



February 14, 2022

International Association for Hospice and Palliative Care Submission for OEWSGA12
Guiding Question Two: The right to justice

This submission identifies where the right to justice for detained persons with palliative care needs can be construed in national, regional and international legal frameworks, and suggests the scope of the right, considering conditions of older prisoners.

Global and regional standards the regarding right to justice for prisoners

International Covenant on Civil and Political Rights (ICCPR) – Article 10

Convention on the Rights of Persons with Disabilities (CRPD) – Article 12

Inter-American Convention on Rights of Older Persons – Articles 4 and 31

The United Nations Standard Minimum Rules for the Treatment of Prisoners 41 (3)

Access to justice for prisoners with palliative care needs means the ability of prisoners to fully exercise human rights including the right to health services, including to palliative care, ... and to live and die with dignity. Prisoners' abilities to exercise the right depends on

- Effective channels to file complaints of neglect, failure to comply etc.
- Staff trained to recognize when a prisoner has palliative care needs
- Prisoners who know their rights
- Trained clinical staff in health care community outside the prison
- Informed judicial personnel to update and expedite compassionate release provisions as appropriate

Recommendations for state obligations re *scope of right to justice for older prisoners with palliative care needs*

Procedural

1. Train prison staff in existing human rights standards – the right to medical care includes palliative care (General Comment 14 ICESCR)
2. Train prisoners to serve as hospice volunteers
3. Inform prisoners and staff of right to file a case for violations
4. Train community hospice/PC staff to respect rights of prisoners and families
5. Ensure there are rules in place for expedited compassionate release if appropriate

Substantive

1. Develop curricula for prison staff & prisoners



2. Ensure prisoners' access to community and district facilities as necessary
3. Ensure access to essential palliative care medicines in prisons and in community

Appendix: Regional and National Perspectives & Research on the Right to Justice and to Palliative Care in Prison

The European Association for Palliative Care (EAPC) Prison Task Force

Survey Part A done with eight countries: Australia, Belgium, Czech Republic, England and Wales, France, Portugal, Scotland and Slovakia found that, despite increasing numbers of older prisoners, relatively few prisons provide inpatient care, and only one country has any prisons that provide dedicated palliative care services. Early release on compassionate grounds is extremely rare in most countries. For the principle of equivalence (in the UN Standards) to be adhered to, facilities for sick and dying prisoners need to be improved, or many more people need to be released on compassionate grounds at the end of life. *The Part B Survey will address the issue of access to justice for prisoners with palliative care needs.*

United States

The Humane Prison Project is a model peer education, care and bereavement program for prisoners with palliative care needs at San Quentin State Prison in California. Although the US is a party to the ICSPR and the CRPD several US prisons have hospices, no provisions for access to justice have been identified in US federal or state prisons or jails. US is not a party to the Inter-American Convention on the Rights of Older Persons.

United Kingdom

Convictions for sexual abuse crimes have resulted in a larger number of older prisoners with age-related health problems and disabilities. Few older prisoners convicted of sex offences have a place to go upon release for to a terminal diagnosis. More appropriate environments, such as a secure nursing home for convicted sex offenders, or for older people who have served their sentences, may be met with resistance in the community or by commissioners. Although the UK is a party to the ICPCR and the CRPD, we have not identified provisions for either access to justice or to palliative care for prisoners approaching end of life.

References and related reading

- Convention on the Rights of Persons with Disabilities
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.htm>



INTERNATIONAL ASSOCIATION FOR HOSPICE & PALLIATIVE CARE
Advancing Hospice & Palliative Care Worldwide

- International Convention for Civil and Political Rights
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- Interamerican Convention on the Rights of Older Persons
[https://www.oas.org > ... > Inter-American Treaties »](https://www.oas.org/inter-americana/inter-american-treaties/)
- IAHPC presentation to European Association of Palliative Care Congress on the right to palliative care in prison 2019
<https://hospicecare.com/uploads/2019/5/The%20Right%20to%20Palliative%20Care%20in%20Prison.pdf>
- IAHPC brief on Normative Elements of a Right to Palliative Care for Older Persons, submitted to OEWSGA10
<https://hospicecare.com/uploads/2019/1/IAHPC%20Submission%20to%20OEWSGA10%20on%20Normative%20Elements%20of%20Right%20to%20Palliative%20Care.pdf>
- IAHPC COVID Briefing Note: Palliative Care for Detainees in Custodial Settings
<http://globalpalliativecare.org/covid-19/uploads/briefing-notes/briefing-note-palliative-care-for-detainees-in-custodial-settings.pdf>
- EAPC Task Force on Palliative Care for Prisoners. Mapping palliative care provision in European prisons: an EAPC Task Force Survey <https://www.endoflifecare.be/eapc-task-force-on-palliative-care-for-prisoners-mapping-palliative-care-provision-in-european>
- I'm having a Cancer Scare but Prison Healthcare is So Degrading I've Quit Seeking Answers <https://www.themarshallproject.org/2022/01/28/i-m-having-a-cancer-scare-but-prison-healthcare-is-so-degrading-i-ve-quit-seeking-answers>
- Humane Prison Hospice Project <https://www.commonweal.org/program/humane-prison-hospice/>
- Dying in Prison and Prison Hospice: Why We Should Care
<https://letsreimagine.org/1754/dying-in-prison-and-prison-hospice-why-we-should-care>
- 'Nothing to See Here' (Armstrong et al, 2020)
https://repositorium.ixtheo.de/xmlui/bitstream/handle/10900/121851/Nothing_to_See_Here_43100.pdf?sequence=1&isAllowed=y
- 'Deaths in Prison: A National Scandal' (INQUEST, 2020)
<https://www.inquest.org.uk/deaths-in-prison-a-national-scandal>

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