



MONASH University

Law

Implementing Human Rights in Prisons

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Outline: a framework

Implementing human rights in prisons requires

- Rights-based legislation
 - International human rights instruments and case law
 - Practical issues of implementation
- External monitoring
 - Optional Protocol to the Convention against Torture (OPCAT)
- A 'rights' culture

Rights and prisons

UN Basic Principles for the Treatment of Prisoners (1990)

- 5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in [the international rights instruments.]

Rights instruments

UN Conventions

- International Convention on Civil and Political Rights (ICCPR),
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1987 (CAT)
- Convention on the Rights of Persons with Disabilities 2006 (CRPD).

'Non treaty/ 'soft law' – Rules, guidelines, codes

- UN Standard Minimum Rules for the Treatment of Prisoners (2015)
- UN Basic Principles for the Treatment of Prisoners (1990)
- European Prison Rules (2006) ...

Victoria: Charter of Human Rights and Responsibilities (2006)

Some key rights

- Prohibition on ‘torture or cruel, inhuman or degrading treatment or punishment’ (ICCPR art 7; CAT arts 2 and 16; CRPD art 15)
- Right of people deprived of their liberty to be treated ‘with humanity and with respect for the inherent dignity of the human person’ (ICCPR art 10(1))
- Right to life
- Right to liberty and security of the person
- Equality before the law
- Privacy
- Protection of family and children

Enforcing rights?

- UN and regional Committees (eg UN HRC)
- Regional and domestic Courts

- NB there are lawful limits on rights.
 - Eg Victorian *Charter* s.7(2)

What is 'inhuman or degrading treatment'?

- Prohibition on inhuman or degrading treatment is not breached in the prison context by suffering which is simply the 'inevitable' result of legitimate punishment (*Frerot v France* [2007])
- May include overcrowding, lack of access to air and light, poor sanitation – depending on circumstances, such as duration, and impact on the individual.

- Prisoner shared a ‘cramped, stuffy and gloomy cell which is inadequate for the occupation of two people ... for at least 20 hours on average per day’, without overnight access to a toilet.
- Held: ‘degrading treatment’, that is, treatment which was ‘such as to diminish his human dignity and to arouse in him feelings of anxiety, anguish, inferiority and humiliation’.
(*Napier, Re Petition for Judicial Review* [2004])

Incorporating rights into practice

- Legislative and policy reviews; ongoing scrutiny of new legislation and policy
- Training, education and information
- Balancing interests in practice
 - Community expectations;
 - Safety of staff and prisoners
 - Resource allocations
- Human Rights as framework for practical tools for implementation

- Guidance for implementation?
- Eg Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (2nd ed 2009).
 - The vehicle I have used for that is the compendium of international human rights standards. I have felt confident in doing that because in so many countries, east and west, north and south, the response that I have had from first line staff has been, “That makes sense to us; we can relate that to our daily work”. (Coyle 2013)

External Monitoring

- Ombudsman
- Inspectorates
- NGOs/ civil society

- Victorian Ombudsman
- WA Office of the Inspector of Custodial Services (OICS)

Monitoring standards

- UK HM Inspectorate of Prisons
 - ‘Expectations’
 - ‘Healthy Prison’ standards – safety, respect, purposeful activity, preparation for release.
- OICS WA
 - Codes of inspection standards
 - Adult custodial services (2007)

The basis of the code lies in the principles of independent inspection, purposeful and rehabilitative imprisonment, and the protection of human rights. ... The observance of human rights is integral to good prison management and the most effective and safest way of managing prisons.
 - Aboriginal prisoners (2008)
 - Young people in detention (2010)

OPCAT

- Two tiered monitoring framework:
- National Preventative Mechanisms (NPMs) – domestic
 - Statutory
 - Independent
 - Unrestricted access
 - Adequate resources
 - Public reporting
- Subcommittee for the Prevention of Torture (SPT) – international oversight