The Right to Palliative Care in Prison

Normative, legal, and ethical framework
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Outline

• Theoretical
• Empirical overview – socio-political context, numbers, epidemiology
• Normative overview, Rights and obligation in international law
  • Treaties – explicit right of all
    • IDHR, CESCR, CAT, OAS Treaty, European Parliament law
  • Equivalency rule
  • National Protective Mechanism
  • Mandela Rules
• Policy Recommendations
Context: purpose of prisons

• Deprivation of freedom rather than torture and death
  • C18 Enlightenment theory (Beccaria)
• Function: to rehabilitate and reintegrate persons convicted of crimes into society
• 21st C prisons: longer sentences/older prisoners/no release
• Terminal illness and right to PC a contradiction
• Result: life sentence/torture and inhumane and degrading treatment
• Same as pre-C18 but longer period of suffering!
C21 Socio-political context

Neoliberalism – globalisation – privatization of health services

Source of prisoners: “war on drugs,” sex offenders, migrants

More older prisoners

Staff cutbacks

Privatisation of prisons for profit (not so much in Europe)
Rough Numbers

• “Older” is 50 plus (prison accelerates physiological ageing)
• Demographics: 3x # older prisoners in UK
• Age 50 plus now 16% of population
• Oldest old >85 increasing
Health conditions requiring PC in prison

> than outside populations re NCDs, diabetes, dementia, etc.
> prevalence of HepC, HIV/AIDS and TB (MDR)
> frailty in concentrated space
> mental health issues

0 family support
2x burden of punishment (Turner et al)

“More like a care home than a prison”
Models” of EOL “care” for Inmates

Inmate care (peer to peer) often trained by outside NGO/faith based
Poland as pioneer

“Equivalence principle”
Publicly provided – ie NHS in prison clinics
staffed by state employees or contract workers
Liaison with community hospices clinics and hospitals

Compassionate release (rare)
"A human being, in detention, remains the holder of all the fundamental rights, except those which a judicial decision has taken away from him. Among these rights, there is little more precious than access to care, respect for dignity and intimacy."

Robert Badinter, Senator, former French Minister of Justice.
Convention Against Torture ("Hard law") 1987

• State Parties must prevent
  • “acts of cruel, inhuman or degrading treatment or punishment ...”
  • when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”
European Convention for the Prevention of Torture (establishes visits)

“The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.”
A prison's health care service should at least be able to provide out-patient consultations and emergency treatment. When the state of health of the inmates requires treatment which cannot be guaranteed in prison, everything possible should be done to ensure that treatment is given, in all security, in health establishments outside the prison.

“Equivalence Principle”
The UN Principles of Medical Ethics

• All health personnel working with prisoners

  • “have a duty to provide them with ... treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained”

European Prison Rules, adopted by the Council of Europe (non-binding)
UN Committee on Economic, Social and Cultural Rights

“States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees ... [to] curative and palliative health services”

(General Comment 14, 2000)
International Covenant on Civil & Political Rights

- “Right to ... health of all detained persons”
  - Articles 6 (the right to life) & 7 (prohibition of torture)
- Obligation to “provide appropriate medical care to detainees”
  - Article 10 (prohibition of inhuman or degrading treatment)
- UN Human Rights Committee has affirmed that state responsibilities under the Covenant include “the provision of adequate medical care during detention”
European Court of Human Rights

• Where the prison is unable to provide an adequate standard of medical care, *in exceptional cases* the person should be released. Price v. United Kingdom, and Mouisel v. France, in which the prisoner was suffering from leukaemia (2002)

• State’s positive obligations to protect the well-being of detainees are heightened when a prisoner is at increased vulnerability due to severe health concerns...
“Mandela Rules” (2015)
The United Nations Standard Minimum Rules for the Treatment of Prisoners

Nelson Mandela

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

Nelson Rolihlahla Mandela
Three core principles

• Organise care in close relationship to general health admin in community,

• Integrate prison health policy into national health policy,

• Access to healthcare without discrimination on grounds of the prisoner’s legal situation.
122 rules revised in 9 thematic areas

- Staff training
- Terminology
- Complaints and inspections
- Access to legal representation
- Prisoners’ inherent dignity as human beings
- Vulnerable groups of prisoners
- Medical and health services
- Restrictions, discipline and sanctions
- Investigations of deaths and torture in custody

35%
Definition of degrading treatment

“Acts which cause real and serious humiliation or a serious outrage upon human dignity, and whose intensity is such that any reasonable person would feel outraged.”
OPCAT (Optional Protocol)

Establishes “National Preventive Mechanism” in all countries

Pro-active unannounced visits to places of detention and closed healthcare systems

Ukraine, UK and other countries have utilized
Basic Recommendations

• Establish basic hospice and palliative care systems *in community*
  • Activates “equivalence principle”
  • Develop advocacy strategy in community, with families & parliamentarians
• Bring cases to European Court of Human Rights
• Raise attention through UNODC (supposed to oversee Mandela Rules)
• Submit complaints to Special Rapporteur on Torture and SR on Health
• Contact Independent Expert on Older Persons
Selected References

• UN Declaration of Human Rights (1948)
• ICECSR (1976)
• ICCPR (1976)
• CAT (1987)
• European Prison Rules, Council of Europe
• Mandela Rules (UNODC)
• Detention conditions and treatment of prisoners [https://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf](https://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf)
THANK YOU!

Photo Credit “Grace Before Dying” Lori Waselchuk

THANK YOU!