' as being special and ordinary, and directs the two categories to be accommodated separately. This distinction is also drawn between civil prisoners (sections 721-723).

On the international plain, rule 11 of the *Nelson Mandela Rules* prescribes that:

The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason of their detention and the necessities of their treatment. Thus,

- a. Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- b. Untried prisoners shall be kept separate from convicted prisoners;
- c. Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- d. Young prisoners shall be kept separate from adults.

PART III – THE LEGAL FRAMEWORK OF MYANMAR

3.1 Introduction

The following legal documents establish the main sources from which to gain an understanding of the legal, regulatory and procedural framework governing the prison system.

3.2 Constitution of Republic of the Union of Myanmar (2008)

The *Constitution* provides for certain fundamental rights and duties of citizens under Chapter VIII, including the freedom from discrimination⁵, gender equality, respect for life and freedom, freedom of conscience and assembly, freedom of religion, as well as safeguards to protect against their violation, including oversight mechanisms related to prison. The Constitution provides that the Pyidaungsu Hluttaw shall have the right to enact laws for the entire or any part of the Union related to matters prescribed in Schedule One of the Union Legislative List, which includes matters related to prisons.

3.3 Myanmar Penal Code (1861)

The *Myanmar Penal Code* (1861) enacts various crimes and their sentences, including imprisonment, death, transportation (rigorous (with hard labour) and simple (without)), and non-custodial sanctions such as fines. The procedural rules, with respect to criminal trials, imprisonment and fines, are set out in the *Penal Code*.

⁵ The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, official position, status, culture, sex and wealth. (Article – 348 of Constitution).

3.4 The Code of Criminal Procedure (1873)

The *Myanmar Criminal Procedure Code* consists of a total of 46 chapters and 569 sections, addressing procedures relating to judges, law officers (prosecutors), police and lawyers, detention, arrest, bail, appeal and amnesty related to offenders, persons of unsound mind, infants, etc. It also consists of appendices of amended sections. This procedure code was amended by *Law related to amendment of The Code of Criminal Procedure (2016)*.

3.5 The Prison Acts (1894-1920)

The *Prison Acts* include the *Prisons Act* (India Act IX, 1894), the *Prisoners Act* (India Act III, 1900) and the *Identification of Prisoners Act* (India Act XXXIII, 1920), and contain a set of principles by which prisons are governed and administrated. Although reform proposals have been made, the mentioned laws remain in effect in Myanmar.⁶ Today, these laws have not yet been amended by Pyihtaungsu Hluttaw as the draft *Prison Law (2015)* has not yet been ratified.

3.6 Civil Procedure Code (1908)

This code consists of 49 orders, rules and regulations, concerning civil matters, for example failure to pay compensation (contractual disputes), and civil arrest. This code regulates civil prisoners and civil prisons. Notably, currently, there are no civil prisons; anyone subjected to civil arrest will be detained together with those subjected to criminal arrest. There have been many amendments related to this recently, some Jurisdiction changed by the Union Judiciary Law.

3.7 Police Manual (1861-2001) and Police Acts (1945)

There are four volumes in this police manual, namely the first volume (1861), the second volume (1945), the third volume (2001) and the fourth volume (2013). The first and the fourth volume were combined and updated as a first volume. These volumes cover the duties, rules

⁶ This draft law has been proposed by the Ministry of Home Affairs and consists of a total of six chapters and 62 sections. If this law was to pass, it will supersede the Union Law 3. Although the draft is better than the current law, weaknesses persist and are currently being debated in the Hluttaw, the National Assembly of Myanmar. A useful evaluation of the draft law is found in 'Myanmar: Bring Rights to Prisons' published by the Amnesty International. In this draft, there are concerned with the prisoner contact with the outside world as section from 30 – 35.

and regulations for the police. For example, investigations and interrogation of detainees in police lock-ups, transportation from police lock-up to court custody and prison. Also covered are detainees' meetings with lawyers and their family in court custody and police lock-ups according to the laws and regulations.

The Police Acts include the *Police Act (6/1945)*, and the *Yangon Police Act (India Act-III, 1920)*. These Police Acts primarily address matters of discipline, general procedures, arrests and detention.

3.8 Burma Jail Manual (1894)

The *Burma Jail Manual (1894)* is secondary legislation regulating prison staff (including officers) and prisoners on the application of law set out in the above laws and codes. It applies generally to the entire prison system, namely jails, prisons, labour camps and individual facilities. Some parts are considered informational, i.e. non-binding, as some rules and terms are not practically used. This Manual also regulates prisoner contact with the outside world in old English rather than modern legalized terms.

3.9 Court Manual (1946)

The Court Manual governs court processes around the issuance of orders and notifications on civil and criminal hearings and the responsibilities of lawyers, law officers and judges. It also provides for the classification of prisons, judgments, crimes and sentences. There are edited and revised versions in Myanmar language dated 1946, 1957 and 1970.

3.10 The Offenders' Remand and Parole Act (1961)

This Act (12/1961) consists of the rules relating to responsibility of remand and parole services especially during the pre-trial period and in fitting and preparing the offenders and prisoner for release. The services are provided according to the place of residence.

3.11 Child Law (1993)

The Child Law (SLORC 9/1993) governs, amongst other things, matters around juvenile justice, importantly setting out who is able to meet with children in detention. With respect to the prisoners contact with the outside world, The Prison Acts also touch upon this. Chapter XII - Custody and Care of Children and Youths in Prisons, section 5(c) grants children in detention

“the right to meet parents, guardians, relatives and friends concerned and the right to be sent food and prescribed articles in accordance with the existing regulations and by-laws.”

3.12 The Union Judiciary Law (2010)

This *Union Judiciary Law* (28 October 2010) consists of a total of 7 chapters and 74 sections relating to the judiciary, its formation and jurisdiction. In this law, the concept of official visits, as related to prisoner contact with the outside world, is outlined in sections 67 and 68. These sections state that the Chief Justice of the Union, Judges of the Supreme Court of the Union, the Chief Justice and Judges of the High Court of the Region or State Judges of the Court of Self-Administered Division, Self-Administered Zone and Judges of the District Courts may inspect prisons, labour camps and police lock-ups within their jurisdiction, for enabling convicted persons and those under detention to enjoy rights to which they are entitled and for preventing undue delay in the trial of cases throughout prisons, labour camps and police lock-ups of the Union, the Region or State, Self-administrated Division, Self-administrative Zone, District and Township.

3.13 Myanmar National Human Rights Commission Law (2014)

This law consists of eight chapters and 70 sections. It aims is to protect civil rights, to recognize UDHR in society, to promote human rights, and to co-operate with international organizations, local organizations and stakeholders. Namely, the Myanmar National Human Rights Commission has to inform the Congress, the President, and the relevant ministries on visits and monitoring of prisons.

These matters are addressed in sections 43 to 45 under the chapter on ‘the Inspection of Prisons, Jails, Detention Centres and Places of Confinement’. Worth reproducing in full, these sections are as follows:

Section 43 – The Commissions has the power to inspect prisons, jails, detention centres, and places of confinement in order to ensure that persons imprisoned, detained or confined are treated humanely and in accordance with international and national human rights laws. The inspection shall be carried out in accordance with relevant laws.

Section 44 – In carrying out the functions under section 43, the Commission shall have the following powers:

- (a) Right of inspecting prisons, jails, detention centres and places of confinement after notifying the relevant authorities of the time of its intended visit;
- (b) Right of inspecting all areas and facilities for those detained or confined in prisons, jails, detention centres and places of confinement;
- (c) Right of interviewing prisoners, detainees and those confined freely and privately;
- (d) Right of recommending for action to the relevant departments and organizations and requiring them to inform the Commission of the steps that they have taken to give effect to those recommendations.

Section 45 – The commission may inform the relevant organizations at the Union level of its findings and recommendations and make them public as appropriate.

3.14 Myanmar National Human Rights Commission Procedure (2016)

In these procedures, there are seven chapters and 71 sections. Most importantly, it empowers the Commission to form a disciplinary committee which is permitted to monitor prisons, custodies, and labour camps. The Committee has to report the government to take action after monitoring prisons, custodies, detention centres, and so forth. According to section 41 to 48, while monitoring prisons, the committee assessment is to be based on the *Nelson Mandela Rules*.

3.15 Legal Aid Law (2016)

This law (amended on 26 May 2017) consists of 14 chapters and 48 sections. In particular, it requires coordination between courts, law offices, the Myanmar Police Force, Prison Department and the prosecution authority, lawyers and paralegals to freely assist the poor, children, women, disabled persons with matters related to bail, parole and appeals.⁷ Lawyers and paralegals can't get or accept remuneration or presents from the client. One of its objectives, according to section 3(e), is to reduce the unnecessary detention in police lock-up and prison during the period of criminal investigation and trial, and to prevent unlawful arrests and detention.

⁷ Section 38 – The Courts, Law Officers, Myanmar Police, the Prison Department and Prosecuting Bodies shall cooperate with the relevant Legal Aid Bodies to obtain legal aid for the persons eligible for legal aid.

PART IV – PRISONER CONTACT RIGHTS UNDER NATIONAL LAW

4.1 Introduction

This part of the review is concerned with the visitation rights of prisoners who are newly convicted, committed, sentenced to transportation and on death-row. The discussion below will outline the different means of contact such prisoners are afforded to communicate with the outside world, namely: visits, letters, books, newspaper and broadcast media, and the like.

More broadly, there are two types of visitors: ex-officio and social. Ex-officio visitors are those that are envisaged in the *BJM* and other related law such as *Myanmar National Human Right Commission Law*, *Myanmar National Human Right Commission Procedure*, *Police Manual* and *Union Judiciary Law*. Social visitors, on the other hand, include family members (those appearing on the House Hold Card list and holding a NRC (National Registration Card)).

4.2 Official Visits

In Myanmar, the prison visiting system consists of those who are known as ex-officio visitors. These individuals have right to access. They include statutory visitors such as inspectors, ombudsmen, visiting justices, consular representatives, and members of Human Right Commission. In Myanmar prisons and labour camps, the following official visitors (ex-officio visitors) are conferred with the power to visit prisons and jails within their respective jurisdictions:⁸

- the Chief Justice
- the Ministers of the Governor
- the Judges of the High Court of Judicature at Yangon
- the Commissioners of Divisions
- the Inspector-General of Civil Hospitals, Burma
- the Director of Public Health, Burma
- the Assistant Director of Public Health, Burma
- Sessions Judges
- the District Magistrate
- the Inspector-General of Police

⁸ Section 24 of *BJM*.

- the Deputy Inspector-General of Military Police
- the Deputy Inspector-General of Police for Railways and Criminal Investigation
- the Deputy Inspector-General of Civil Police in charge of Ranges
- the Sub-Divisional Magistrate⁹

4.3 Social Visits: Interviews and Communications

The *BJM* regulates interviews and communications with prisoners. It is concerned mostly with contact with the outside world, but these are outdated because it remains the product of British colonial rule. For example, communication entails non-electronic forms of communication such as letters as opposed to email, skype, internet, fax, photocopiers, computer, tele tune¹⁰, and telephone.

4.3.1 Family Visits

In Myanmar, family¹¹ is very important for criminal and civil prisoners and other detainees for contact with the outside world. Usually, according to the regulations, family visits are allowed twice per month, where the members of family can take packages, foods, clothes, and the like. They can also send packages to the prison. According to the relevant rules and regulations, the visitation is brief and not completely free as indicated in the preceding articles. The regulations are detailed below.

According to section 670 (9) of the *BJM*:

applications for interviews are to be made on Jail Form No.6.¹² Interviews are to be permitted once a fortnight. It is envisaged for them to take place in the presence of the Superintendent or of an officer deputed by him on this behalf, and should be strictly confined to private and domestic matters. The

⁹ See section 3.15 of *MNHRC*.

¹⁰ We define 'tele tune' to mean to listen to or watch particular broadcast on the radio or television; to be tuned in (to something) to understand something such as a situation or someone else's feeling as tune.

¹¹ Family means a group of people who are related to each other by marriage, their parents and children, people who lived in the past, a group of individuals living under one roof as house hold, a group of persons of common ancestry as clan like parents and children, husband and wife, brother and sister, etc. Actually, the person who is listed as family in the registered list of the house hold card.

¹² Form VI requires certificate of identity including name, father's name, village, address, serial no and names of criminal tribe, etc

discussion of political questions is not allowed. Ordinarily, the number of visitors should not exceed two, but an exception may be made at the discretion of the Superintendent if he considers there are special circumstances that call for a relaxation of the rule. Publication of matters discussed at the interview may be treated as a sufficient ground for the withdrawal of the privilege if the Superintendent has reason to believe that such publication has, in any way, been due to any act or omission on the part of the prisoner.¹³

Furthermore, according to section 780 of the *BJM*:

(1) Every newly convicted prisoner shall be allowed reasonable facilities for seeing, or communicating with, his relatives or friends, with a view to the preparation of an appeal or to the procuring of bail. He shall also be allowed twice, or oftener, if the Superintendent considers it necessary to enable him to arrange for the management of his property or other family affairs.

(2) Every prisoner, committed to prison in default of payment of a fine or of finding security under Chapter VIII of the Code of Criminal Procedure, shall be allowed to communicate by letter, and to have interviews at any reasonable time, with his relatives or friends, for the purpose of arranging for the payment of the fine or the furnishing of security.

(3) Every prisoner under sentence of transportation, and about to be transported, shall be allowed to have one or more interviews with his relatives and friends, before transfer from the jail to which he was committed when sentenced.

(4) Every prisoner under sentence of death shall be allowed such interviews and other communications with his relatives, friends and legal advisers at the Superintendent thinks reasonable.

¹³ The prisoners can get one time within two weeks of visitation time and they need to talk or discuss with visitor. The prison officers have authority to permit or deny visits if they have reasonable ground or condition. In addition to this, the prison officers are allowed to extend the visitation time 30 minutes. The main problem is related to prison overcrowding. This issue is more pronounced at the Central Prison and less so in small prisons in rural areas,

In practice, there are many different interpretations and practices. For instance, whilst references are made to 'friends' such as under section 41 of the *Prisons Act*, in reality they cannot get the visitation if the visitors are family who are not named on the house hold card.

According to section 781 regarding the general procedure regarding interview and letters in the case of C class convicted prisoners of the *BJM*:

In addition to the privileges granted in the last preceding rule, every convicted prisoner of Class "C" shall be allowed to have an interview with his friends and to write and receive, a letter once a month during the term of his imprisonment, provided that the exercise of this privilege shall be contingent on good conduct and may be withdrawn, or postponed, by the Superintendent for bad conduct.

Note 1 – A letter merely arranging an interview shall not be counted as a letter for the purposes of this rule.

Note 2 – A prisoner may, with the permission of the Superintendent, substitute a letter with reply for an interview or vice versa.

In sum, C class convicted prisoners must be provided the opportunity of both interview and communication once per month. Currently, however, no convicted prisoner is assigned to this class.

According to section 782 of the *BJM*:

Prisoners, who are watchmen, and convict overseers shall be permitted to see, and write to, their friends, and receive a letter from them, once in two months, and convict warder once a month.

According to section 783 (1) regarding the Superintendent's discretion to grant privileges of interviews or letter writing shorter intervals of the *BJM*:

The Superintendent may at his discretion grant interviews, or allow the dispatch, or receipt, of letters at shorter intervals than provided in paragraph 781, or, in spite of the prisoner's misconduct, if he considers that, special or urgent grounds exist for such concession, as for example, in the event of the prisoner being seriously ill or on the occurrence of the death of a near relative, or if the friends or relatives have come from a distance to see the

prisoner and it would inflict an undue hardship on them to refuse an interview, or if the prisoners is nearing release and wishes to secure employment, or for other sufficient cause. Matters of importance, such as the death of a relative, may also be communicated at any time by the friends of a prisoner to the Superintendent, who will, if he thinks it expedient, inform the prisoner of the substance of the communication.

According to section 783 regarding the Superintendent's permission for interviews required of the *BJM*:

(2) No convicted prisoner shall be allowed to have an interview or to receive, or write, a letter, except with the permission of the Superintendent, which shall be recorded in writing.

(3) Applications for interviews with prisoner may be oral or in writing at the discretion of the Superintendent. If the prisoner is not entitled to an interview, the application shall be informed at once.

Notably, as the superintendent can permit for interviews or letters or receipt etc., he can accept or deny interviews and communications by his own volition. In reality, the superintendent doesn't promptly reply to the prisoner's requests. As such, the prisoner can't get the permit if the Superintendent is absent or does not approve on a personal level.

4.3.2 Conjugal Visits

These are visits where a prisoner can meet with their spouse in private for an extended period which may allow them to have sexual intercourse with the aim of preserving family bonds and helping with reintegration. This is not provided under the law but nevertheless practiced in labour camps throughout the country. The prisoner is permitted to stay with their spouse three days per month, sleeping overnight. But it is actually and mostly afforded to male prisoners, rarely for female prisoners and never for LGBT prisoners, rendering this a discriminatory practice.

4.4 Designation of Hours and Frequency

Basically, the following time and scheduling conditions shall be met: 1. at least one time visit weekly; 2. weekend visit; 3. visits of at least half hour. Finally, facility specific visiting hours are presented in Chapter 9 of the *BJM*.

For example, death prisoners, prisoners sentenced to transportation, remand prisoners, new prisoners and civil prisoner and the convicted officer can get the visitation once in two months. According to the regulation, the visiting time is 20 minutes but the jail officer can extend the duration time to 30 minutes and more. Visitation dates for prisoners and detainees are from Monday to Saturday except prison overcrowding issues. In labour camps, they are allowed to stay with their wife three days per month.

According to section 784 (1) of the *BJM*:

The Superintendent shall fix the days and hours at which interviews shall be allowed, and no interviews shall be allowed at any other time, except with the special permission of the Superintendent. "A" notice of the hours during which prisoners may be interviewed shall be posted outside the jail.

According to section 784 (5) of *BJM*:

The time allowed for an interview shall not ordinarily exceed 20 minutes but may be extended by the Superintendent at his discretion.

According to section 671 (6) of the *BJM*:

They may write one letter, and receive one letter and have an interview, once a month.

4.5 Designation of Facilities

According to section 784(2) of the *BJM*:

Every interview shall take place in a special part of the jail appointed for the purpose, if possible at, or near, the main gate. Provided that interviews with female prisoners shall, if practicable, take place in the female enclosure. Provided also that, if a prisoner is seriously ill, the Superintendent may permit the interview to take place in the hospital, and a condemned prisoner shall ordinarily be interviewed in his cell. Provided further that the Superintendent may, for special reasons, to be recorded in writing, permit an interview to take place in any part of the jail.

4.6 Restrictions on Contact

According to section 204 of the *BJM*:

The Chief Jailor is responsible for the identity of the prisoners sent to extramural labor, and shall keep a list showing details of all prisoners so employed with the names of the warders in charge. The Chief Jailor shall check the prisoners going out and coming in, from this list.

According to section 205 (1) of the *BJM*:

The gate-keeper shall admit or pass out of the jail as the case may be –

- (a) all ex-officio and non-official visitors, police officers, and officers of Public Works Department on Duty,
- (b) officers of the jail going on, and coming off, duty,
- (c) prisoners duly authorized to enter and leave.

According to section 205 (2) of the *BJM*:

With the exception of persons mentioned in clause (1) no person shall be permitted to enter the jail unless under a written order from, or when accompanied by, the Superintendent.

According to section 205(3) of the *BJM*:

A list of the ex-officio and non-official visitors entitled to admission shall be posted between the gates both in English and in the Vernacular.

According to section 206 (1) of the *BJM*:

All ex-officio and non-official visitors, casual visitors admitted with or under the orders of, the Superintendent, respectable merchants, superior subordinates of other departments visiting the jail on business, or on duty, and jail officers of the rank of Selection Grade Warder and above, shall ordinarily be exempt from being searched.

According to section 206 (2) of the *BJM*:

Should the gate-keeper have reason to suspect that any person, ordinarily exempt from search, is introducing or removing prohibited articles, he shall detain such person between the gates and send notice to the Chief Jailor, who shall himself, if he thinks necessary, conduct a search.

According to section 206 (3) of the *BJM*:

Females shall only be searched by a female warder in private, and without the presence of any male officer.

According to section 209 (4) of the *BJM*:

The Chief Jailor shall occasionally, and at least once a week, at unexpected times, search some of the officials of the jail, subordinate in rank to himself, who are ordinarily exempt from search, on their way into, or out of, or when inside, the jail, and shall report the circumstance that he has done so, with the results, in his Report Book.

According to section 206 (5) of the *BJM*:

Search of all officers of the rank of Selection Grade Warder and above shall be conducted by the Chief Jailor with as much privacy as possible.

According to section 206 (6) of the *BJM*:

Should any person other than a jail officer or prisoner decline to submit to be searched, or decline to deliver up any transferable articles in his possession to the temporary custody of the gate-keeper, when required to do so, he shall be denied admission.

According to section 41(1) of the *Prisons Act*:

the jailor may demand the name and address of any visitor to a prisoner, and, when the Jailor has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor. (2) In case of any such visitor refusing to permit himself to be searched the jailor may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the President of Myanmar may direct.

The officer must read letters, decide whether they are to be provided to the prisoner or sent to the addressee (e.g. family member) from the prisoner and record the letter in all circumstances. Communications addressed to or sent by prisoners is governed by section 62 of *BJM*, which states:

He shall read, or cause to be read, every letter addressed to, or written by, a prisoner, making all letters with his initials. He shall use his discretion in communicating to, or withholding from, a prisoner, at any time, the contents of any letter, notifying the fact in the order book.

According to section 670 (8) of the *BJM*:

Letters – Ordinarily they may be allowed to write and receive one letter, once a fortnight. On urgent occasions, for example, a death or serious illness in the family, the rule may be relaxed at the discretion of the Superintendent. The contents of all letters should be limited to private affairs, and there should be no reference to jail administration and discipline, to other prisoners, or to politics.”

In sum, the prisoner can accept or write any kind of letter restricted to personal matters. Political or other sensitive issues are forbidden. Currently, writing day is Sunday.

According to section 63 of the *BJM*:

Whenever he sees fit to refuse admission to friends of a prisoner who is entitled to an interview, he shall record in the order book his reasons for withholding the desired permission.

According to section 789 of the *BJM*:

The jailor may demand the name and address of any visitor to a prisoner, and, if he has good grounds for suspecting that any visitor is taking prohibited articles to a prisoner, he may search the visitor, or cause him or her to be searched before he or she is allowed to enter the jail or see a prisoner, but the search shall not be made in the presence of any prisoner, or of any other person. If the visitor is a female, the search shall be made only by a woman. In the case of such visitor refusing to be searched, the jailor may refuse to allow an interview with a prisoner. In any case, when a visitor is searched, or an interview with an under trial prisoner is refused, the jailor shall at once report the circumstance, and the grounds for his action, in his report book and submit his report to the Superintendent at his next visit to the jail.

In sum, the jailor needs to collect the name, address of any visitor and the jailor can search that visitor. If the visitor is a female, the search shall be made only by a woman. If the visitor

refuses to be searched, the jailor can refuse to allow the visit. Jailors must record the details of the circumstance and situation.

According to section 785 (1) of the *BJM*:

No letter shall be delivered to, or sent by a convicted prisoner until it has been examined by the Superintendent or by the jailor or other officer under the Superintendent's order, but no unnecessary delay should be allowed to language unknown to the Superintendent, he shall take steps to procure a translation before forwarding the letter. No letter written in cipher shall be allowed. The Superintendent may withhold any letter which seems to him to be in any way improper or objectionable, or may erase any improper or objectionable passages.

According to section 785 (2) of the *BJM*:

If a letter is addressed to a prisoner who is not entitled under the rules to receive it, it may, unless the Superintendent determines to communicate it under sub-paragraph (3) be withheld and kept in the Superintendent's custody until the prisoner is entitled to receive it or is released, when it shall be delivered to him, unless it is improper or objectionable, or it may be returned to the sender with an intimation that the prisoner is not entitled to receive it.

According to section 785 (3) of the *BJM*:

A convict may retain any letter which has been delivered to him with due authority, unless the Superintendent otherwise directs, or the convict may ask that it be kept for him.

That is, after the Superintendent has examined a letter, it will be forwarded to the prisoner as soon as possible. If the Superintendent can't understand the notes on it, he can postpone or destroy it. The Superintendent must explain his decision. In reality, letters are delayed at least three weeks.

According to section 787 of the *BJM*:

A Superintendent may refuse to allow any interview to which a prisoner would ordinarily be entitled under these rules, but in every such case, if in

his opinion it is inexpedient in the public interests to allow any particular person to interview a prisoner, or if other sufficient cause exists, he shall record his reasons for such refusal in his journal.

According to section 784(3) of the *BJM*:

Every interview with a convicted prisoner shall take place in the presence of a jail officer, who shall be reasonable that no irregularity occurs and who shall be so placed as to be able to see and hear what passes and to prevent any article being passed between the parties. No politics should be allowed to be brought out at the interview.

According to section 784(4) of the *BJM*:

Any interview may be terminated at any moment, if the officer present considers that sufficient cause exists. In every such case the reason for terminating the interview shall be reported at once for the orders of the senior officer present in the jail.

According to section 784(6) of the *BJM*:

Every convicted prisoner, and every un-convicted criminal prisoner, shall be carefully searched before and after an interview.

4.7 Access to Reading Materials and Tobacco

According to section 645 of the *BJM*:

Any condemned prisoner who can read and write, shall be provided with such books as he may wish for, subject to the Superintendent's approval : a prisoner who smokes shall be provided with tobacco: all reasonable indulgences will be legal advisers ; it shall be the duty of the religious teacher of his persuasion, attached to the jail, to visit the condemned prisoner daily, and, if he wishes to see any other approved religious minister, endeavours will be made to comply with this request.

According to section 670 (6) of the *BJM*:

They may be allowed the use of books from the jail library, and also to read books and magazines from outside (purchased at their own expense), subject to the approval of the Superintendent. Compared with prisoners in Class B a larger allowance should be made for the provision of reading matter for prisoners in Class A.

Notably, A and B classes have not been used since 15 January 1964 by the notification (2/64) of the Ministry of Justice under RC.

According to section 670 (7) of the *BJM*:

Newspapers – in addition to the “Shwe Pyi Daw” copies of which are supplied weekly to all jails, newspapers may be allowed under special circumstances, with the approval of Government, the subject matter being censored by the jail authorities.

As a note, jail authorities must permit prisoners to read newspapers. Nowadays, in Myanmar, newspapers are not only printed but also digital. Although the “Shwe Pyi Daw” newspaper stopped publication, other daily and weekly newspapers or magazines are distributed in prison. The government has already permitted the distribution of newspapers weekly. The Superintendent retains the power to control of dissemination and redact the content of newspapers.

4.8 Establishment of and Access to Prison Library

According to section 1244 of the *BJM*:

In every jail there shall be a library in which shall be kept all literature (both English and Vernacular) purchased by, or presented to, the jail for the use of the prisoners.

According to section 1245 of the *BJM*:

A manuscript register shall be maintained showing the titles of the books, date of purchase, or by whom presented. If purchased, the price shall be entered in a column to be provided in the register.

According to section 1246 of the *BJM*:

Each book or periodical shall be serially numbered in the order entered in the register.

Whilst every prison must establish and maintain a library as per the above listed sections, in reality not all prisons do.

According to section 1249 of the *BJM*:

The Superintendent shall endeavour to interest non-official visitors in the matter of the prison library with a view to the matter of the prison library with a view to their contributing, from time to time, suitable reading material for the library.

According to section 1247 of the *BJM*:

On working days' prisoners desirous of reading may after the evening meal, have the use of books till 9 pm and on Sundays or other holidays from 8am to 9pm. At 9pm, the convict officers in charge of the wards shall collect the books and hand them over to the patrolling paid warders, who shall, early the following morning, make the books over to the jailor in charge of the library.

4.9 Access to Writing Materials

According to section 786 of the *BJM*:

Writing materials shall be supplied in reasonable quantities to any convict who has permission to write a letter, and all letters shall be written at such time and place as the Superintendent may appoint. A fixed day of the week, preferably Sunday, shall be set apart for letter writing. Service postage stamps and, when postcards can be used, service postcards shall be provided for the correspondence of prisoners.

4.10 Literacy Lessons

According to section 1248 of the *BJM*:

For the benefit of prisoners who are unable to read, a literate prisoner, preferably a convict officer to be chosen by those prisoners, shall be detailed to read to them.

4.11 Violation of Visitation Rights

According to section 788 of the *BJM*:

Any prisoner, who abuses any privilege relating to, the holding of an interview, or the writing of letters, or other communication with any person outside the jail, shall be liable to be excluded from such privileges for such time, and may be subjected to such further restrictions, as the Superintendent may direct.

4.12 Women Prisoners

According to section 612 of the *BJM*:

Well conducted female prisoners shall be allowed to see their friends once in each month.

Notably, in contrast to male prisoners “well conducted female prisoners” can meet with their friends once a month. The visitors, in this section, include the family members, relatives and friends.

4.13 Isolated Prisoners

Prisoners who are subjected to solitary confinement including separate confinement and cellular confinement are not allowed any meeting in this period.

According to section 46 (8) of the *Prisons Act, 1894*: the prisoner who break off prison offences shall be separate confinement for any period not exceeding three months. Section 46 (10) of the *Prisons Act* explains that: cellular confinement means such confinement, within or without labour, as entirely secludes a prisoner from communication with, but not from sight of, other prisoners. As such, during this time, these prisoners cannot meet with their visitors.

4.14 Civil Prisoners

According to section 790 of the *BJM*:

(1) Under trial and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating with either orally or in writing, or otherwise communicating with either orally or in writing, their relatives, friends and legal advisers.

(2) Every interview between an under-trial prisoner and his legal adviser shall take place within sight, but out of hearing of jail official. A similar concession may be allowed by the Superintendent in the case of an interview with any near relative of the under-trial prisoners.

(3) Where any person desires an interview with an under-trial prisoner in the capacity of the prisoner's legal adviser, he shall apply in writing, giving his name and address and stating to what branch of the legal profession he belongs, and he must satisfy the Superintendent that he is the bona fide legal adviser of the prisoner with whom he seeks an interview and that he has legitimate business with him.

(4) Any bona fide confidential written communication prepared by an under trial prisoner as instructions to his legal adviser may be delivered personally to such legal adviser without being previously examined by the Superintendent. The legal adviser shall inspect the written communication then and there. He shall hand it over to the jail official present at the interview then and there, if he finds that it is wholly a document not within the preview of the paragraph and shall report the fact of having done so to the Superintendent at the earliest possible date by a letter addressed to the Superintendent by name. The legal adviser shall return the written communication to the prisoners then and there, if he finds that the document contains not only instructions within the preview of the paragraph but also extraneous matter, after endorsing the communication and signing a statement to the effect that it has been so returned. For the purpose of this rule the term "Legal Adviser" means a legal practitioner within the meaning of The Legal Practitioners Act."

Note: Under trial and civil prisoners must interview not only orally but also in writing with their relatives, friends and legal advisers. Under trial prisoner and his legal adviser can interview in

front of the Superintendent but out of hearing of officer moreover this related with any near relative. The lawyer needs to get instruction for his/her case thus why he must be applying to the officer by the letter. Superintendent must give the letter to the lawyer without checking.

According to section 791 of the *BJM*:

Civil prisoners may see their friends and relatives at such times and under such restrictions as the Superintendent may appoint, and the presence of a jail official shall not be necessary.

4.15 Lawyer Visits

Section 40 of the *Prisons Act, 1894*, requires that due provision shall be made for the admission, at proper times and under proper restrictions into a jail, of persons, with whom civil or under trial prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, under trial prisoners may see their duly qualified legal advisers without the presence of any other person.

4.16 Religious Visits

In Myanmar, the Constitution recognizes numerous religions namely Buddhism, Islam, Hinduism, Christianity and Animism. According to the various provisions (articles 361, 362 & 363), the Constitution recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union; the Union also recognizes Christianity, Islam, Hinduism and Animism as religions existing in the Union at the day of the coming into operation of this 2008 Constitution and that the Union may assist and protect these recognised religions.

The *BJM* provides for religious needs, primarily through the prisoners' right of meeting with their religious leader for the purposes of ceremony and worship. Accordingly, prisoners are able to meet with their religious leader such as a chaplain or a monk.

According to the *BJM*:

805. *Pongyis* (the Buddhist monks), approved by the Deputy Commissioner of the District in which the jail is situated, may be allowed, on Sundays or other holidays, to preach to Buddhist prisoners.

806. To enable under trial prisoners and prisoners undergoing simple imprisonment, who are themselves *Pongyis* to keep the Sangha Sabbath twice a month (i.e., *Labyine* or full Moon Day, and *Lagwene* or Change of Moon), they may, at their request and subject to good behaviour, be allowed the ministrations of another *pongys* of the same *going* or sect, who has been approved by the Deputy Commissioner.

807. Every Christian prisoner, confined in the special ward and who can read, shall be furnished with a Bible and prayer book of the denomination to which he belongs. These shall be kept in his cell or ward.

See also sections 792 – 804 of the *BJM*.

PART V – PRISONER CONTACT RIGHTS UNDER INTERNATIONAL LAW

There exists a multitude of international legal standards, binding and non-binding, global and regional, governing the contact rights of prisoners and others deprived of their liberty. This part will firstly provide an overview of relevant provisions and rationale with respect to different aspects of contact including social, legal, religious visits and access to media.

From the outset, it is important to underscore the importance of contact rights for safeguarding mental health of prisoners, as well as against the perpetration of torture and other ill-treatment. As with any crime, torture is a crime of opportunity. Denial of a prisoner's communication rights increases the perpetrator's opportunity.

Rule 2 (1) of the *Mandela Rules* stresses that all aspects of these rights are to be provided without discrimination on any ground.

5.1 Family Visits

Visits are a means to safeguard social relationships, in accordance with the right to private and family life. Article 17 (1) of the *International Covenant on Civil and Political Rights* (ICCPR), mirroring article 12 of the UDHR, states that 'no one shall be subjected to arbitrary unlawful

interference with his or her privacy, family, home or correspondence'. This principle is also echoed in the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, which provides that:

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations. [Principle 19]

Importantly, visitation rights are not solely for the prisoner but also for the family and friends. According to the *UNODC Handbook on Dynamic Security*, they must be seen as 'entitlements rather than privileges'¹⁴, and, in turn, not used as reward or punishment.

The recently revised UN *Standard Minimum Rules*, now referred to as the *Mandela Rules*, together with the deliberative support provided by the Essex Expert Group, provide specific guidance in relation to the minimum parameters within which contact rights should be realised.

The geographical placement of the prisoner is also highlighted as an access issue. Rule 59 of *Mandela Rules* provides, reiterating principle 20 of the *Body of Principles*, that 'Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.' The focus on rehabilitation is found again in rules 106 and 107, which provide that:

Rule 106: Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

Rule 107: From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.

The *Mandela Rules* enshrines the modality of this right, in rule 58, as follows:

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

¹⁴ United Nations Office on Drugs and Crime (UNODC), *Handbook on Dynamic Security and Prison Intelligence*, New York, 2015, p. 22 (*Handbook on Dynamic Security*)

(a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and

(b) By receiving visits.

Rules should be flexible (e.g. visit duration extended, teleconference facilities provided, or telephone rights increased) given that some families may not be able to visit regularly due to distance. Similarly, the term 'family' must also be viewed with some flexibility and breadth to allow for different cultural conceptions of what it constitutes.

Rules 68 to 70 of the *Mandela Rules* also concern the right of the prisoner to notify and to be informed of their imprisonment, his or her illness or death and those related to his or her family.

5.2 Conjugal Visits

Rule 58 (2) of the *Mandela Rules* states that:

where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

Rule 27 of the *UN Bangkok Rules* echoes this principle in relation to women prisoners.

5.3 Religious Visits

According to rule 65 of the *Mandela Rules*,

- (1) if the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis,
- (2) A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times,

- (3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.

Rule 66 of the *Mandela Rules* provides that:

So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.

5.4 Access to News and Books

Rule 63 of the *Mandela Rules* provides that:

Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Rule 64 of the *Mandela Rules* provides that:

Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

5.5 Access to Legal and Diplomatic Assistance

Rule 61 of the *Mandela Rules* provides that:

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.

3. Prisoners should have access to effective legal aid.

Rule 62 of the *Mandela Rules* provides that:

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. 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 representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

5.6 Women Prisoners

Recognising the prevailing shortcomings, the *Bangkok Rules* (rules 26 to 43) provide authoritative guidance on better realising the broader international legal standards for women prisoners. Given that there generally exists fewer women's prisons compared to those for men, the distance required for family visits may render visits onerous. Particular emphasis is also placed on facilitating visits for those prisoners with children.

Whilst the foregoing legal standards in the *Mandela Rules* apply, the *Bangkok Rules* underscore the importance of visits for the mental health and post-release social integration of women prisoners (rule 43). Also, of significance is rule 44 which provides that women prisoners should be consulted on their visitors lest visits be harmful and undesired, given that women are usually disproportionately subjected to domestic violence.

5.7 Isolated Prisoners

Rule 44 of the *Mandela Rules* defines solitary confinement as 'the confinement of prisoners for 22 hours or more a day without meaningful human contact'. There exist varying purposes for which solitary confinement is imposed, including as punishment and protection. As the following section details, such restrictions do not necessarily entail denying affected prisoners any contact with the outside world, such as the right to visitation. Tailored, partial restrictions directly necessary and proportional to a legitimate purpose are however justified. International legal jurisprudence is clear that total isolation of a prisoner from other inmates and from the outside world can readily amount to torture or cruel, inhuman or degrading treatment.

5.8 Restrictions on Contact

Rule 58 (1) of the *Mandela Rules* qualifies the right to communication with ‘under necessary supervision’, entailing what would usually be visual control. A similar qualification is found in principle 19 of the *Body of Principles* which subjects the communication ‘to reasonable conditions and restrictions as specified by law or lawful regulations. On security concerns, the prison authorities are also afforded a degree of control over who is admitted for visitation. This is found in rule 60 of the *Mandela Rules*.

According to rule 43 (3), while family contact cannot be prohibited, it can however be restricted for ‘a limited time period and as strictly required for the maintenance of security and order’. According to the Essex Experts Group, there exists a narrow justification available for the prison administration.

Rule 23 of the *Bangkok Rules* prohibits punitive limitations of family contact, especially with children.

PART VI – CONCLUDING REMARKS

This legal review has aimed to provide a broad overview of the legal frameworks, both national and international, regulating different forms and aspects of prisoner contact with the outside world. The particular dynamics the national laws envision, in terms of provision and restriction of rights, are instructive in and of themselves. The breadth of power and discretion wielded by prison administration, to name but one, is a case in point. The historical anchoring and framing of a number of the national law is another point of interest.

While the review has not intentionally looked beyond the written provisions, it has remained mindful of implementation and comparison. Accordingly, the structure of the review, where the national sections significantly mirror the international, is conducive for comparison. Such a comparison is attempted in the accompanying commentary. Further, the review coupled up with the research papers would enable analysis of implementation particularly of national laws.

LEGAL REVIEW OF PRISONER CONTACT RIGHTS WITH THE OUTSIDE WORLD – A COMMENTARY

Ergun Cakal

Myanmar's laws bear the hallmarks of its colonial legacies, with imported-imperial legal precepts remaining fixtures in law and practice. The legal framework pertaining to prisoner contact with the outside world (PCWOW) is a case in point. Dated between 1860 and 1920, colonial-era acts and regulations continue to frame many of its aspects. Generally, national and international legal systems are replete with prescriptions of prisoner rights and Myanmar is no exception here. The legal review featured in this collection compiles the pertinent provisions found in these bodies of jurisprudence, making it possible for comparison. This commentary represents a preliminary effort to compare, drawing on the review and the related research papers on institutional practices and lived experiences of visits.

When compared at a glance, standards enshrined in Myanmar law resemble essential components of prisoner rights and safeguards found internationally. Prisoner rights to visit and correspond are explicitly recognised in law as are broader religious and cultural rights. Further, those in civil detention, in pre-trial detention or newly convicted are envisaged to enjoy regimes, at least in law, that include access to lawyers and family 'without the presence of any other person'.¹⁵ Yet, as shall be discussed, the realities fall well short of international minimum standards.

The research represented in this collection has as its primary focus family visits and not contact with lawyers or other external actors. Several important points can be made here. Most importantly, we observe that the detail and, in turn, the breadth of this right, particularly regarding duration and frequency, remain ill-defined and limited.¹⁶ The considerably broad and

¹⁵ See *Burma Jail Manual*, Article 790. (i) Undertrial and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing, or otherwise communicating with either orally or in writing, their relatives, friends and legal advisers.

¹⁶ *Prison Act*, Section 40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

arbitrary discretion the law confers to prison superintendents, and the resulting reality that visitation practices considerably differ across institutions, exacerbate the ambiguities and limitations associated with the practice and experience of family visits. Whilst discretion admittedly provides for considerable flexibility, with the liberal allowance for conjugal visits in labour camps as one example,¹⁷ in the absence of guiding principles, the room for abuse is evident.

Some other gaps can be readily identified. Prohibitions on visits based on illegitimate factors, particularly for certain classes of prisoners such as those in solitary confinement, on death row and political prisoners, are of note. Furthermore, considerations emanating from the right to family and private life, as articulated by international law, such as confidentiality, broad definition of 'family' and not restricting visitation for punitive purposes also do not seem to be observed. In the absence of legal guidance, the allocation and transfers of prisoners to distant places of detention that make visiting either impossible or characterised by extreme hardship is problematic in reality. Despite provision for families to meet prior to transfer of a prisoner, the failure to implement this practice raises a similar point. In our view the gaps between law and practice necessitates and renders paramount the scrutiny of institutional practice.

PRACTICE (THE IMPLEMENTATION GAP)

Legal prescriptions are often detached from practical realities and experiences of prisoners and their visitors. As elsewhere, in Myanmar, laws and standards have 'largely been drafted without considering their meaning in terms of architecture and design',¹⁸ or implementation for that matter. Given the age of the relevant national legislation, this would only be expected. Needless to say, this is not restricted to PCWOW but also applies to conceivably any issue relating to prisons. According to Dworkin, generality in legal language performs the function of bringing in 'principles or policies lying beyond the rule'.¹⁹ As the research here suggests,

¹⁷ Conjugal visits, whilst not provided for in legislation nor allowed in prisons, are liberally allowed (for male prisoners) in labour camps in practice. Rule 27 of the *Bangkok Rules* require that women prisoners are allowed conjugal visits on an equal basis with men.

¹⁸ ICRC, *Towards Humane Prisons: A Principled and Participatory Approach to Prison Planning and Design* (2018), p. 9.

¹⁹ Ronald Dworkin, *Taking Rights Seriously* (Duckworth 1977), p. 28.

prescriptions of 'adequate'²⁰ regimes and 'reasonable'²¹ facilities and allowances pertinent to PCWOW work in a similar manner but are devoid of the necessary substantiation elsewhere, such as in non-legal instruments.

When read in conjunction with the related research papers drawing on institutional practice and lived experiences of visits, the legal review helps build a nuanced picture of the dynamics at play, mainly in terms of *interferences* with rights, illustrating the different ways in which material conditions profoundly dictate the realisation of such rights, particularly in relation to family visits.

A comparison between the law and its practice reveals a broader point with respect to the *unsaid*: the law remains largely silent or vague regarding these interferences and the temporal and procedural preconditions for quality of visits in terms of, for instance, *access, frequency*²²

²⁰ *UN Body of Principles for the Protection of Detained or Imprisoned Persons* (1988), Principle 19: A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations. *Mandela Rules*, Rule 61 (1) Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.; *Mandela Rules*, Rule 106: Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.; *Mandela Rules*, Rule 107: From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.; *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules, 2010) state that "Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration" (Rule 43).

²¹ See Section 780(1) of the *Burma Jail Manual*: (1) Every newly convicted prisoner shall be allowed reasonable facilities for seeing, or communicating with, his relatives or friends, with a view to the preparation of an appeal or to the procuring of bail. He shall also be allowed to have interviews, or write letters to his friends once or twice, or oftener, if the Superintendent considers it necessary to enable him to arrange for the management of his property or other family affairs.

²² Perhaps with the exception of the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty which requires children to have visits "in principle once a week and not less than once a month" (Rule 60) and phone or written communication "at least twice a week with the person of his or her choice". Whilst not an authority, the *UNOPS Technical Guidance for Prison Planning: Technical and operational considerations based on the Standard Minimum Rules for the Treatment* states that "In the professional judgment of the authors of this manual, visiting facilities should be able accommodate no less than a single hour visit to a prisoner every two weeks, and should strive to accommodate more frequent visits to every possible extent. Particularly in the case of women's prisons, which

and *duration*. Similarly, spatial and technological conditions across institutions, based on geography, technology and resources are also pointed out to be of importance including *geographical and physical barriers, ventilation, smell, temperature, privacy* (i.e. overcrowding, presence of other inmates, visitors or prison guards), and *noise*.

Timing and Procedures

Adequate and frequent visits and correspondence between prisoners and their family and friends are required by international law.²³ Visits and correspondence are also required by the Nelson Mandela Rules to be at *regular intervals*. This commentary necessarily draws on the jurisprudence of the European Court of Human Rights which has unpacked these matters to some extent. There, such restrictive measures have been assessed primarily within the frame of the right to private and family life under article 8 of the *European Convention of Human Rights* and its recognized exceptions towards legitimate aims.²⁴ In Myanmar, section 784(5) of the *Burma Jail Manual* dictates that visits can be no longer than 20 minutes but may be extended at superintendent's discretion. In terms of frequency and duration, there are no fixed minimum standards internationally.²⁵

The European case of *Khoroshenko v. Russia* (41418/04, 30 June 2015) represents the most substantive adjudicatory discussion by an international or regional decision-making body to date. This involved a petition against a visitation regime with a twice-yearly allowance. Surveying the European standards, the Court highlighted that the European Prison Rules required visits to be “as often as possible and in as normal manner as possible” (para. 134).

are fewer in number and tend to be located further away from the prisoner's family, longer visiting hours should be accommodated.” (p. 127)

²³ Rule 58 of the *Nelson Mandela Rules*: (1) Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals ... ; *Miguel Angel Estrella v. Uruguay*, Comm. No. 74/1980, U.N. Doc. CCPR/C/OP/2 at 93 (1990), para. 9.2: ‘In particular, prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving visits.’

²⁴ Article 8. 2 of European Convention on Human Rights. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.; see *Messina v. Italy* (no. 2), 25498/94, § 62, ECHR 2000 X.

²⁵ *Moiseyev v Russia*, 62936/00, 9 October 2008: no visits in first nine months after arrest, thereafter two one-hours visits per month, unjustified impositions of physical separation by glass, each constituted a violation of article 8.

Surveying practice across Council of Europe states, it found the generally accepted minimum to be not less than once a month (para. 135).

Assessing the impact of the restrictions in the case, the Court accepted that it made it difficult for the applicant "to maintain contacts with his child and elderly parents during a time when maintaining contact with his family was particularly crucial for all the parties involved" (para. 147). The Court went on to hold the following measures as disproportionate:

A complete ban on direct physical contact with the applicant and the presence of a guard within hearing distance during this period contributed to the applicant's inability to establish close bonds with his son during the key period of the latter's early life, and also had an adverse impact on contacts with his aging father during the period when the father could still visit the applicant in person. Moreover, it is evident that, given the limit on the number of adult visitors and the low frequency of authorised visits, certain of his relatives and members of the extended family may simply have been unable to visit him in prison throughout this period.

In their Joint Concurring Opinion, Judges Pinto De Albuquerque and Turkovic expanded on this reasoning. Discussing the applicability of resocialization as the primary purpose of imprisonment to life prisoners (para. 4), the judges pointed out that the lives of prisoners' families were also deeply affected by visitation policies where relationships deteriorate due to the absence of meaningful contact (para. 7) and that their interests are to be considered as well (para. 15). The judges specifically and unequivocally stated that "a rule that permits family visits to prisoners only once every six months is per se inhuman" (para. 13).

In terms of frequency, the judges found that "a large majority of countries allow for more than one family visit per month to sentenced prisoners and eleven countries allow for weekly visits are of the utmost relevance" (para. 19) and there was a "growing European consensus ... that prisoners are generally accorded the right to family visits between one and four times every month" (para. 20). Summing up the European principles the concurring judges explained:

Under Article 8, regular family visits are a right, not a privilege, of prisoners and their family members. The law should provide for a minimum, but not a maximum, number of family visits. No distinction should be made between life or long-term sentenced prisoners and other sentenced prisoners with regard to their respective family visiting rights. Moreover, any restrictions on a prisoner's right to a family visit should be based exclusively on treatment and security considerations pertaining to each prisoner. Even where justified restrictions on visits are imposed, these should be limited to a number that creates the minimum interference with

the right to family life, and should in any event permit the alternatives of oral and written contact with the family. (para. 17)

Countering this, particularly in terms of temporal and procedural arrangements, is the narrative of 'operational flexibility' in the face of a 'burden' for prison administrators as presented by visits,²⁶ justifying institutional discretion to limit who is able to visit, how often and how long. As in many countries, there is also wide discretion conferred on prison authorities in Myanmar which potentially undercut minimum standards. Whilst the law cannot admittedly anticipate and regulate the minutiae of many aspects of everyday situations, as discussed, its breadth cannot be so vague for exploitation for personal gain (as indicated by the experiences of corruption) and arbitrariness (relating to quality of visits depending on attitude, relations) by prison staff and abuse of visitors and prisoners.

Arguably, the most unfettered of all these powers is found in section 783(2) of the *Burma Jail Manual* which provides that all visits are subject to the approval of the Superintendent. In a number of European cases, similar provisions conferring unfettered discretion, devoid of clarity as to the considerations involved in their exercise, have been deemed to not provide sufficient protection against arbitrariness and, therefore, unlawful.²⁷

A central principle here is that rights pertaining to PCWOW are to be viewed as *entitlements* and not *privileges*, *rewards* or *punishment*.²⁸ Yet, the research featured in this collection shows that visitation rights are or have been in the past used in ways where: rights are denied by prison staff because a prisoner has breached prison discipline; payments are elicited for longer visits or a better visiting space; and, most basically, general fees are levied for visits.

²⁶ See Article 8.2 of the European Convention on Human Rights; Zyl Smit and Snacken, *Principles of European Prison Law and Policy* (OUP, 2009), p. 237: 'it also has to be recognized that visiting facilities in prison create a heavy administrative and security burden for prison administration'. See also UNOPS. *Technical Guidance for Prison Planning: Technical and operational considerations based on the Standard Minimum Rules for the Treatment*. 'The primary design issue in the consideration of visitation spaces is the maintenance of prisoner privacy while retaining the ability for prison staff to observe prisoners and maintain security. Prison visits areas need to balance both the security requirements of the prison and the provision of a positive space for the interaction of prisoners with their families.' (p. 126)

²⁷ See *Lupsa v. Romania*, no. 10337/04, §§ 32 and 34, ECHR 2006 and *Al-Nashif v. Bulgaria*, no. 50963/99, § 119, 20 June 2002.

²⁸ UNODC, *Handbook on Dynamic Security and Prison Intelligence* (2015), p. 22; for prohibition as punishment see rule 43.3 of the *Mandela Rules* and rule 21 of the *Bangkok Rules*.

Another limitation to access is found in the requirement that the visitor need be on the national household list. As close friends or others who may be family though not included on this list, this is conceivably too limited when compared to international standards.²⁹

Difficulty in talking freely about personal issues or difficult subjects is also thought to hinder post-release adjustment. Compounded by other barriers as mentioned, the presence of prison staff as mandated by section 784(3) of the *Burma Jail Manual* is another clear barrier in this respect.

Spaces and Technologies

To be sure, separation and restriction of social ties is envisaged by the very nature of imprisonment.³⁰ It is widely accepted as a 'restricted and restricting space and this includes the space of visits', granting contact but 'under very different conditions to those under which families normally interact'.³¹ This is tempered by the edict, as also enshrined in the *Nelson Mandela Rules*, that imprisonment (i.e. deprivation of liberty) is punishment in itself and therefore should not be aggravated and, more specifically, that prisoners 'shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation'.³²

In *X and Y v. Argentina*, IACHR, Report no. 38/96, Case 10.506, Merits, 15 October 1996 the Inter American Commission on Human Rights recognised that there were indeed certain legitimate limitations to the right to family life which, "even though they do not suspend this right, inevitably affect its exercise and complete enjoyment" (para. 97). Deeming contact rights as a 'corollary' to the right to family life, it went on to hold that:

Though imprisonment necessarily restricts the full enjoyment of the family by forcibly separating a member from it, the state is still obliged to facilitate and regulate contact between

²⁹ *Nelson Mandela Rules*, Rule 58 (1) and *European Prison Rules*, Rule 24.1 refer to 'friends' or 'other persons', respectively; *Ciorap v Moldova*, 12066/02, 19 June 2007, para. 107; Commentary to the *European Prison Rules* (p. 52) explains that "reference to families should be interpreted literally to include contact with a person with whom the prisoner has established a relationship comparable to that of a family member even if that relationship has not been formalized".

³⁰ *Nelson Mandela Rules*, Rule 3: Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

³¹ LoDiM, 'The quality of prison visits in Myanmar: perspectives of prisoners and their family members'

³² *Nelson Mandela Rules*, Rule 59; see also *European Prison Rules*, rule 17.1; *UN Body of Principles*, Rule 20.

detainees and their families and to respect the fundamental rights of all persons against arbitrary and abusive interferences by the state and its public functionaries.

In *Oscar Elías Biscet and others v. Cuba*, IACHR, Report no. 67/06, Case 12.476, Merits, 1 October 2006, the Commission found that deliberately allocating prisoners far from their family to hamper contact constituted a violation.³³

The experience of family members interviewed for this case study attests to the hardships engendered by the distances they've been required to travel for visits. There exists no further international guidance here despite certain minimum standards having been advocated for by international bodies around the flexibility in visiting arrangements as necessitated by distance.³⁴ Interestingly, the case study indicates that those with shorter sentences were more likely to be placed in prisons closer to their homes.

In elaborating on visitation rights, Essex Paper 3 requires there to be a 'provision of a positive space for the interaction of prisoners with their families'.³⁵ Similarly, rule 28 of the Bangkok Rules requires "an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact" for visits involving children. Here, we are offered the somewhat opaque word 'positive' to understand desirable visiting environments. Like 'adequate' and 'reasonable' this is a very vague specification.

At the European level, some forms of interference to communication such as physical barriers, such as wire mesh and glass cabins, have been deemed unjustified and, therefore, violations

³³ *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (2008), Contact with the outside world: Persons deprived of liberty shall have the right to receive and dispatch correspondence, subject to such limitations as are consistent with international law; and to maintain direct and personal contact through regular visits with members of their family, legal representatives, especially their parents, sons and daughters, and their respective partners. They shall have the right to be informed about the news of the outside world through means of communication, or any other form of contact with the outside, in accordance with the law.

³⁴ CPT has previously emphasised the 'need for some flexibility as regards the application of rules on visits and telephone contacts' for families who live far away: CPT 2nd General Report, para. 51. Lindsey, Mears, Cochran, Bales, Stults, 'In Prison and Far From Home: Spatial Distance Effects on Inmate Misconduct' *Crime and Delinquency* 2017, Vol 63(9) 1043-1065: finds that such costs (distance, time away from work, accommodation and transportation costs) 'may result in substantially reduced visitation and social contact more generally with family and friends' (p. 1058).

³⁵ Penal Reform International and the Essex Human Rights Centre, *Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules* (2017), p. 48.

of the right to private life.³⁶ Oppressive conditions caused by overcrowding and noise have not been meaningfully addressed in international law. It has been observed in this case study and elsewhere that visitors can often feel 'miserable', 'like prisoners themselves', the 'intense and suffocating atmosphere' and a pressurized environment which leads to a 'frustrated tension' between prisoners and visitors having 'negative repercussions ... in maintaining social ties'. Notions of 'pains of imprisonment' as shared by both prisoners and their families and even 'secondary prisonization' of visitors are discussed in the literature.³⁷

'Upsetting effects' caused by restrictions and conditions are evident in the research. The short duration of visits, regularly 20 minutes, is one such challenge. Authorities recognize the common hardships associated with the visiting environment and use them as bargaining chips in exchanges with visitors such as when allocating better locations for visits.

A Final Note

The review and accompanying research papers substantially outline the dimensions of family visits in Myanmar, to varying grades of precision, as well as pointing to aspects warranting further inquiry. While international benchmarks are relatively developed, for example regarding the right to private conversations, this commentary also notes the shortcomings and superficiality found there.

³⁶ *Ciorap v Moldova*, 12066/02, 19 June 2007, § 107: glass cabin that lacked privacy found to be 'far reaching'. See also CPT Portugal Visit 1992, CPT Inf (94) 9, § 147; see also *Moiseyev v Russia*.

³⁷ Rebecca Foster, 'Exploring "Betwixt and Between" in a Prison Visitors' Centre and Beyond', pp. 182, 194 in D. Moran, AK Schliehe (eds.) *Carceral Spatiality* (Palgrave, 2017). Dominique Moran, 'Between outside and inside? Prison visiting rooms as liminal carceral spaces' *GeoJournal* (2013) 78: 339-351.

PART 2:
PAPERS ON PRISONERS' CONTACT
WITH THE OUTSIDE WORLD

CONTACT WITH THE OUTSIDE WORLD: DIFFERENCES IN VISITATION PRACTICE IN DIFFERENT SITES

New Ni Aung

ABSTRACT

Drawing on data collected for a case-study about prisoners' contact with the outside world in Myanmar, this article compares the experience of visitation across four kinds of detention facilities: police lock-ups, court custody, prisons and labor camps. Drawing on personal experience as a lawyer and on interviews with ex-prisoners and their family members the variation in visitation practices is described. Two specific factors are emphasized: the proximity of the prisoner to the visitor's home and whether the prisoner is held in an urban or rural location. Additionally, the attitude of staff encountered by visitors in the different sites is considered. The article illustrates the variation in experiences of visitors at different sites, based on first-hand accounts.

Keywords: Police lock-up, Court Custody, Prison, Labor Camp, Prison visitation.

INTRODUCTION

All over the world people are detained in a variety of locations. In criminal justice systems people are detained and confined at the point of arrest, during judicial proceedings and upon sentence in a range of different places. This article describes and compares some of these different places in Myanmar with specific reference to police lock-ups, court custody, prisons and labor camps with a focus on visitation practices. The article is based on first-hand accounts by prisoners, visitors and lawyers about conditions and experiences related to visits as well as the laws and rules that govern such visits. It describes the different conditions and situations of police lock-up, court custody, prisons and labor camp in urban and rural areas and

addresses the different experiences and difficulties of prisoners and family members with regard to information, transportation, and mental and financial challenges.

The article is organized as follows. Firstly, following some initial background information we describe the four sites, Secondly, we situate the study in relationship to some of the social scientific literature on prison visits. Then we present and analyze data that explores people's experiences of these different sites.

BACKGROUND

In Myanmar, nine types of detention can be identified. These are police lock-ups, interrogation camps, court custody, prisons, labor camps, training schools for juveniles, correctional centers for juveniles, guarded wards, military detention facilities. The material we draw on for this paper allows us only to address the four sites already referred to, that is police lock-ups, court custody, prisons and labor camps but to contextualise the discussion we will briefly characterize the nine types of detention.

Police lock-ups are the place of detention for detainees when they are first arrested. These are the places where suspects are held before being charged to court. Interrogation camps are places used for investigation of particularly serious or politically charged cases such as treason or subversion. Court custody is the place at the courts where a detainee is kept on the day of court proceedings while undergoing trial or sentencing. Prisons are the places where prisoners are held prior to and following sentence. In urban prisons, space is allocated for those undergoing trial and those already sentenced, though in rural areas only sentenced prisoners are held. Labor camps are basic detention facilities where inmates are forced to engage in penal labor as a form of punishment under the criminal code. Labor camps are seen by many as sites of exploitation. Training schools for juveniles are used to contain, care for and control young people in conflict with the law during their court case, prior to sentencing. Correctional centers for juveniles are for the detention of children under sixteen who are convicted of a crime. Guarded wards are secure locations at public hospitals where sick detainees and prisoners can get treatment for injuries or ill-health. And finally, military detention is a place for soldiers who break military rules and regulations. These are under the control of the military.

Some types of detention are easier to access and collect data on than others. The analysis in this article focuses on the four types of detention that featured in our data, namely police lock

ups, court custodies, prisons and labor camps³⁸. Pallot (2005) has mapped out the 'topography of incarceration' and identified the four aforementioned sites as particularly important for understanding the experience of imprisonment.

The right to visit and be visited exists in these places in accordance with the rules and regulations. These are laid out in the Laws of Myanmar and govern who is entitled to visit in each of these sites. For example, the Prison Act and the Burma Jail Manual (1894) section 24, allows for official visitors and non-official visitors as well as visits from family members and friends³⁹. Also, according to the law, lawyers have access to prisoners or detainees in all these sites. Additionally, members of the International Committee of the Red Cross (ICRC) are entitled to meet and discuss with prisoners in the prisons to learn about their situation and any hardships prisoners may encounter and how to assist prisoners in tackling their problems (especially with regard to maintaining contact with family members). The next section examines in more detail the four sites with which we are concerned.

Police lock-ups

Police lock-up is the first point of contact with the system after arrest.⁴⁰ According to official sources⁴¹ in Myanmar there are 15 state police stations, 74 district police stations, over 300 township police stations, over 300 township police camps as well as local, village level police posts. If a person is arrested on suspicion of a crime the suspect is taken to the police station while the case is investigated. He or she is held in the police lock-up. At that time, the detainee can make contact with family or friends depending on the attitude of the police officer and the situation of the case. If the accused person makes contact with their family, the family can get in touch with a lawyer and obtain legal advice. This can lead to the detainee being granted bail or being released from the lock-up on that day. However, it depends upon the nature of the crime. For instance, visitation is not allowed for those who are charged with treason. Formerly, some detainees were successful at making contact with their family only if they paid money. Nowadays, it is easier for detainees to access family members in police lock-ups without paying any money. Police lock-ups are not designed for visits and they are typically

³⁸ The other types of detention centers are worthy of further study but beyond the scope of this article.

³⁹ Burma Jail Manual – 1894, Section 26 (Chapter IV, p-27-28)

⁴⁰ This paper does not cover what might happen to people in police vehicles following arrest.

⁴¹ Phone conversation with senior official at Naypyitaw Police HQ

inconvenient and lack privacy. Family members sometimes have to wait a long time for the chance to meet and they are typically closely watched by the police during conversation. This period of detention is a time of anxiety for both detainees and their families as they face the possibility of criminal proceedings. The accused person can be detained for 24 hours before being charged. There are some differences between the practice of rural and urban police stations. In rural locations, for instance, detainees can remain in the police lock-up during the whole court case, for about one and a half years, and not be transferred to prison as these are mostly located in big cities. According to personal experience, police lock-ups in rural areas consist mostly of narrow cells, lack separate cells for female detainees, are poorly ventilated, are dimly lit and lack privacy; they are not comfortable. The police lock-ups in urban areas are normally wider, well-ventilated, and lighter though still offer little by way of privacy for the detainees and their visitors. In urban locations, detainees are typically held for relatively short periods, for example about two or three days in the lock-up before being transferred to prison where they are held during the trial.

Court custody

Myanmar has one Supreme Court of the Union, 14 State and Regional Courts, 72 District Courts and 330 Township Courts⁴². Township courts are courts with original jurisdiction over criminal cases with penalties of up to seven years, civil cases where the subject matter does not exceed 10 million kyats and juvenile cases. Examples of crimes tried in township courts include prostitution, gambling and assault. Special courts are not individually named in the constitution but appear to be provided for as “other courts constituted by law,” including juvenile courts, courts for municipal offences and courts for traffic offences. These are both courts of original, appellate and “revisional” jurisdiction. District courts have original jurisdiction over “serious” criminal cases for example murder, rape and robbery as well as certain civil cases. State and Regional Courts are courts of original, appellate and “revisional” jurisdiction and have original jurisdiction over civil cases with subject matter exceeding 500 million kyats. The Supreme Court is the court of final appeal for courts except for the Constitutional Tribunal and military courts. Each type of court will typically have holding facilities, known as court custody, where the detainee is held in connection with court appearances.

⁴² Penal Code, Section 20 and 2008 Constitution of Myanmar, Section 293

According to observation data, the quality of court custody varies. For example, the facilities of township courts and district courts are different. The latter are better equipped, especially with regard to the visiting space, structure of the building, lighting, ventilation, sanitation system and so on. In the district courts the visiting space is wide enough for accused persons to be able to meet freely. Conditions are better than in township courts. After being arrested by the police and charged, the suspect must appear in court. When the accused person is in court custody, family members can have physical contact with the accused person by holding hands and giving hugs when they are taken from custody to the court room. The family also has the opportunity to provide the detainee with food. At this time, if a lawyer has been appointed, the lawyer has access to the detainee but there is no private meeting room for either lawyers or families at the court custody both in district and township courts.

The third and fourth place of detention we consider are prisons and labor camps. In Myanmar one can either be sentenced to imprisonment only or to imprisonment with hard labor. This is at the discretion of the judge. In either case, the prisoner will first be sent to prison. Only later will he or she be transferred to a labor camp.

Prison

There are 47 prisons in Myanmar. After the accused person is sentenced by the court, he or she must be transferred to the prison and must abide by prison regulations and instructions. According to the Jail Manual, the prisoner can meet their family once per week. Section 784 (5), states that the time allowed for an interview shall not ordinarily exceed 20 minutes but may be extended by the Superintendent at his discretion. Section 670(9) states that application for interviews should be made on Jail Form No.6. They should take place in the presence of the Superintendent or of an officer deputised by him and conversations should be strictly confined to private and domestic matters. The discussion of political issues is not allowed. Ordinarily, the number of visitors should not exceed two, but an exception may be made at the discretion of the Superintendent if he considers there are special circumstances that call for a relaxation of the rule. Publication of matters discussed at the interview may be treated as a sufficient ground for the withdrawal of the privilege if the Superintendent has reason to believe that such publication has, in any way, been due to any act or omission on the part of the prisoner.

Our data and observations suggest that the structure of visiting rooms is quite different in different prisons depending on whether the prison is situated in a big city or a small rural town. For example, facilities in Yangon and Bago are considerably different. Mostly, the visiting space is narrow, not well-ventilated or well-lit. The visiting rooms are typically just designated

spaces set aside for visits in prison for the prisoners and visitors. They are not purpose built. Prison staff explained to us that they believe it is necessary to be flexible when enforcing rules and regulations about visits. For example, if family members come to prison from areas far away, permission to extend visitation time is sometimes given.

Prisoners who are sentenced to prison with hard labor are later transferred to the labor camp for participation in labor projects.

Labor camp

The final place of detention we consider are the labor camps that carry out operations such as construction of highways, dams, irrigation canals, special agricultural projects, and quarrying. In the past some of these activities were referred to as "New Life Projects," designed to 'uplift the moral character' of the prisoners. According to a report, there are 48 labor camps including 18 stone quarry camps and 30 live-stock and farming camps. Work in the camps is rigorous and prisoners have to work eight hours a day except Sunday. In general, longer visits are traditionally permitted in labor camps. For example, a family member can visit for a whole day and conjugal visits are possible. However, labor camps have been subject to intense criticism because during the time of the military government, the labor camps were notorious for their appalling, life-threatening conditions. But to our surprise some of the interviewees speak positively about them, particularly about the more relaxed regime for visits. The visiting space in labor camp is spacious enough for the prisoners and visitors to meet freely and is well-ventilated. It also allows for privacy though prisoners still endure a life of hardship and toil.

As has become clear above, places of detention vary with regard to visitation practices. One dimension according to which practices vary seems to be location. That is whether places of detention are in urban or rural places. We will return to this later when we analyze the perspectives of prisoners and family members. Firstly, we will present selected literature that looks at the way prisons engender both geographical and social separation.

PRISON SEPARATES

Prisons have traditionally been understood as institutions that separate people from society (see Spierenberg). Goffman, for example, theorized the 'total institution' as "... a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable length of time..." (1961, 11). But scholars have debated the relative

degree of separateness between prison and society (see fx Schliehe). Farrington (1992: 7), suggests a replacement of Goffman's notion of the prison as a 'total institution' with a theoretical conception of 'a "not-so-total" institution, enclosed within an identifiable-yet-permeable membrane of structures, mechanisms and policies, all of which maintain, at most, a selective and imperfect degree of separation between what exists inside of and what lies beyond prison walls.'

Farrington (1992) identified 'points of interpenetration' through which the prison and wider society intrude into and intersect with one another. Baer and Ravneberg (2008) problematize the basic conceptualization of a binary distinction between 'inside' and 'outside', instead positing prisons as 'heterotopic spaces outside of and different from other spaces, but still inside the general social order' (Baer and Ravneberg 2008, 214). While these are astute observations about the societal embeddedness of the prison, we find in our study that there is an undeniable experience of separation by the prisoners, which – to varying degrees - is a feature of imprisonment in Myanmar and that family members invest considerable energy to overcome the separateness and distance between themselves and their relatives, as we shall see later.

Much of the research on prisons has been conducted in the western world, though there is some interesting material on visitation practices that focuses on Russia which highlights the vast distance between family members' place of residence and the place of detention (Moran, Piacentini and Pallot, 2011). Moran and colleagues draw attention to the fact that during trial prisoners are typically held in urban centers but upon sentencing they are transported to penal colonies far away from their places of residence. This creates huge challenges for families when having to plan, make and finance long journeys. The situation is similar in Myanmar.

Pallot (2015) writes that: "sending prisoners long distances to serve their sentences may be understood as punitive, adding to the familiar pains of imprisonment discussed by penal sociologists."

In this understanding, transferring prisoners to a prison which is a long way from their native town can be regarded as a punishment and make the family and the prisoners suffer from the pain of imprisonment. Long and expensive journeys can result in lack of contact between prisoners and their families. Piacentini and Pallot (2012: 12-13) state further that the Russian penal code states that people should be imprisoned in their own region. However, there are in fact many exceptions to this rule. So, while there is generally a consensus that in an ideal world

prisoner would be located within easy reach of their families in practice the situation is rather different.

It is not only Russia and Myanmar where prisoners are held far from their hometowns. In her analysis of American prisons, Christian (2005) observes that:

Geographic separation from family is one consequence of imprisonment. Depending on the state, prisons are often located in remote, rural areas that are far from the urban cores many prisoners come from.

Prisons then can in some way be understood as producing separation. Breen indicates that visitation practices are one means of 'bridging the gap between two very different worlds' (1995, 99). In what follows we look at how ex-prisoners and family members talked about their experiences of bridging this gap and maintaining connections.

RESEARCH CONTEXT AND METHODOLOGY

This article draws on ethnographic fieldwork conducted from June to December 2017. Data has been collected through qualitative methods, such as observation and interviews. Data has been collected in four different parts of Myanmar and includes 75 interviews (43 male and 32 female). We draw mainly on interviews with two family members of former prisoners, one family member of a former political prisoner, five former prisoners – three of whom were former political prisoners, prison staff and a focus group discussion with lawyers. During the field trip, we found that it was sometimes not easy to conduct interviews either because of lack of privacy or because of the bitter experience of the interviewees which made it hard for them to talk. Observations took place in police lock-up, court and court custody, prison and visiting room and labor camps. Some sites were not easily accessible depending on the attitudes and authority of the officers and location of the different prisons.

ANALYSIS - COMPARING VISITATION IN DIFFERENT DETENTION SITES

This section explores the different experiences of visitors at different sites based on their first-hand accounts. We believe that first-hand accounts give us unique insights into the issues under consideration. The section features comparison of different sites of the same type and of different types of site. It also features the perspectives of different actors experiencing the same sites from different perspectives.

Family Visits

In order to learn about the experiences of different actors we interviewed a range of people representing different categories, for example, a daughter visiting her mother, and the mother receiving visits from her daughter, families visiting political prisoners, families visiting criminal prisoners and so on. The interview data casts light on the experience of people in different kinds of detention as well as on the variation across the same type of sites.

1. An interview with a Family Member (Daughter) & Ex-Criminal Prisoner (Mother)

This is the account of a woman who has made visits to her mother in four different types of detention and of the mother's experience as a receiver of visits. The daughter speaks of the conditions and hardships associated with visiting her mother in each location. Her mother was sentenced to two and half years imprisonment under the Gambling Act. This took place during the period of the Government of President U Thein Sein, that is, during the transition period from military authoritarian rule to democracy in 2010.

The interview was conducted in the woman's house which was under construction. She warmly welcomed our interview about her visitation experiences. During her mother's incarceration in 2012, she visited her mother at the police lock-up, court custody, prison and labor camp.

Firstly, the interviewee told us about her experience of the visitation in the police lock-up, which was a small, smelly and dark room about ten feet wide that she shared with seven other detainees. There were many mosquitoes and she complained that it was not good for the detainees' health. Both visitors and detainees felt miserable. The mother described how as an accused person, she felt shameful and anxious at the police station. Time for visiting was limited to 15 minutes each day and there was no opportunity for the daughter to be alone with her mother. Certain items were prohibited, for example, detainees had to eat with plastic spoons rather than metal. At the police lock-up where her mother was initially held there was no cell for women only. Therefore, she was transferred to another police lock-up in the region where there was a cell for women only, she said. Her mother emphasized that there were more opportunities for talk and physical contact.

In contrast to the police lock up, the court custody was more convenient with opportunities to communicate through windows in the wall of the cell and to interact when the mother was moved back and forth between custody cell and court room. However, at the court there was no formal separate room for female detainees so she was held in an unused, empty section of the custody area.

The procedures associated with visits to prison were described in detail. On arrival prison staff noted the visitor's National Record Card Number and she paid 1000 kyat for registration charges. She described how if she bribed them with more money, she could get a visit for about 15 minutes longer than normal.

The daughter described how her mother would be searched before and after visitation and that female prisoners had to wear white blouses and brown longyi at visitation time. Visits were organized such that groups of 5 prisoners would meet with their visitors at the same time in the same room; they were closely monitored by staff.

The first experience of visitation is very difficult, she told. On one occasion she was prevented from visiting her mother due to a visit by government officials. Every day the daughter would deliver food to the staff for her mother and the staff would give it to her mother, though visiting was only once per week on Wednesdays. She felt sorrowful to see her mother in prison uniform behind iron bars but felt relieved that they could talk during visits. During the visit they were kept two feet apart separated by a double wire fence.

With regard to visits received in prison, the mother described the narrow and overcrowded visitation room and the small bench she and other prisoners sat on. It was noisy, it was hot, and there was no privacy. Sometimes they had to listen to each other very attentively to hear the full conversation. Female prison staff were standing around listening attentively on the prisoners' side. While visitors were not closely monitored, prisoners were.

At the labor camp, a quarry camp where prisoners were breaking stones, closer contact of longer duration was possible. But visits were difficult due to long distance between the home of the daughter and the labor camp which took a whole day's journey. Like in the prison, at the gate, the family member had to give the prisoner name, visitor NRC Card and family list. But, in contrast to the prison there was opportunity for private interactions, enjoying food together and they were not obliged to pay any fees. However, money did sometimes change hands. For example, if the prisoners bribed the staff they would be allowed to stay upstairs rather than downstairs. The upstairs cell is wider, well-ventilated and less populated than that of the downstairs. The daughter also shared how in contrast to the prison where her mother slept uncomfortably on three planks of wood, at the labor camp she had sufficient space and more opportunities for fresh air and movement. During the interview, the daughter explained that she preferred the labor camp where her mother could move around more freely, and they could have visits as often as they wanted.

From the perspective of the prisoner, the mother, family visitation at the labour camp was more comfortable. Visitation time was three hours and the family could visit once every week. Even though they felt tired from the physical labor at the camp the prisoners were happy as they could have visits with their family.

This account documents some of the experiences of a mother and daughter as the mother moved through the criminal justice system. We get a sense of the fact that the same places can be experienced in similar and different ways dependent on one's position as a visitor or prisoner and one's state of mind.

2. An interview with a Family Member of a Political Prisoner

Here, I would like to highlight the experience of a relative of a political prisoner. The events took place during the time of the military regime when there were many political prisoners. In this case, the political prisoner died in prison after five years of imprisonment. Unlike the preceding analysis that compared different types of detention, this account features descriptions of different facilities in four prisons. Mostly prisons in the big cities are crowded, lack privacy, adhere to strict rules and regulations and have limits on visitation time whereas in prisons in small towns there is more privacy, flexibility, better ventilation system and so on. Furthermore, the reasons for the visits, which made a difference to the way they were experienced, are also revealed below. Some visits were supported by outside agents such as ICRC.

I met the sister, mother and brother of a political prisoner at their house. They expressed deep sorrow about their prisoner's death in prison and the women cried at the end of the interview. They were poor, and their house was small, dark and hot. The political prisoner, respectively son and brother of the family members, was sentenced to ten years imprisonment as a political activist charged under the Emergency Law, section 13(1) and Unlawful Association Act 17(1) in 1998. Before his sentence he was detained in an interrogation camp. The family did not get a chance to visit him and did not even know where he was before he was given the sentence and transferred to prison.

They described their first visit to Insein prison. First, the family members had to fill in a visitation form and present an original version and a copy of the House Hold List Record Card, as well as originals and a copy of their National Identity Cards. After submitting the documents, the prison staff checked the food parcel and two hours later, with sorrow and worry, they had their first visit. The prisoner came out handcuffed, wearing a black mask closely supervised by three

staff while some other political prisoners were wearing foot shackles. Visitation time was only 15 minutes and the family did not experience this as adequate. There was no privacy. The room was only 10"x5"x15" There was a foul smell, it felt so hot, they couldn't see each other clearly or even touch each other, not even with a finger through the fencing.

The family described to us the long journey they had to make once their family member was transferred to another prison. They were informed about the transfer by ICRC who supported their subsequent travels. The first journey took them about 2 hours, second 12 hours, third 6 hours, fourth 14 hours and final 8 hours. It took them about 42 hours in total for the whole journey by different means of transport which did not include the waiting time for motor boat, trishaws, and motor bike for transit. It was a trying 3-day journey during the rainy season. When they finally arrived, the space for visits was 10"x10"x20". It was a wooden building and was more comfortable than Insein and the prisoner and family members were able to talk without having any guards nearby. They could breathe fresh air, the environment was cleaner and they said there was no corruption in this prison. The prisoners were free, more relaxed and happier and the family members shared that feeling. Visitation time was 40 minutes though on one occasion they were unable to access their relative due to government official visitation.

The family visited another prison three time but under tragic circumstances. These visits were also supported by ICRC. When their relative got sick and was admitted to the prison hospital they were able to visit him there. At the prison hospital, the doctor checked all the foods. They had no freedom because the officers always monitored them closely. The hospital room space was neither wide nor narrow and they experienced the bad smell of medicine. The gate was made of brick and iron and five feet in height. And the roof was made of zinc. They saw him once in the hospital and a second time at the superintendent's office. This prison offered the best communication between the staff and prisoners or family members and visitation time was allowed for 2 or 3 hours in special situations, depending on the attitude of the superintendent.

Following yet another transfer, a trip to yet another prison was also supported by ICRC. Family members had difficulties finding accommodation so they had to stay in a monastery eight miles away. The prisoner could not get the medical treatment he needed for a minor though painful disease although the superintendent did give him some medicine. But, the prisoner's health became worse day by day and he was admitted to the public hospital. His minor health issue developed into something serious because of lack of treatment and in the end even caused

his death. They felt sorrowful. In the public hospital, the prisoner was guarded by police rather than prison staff.

This account reminds us of the fact that health care in prisons is often inadequate and can have tragic consequences. If he had been in a prison closer to home could his death have been avoided?

3. An interview with an Ex-Political Prisoner

Not all political prisoners experienced prison in the same way depending on the different family background and their personality. Our next account concerns a relatively privileged political prisoner from the upper and middle region of Myanmar who was able to get visits even when in solitary confinement and to receive adequate medical treatment from the physician inside the prison. He was arrested in 1988 during the 88 uprising when Myanmar was under the control of Revolution Council led by U Ne Win who was the former Prime Minister and during the transition period from State Law and Order Resolution Council to State Peace and Development Council. He spoke proudly of being a prisoner and told about the privileges he was granted due to a good relationship with the superintendent. His granddaughter was playing near us and he looked at her sweetly and with kindness. He shared this story about his experience of visits:

In the police lock-up, he explained he could receive visitors at any time except during the 6 pm evening line up security meeting. He freely went to the hospital for his health and hardly attended the public court but just only the military interrogation camp during the period of 1997.

While in police lock up he had easy access to visitors, at the prison it was more difficult. On one occasion he complained his family member had to wait for 4 hours to meet him. Visitation time was only twenty minutes. The room was hot, dark, noisy and typically contained 20 prisoners at one time. The room was divided by two layers of wire netting spaced about 36 inches apart. In the next prison he was transferred to, he was able to receive visits from his family while in solitary confinement by giving money, as visitation is not officially allowed for prisoners in solitary cells. His wife was brought through the main jail by a member of staff where she met him in the solitary cells. They could not talk freely as there were staff nearby. Had they wanted to talk freely, they could have paid more money. The solitary cell where he received visit from his wife was quite narrow. His wife had to pass through two iron barred doors and down stairs to access the solitary cells. He was not able to access medical treatment outside the prison but he was tended to by a physician and had access to an ECG machine

for his coronary thrombosis because of a good relation with the prison superintendent. It seems as though the relationship with staff is crucial for receiving the kind of good medical treatment that this prisoner had, compared to the delayed treatment leading to death of the former.

The former case was 10 years earlier than the latter and took place in different prisons. Thus, the differences can also be due to changes in the prison system or differences between the prisons they were imprisoned in. The two cases do however illustrate vastly different health outcomes.

4. An interview with a female Ex Criminal prisoner and Family Member

Our next account concerns a woman who was herself released from prison in 2007 after serving 2 years under the gambling act. Further, her brother was also arrested on a drug charge in 2017. This allows for a comparison across time even though from different perspectives as a prisoner and a visitor.

The interview took place in her home. The floor was not covered so we felt cold as it was raining at the time. She was sad about her family circumstances, but she shared her experiences, both as a former prisoner and as visitor to her brother. She stated that at the Police Station, there had been no female lock-up room and female detainees had to stay in an unused section of the police lock up. The space was quite wide and the height was 15 feet. The room consisted of three solid walls. The front of the room was made from iron bars from floor to ceiling painted black. A small gate about 3 feet high in the bars allowed access to the room. A toilet made of brick with a drain was inside the lock-up. The detainees could bathe with a bucket in the same place. The condition of the room was rather poor and there were many insects, she explained. Visitors do not enter the cells. They speak with detainees through the bars. They had to talk loudly with their visitors as the distance was 5 feet between them in the police lock up.

After telling us about the condition of the lock up, she mentioned how male and female detainees were transported together to prison in the police truck. She told us how on arrival at the prison she felt depressed and disoriented. She worried about her child on the outside and how she would survive on the inside. Under such condition she explained the prisoners would comfort each other.

At the prison where she visited her brother, the visitation room was a narrow brick building divided by two layers of wire mesh about ten inches apart. Physical touch was possible through the mesh. The part of the room reserved for the visitor is larger than the part containing

prisoners. Sometimes more than ten visitors would be present. As in other prisons, entry procedures involved presentation of identity documents. A 500 kyats fee was levied for each visitor.

During her imprisonment, she passed every single day in prison with anxiety, inconvenience, and found it pretty difficult to meet her visitors since she sometimes would have to wait for long periods. When she met her brother in prison as the visitor, she felt that everything was quite alright to have the visitation except the sorrow she felt for her brother.

5. An interview with a Criminal Prisoner from an Ethnic Armed Group

The interview was scheduled with a husband and wife together to get the experience of a member of an ethnic armed group in DKBA. During the interview, sometime the husband shared about his experiences and sometimes his wife participated in conversation. He was arrested for illegal association and crossing the border illegally in 2016 and sentenced to three years. He and his wife said that in the prison he stayed in, the visitation room was divided by wire netting and glass. Here the prisoner and the visitor had to talk via a phone that did not always work very well and so, they sometimes faced problems with communicating. The room was 4"x7" and when seven prisoners were crowded in, it was full of noise. The time for visitation was only 10 minutes and if there were many visitors, it could even be less. One time when a family member of this prisoner came for a visitation from far away, they could not get visitation time longer than the allotted visitation time though they were willing to return on the same day because of the insufficient visitation time. Main problems identified were the allotted time, bad technology and the wasted time for checking and searching on both sides. The interviewee mentioned that access to visits was unequally distributed depending on the kind of crime the prisoner committed. He also told us that for 7000 kyats special visitation arrangements could be made where physical touch was possible such as holding hands and hugging.

Above we have considered various aspects of prison visits seen from the perspectives of prisoners and their families who visited them. The first account was about four sites of detention seen from the perspective of a visitor and a prisoner. The second was a tragic story featuring some of the pains associated with geographical separation over long distances. The third teaches us about positions of privilege that can be attained within prison and how these affect contact with the outside world. The fourth expresses some of the anxieties associated with being a visitor and a prisoner, and the fifth illustrates the introduction of new technologies while problems related to space persist.

CONCLUSION

Our data shows that the experience and quality of visits varies across different types of detention. Police lock ups generally do not have visiting facilities. There is no sanitation, lack of space, not enough ventilation, or privacy and so on. But they are relatively easy to access, documents are mostly unnecessary, food can be provided to the detainees and discussion with the lawyer had privately. In the court custody, the power of legal attorney can be given by the accused person to a lawyer. Visitation rooms in general have more space, fresh air, and food supply and prisoners can have physical contact with family during the trial. When it comes to prison, differences in visitation procedure, time, space, ventilation system, strictness in adhering to rules and so on can be discovered depending on whether the prisons are in remote or urban areas. The rules and regulations governing duration of visits are strict in some prisons but flexible in others. In Labor camps, prisoners have access to conjugal visit at the convenient time both for the prisoner and family member and they can have fresh air, space and also privacy. Political prisoners encounter different situations depending on the political situation. We have noted that while there are rules and regulations governing visits in different sites that the discretion and attitude of staff is highly important. Obstacles to good visits include difficulty in transportation, expense and not enough visiting time in some institutions. If the prisoner gets along well with the staff, an officer of the prison and other inmates and is accustomed to the prison system, the prisoner can live relatively conveniently in prison and maintain contact with family.

This exploratory paper has uncovered some of the dynamics of visits pertaining to different types of detention facilities. There is still much work to do to understand these dynamics fully and from multiple perspectives. We observe marked differences in visitation practices in rural and urban areas and between different places of detention. Conditions vary greatly in terms of ventilation, sanitation, visitation time, available space, level of privacy, adherence to rules and regulations, food supply, levels of corruption, light, attitude of the staff etc. This paper thereby offers an important perspective, informed by people who have themselves experienced visits, that increases our awareness of the different practices of visitation in Myanmar and their consequences for prisoners and their families.

THE VALUE OF PRISON VISITS: AN INVESTIGATION OF THE FACTORS AFFECTING THE QUALITY OF PRISON VISITS IN MYANMAR

Aung Lin Oo

ABSTRACT

Family visits are of vital importance for prisoners struggling to maintain ties to family during their incarceration. They are also considerably important to family members who invest their resources and endure considerable hardship to conduct visits in order to maintain relationships. The quality of visits is affected by multiple factors. This article explores the perspectives of prisoners and family members on visits to map the factors affecting the quality of the experience. Attention is drawn to restrictions on space, time, and privacy, which can affect the quality of the visits. Drawing on data collected through observation and interviews, the article emphasizes the value of visits for maintaining meaningful relationships as it explores the ways in which prison visits are experienced and the challenges involved.

Keywords: experience of visit, Myanmar, visiting time, visit rooms

INTRODUCTION

Prison visits are of significant importance to prisoners and their families as they struggle to maintain a relationship. This is true universally. In some countries, prisoners simply would not survive without prison visits since family are the only source of material and moral support. Often family members invest considerable time, energy and resources to travel and bring foods and necessities to their loved ones in prison. This article sheds light on some of the challenges facing family members and prisoners as they seek to maintain a meaningful relationship.

The maintenance of meaningful relationships is thought to have positive effects on later social integration and to have positive effects on prisoners' mental health and well-being. To survive and stay healthy prisoners need human contact that is more than just fleeting or incidental. Rule 44 of the UN Standard Minimum Rules for the Treatment of Prisoners emphasizes that

contact must not be restricted to interactions adopted by prison routines, the course of criminal investigations or medical necessity.

This article is inspired by the work of three prison scholars who have written about this topic in contexts quite different to Myanmar, namely in Scotland, the United Kingdom and Russia. These studies offer a useful point of comparison. Despite obvious differences between these countries and between them and Myanmar our analysis reveals striking similarities at the level of experience for both prisoners and their families.

Prison visits have not previously been subject to empirical study in Myanmar. Our analysis is based on face-to-face interviews exploring the first-hand perspectives of family members, ex-prisoners and a prison superintendent. It contributes to deepen our understanding of the factors that can obstruct the maintenance of a meaningful relationship between prisoners and their families.

The article is divided into five sections: introduction, literature review, method, analysis and findings and a conclusion.

LITERATURE REVIEW

Previous literature has considered prison visits as having positive effects on prisoners in terms of reducing re-offending, supporting social bonds, and improving social reintegration after prison (Duwe and Clark 2011; Cochran 2014). Prison visits that maintain social ties between prisoners and their families have been shown to improve prisoners' behavior and mitigate against the pains of imprisonment (Siennick, P. Mears and Bales 2013). Recently, scholars have emphasized the interconnections between inside and outside of prison, but little is so far published about the Myanmar context. In Myanmar, prisoners would struggle to survive in prisons if there is no such connectedness, for family members bring medicines, foods, and other materials to prisoners, during their incarceration (Aung 2014). The literature suggests, as we shall see, that there may be universal challenges to the quality of prison visits. These include limits on space and time as well as issues related to privacy connected to the fact that visits take place under close supervision and surveillance. These themes emerge in the work of Moran (2013), Foster (2017), and Hutton (2016). Before presenting the data from Myanmar, we will attend in some detail to their analysis of visits in Russia, Scotland and England.

Moran and others conceptualize visiting rooms as liminal carceral spaces. That means 'specific spaces of betweenness' (2013:342), where 'prisoners come face-to-face with persons and objects which come from and represent their lives on the 'outside'' (ibid.:339). Moran explains how the term "liminal" comes from the Latin *limen* meaning boundary or threshold. The visiting room is thus a boundary that mediates the relationship between prisoners and their visitors in quite specific ways and is therefore a highly significant space. Moran (2013) explored the way visiting rooms in Russian prisons were 'in-between' spaces by paying attention to the way identities were destabilized in this space. In Russian prisons, like in Myanmar, visitors must bring identification documents which certify their own identity and their relationship to the visited prisoners, such as their passport, marriage certificate, or proof of guardianship for any children. In Russia, visitors have a right to short visits and long visits. Short visits allow visitors to come face-to-face with their incarcerated relative, yet sometimes, they have to speak through a plexi-glass screen and their visiting time is limited. The fact that visiting rooms are small and able to hold only six pairs of prisoners and visitors creates logistical difficulties. Long visits normally take place in a visiting hostel, where visitors stay together with prisoners in the same room for several days. These hostels provide several rooms such as shower rooms, TV rooms and the like, where visitors and incarcerated relatives can enjoy cooking, eating together, sharing accommodation over several days and watching TV. In these facilities, incarcerated people are able to briefly suspend prison life as they share time, space and emotions with their visitors. Rooms for long visits feature comfortable and supportive spaces that enable the prisoners to experience family time with their loved ones. They enable prisoners and their family members to re-engage each other during the time of incarceration. The rooms for long visits are deliberately designed like a "domestic environment" (ibid:344). They offer important opportunities for prisoners and visitors to re-engage with each other in order to maintain a meaningful relationship.

Foster's (2017) analysis of visiting facilities and practices in Scotland also shows how family members invest "a great deal of time (as well as expense and emotional labor)" in order to maintain relationships. Her primary research focuses on a prison in Scotland's capital Edinburgh where as well as visiting rooms for the meeting between prisoners and visitors, there is also a special center designed to make the experience of visiting less stressful. According to her research, visitors can enjoy visiting facilities and support from the visitors' center, before visits themselves take place in visiting rooms. The center is located in front of the prison near the car park but separate from the prison. The visitors' center provides lockers where visitors can store their valuable properties and identity checks are performed there.

Furthermore, there are two places for children in the visitors' center: areas for indoor and outdoor play.

There are no designated visitors' centers in Myanmar, but some prisons have small recreation centers, where visitors can watch TV and wait before meeting their prisoners. Some families are assisted by the International Red Cross (ICRC) who provide transportation costs to poor family members. According to International Red Cross report, some recreation centers in prisons are under construction in collaboration with Myanmar Prison Department.

When visitors arrive at the visitors' center in Scotland, staff check the list for the respective meeting and send this information to the prison reception desk. This process usually takes 15 minutes or more. Prison staff usually announce the visitors' name over the loudspeaker when it is their turn to go and meet the prisoner in the visiting room. By doing so, visitors can start the meeting with their prisoners on time and feel relax and comfortable during prison visitation. According to Foster the actual encounter in the visiting room can still prove challenging. Movements of prisoners and visitors are strictly restricted. For instance, they are not allowed to hug each other or share food. In addition, the fact that there are surveillance cameras and prison staffs in the visiting rooms restrict the possibility of having relaxed private conversations. Thus, despite relatively comfortable visiting centers, the visiting rooms in the prison remain as barriers to prison visits undermining the opportunity to maintain strong relationships. She argues that prison practice in general weakens meaningful relationships, even when efforts are made to support visitors through the centers. To put it simply, visitors spend a lot of energy on planning, travelling, waiting and going back to their home but the basic conditions of visits, the surveillance, control, and restriction of movement that family members are subject to makes the painful experience . Rather than being a time when the prisoner temporarily suspends prison life (as during long visits in Russia) it is, according to Foster, a time when the visitor is temporarily subjected to the prison life. They experience what she terms secondary prisonization. Visiting rooms were described as 'horrible' as visitors were 'forced into a position of subservience in relation to the prison' (ibid 170). The strain and stress of visiting rooms thus caused visitors long-term emotional conflict even after leaving the visiting rooms and heading home. Foster's account of the experience of visits in Scottish prisons in many respects resemble the experience of the visitors we interviewed. Myanmar and Scottish prisons are clearly very different, yet they are experienced in quite similar ways.

Hutton's analysis of the visits in the United Kingdom (2016) explores what she calls "the inherently problematic nature of the current visiting practice reflecting on the restrictions placed

on prisoners and families". She highlights the importance of the quality of interaction between visitors and prison staff. Focusing on two prisons, Hutton observed prison staffs' contempt for and control of visitors. Some prison staff act kindly and supportively but delays, being treated with suspicion and subject to surveillance and watched as if they were drug smugglers caused emotional guilt and was unsettling for visitors. In addition, prisoners are not permitted to move from their seats and hug or touch their visitors and children during prison visits. These restrictions on physical contact and movement have negative impacts.

In what follows, inspired by Hutton's focus on restrictions, I will describe three key restrictions on prison visits in Myanmar as described by family members and prisoners. These relate to space, time and privacy. Restrictions on space, time and privacy, it will be argued, undermine the possibility of maintaining meaningful relationships. But first a brief comment on methodology.

RESEARCH CONTEXT AND METHOD

Data for this article was collected over the space of 3 months using an ethnographic approach. This included observation in 1 prison, 1 labor camp, 4 court custodies and 74 interviews. The research team deliberately chose four locations in Myanmar, where interviews and observations were feasible. During field trips, four researchers were divided into two groups and one acted as a supervisor. Interviews were conducted with 17 family members, 41 ex-prisoners, 4 detainees and 1 superintendent, all between the age of 24 to 74. The research team also conducted informal and ad-hoc meetings with prison superintendents and judges. Field notes were written during all field trips and interviews were recorded, transcribed and analyzed thematically. Initial thematic analysis of data suggested that crowded spaces, short time and lack of privacy weaken the quality of prison visits. This analysis inspired me to further examine the quality of prison visits, with particular reference to space, time and privacy.

PRESENTATION OF DATA AND ANALYSIS: PRISON VISITING ROOMS IN MYANMAR

Interviewees describe two kinds of visiting facilities, one that features a wire mesh through which prisoners and visitors speak to each other and another that features a glass window through which people communicate. Typically, for every visit families bring their national identity cards and household list for security check. After they have been approved, prisoners and their visitors are allowed to meet in a visiting room. Such spaces are of great importance

for the maintenance of a meaningful relationship. According to our interviews, as we shall see below, the space for visits is typically noisy and crowded which means that prisoners and visitors can have difficulty locating and hearing one another in the room. The duration of visits is short even though family members are often obliged to spend a huge amount of time on travel and admittance procedures. Furthermore, visits are closely supervised by the prison authorities and privacy is limited. These issues create huge impediments for prisoners and their families in maintaining meaningful relationships.

Restrictions on space

Interviewees identified two types of visiting rooms, ordinary rooms and special rooms. Ordinary rooms, where prisoners and visitors meet under often crowded conditions, are types of official rooms. In contrast, special rooms, in which wealthy and privileged prisoners and visitors can meet, are unofficial. Prisoners can receive moral and material support through visits, yet the official visiting rooms present a lot of challenges to visitors. I interviewed one family member, a 40-year-old woman, at her home concerning her experiences during prison visits. Her husband was arrested for political reasons and she told me:

At first, I did not know where my husband was arrested. After a few days, I was informed where he was arrested and detained. Then, I went to the prison. In the prison visiting room, I and my husband met and talked each other through double wire fence... The place was so crowded that I couldn't make out what my husband was saying from time to time. At the time, my husband was suffering from heart disease and he, finally, was admitted to the prison hospital. I could see depression written all over his face when I met him. And then, I assured "Don't worry about me and your daughter". Before leaving his prison, I gave foods and other materials to him so he could go through the tough situations well while incarcerated.

In this case, the visiting room did not have enough space for prisoners and visitors to meet each other. The wire fence imposes restriction on physical contact making it difficult for them to connect. In addition, she and her husband mutually worried about each other. Physical restriction and crowded visiting rooms are clearly challenging to prisoners and visitors.

Myanmar prisons generally hold more prisoners than they are designed for. According to the World Prison Population list, despite its capacity to hold 26,100 prisoners (not including labor camp), the prison in Myanmar is holding 600,000 (Walmsley 2013). This is likely one reason it

is necessary to crowd so many people together in visiting rooms. The combination of too many people and too little space results in less than optimal conditions for visits. The superintendent of one prison explained:

The previous visiting rooms were so cramped that it was impossible for visitors and prisoners to hear each other for everyone in the visiting room was talking at same time. Consequently, they were required to utilize a lot of energy on their conversation and ended up in exhaustion at the end of the conversation. Therefore, I changed the visiting room from the wire fence room to the glass one. Now, prisoners and visitors can talk to each other through the glass.

The superintendent depicts himself as a modernizer replacing the wire fence with a glass window and understanding how visiting rooms have negative repercussions on families and visitors. During the prison observation, we visited the new visits area with him. The room was L-shaped and divided by glass between visitors and prisoners. Prisoners and visitors can speak through the glass but there is no hole in the glass and no phone available, yet their voice can be heard over the glass. From the superintendent point of view, it is progress, but he did not know whether visitors and prisoners enjoy speaking through the glass or not.

In some cases, some wealthier prisoners have the possibility to access special treatment related to prison visits. If they pay money to prison staff, they can receive their visitors in special visiting rooms and avoid the crowded visiting rooms. My colleagues and I came to a tea shop and interviewed an ex-prisoner about his incarceration experiences. He described how visitors and prisoners dealt with challenges during visiting time. He said:

Sometimes, there were many visitors and prisoners in the visiting room. I spoke loudly with my wife and the visiting time was very short. When time was up, my wife had to bribe some money to prison staff. After a few months, I was appointed as a (prisoner) Tanzi⁴³. I was able to enjoy special privilege to meet my wife in the special room, which was the superintendent's office. Since then, my family members who came to visit me were not required to experience the cramped visiting room again.

⁴³ A Tanzi is a prisoner elected by the prison authorities to maintain order among the common prisoners in the prison. As a result, prison authorities give them special treatment when it comes to prison visitation.

This case demonstrates that prisoners with access to resources (money, for example) or the ones who are able to win the trust of the authorities and attain a high position in the prison hierarchy, can have more chances than other prisoners to come face-to-face with their relatives in special rooms. Money can buy privileges that ameliorate, to some degree, the hardship associated with visits.

Many prisoners in small spaces can generate body odors that annoy and upset visitors. The situation made prisoners feel embarrassed as well. The atmosphere can easily become intense and suffocating, when many people are crowded in a small space under pressure. During a visit to a court custody, I witnessed a noisy place where many visitors were standing and talking loudly with the detainees through barbed wire. It seemed that it was difficult to communicate with each other in this noisy crowded place. As I entered there, I saw some prisoners standing behind bars and talking with their visitors. The visiting space was too hot. It was not ventilated. Detainees and visitors were sweating profusely. Some visitors were sitting fanning themselves and some were breathing in headache relief through an inhaler. Consequently, they could no longer talk with their detainees even though they were allowed more time. The conditions of the visiting room impeded the maintenance of a meaningful relationship. I could not fully understand the visitors. I too could not stand the detainees' body odor smell and I immediately felt suffocation and headache on arrival. I could not observe for long even though the police officer would have allowed me more time. My experience was also shared with another interviewee. At the tea shop, I interviewed him. He was arrested for protesting against the government in 1990. He explained how he quarreled with his brother regarding body odor in visiting suites:

"My father and brother visited at my prison. At the time, there were many prisoners in visiting rooms. My brother tells me that " I can't stand bad smell like body odor from you and other prisoners that are annoyed to me". After he said that, I suddenly feel very angry and sorrowful. I shout at my brother "You don't need to come here again". I cry to my father "My brother doesn't understand how prisoners dealt with this situation."

In this matter, the unpleasant smell from the crowded visitation room was difficult for visitors and discouraged them from visiting in the future because of the unpleasant smell from crowded visiting rooms. Consequently, visitors and prisoners feel depressed, unhappy, nervous, and embarrassed after leaving the visiting room. The uncomfortable visiting rooms and nervous atmosphere potentially contribute more to creating psychological problems for visitors and prisoners than to the maintenance of a meaningful relationship. This situation leads to

frustration and tension between prisoners and their visitors. In some cases, prisoners and visitors share the same emotions regarding their unpleasant prison spaces. Therefore, it can be concluded that crowded visiting rooms have negative impacts on prisoners and visitors.

Restrictions on time

The three scholars referred to earlier all emphasize visit rooms as liminal carceral spaces and draw attention to the negative effects of surveillance on visitors and their prisoners. But they do not reflect so much on time restrictions which is a dominant theme in our interview material.

Even though visitors spend a lot of time and money to visit their relatives, especially in remote prisons, they experience delays and get a short visiting time which results in them feeling upset and frustrated. My colleagues and I went to an ex-prisoner's family home and interviewed a woman, whose brother was arrested in 1988 and died in prison after 10 years. She explained with tears streaming down her cheeks:

When my brother was incarcerated in the prison, I had a lot of challenges regarding prison visits. I and my family were not rich. I had to take a financial support from International Red Cross to visit his prison. His prison was far away from my hometown that I first took a bus and continued the journey with a ship then boarded a plane to arrive at the prison. Upon arriving at the prison, I was already exhausted. Moreover, I had to wait for three hours before prison staff announced my name. Sometimes, I couldn't go anywhere and did nothing before the announcement of my name, even though I was starving. During visiting time, I and my brother often quarreled each other over these awful situations.

Visitors come from remote areas spending a long time and investing physical and mental energy in the maintenance of the relationship. Short visits are thus specially challenging. This is one factor that leads to psychological strain and impedes the connectedness of prisoners with their relatives.

According to Section 794 (5), Jail manual (1986), the superintendent can allow no more than 20 minutes to prisoners and visitors. Additionally, he has a wide power to reject visitors if they do not comply with the Prison Act and its regulation. The standard entitlement to 20 minutes of visiting time can be extended and wealthy and privileged prisoners can have more visitation time than poorer prisoners if they pay money to prison staff. Interviews suggest that time allocation is partly at the discretion of the superintendent. Sometimes, a superintendent will

give more time than the time allocation stipulated in the Jail manual. One superintendent explained:

Sometimes a lot of prison visitors are waiting outside the prison. I am aware that they have come from a very far place to make the visit. So, although the prison visitors are entitled only 20 minutes, I give them more than allowed time for I want to make their visits worthwhile.

In this situation, the superintendent recognized how prison visits are important and how limited visiting time is. Hence, the superintendent sought to make the trip of the visitors worthwhile by extending visiting time.

Spending time together is essential if social bonds are to be maintained. The limitations on time are a problem. Our research team, for instance, observed the court custody. I saw many visitors' talking with their prisoners through the barbed wire and some staff shouted at some visitors to halt their conversation due to the fact that the meeting time was over. But visitors could not stop their talking. Eventually, the police drove them out from the court custody. The limited time allocation is thus a stumbling block to maintaining strong relationships.

I interviewed an ex-criminal prisoner at her home. She was incarcerated under the gambling law because she played illegal two-digit lottery. She told me that she was frustrated about visiting time:

I had stayed in these two prisons and a labor camp during incarceration. In the two prisons, I was all right except the fact that I did not have enough time to meet my family members so that I spoke so fast within time allocation. Compared to the labor camp, I had more time to talk with my families.

In this account, she explains how time was a precious thing necessary to maintain the relationship with her family members. Yet, she had not enough time so she had to speak unnaturally quickly before the time allocation was over and she felt annoyed about her time allocation, even though she was at ease in different prisons. This is another example of how the limitation on time allocation has negative impacts.

As already mentioned, extra visiting time can be bought from prison staff during prison visits. With my colleagues, I visited the home of the family of a prisoner and interviewed a family member. She said:

My brother is still in the prison. I worry about my brother who feels stomach pain. My brother can't stay alive if I don't support him so he is always concerned about if I don't come to him regularly. However, I am not a rich person and do not have enough money to buy foods and other materials for him so that I am not able to meet as usual. During prison visits, I see a lot of prisoners in the visiting room and I feel so hot and do not have time because of crowded prison. Anyway, visitors can get more time to meet their prisoners if pay money to prison staff.

Her description shows that visitors invest a lot to manage family visits and to maintain relationships. But they experienced a lot of challenges. Thus, on top of the expenses for transportation and material goods for the prisoner, the visitor has to add a bribe to extend the visitation time. These expenses potentially put strain not only on the visitor but also on the relationship itself.

Sufficient time allocation is of great importance for a supportive relationship. Spending time together enables prisoners and their family members to maintain a connection and reciprocally encourage each other. However, prison staffs' attitudes and short time allocation can have negative results on the emotions of prisoners and visitors.

Restriction on privacy

Prisons typically feature high levels of control and supervision. This extends to the realm of visits and is one of the ways in which visitors are subject to the effects of prisonization. According to section 784 (3) of the Jail manual, it is forbidden to talk about politics during prison visits. For people arrested for overtly political reasons, for example for fighting for democracy or against the state this is particularly frustrating. But the same mechanisms of control exist for all prisoners. Having conversations monitored by an outside party in a position of authority is considered an awful and invasive experience. The restriction of privacy is an obstacle to maintaining a normal relationship. The sometimes humiliating experience of being subject to body searches and having ones possessions scrutinized can also be something preferably avoided. When I and research team members visited the prison, I noticed many family members waiting and lining up at the gate and being searched and having their bags scrutinized by prison staffs. The processing and organising of bodies that is a characteristic of prison life extends to the families of prisoners when they visit. According to interview reports, political prisoners and their visitors are closely watched by prison staff during prison visits. Even though they have already been checked at the prison gate, their private conversation is

listened to and recorded in prison staffs' note book while they are talking in the visiting room. These strict restrictions damage the right to privacy. Most political prisoners cited the strict surveillance as annoying and upsetting aspects of visits. As has been mentioned, Hutton (2016) cites high levels of security and surveillance causing a lack of privacy as contributing to relationship breakdown rather than supporting relationships. Hutton's analysis implies that visits might, under certain circumstances, be counterproductive to the maintenance of healthy relationships.

One family member I interviewed at her home, was an ex-political prisoner's wife. She explained:

When I talked with my husband through the wire fence, prison staff surrounded us and closely watched and wrote down what we said. I was disappointed and couldn't talk freely.

In this event, private conversations were recorded by prison staff leading to a lack of privacy and visitors' felt as if they were criminals themselves. Prisoners and their visitors were not allowed to talk about political issues. This was reported in many interviews. Having to censor one's conversation makes for an inauthentic form of communication creating strain between people. For those deeply committed to furthering democracy and protesting the dictatorship it is easy to imagine how not being able to talk about the thing one is committed to and imprisoned for would be doubly frustrating. Prisoners and their families did in some cases develop ways of communicating that subverted the prohibition. They would use body language and informal language to avoid the suspicions of the prison staff. I interviewed one ex-political prisoner. The situation was frustrating, as the ex-prisoner explained:

"Prison visits were very important to me, but I was very frustrated by prison staffs' monitoring, recording and writing down what I and my sister were talking about. However, I used informal language to talk with my sister so that prison staffs could not grasp what we were saying.

Such watching and recording denies the opportunity to sustain meaningful relationships between insider and outsider.

CONCLUSION

The evidence from this study indicates, in line with the three articles written by Moran (2013), Foster (2017), and Hutton (2016), the importance of three key factors affecting the quality of prison visits. Drawing on the perspectives of prisoners and their visitors we have identified space, time and privacy as central factors. We have seen that prison visits are valued as a means through which to maintain relationships, but we have also seen that there are costs involved both material and emotional.

In Myanmar, according to our interviews the spaces for visits are not optimal, time is insufficient and the right to privacy is routinely violated. Spending many hours travelling to prisons in remote areas, visitors get to spend only a few minutes with their family members in prison often under conditions characterized by crowding and surveillance. The lack of privacy and the sense of being subjected to the prison's control accorded by such circumstances may have negative repercussions on the physical and mental health of prisoners and their visitors. The space of visiting rooms, the duration of visits and the conditions of surveillance and supervision around visits are clearly factors that affect the quality of prison visits and can in principle either enhance relationships or contribute to their destruction.

Prisons grant opportunities for contact but under very different conditions to those under which families normally interact. They are by their very nature restricted and restricting spaces. However, more could be done to facilitate the maintenance of healthy relationships between prisoners and their families and to counter the potential side effects of visiting prisons by adopting more flexible and normalised visitation practices.

The implication of this paper's analysis is that should the authorities be seriously committed to rehabilitating prisoners and preparing them for a life in society again then they would do well to attend to the way visits are arranged, timed and organized. The voices of former prisoners highlight these as problematic areas that could be addressed as the prison department continues to engage in reform efforts. We believe their perspectives should be taken seriously in the interests of improving the well-being of prisoners' and reducing the collateral damage of imprisonment. In conclusion, serious attention should be paid to the quality of prison visits focused on the spaces of prison visits, the time allocated for visits and the possibility of allowing for privacy without intrusive surveillance and censorship.

PRISONERS' CONTACT WITH THE OUTSIDE WORLD: AN EXAMINATION OF THE UNEQUAL DISTRIBUTION OF PRISON VISITS

Kyaw Lin Naing

Abstract

It is well documented that family visits are very important for maintaining family relations, reducing recidivism and supporting prisoners' re-integration into society. Taking point of departure in the observation that prison visitation opportunities seem to be unequally distributed in Myanmar, this paper investigates why prisoners have different possibilities with regards to accessing visits from family members. In contrast to simple accounts that suggest that visiting rights depend on the ability of visitors to pay (e.g. through bribery), the data suggests that the dynamics around visits are more complicated. The paper thus explores the effects and influence of the length of sentence, the negotiating skills of the prisoner/visitor, and the quality of the relationship with prison staff as crucial to understanding variation in access to visits.

INTRODUCTION

This article is about visits to prisons and labour camps based on accounts from ex-prisoners and their family members. The data shows that prison visits are unequally distributed; some people get more visits than others and some prisoners get longer visits than others. The Jail Manual (1894)⁴⁴ does not explicitly describe the exact length of time allowed. The superintendent has the power to extend the length of the meeting at his discretion. Therefore, meeting times in prisons can, for example, vary from 15 minutes to 1 hour and meeting times at labour camps can exceed 24 hours (Field interview). This article analyses the factors that

⁴⁴ Burma Jail Manual (1894) Section 784 (5) The time allowed for an interview shall not ordinary exceed 20 minutes but may be extended by the Superintendent at his discretion.

contribute to this variation. In doing so, it looks at formal and informal practices. The formal practice follows official instructions and the jail manual while the latter is exercised based often on negotiations between the prison superintendent and prisoners, at the discretion of the superintendent. Thus, the experience of family visits to their relatives at the prison differs from one prisoner to another. While some can meet their family member for time allocated by the regulations, other can have privileged visits. Privileged visits may include opportunity for longer visitation time than normal procedure and may allow a separate room for the family visit. Money may change hands. With this in mind this article argues that the dynamics around visits are complex. The paper thus explores the effects and influence of the length of sentence, the negotiating skills of the prisoner/visitor, and the quality of the relationship with prison staff as crucial to understand variation in access to visits. The paper is divided into three parts: introduction to context and significance of the study, literature review for conceptual framework, and case study and findings.

CONTEXT OF FAMILY RELATIONS IN MYANMAR

Myanmar is a country located in Southeast Asia, which shares borders with India and Bangladesh in the West, China on the North, and Laos and Thailand in the East. It contains many different ethnicities, languages and religions. In spite of this diversity, the family plays a very important role in day to day life across the whole of Myanmar. The Cultural Atlas in its website describes family ties in Myanmar '...family extends well beyond nuclear family and interest of family supersedes those of individual.' Each member of family depends on each other. It is common that all the members of family live together until marriage. Considering the significance of family in Myanmar society, and to prisoners in any place, one can imagine how important family visits are for prisoners in Myanmar.

Prisons in Myanmar have been heavily criticized for the treatment of prisoners both by the international human rights community and by local actors (AAPP, 2016). Reform has been called for by ex-prisoners and activists alike. Under previous regimes political prisoners experienced severe restrictions on their contact with the outside world (Field Interview). For some their family members were not informed about their arrest, in some cases for more than a year (Field Interview). According to the Ministry of Home Affairs Website (MHOA), family visits are permitted provided that the family bring their household records, where the prisoner is listed. The family can visit convicted prisoners for around 20 minutes once a week. However,

the superintendent might grant more time for family who come from remote areas depending on the numbers of visit on a particular day.⁴⁵

Many scholars (Duwe and Clark, 2011; McCarthy and Adam, 2017; Mitchel and el., at., 2016; Ramirez-Barrett and el at., 2006; Smith, 2014) have stressed the importance of family visit and its impact on prisoners and families of prisoners and argued that it can have a positive effect on behaviour and future opportunities. However, few studies have focused on how families access prisoners in the non-western world and none in Myanmar. This paper looks at how prisoners and their families experience access to family visits from 1988 to the present. I draw particular attention to the role of informal practices that are often neglected in analyses. The paper contributes to better understanding of how different factors affect access to family visits as experienced by prisoners and their families. The research question is what factors affect the unequal distribution of access to family visits among prisoners in Myanmar?

SITUATING THIS STUDY IN RELATION TO EXISTING LITERATURE ON PRISONS IN WESTERN COUNTRIES

The paper is inspired by the recommendation of Dude and Clark (2011, p. 22) that ‘future study should also examine more closely the factors that affect whether and to what extent prisoners receive visits’, which has been echoed by McCarthy and Adam (2017). The family visit is not a unique phenomenon to Myanmar but exists across the world. Prison scholars largely agree that family visits play an important part in maintaining family relation, reducing recidivism and enhancing re-integration into society (Brunton-Smith and McCarthy, 2016). Mitchel et al. (2016) analyzed the effects of prison visitation on men and women and found that prison visitation has effects on post-release reoffending, decreasing the risk of re-incarceration. Some scholars stressed the length of visitation as one of the major factors that contributes to prisoners’ well-being. Research shows that the length of imprisonment, slowly mailed letters and expensive phone call charge can restrict prisoners contact with the outside world reducing

⁴⁵ The Ministry of Home Affair.

http://www.myanmarmoha.org/eng/index.php?option=com_content&view=article&id=89&Itemid=543&lang=en

social support. Prisoners with long sentences can experience the gradual withdrawal of their family or their own withdrawal from the family as their sentence stretches out (Brunton-Smith and McCarthy, 2016). Even when a visit is paid, there are some barriers such as distance of prison locations, exhaustive background checks, and charges for checks that can contribute to limited social support. Visitors with criminal background may be barred from meeting prisoners (Duwe and Clark, 2011). Since many prisons are located in remote areas visitors regularly spend more time traveling to the prison than with the actual visit (Gordon, 1999). Some scholars describe how the prisoners' wellbeing depends on frequency of visits and how the distance between home and prison can negatively affect frequency of prison visit (Duwe and Clark, 2016). Christian (2005) argues that prison visitation can serve as a means to protect the prisoners from abuse, that serves as a kind of monitoring mechanism while also giving prisoners moral support and hope.

“... [the family] believe that when a prisoner does not receive visits, it is a sign that no one cares about him, which gives prison personnel free license to treat him however they wish. Further, when no one visits a prisoner, no one knows what is happening to him, and the system is not accountable to anyone.” (Christian, 2005, p. 41)

Studies of the impact of imprisonment on families also indicate that imprisonment leads to other negative impacts, for example damaged relationships with spouses and children, financial hardship, stigmatization of family members and worsened prospects for prisoners' children (Smith, 2014). Ramirez-Barrett and colleagues (2006) argue that imprisonment has collateral effects. These extend from individual level, to family and ultimately to the community. These negative collateral effects are described as follow;

These effects are persistent and pervasive and can include personal, social, financial, emotional, psychological, and physical concerns. Social and economic structures of communities are affected as well, especially in areas where many residents are continually entering and exiting the criminal justice system. Concentrated crime and imprisonment, within communities, diminishes human capital and social capita (Ramirez-Barrett et al., 2006, p. 4).

McCarthy and Adam (2017) explore differences in prison visitation practices in England and Wales. They argue that when prison visitation is viewed as an earned privilege rather than a right, the prisoners' life becomes more difficult and they experience more frustration,

vulnerability and greater difficulties maintaining contact with family in the prison. Seeing visits as a privilege rather than a right allows the authorities to deprive prisoners who break the rules of contact with their families. Visits become part of an incentive structure to encourage good and orderly behavior.

Often political and economic situations produce prisons that are overcrowded, underfunded, and offer few and poor-quality services (Gibson-Light, 2018 (writing about USA)). In spite of this, the prison authorities may adopt strict procedures such as restriction of movement, deprivation of leisure time and suspension of visits as punishment in response to an incident meted out collectively regardless of their individual conduct. Gibson-Light further states that the authorities can also impose those punishment out of suspicion. But, according to Dias (2007) there is no specific legal provision to back them up. So, while there is agreement that prison visits have positive potential there is also an underside. Bad visits can lead to depression, aggression or more guilt (Turanovic and Tasca, 2017). The literature highlights the importance of family visits and their effects on prisoners, family and the community and the necessity to understand prison visitation as a right rather than a privilege. We turn now to consider the experience of prisoners in Myanmar. First a brief section on methodology.

METHODOLOGY

This study builds on qualitative data collected through fieldwork in four different areas of Myanmar. Each field trip took 4-5 days. One was reserved for observation of trials at a court and activities in the prison where possible. At the court, the research team observed activities around holding cells including conversation between detainees and their family, between detainees and police, and among detainees. At the prison, the research team observed activities performed by prisoners, families at waiting hall and visiting room and conversation with prison authorities. Two field trips were conducted in urban areas and two in rural areas. The produced data includes interviews with ex-prisoners, family members of prisoners, prison officers, lawyers and staff from civil society organizations and field notes written during observation at a court, in custody, prison and at a labour camp.

THE PRISON SYSTEM IN MYANMAR

Different types of prisons exist in Myanmar. Prisons are categorized according to their capacity as: Central Jails, A, B and C grade prisons. There are two Central Jails, one in Mandalay and one in Yangon. In addition, there are labour camps in different places in the country. In October 2014 the Ministry of Home Affairs renamed these “agriculture and livestock breeding career training centers” and “manufacturing centers”. According to ICPR:

The overall prison population consists of approximately 16.3% women and 1.6% juveniles, percentiles that have remained stable since 2013. There is evidence of steady rise in the overall prison population in Burma since 1993, while the prison population rate has remained relatively stable. (ICPR, 2013).

AAPP (Assistance Association for Political Prisoners) have criticized the brutal treatment of prisoners in the labour camps and called them the ‘silent killing fields’ (April 30, 2009). The criticism by AAPP of prison is further strengthened by UN Special Rapporteur on situation of Human rights in Myanmar 2018. The purpose of our case study was not to criticize the prison system but to understand aspects of its operation from the perspective of those with first-hand experience of it.

As mentioned above, there are two important aspects to understand family access to visit prison and labour camps in Myanmar - formal and informal practices. There are rules and regulations that govern visits, but these are often outdated and are often not followed. Like all institutions there exists a tension between the policies, rules and guidelines designed to organize and govern practice and everyday practice itself. This is also the case with regard to prison visits. To truly understand the practices, we must pay attention to both formal and informal aspects. The official allocation of time for family visit to prison is not consistently maintained by the department of prison. It solely depends on Superintendent of the prison or labour camp. For example, it might be only 15 minutes in urban areas like Insein Prison and Mandalay which are classified as central jails based on the size of prisoners' population. In contrast to urban areas, prisoners in some rural areas have access to family visits of 25 minutes length. Thus, the length of visit is determined and allocated by the superintendent or the deputy superintendent based on a family's background or long geographical distance. The MOHA explicitly mentions the authority of Superintendents of the prisons on its website stating ‘However, the Superintendents may grant more time for family visit if the family members come from remote areas depending on the number of visits on that particular day.’ This informal and discretionary practice is often dismissed simply as an example of bribery and corruption. I

acknowledge that bribery plays an important part in facilitating family visits and enabling family to supply food and other necessities. However, my point is that though corruption does exist, there are also other factors – other informal practices - that sustain the prison. That is to say exchanges of money are part of a broader exchange economy based on discretion, negotiation and the maintenance of good relationships. The data suggest that we need to look carefully at exchanges between visitors and staff that facilitate visits and at the factors that affect accessibility. Among many other issues, these kinds of ambiguous practices in the prisons lead observers and critics like AAPP and ex-political prisoners to call for prison reform with regard to distribution of prison visit. Through this analysis of prisoners' experiences, it is established that access to family visits is determined not only by bribery and corruption but is affected by different factors such as length of prisoners' sentence, negotiation and relationships between prisoners and prison staff. We turn now to examine the data.

ACCESSING FAMILY VISITS IN PRISON

According to interviews conducted in four places in Myanmar, access to prison visits partly depends on the length of the prisoner's sentence. For example, a prisoner who was sentenced to death was held in individual cellblocks separated from other prisoners. Prisoners on death row are long-term prisoners since Myanmar has not carried out an execution for the last 30 years. The last execution known was in 1988 according to the Cornell Center on Death Penalty Worldwide (CCDPW). Amnesty international regards Myanmar as 'Abolitionist in Practice' (Amnesty International Global Report, 2016). Because of long incarceration in the prison, Stearns and his colleagues are right when they say, 'these long-term prisoners are likely to be forgotten by their immediate family' (Christian, Mellow, & Thomas, 2006 quoted by Stearns and et al, 2017). Another interviewee reported that he and others, who were held for politically motivated crime were held in separate cell as well. They had less chance of receiving family visits because of their political affiliation and because they were held in a prison that is far from family members' homes. At the same time, whether one is sent to prison or labour camp also makes a difference. While this is supposed to be based on sentence length it can also be negotiated by prisoners who have been sentenced to serve jail time, if a prisoner has skills or money. Some prisoners would prefer to go to a labour camp that is close to their home so that they have more privileges than being in the prison. In contrast, others will fear the labour camps, since they are also places where mistreatment can happen far from the eye of the public and where death tolls have historically been high. According to the law, long-term

serving prisoners are not supposed to be sent to work in the labour camp which is meant only for short-term prisoners. But it can also be for long term prisoners if they can negotiate or pay. Forming and maintaining relationships with staff is also important. We know more about the way political prisoners negotiated with staff than we do about criminal prisoners' negotiations. Probably this is because they negotiated to a higher degree, since they wither had more need to do so, they had more skills or they were more outspoken. Due to political reason, the political prisoners are more likely to have been held incommunicado than non-political prisoners. Therefore, political prisoners would negotiate with staff when they had little chance of contacting their families. For some political prisoners, their families were not even informed about their arrest (Field Interview). Therefore, they had to send news of their whereabouts through the prison staff they had a good connection to. Furthermore, the relationship between family and staff, and prisoner and staff also played a crucial part in facilitating prison visits.

Length of Sentence

The Burma Jail Manual Section 11 describes the treatment of prisoners with lighter sentence under the title 'Prisoners Undergoing Simple Imprisonment.' Ex-prisoners confirmed in interviews that prisoners are sent to different places depending on their sentence. There is tendency that long-term prisoners are likely to be locked up in dedicated sections. Prisoners with a sentence of 2 to 5 years would be sent to labour camps, and short-term prisoners are sent to the nearest prison. But neither the jail manual or our data defines specific boundaries for when a sentence is to be counted as long term, medium term or short term. U Thein⁴⁶ who was imprisoned for six months, said that long term prisoners can be sent to any prison around the country to serve their sentence even to locations far from their home and many of political prisoners are sent to remote places away from their home town. In most cases ordinary prisoners are imprisoned in the closest town. Therefore, prisoners with short sentences have more opportunities to be visited by the family (Field Note and interview). However, this does not necessarily mean that they have higher quality meetings with the family. Even though family are closer, visits could still be problematic.

⁴⁶ All the names used in this article are pseudonyms.

When we conducted an interview with U Sein, an ex-prisoner, previously imprisoned for two months charged for illegal logging, he started to speak of his imprisonment as soon as we stepped inside his house:

I don't know anything about life inside the prison because I did not really stay there. (Field Interview).

Though he was willing to talk about his experience in the prison, he repeatedly said that he did not really know about life inside the prison because of his short sentence. He said that he only spent one night inside the prison cell where long term prisoners are locked up. The next day, he was moved to a factory where prison facilities such as generator, water purifier and etc., are kept.⁴⁷ He was assigned to operate the generator. In addition, he had opportunity to be visited by his family everyday while living in this part of the prison. Thus, he could access family visits more easily than the long- term prisoners who stayed in a different ward. The opportunity to be visited by family every day affected his life in prison in several ways. For example, he explained how his family was able to provide him with food through the daily visits:

I have not tasted prison food. Because I got food from home every day. Most of the time, it was my daughter who would bring me food every day. They did not have to come in the evening for they have packed food for dinner as well.

He further explained the advantages of being in the prison factory. He was able to use a mobile phone and he would call his family at night. Of course, the use of mobile phones is prohibited. But he could use it secretly as he was staying alone in the factory while other prisoners in wards were in groups. When asked how he understands family visit more generally in the prison, he replied that he was not very sure about it because his family came to prison every day. He thinks that the reason he was in a more relaxed environment was that the authorities did not expect him to escape prison since his sentence was only two months. He also talked

⁴⁷ In the interview, U Sein says he was in 'Ah Lott Yone' which literally means 'Workshop or Work Place.' I categorized prison compound, based on his explanation, into three different level- campus is the place where the prisoners' families are entertained while waiting for their turn to meet prisoners, office and workshop where staffs and short term prisoners assigned to work and the cell where the long term prisoners are locked up.

about another prisoner who served only two months. Though the man did not have any skill, he was kept in the facility section to look after the piggery as well.

U Mya was accused of murder and sentenced to 10 years of imprisonment during 88 uprising. First, he was investigated by the military intelligence unit. Then, he was transferred to police custody. Later on, he was transferred to Mandalay Prison. He was not happy in prison. So, he started making a plan to escape but he discovered the only way to get out was to be reassigned to a labour camp. Thanks to his negotiation skill, he managed to contact and bribe the superintendent and was transferred to a labour camp near Thauungyi. It was normal, he said, that prisoners at the labour camp would have their legs in chains for a period of six months and only unchained based on good behaviour of the prisoners. But when the superintendent learned that he was an educated man, he was given many opportunities.

When I reached there, I was the only one who had a long sentence. There is no one who had a longer sentence than me. Legs were always cuffed. I mean for 6 months. Luckily for me, the staffs were not educated, there were also ten students. When they knew that I was a graduate, they approached me to teach them and their kids.

Though prisoners could not be used for the personal interest of the staff according to the rules, he made himself available to the service which also earned him respect and trust from superintendent of the labour camp. He was also able to meet his friends in Mandalay Prison as he explains here.

You won't believe me if I told you my story. The Superintendent trusted me so much that I used to drive him to Mandalay. The superintendent did not allow me to wear the prison's uniform but I wore civilian cloths-long pants and shirt. For this reason, nobody knew that I was prisoner. I was prisoner but I went around with him to Mandalay. That's when I went to meet them while superintendent had meeting. And they were surprised to see me there...

He further stated that he could go to Thauungyi to meet his family and talk on the amateur radio.

The experience of U Sein narrates the story of his short-term imprisonment where he was allowed to have family visits every day unlike other fellow prisoners. As he was staying alone, he did not only receive family visit every day but also able to contact the family on the phone.

In his case, his short sentence played an important role in facilitating family visit. He believed that the prison department put him an environment with more relaxed rules or security procedures because there is less incentive to escape. He felt it would be better to serve his sentence than being hunted as fugitive by police. The case of U Mya illustrates how life in a labour camp can offer different opportunities with regards to access to family visits and contact with the family. According to him, he had quite unique opportunities for contact with the outside world including seeing his family. At first, it was his education that brought him closer to the Superintendent and other staff. Then, he slowly built relationships that would later grant him the Superintendent's trust. He believed that the prospect of his long sentence had led him to build a good relationship with superintendent, which paved the way for quality contact with family as they spent time together at a guest house in Thaugyi.

Negotiation Skills

In Myanmar prison visits are often limited only to members of prisoners' closest family. But this is also negotiable. Formally speaking, only people on the household list can visit. This is one example of how negotiations skill can have an influence on access to visits. Negotiation skills play a crucial role in facilitating family access to visit prison in Myanmar. According to ex-prisoners, there are two kinds of family visit - normal visits and special visits. Normal visits take place in visiting room where 15- 25 prisoners can receive visitors at the same time. Prisoners would sit or stand on one side of the room, while the family stays on the other side. In between them is a single or double-layered wire mesh fence. But if the family is able to pay 5000 kyats, they can get access to a special visit. The special visits will be conducted in a different room, where only one visit takes place at a time, and where the prisoner and his/her family does not have to be separated by a fence. Many of the interviewees confirmed this practice but denied ever having experienced a special visit themselves. Only one person, we interviewed told us about meeting with her husband, though without money being involved due to the superintendent's sympathy towards the family and her long journey. A former member of prison staff shared that in some cases, prisoners with social status or well-known person, could meet with families in the office of the deputy or superintendent. This can be classified as special visit where physical touch is possible.

When the families of prisoners fall outside the scope of the rules, they have to negotiate to have access to family visit. Ma Aye was a cousin of a prisoner who was sentenced to five years of imprisonment for committing murder. She had been supporting him since his arrest. She is

not a family member officially because the Family Household Records (FHR) only list intimate family members, not cousins. Ma Aye, in an interview conducted in rural area, said that she was able to visit her cousin on the condition that she provides National Registration Card (NRC) to the prison authorities. In this case, she was able to visit her cousin while he did not have financially able siblings. Therefore, she told the researcher the prisoner relies on her. She was the only one who has been supporting him with all the basic needs. She described her experience as visitor:

Whenever I go to Prison, I have to take my NRC with me. If I did not take, they (prison staffs) would charge me 1000 kyats. If I go with my sibling, they would charge me 5000 kyats.

The price is different when she goes alone and when she goes with other cousins because prison authority cannot let all the visitors in the visitor's room which is too small to accommodate many people. Sadly, even she was not able to visit her cousin for more than five months because she did not want to come for a visit empty handed. It may seem that money is a key for negotiation in family visit. But there are no guarantees. In the case of a sick female prisoner, she failed to convince the staff.

That was the time when I was about to be send to the quarry from here, I asked them to call my home saying, "please call my home and my family and inform them for they did not know that I would be transferred to labour camp" and "bring me something to eat (food) and drink at the labour camp." I asked sayamas⁴⁸ (them) to tell them but they did not phone for me at that time. That time I was also terribly sick. I told them, "please inform my family members at home," and I asked help from sayama that I am sick and would leave to labour camp. But they did not inform them ... They just don't want to contact for me. I had money but they just did not do it for me."

Since it was the time she was about to transfer to the labour camp, the staff did not want to jeopardize the things they used to do on normal days in the prison. Some prisoners use very

⁴⁸ Sayama is a term used to address woman in respectful way in Myanmar. The equivalent term for English maybe Madam.

creative strategies to convince staff to bring their family members to visit them. An example of this was relayed by a different prisoner:

Sometimes, if there is emergency. Some would go out (off duty) after their duty. And I would say, “hey, my friends I am suffering like this and that, please you go to my house, xxx ward, Home No (mail box). My parents live there. Ask that amount of money. You buy medicine from such and such shop. I have to take that medicine.” That is how we have to ask them.

Though there is no direct payment, the staff member went to his house out of expectation of money. The family would realize that their relative is suffering inside the prison. Therefore, he knew that they would definitely visit him.

Another example of negotiation takes place at the labour camp. The closer a prisoner is to the family house, the more he has opportunity to contact family. Prisoners can even go out to meet the family. One interviewee describes the situation below:

They can just come out of the camp and sleep with their family at night and they would go back the next day. That’s how it works here. Everything is money.

The opportunities to negotiate will likely vary from prison to prison. It depends on the prisoners’ location as well. In the case of the last account, prisoners have to be from the same locality and must have some kind of access for negotiation. Negotiations can also result in the import of contraband into the prison. Before 2000, political prisoners had very limited access to the outside world due to the nature of the charges they faced – often rebellion against the state. An ex-political prisoner from Yangon was transferred to Pakkoku Prison, in which he spent two and a half years. He said that if a prisoner wanted to bring in contrabands, he had to befriend the staff first and try to make them understand how pitiful the lives of prisoners are. He even convinced the staff members to bring in a radio. Staff would also serve as guards to protect them from being caught by senior staffs.

Relationship with the Staffs

Negotiation generally leads to intimate relationship between prisoners and staff or intimate relationships lead to the ability to negotiate. But it involves a long process to build trust between

the two. In the interviews, many ex-political prisoners report that their families were not informed about their arrest when it took place. It took time for the families to locate them through informal channels such as friends, policemen or people who visited prisons. Even if they were arrested at home, the family members had a hard time to find them during the military regime. But there were some exceptional cases in which if the prisoner's family is part of government institution or is a famous political prisoner or is related to prison or police department somehow. For example, Daw Khin Kyi was a teacher. Her husband was a politician, a leading member of National League for Democracy in a small city where many of the relatives also worked as government employees. During the 88 uprising in Myanmar, her husband was arrested for his involvement in politics. Unlike many political prisoners' family, Daw Khin Kyi was immediately informed about her husband's arrest by a policeman. It was not because she was a teacher, but the policeman was her near relative. When her husband was arrested for the second time, a friend of her husband came to inform her about his arrest but did not know his whereabouts. Therefore, she started looking for husband. Unfortunately, her husband was not in the police look up. Therefore, she decided that she would look for her husband at the military intelligence unit. She recounted how she dressed up in her school uniform as a teacher and went to the military intelligence camp:

I dressed up in the school uniform and started to go to military intelligent unit. When I reached there, I asked military man my husband's whereabouts. He was a bit hesitant and nervous because he knew I was a school teacher because of my uniform. So he reported it to his superior and they told me that my husband was there. Unluckily I could not meet him in person but I could pass food and clothes to him.

Furthermore, when her husband was transferred to a prison, she was allowed to meet her husband in the superintendent's office without having to go through noisy and overcrowded prison visiting room. This kind of special relationship institutionally or personally also can pave the way for family access to family visit in Myanmar. The example of Daw Khin Kyi shows how both institutional relationships and personal relationships facilitate access to family visit.

CONCLUSION

The analysis above shows that understanding access to family visits is complicated. It is not enough to study institutional policies; one also has to consider everyday practices. By looking at everyday practices this article has identified factors that facilitate access to family visits in prison in Myanmar which are often overlooked. The analysis shows the co-existence of formal rules and informal practices. The findings suggest that access to family visits vary depending on length of sentence, negotiation skills and relationships. The data suggest that long term prisoners may have certain privileges when it comes to visits and that prisoners serving a very short sentence enjoy highest number of family visits, for example because of the nature of prison cell they are in such as the prison factory. Moreover, prisoner's residency also assists to access family visits where staff and prisoner are known to each other. Negotiations can take time. Long term prisoners have access to different ways of negotiating because they have the chance to build relationships over longer periods while serving their long sentence. It also involves drawing sympathy from staff over long periods of time. In addition to staff feeling sympathy for prisoners, negotiations also involve personal gain for staff - for example in the form of cash from prisoners' families in return for access to regular family visits.

In sum the quality and quantity of family visits in Myanmar is partially determined through negotiations. The relationship with staff is a vital factor in understanding prisoners' opportunities for contact with the outside world in Myanmar. We have also considered the way length of sentence can make a difference to family contact. Ensuring equal opportunity for visits, cognizant of the variation experienced by virtue of sentence length is an important task for the prison authorities. This study has inevitably focused on the experience of former prisoners, that is those who used to be in prison. Future research could valuably pursue these themes in more detail in the contemporary moment.

FORGOTTEN PRISONERS IN MYANMAR

Under what circumstances do prisoners not get visits?

U Than Htaik

Abstract

This paper, part of a case study about Prisoners' Contact with the Outside World (PCWOW) in Myanmar, focuses on the conditions and circumstances of prisoners who do not receive family visits. Based on interviews and observations it documents the various circumstances under which prisoners are deprived of the opportunity of contact with family members. We develop a typology about people in prison in Myanmar who do not receive family visits. The typology is divided into two main sections: one on circumstances under which prisoners are deprived of visits, the other relating to the way their personal situation or who they are contributes to them not getting visits. While previous research in other places has described the benefits and challenges of family visits there is little existing research about prisoners who do not get visits in Myanmar. In Myanmar, like many other places in the Global South, prisoners are dependent on contact with the outside world for food and other essential supplies. The typology illustrates the complexity and multiplicity of issues that affect visits; it shows how these overlap and intersect with each other and it helps us identify what kinds of people under what conditions might be especially vulnerable in prison.

Keywords: Myanmar Prison; Prison Department; prison visits; family visitation; isolation

INTRODUCTION

It is universally recognised that prison visits are of vital importance for prisoners. However, it is still the case that there are many prisoners who do not get visits. This paper explores the experiences of prisoners in Myanmar who do not receive family visits. In Myanmar, the term "prison visit" refers to the opportunity granted to prisoners to be visited in prison by members

of their family, members of concerned embassies, or other authorized persons, where they are allowed to meet the prisoner and to give authorized items (The Section 2(L) of *Prisons Law Draft*).

This paper aims to answer the questions ‘who does not get visits and under what circumstances?’ It does so by examining the perspectives of three groups: prisoners, family members and prison staff. The paper also explores how prisoners who do not receive family visits cope. Through analysis of interviews three different categories of prisoners were identified:

- (a) prisoners who never got visits from family;
- (b) prisoners who got visits near the beginning of their incarceration and
- (c) prisoners who did not get visits near the beginning of their incarceration but did get visits later

As we shall see there are many reasons why a prisoner might not get visits. It may be that they are prohibited from receiving visits due to having committed a violation of prison rules or it may be that their family do not have the resources available to visit or do not even know where they are, or even that they are under arrest or detained. I will consider this further later. First a brief look at history.

Background

Prisoners who do not receive visits can be identified since the period of the Myanmar Monarchy before 1886 (Catalogue of the Hluttaw Records, 2012). This is not a new phenomenon. Transferring convicts to remote areas, where they were subject to malaria and other diseases, as well as torture and physical hardship sometimes meant they were more likely to die than to live. In those day, the convict held in prisons in the countryside or the forests or other places far away from the city had difficulty getting visits and were dependent on the good will of people in the community for food and supplies. Bearing leg chains and holding bowls they would beg for supplies that they could share with other prisoners in prison (Myanmar Monarchy Administration 2011). As we shall see later even in more recent times sharing food is one way that prisoners cope with lack of visits.

During the early days of British prisons in Myanmar, Port Blair jail on the Andaman Islands (founded in 1906) was used as a site of distant punishment for serious crimes like treason or

revolutionary activity. Since the prison was located on an island in the sea, communication with family members on the mainland was very difficult and contact more or less impossible. If they were located there, it was too difficult, not to mention costly, for families and relatives to visit. Prisoners sentenced to transportation are thus among the earliest type of prisoners to suffer from lack of family visits.

When we interviewed ex-prisoners, family members and prison staff about prison population, kinds of crimes, types of prisoners and visitation, they shared that most of the prison population are drug cases. Prisoners with drug cases are included in the group who do not get visits, but so are other types of prisoner. Thus, it seems that it is not offence that is determinant of whether one gets visits or not.

It is actually common for prisoners all over the world not to receive visits. In USA for example, the most common visitation pattern is in fact no visitation. Observers have pointed out that “the vast bulk of inmates do not receive a single visit” (Duwe and Clark 2013; see also Hairston 1988; Jiang and Winfree 2006; Monahan et al.2011; Siennick et al.2013). This reminds us of the significance of this topic.

As Moran puts it ‘Prisons are not simply institutions which (cor)respond to crime; rather, they are reflective of and mediate social, political, and cultural values, both at the level of the carceral state, and the individual prison’ (Moran et al. 2009, 701). Similarly, Melossi has pointed out how “(p)unishment is deeply embedded in the national/cultural specificity of the environment which produces it”, (Melossi 2001, 407). This reminds us of the necessity to conduct specific studies of particular contexts, in this case the situation in Myanmar. But we can also look to studies of visits in other contexts for inspiration. Prison visits have for example been referred to as:

the lynchpin of contact between prisoners and their families, they provoke joy and unhappiness in almost equal measure. They provoke joy at being briefly reunited with a parent, partner, child or friend and also anxiety, stress and sometimes unhappiness promoted by, for visitors, difficult travel arrangements, complex prison policies, or simply an unhappy or difficult meeting with the prisoner (Codd 2008, 152-3).

The literature also points to several reasons why visitation might be rare for example if visitors have “to travel long distances, pay fees, take time off from work, and find childcare” (Christian, Mellow and Thomas 2006).

We have not been able to identify any academic articles in the Myanmar language specifically related to the topic of prisoners contact with the outside world and prison visitation practice, or the situation of prisoners who have no visits. But the topic is partly covered in some literature, for example, the autobiographies of former prisoners (e.g. authors like Win Tin, Jolly Tun, Min Zin, Htay Win, etc.), prison staffs (e.g, authors like Yan Aung Maung Maung, Hla Htay (alias of a retired prison officer), Senior Jailor Thein Aye, etc.) and fictional accounts (e.g. The Lizard Cage) though we will not reference that material in any detail here.

Data and Method

This paper draws on interviews with ex-prisoners, their family members and prison staff. The data was collected during field trips to four different areas in Myanmar, including rural and urban settings. During fieldtrips semi-structured interviews were conducted and observations carried out at detention centres such as prison, labour camp, court custody, police lock-up and training school. Interviews gave interviewees the chance to freely discuss their prison life and experiences as well as the topic of prisoners contact with the outside world. Some additional data was collected through phone conversations with prison staff. All data has been anonymised in this article.

The children, the disabled, HIV and AIDS victims, and the elderly and others are not specially analysed here. Although this paper highlights the circumstances of prisoners far from the cities, it does not deal with Myanmar citizens who are imprisoned in foreign prisons and do not receive visits.⁴⁹

The qualitative data was analysed thematically. Only three persons we interviewed reported never having received visits. But an overwhelming majority reported periods of their incarceration where they did not receive visits. For example, some did not get visits while in interrogation camps and some had no visits right after their arrest. There are also cases of people who were entitled to visits yet had no-one in the community to visit them, for example if their family members either had died or were too ashamed to visit as was sometimes reported in the case of sex workers. It was claimed that it was worse to be neglected or seen as unworthy of a visit than to not have any possibility of a visit due to for example the death of relatives. In some cases, both husband and wife are in prison, making visits impossible.

⁴⁹ The issue of Myanmar citizens in prisons in neighbouring countries could be a topic for further study.

We turn now to look at the data in more detail beginning by focussing on circumstances which may lead to an absence of visits.

CIRCUMSTANCES

Under this category I consider a series of circumstances pertaining to not getting visits. In general, they relate to time (meaning when during a period of detention visits did not happen), place (meaning issues related to location and distance between the prisoner and their home) and level of information provided by the authorities to prisoners' families. In what follows I consider the following circumstances: during initial interrogation; during pretrial detention, when held incommunicado, when in solitary confinement and when on death row. I also consider the aforementioned issue of transfers to remote places and the effects of length of imprisonment.

Stages of detention

The length of time that prisoners endure without contact with their families can be different. Some prisoners do not get any contact with their families from the moment they are arrested and taken to the court until pre-trial detention period. This is common. It can be said they do not get visits because their need for visits and their whereabouts is unknown. The prisoners meet neither with their family nor with their lawyer. Since the military regime (1988-2012) until present, the chance to meet with family and to get legal rights at the point immediately following arrest is very rare. This is because the authority who arrests did not allow for meeting with family members, relatives and friends.

A man we interviewed explained the following:

I was arrested at home. Then, when I was in the police car, I was taken cover over my head. The police sent me to investigation camp. I was questioned, investigated. To get the information they want from me, I did not get water, food and I was beaten. I was not fed. Then, my head was covered and I was taken to another places. I know later that some of my cases were arrived. I had to stay there for about 8 days. Then, I was sent to a separate prison in Insein. I was put in a room there. *I could not contact with anyone and nobody contacted me during these days.*

Someone who was arrested for political activism reported a similar experience. Not only he, but also his friends were imprisoned and tortured before eventually being sent to the court.

Another similar example featured a man who was arrested at his home and sent to an interrogation camp where he was hit and beaten and after four days placed in a separate cell in Insein prison. Then he was interrogated and beaten again and again for the next three days. During that time, he could not contact his family and his family could not visit him. Although he did not know where, he was sent to another interrogation, he shouted in the car he was taken to GTI at Insein. That period lasted about 1 month before he was taken to court. The court period before imprisonment took about one and half year. First, no visits were allowed though things like foods, clothes, money, etc could be delivered. With the help of other political prisoners and the permission of the prison authorities, he was finally able to meet with his family after two months as a detainee.

So, visits can be rare during the earlier phases of incarceration following arrest but situations also occur during a period of imprisonment when visits simply stop, for example, due to the changed personal circumstances of family members and the reduced strength of ties between people in prison for long periods and their relatives. As this man explained:

“When I was in prison earlier, my wife visited once every two weeks or once a month for 2 years. Later, she did not come. She outside. I have never met her since I was divorced. No visits since then. When I was set free, she has already remarried and got children.

In such cases prisoners receive visits and contact is maintained for some considerable time but because of changing personal circumstances they cease. Therefore, we can conclude that it is not only the authorities who are responsible for prisoners not receiving visits; the changing situation of families outside also matters. That said we should not forget that the very fact of incarceration can have a negative impact on the family situation and contribute, for example, to relationship breakdown.

As well as personal circumstances that might change, the changing political situation can also make a difference to the possibility of visits. People seen as subversive or against the governing regime can be deprived of visits because of such factors. Since Myanmar gained independence in 1947, there have been many armed conflicts in different areas of the country. These conflicts are still going on. Prisoners who are members of ethnic armed groups, are often unable to meet their families since their families live in far-off villages and because they

are afraid to visit prison. Even though they want to visit, pressure from the local authorities prevent them from going. Some family members we interviewed recounted that they were threatened that if they would come back to the prison, next time the staff would harm them and their village. Therefore, wives were afraid to visit their husbands and their husbands were forced to manage without visits. Under conditions of suspicion, fear and potential harassment, the families of members of ethnic armed groups chose to stay away.

It is not the case that no members of ethnic armed groups ever receive visits, but it is the case that there are emotional and material barriers to overcome and risks to assess for family members wanting to visit. That is, political, social and economic circumstances can make it impossible for some members of ethnic armed groups to receive visits while in prison.

It is not only political prisoners of different kinds who are deprived of visits in the early stages of imprisonment. We also heard accounts about the accused in famous crime cases who had no contact with their families. While, the arrestees were under police interrogation and there was no contact with the outside world.

We heard many accounts like the following that imply that often people were held under circumstances where their whereabouts were unknown:

I was not allowed to see my family despite request. When I was sent to the prison, I did not see my family... Only if family members came and inquired if there was that name in that prison... then parents know and I got visits. If the prison did not tell them, they will not know.

This quote shows us how prisoners were essentially at the mercy of the authorities. Only if families sought them out and proactively made inquiries might they be located. One can imagine the stress that this must provoke.

In the period of military regimes, many political prisoners were not charged at the court like other cases. Instead they were trialled in military courts. Before their trial they were kept in military interrogation centres where many were brutally tortured. During the interrogation, they were not able to communicate with their families. After interrogation, they were transferred to a special court located inside prison where they went through trial and received their sentences. Some political prisoners were able to contact their families while underdoing trial. Some were transferred to remote prisons without their family members being informed about it. Consequently, they lost contact with their family. Many were held in solitary confinement

from the moment they were arrested by Military Intelligence (MI) or Special Branch (SB) police from the street, the home or the tea-shop. Solitary confinement involves “the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day” (HRFoT 2007, 1). According to section IV of Prisons Act, during solitary confinement prisoners are not given the opportunity to receive visit even though they have family and relatives outside.

Another factor complicating family members’ attempts to locate prisoners is the fact that they were not always held in authorised locations. Sometimes prisoners would be taken to buildings that were not prisons or formal detention facilities and interrogated and subject to torture and sometimes death. In these places they would be deliberately inaccessible to visitors.

Solitary confinement is also used as a sanction by prison authorities. If prisoners break the rules listed under section 45 of the Prison Act, they can be subject to staying alone in a cell from 14 days to 3 months. Under such conditions they lose their entitlement to visits from the outside.

One additional set of people who it was claimed suffer from lack of visits is those held on death row. It is unclear why this might be, though it may relate to relative poverty or possibly stigma or rejection by family members. Further, more systematic, research would be required to explore this question.

We move now to consider in more detail the circumstances of prisoners held in locations far from their families due to their transfer to remote prisons.

Transfers to remote prisons

According to the *Nelson Mandela Rules* (rules 58), that set minimum international standards for the practice of imprisonment every prisoner has the right to inform their family of his or her detention or transfer. The rule guarantees that prisoners can, under supervision, “communicate with their family and reputable friends at regular intervals”, both by correspondence and by receiving visits (*Nelson Mandela Rule 58.1*). As we have learned already this has been far from common practice in Myanmar’s history. This can be because of the way people are held (e.g. incommunicado) or the way the justice system was used for overtly repressive purposes. It can also be because of where they are held. Many political prisoners experienced times when they were held in prisons which were a long way from their home town. Prison transfers can have a large impact on the mental and physical strength of prisoners and family members.

We heard accounts of the authorities failing to inform families about when a prisoner had been transferred resulting in wasted time and energy when the family member arrived at the prison and asked the staff about their relative, the staff replied that the prisoner had been moved to another prison. Only then did they learn of the prison transfer. Such circumstances mean that even prisoners who do have families that wish to visit them sometimes do not receive visits. One prisoner interviewed said:

“When I was transferred to another prison, the prison staff did not inform my family. So, my family did not know where I was then.”

Another interviewee explained how prison staff had helped him to send a letter to his family about the prison transfer. But the post system in Myanmar is not reliable and his family did not receive the letter. Only after his release did he learn that the family had not received his letter.

When prisoners are transferred to other prisons, family members face problems with locating the prisoner and accessing prisons far away. For example, a prisoner held in Myitkyina Prison, was over 900 miles away from his home. A single trip from Yangon to Myitkyina costs generally 50000 Kyats (\$50) per person not including guest house fees, food or local transport. Transport costs and the inconvenience involved are significant issues hindering visits. Some family members expressed their gratitude to ICRC for helping to finance and facilitate visits in the face of such difficulties. But others give up after facing excessive challenges with locating their relative in prison and traveling to remote areas for visits.

In the light of the above facts it is no surprise that the fact that prison visits are limited to 15 minutes per week or fortnight is a hindrance to some family members. How much time and energy is one willing to invest when the time ultimately spent with ones loved one is so short? The costs incurred and the difficulties family members may face on the journey is a cause for concern for some prisoners as well. For these reasons some prisoners deliberately forgo visits.

PERSONAL SITUATIONS

In this section, I consider the particular situation of children, foreigners and poor people.

According to a staff member of a juvenile training centre, children can face particular challenges when it comes to accessing visits. In some cases where they are orphans or street children they simply have no-one to visit. In other cases, parents refuse to acknowledge their children in prison and hence refuse to visit. As the staff member said,

... Most of them are poor and naughty. Some are parent-less or orphans. Some are street-children and beggars. So, very few visits... Most do not visit them. Some parents do not want to take their children back. So, they do not come and visit. Then, we have to keep them as our responsibility.

As is documented in other countries, foreign prisoners face particular challenges when it comes to accessing visits. In a book written by a retired prison officer it was reported how in June 1985, in Insein prison there were 700 Chinese prisoners out of a total prison population of 8000. The Chinese authorities denied that they were Chinese citizens. Some were very old and had been in prison for the last 20 years; they stayed as stateless persons there. None of them received family visit. (Retired Prison Officer 2015, 164-173).

More recently Myanmar National Human Rights Commission (MNHRC) reported that there have been difficulties to visit foreign prisoners in Nyaung Shwe Prison in Shan State. Two Chinese prisoners in Taung Ngu Prison desired to contact their embassy so that the authorities could communicate and help their case. They received no visitation.

It is said that poverty is not a crime but it is one reason why people commit crimes. It is also one reason why some prisoners do not get visits. Poverty remains widespread in Myanmar in urban and rural areas. Families with few means may not be able to afford transport charges; they may have to prioritise the few resources they have on the immediate needs of the family outside; and they may not have resources with which to purchase things to give to the prisoner. All these factors hinder visits. As one ex-prisoner reported about a fellow prisoner "... although the prison is in the same town, there are those who do not have visits. Because their families are so poor. They are in heavy debt and they are casual workers. So, they do not receive visits."

And similarly, an ex-political prisoner told how "the prisoner who eats meals together with me does not receive any visits. He has only his old mother outside. His relatives support his mother for food, so, he gets no visits from his mother. Because his mother was depending on money, food or other supports from their relatives, so she did not come to him even though she would like to come her son inside. We have to share what we have with him. He is really pitiful because he is very poor."

Another prisoner who did not get visits for 6 years described his own circumstances:

Those who are outside are poor, how can they give the ones inside. For example, my parents are poor. They have to struggle for their daily welfare, how can they give me? They themselves earn their living with difficulties. So, I do not have visits either.

When he was imprisoned, he first expected visits as others did, but later he did not. Instead, he hoped to eventually return to his family; he would struggle himself in prison until his release. He pointed out that poor families had to struggle a lot for a living outside and that giving visits is one of the most difficult things. Poverty can thus contribute to crime and aggravate suffering by hindering visits in a kind of vicious and miserable cycle as succinctly put below:

I was transferred from Kalay, Sagain Region, where I lived, to Mawlamyine Prison. There I did not get any family visitation because my father was dead and my mother is poor.

A member of prison staff shared his perspective as follows:

There are many prisoners who do not have visit in my prison. Among them, most are very poor. The prison feeds them as per their allowed budget. If they get visit, it is better. If so, they can eat and buy as they need. Those without visits cannot eat what they want.

Not receiving visits can have physical and material effects. It means you can be without food or without money which you may need to ensure safety. A former prisoner warden told us that for prisoners without money, life behind bars can be extremely difficult, regardless of their offence. "Some inmates are from rural areas and they're not able to have family visits. Those who don't have money to bribe guards were beaten."

Not having visits can thus have serious consequences. We consider these further in a final substantive section.

VALUE, CONSEQUENCES AND COPING WITHOUT VISITS

"Visitation is very important because it helps and supports physically and mentally the family member in prison. Some cannot stand and survive for a long time and they will die if they don't get the visitation with their family." (Prison officer during phone conversation)

There is no doubt that visits are of immense value to prisoners. The data shows prisoners speaking of visits as of key importance to cope with the pains of imprisonment. Prisoners long

for having family visits, even for a moment. One prisoner stated that: “For the prisoners, visit is essentially needed in prison”, and another one said: “I even dream every night that my family comes and sees me.”

Prison visits are an important source of both news and physical and emotional support as well as protection. We consider the importance of both below.

A well-known slogan among political prisoners goes as follows: “*Information is more important than curries and meals*’. It indicates the value of information especially to political prisoners who are keen on keeping up to date with current political events. Others spoke of this:

News is greatly important to us and we tried to get the information from outside by any means and ways though we know that if we get caught, punishment is solitary confinement with extending 6 months.

Prison staff describe how prisoners were dependent on their visitors for news:

(In) previous years, incarcerated prisoners were prohibited to read the newspapers, watch TV, listen to the news and were separated from outside. Prisoners merely could get the information when their visitors came.

Prisoners would long for visits where they could hear news from their visitors (though it was standard practice that political talk was forbidden).

Sometimes visits would be suspended due to the political climate outside the prison. We also learned of an incident where staff challenged prisoners to put their right to visit on the line as a stake in a bet about whether the information they shared about life outside was true or not. The conversion of the right to visits into a form of currency for betting hints in a rather absurd way about the perceived value of visits to prisoners. One rarely bets with something that does not matter.

Prisoners who get no visits are particularly vulnerable and struggle more in prison than others. Not receiving visits can have physical and mental consequences. Physical problems common to prisoners caused by lack of food, insufficient health care, illness, sensitivity to diseases, weaknesses, infections and deaths could potentially be ameliorated by visits. In their absence they are exacerbated. Mental problems too can be exacerbated by isolation and lack of contact

with family members as these factors can contribute to feelings of depression, disappointment, sorrow and helplessness.

A prisoner from upper Myanmar who was moved to a prison in lower Myanmar spoke about the situation when he did not receive visits during his imprisonment:

When others happily came back after meeting with family during visits they still have smiling faces until they arrive in the sleeping room. I also want to get visit like them... I always think of how my mother and my family live outside. I feel sorry. Food here is not good but I feel pleased when I see my family and their faces. I really feel depressed.

Another prisoner told the story of a young person without visits who tried to kill himself:

We lived together on the top floor. He is from high-social class. After about a week in prison and when he does not receive visits, I don't know how he feels. He is a troublemaker . One day he wraps his longyi around his neck and ties around the iron bar. Luckily, he does not die.

Prisoners who receive visits can be encouraged and request help when necessary. Those without visits can feel hopeless. One ex-prisoner expressed how he felt jealous of those who received visits though he acknowledges that the visits others receive can also be of benefit to him:

It is good if other prisoners get visits. Frankly, if my prison-mates have visits, we can get some share. But I feel jealous in mind; because they receive visits, but I don't. I admit I feel jealous not in negative sense, but I just want like them.

A female prisoner identified the negative effects of no visits and the positive effects of visits:

There's an over 70-year-old women behind me. When she is first in prison, she gets visits. Later, there were no visits and she became moody and does not speak with anyone. Then, she lies in bed. The prison staff give her medical treatment, but she does not recover. When the prison contacts her home and when her family comes and sees her, she rises and feels well again.

A number of interviews revealed how prisoners would share resources with each other where necessary but clearly these circumstances of inequality may also lead to tensions between prisoners amid scarce resources. One family member described how she would take more food than her own family member needed knowing that he would share it with others.

Some prison officers demonstrate that they recognise the challenges facing prisoners who do not get visits and the challenges that they can present for the authorities. Some staff bend the rules to help prisoners without visits to survive. These aspects feature in this lengthy statement from an ex-prison officer:

Visitation is very important for every prisoner... The prisoners who used to meet with their family have polite manners. The prisoners who have no guest meeting look rude. According to my personal experience, they have bad behaviour and are difficult to control. They always do bad things such as breaking the prison rules and regulations. They make defiance to the officers. We had to care about those prisoners. We thought about which job they could do, any job that might support them as they have no family member coming to see them. If they work at farm, they can get money for cigarette and coffee mix and by selling the vegetables from the farm. Even if they don't get money, they will get something to cook. If they don't have guest meeting, they must work here anyway. They must carry ration to the seller once a week and they shall not deny to do it. After carrying the ration, they sell the rest of the food. But that's not officially allowed. I arrange it for them as we are like a family

In the labour camps, not having visitors can result in having to work harder. Prisoners who receive visits can get coffee mix that functions as currency inside prisons and labour camps. The prisoners who have coffee mix inside the labour camps can use them to pay other prisoners to do their work. The prisoners who do not have visitors can thus be forced to work even harder.

One interviewee shared about her mother's experience in labour camp where the prisoners had to carry stones: "It was a very tiresome job. So, those who couldn't carry gave coffee mix to those who carried the stone on their behalf. The prisoners who did not get a visit since over 20 years ago carried the stone... Some prisoners are moved to another prison when their family did not know about it. Therefore, some have no supports from outside. They had to carry the stones in order to get the coffee mix."

The absence of visits may correspond to the presence of abuse. At least, it is believed that visits are one way to reduce the likelihood of abuse. In the absence of access and contact there is opportunity for abuse as there is no protection. The following examples graphically illustrates this:

A 49-year-old woman... said she was detained at the police station and interrogated for one and half month. She was frequently interrogated by the police at her home. During that period, she was taken to the police station in another town and interrogated in a separate place. Her family were refused access to her and when they tried to leave a blanket, a mosquito net and foods at the place where she was arrested, the police said they kept her well and nothing was needed, and the family were not allowed to meet her. But in the absence of family visits she was tortured both mentally and physically in many different ways. She just had to take it because she was afraid that if she responded she would be killed and her dead body would be discarded.

Similarly, the following account mentions the fact that no one visited in connection with an incident of abuse

I was arrested... They twisted my hand and it was broken. They took me to a lock-up and questioned me non-stop from morning till night. When I was about to sleep, they came in and asked me again. *I did not meet with anybody*. When I finally came to the prison, then I had to meet my parent.

We can thus make direct links between lack of visits and abuse but we can also identify examples of indirect links. For example, Htay Win (179-180) reports that lack of visits can result in sexual exploitation in the form of the exchange of sexual favours for resources. Where prisoners are lacking resources (because they get no visits) they are forced into exploitative or coercive transactional relationships in order to survive.

CONCLUSION

I come now to a conclusion. The topic of prisoners who do not get visits was identified because we knew that people struggle to survive in prison even when they have contact with the outside world. Our hypothesis or hunch was that people without contact would struggle even more. We have explored this theme and confirmed our hypothesis. Prisoners without visitors face significant challenges. We have also identified the circumstances under which particular people are more likely not to receive visits than others. We have found evidence based on

interviews with former prisoners and family members about the significance of visits for well-being and more specifically that not getting visits exacerbates what in prison sociology is known as the 'pains of imprisonment'. We have also shown how prisoners who do not get visits manage or cope. Often, they are reliant on the kindness of other prisoners or prison staff. But this also means they are vulnerable to exploitation either by other prisoners or by staff. In summary, the main circumstances where prisoners do not get family visits are: under solitary confinement; when they have no family, relatives or friends; when hindrances such as distance and lack of resources prevent the family from visiting; when prisoners are being punished for misbehaviour; when families are poor or not informed of prisoners' whereabouts; and during situations of political tension and armed conflict.

Our analysis leads us to emphasise the importance of visits for prisoners' protection and well-being and for the good order of the prison and to draw attention to the fact that the factors and circumstances we have identified often overlap and reinforce each other in real life. It is our hope that our findings, and further close attention to this topic, might feed into policy debates about how contact between prisoners and their families might be sustained such that the risks to prisoners are reduced and so that prisoners might never be forgotten.

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