7. A Case for Justice: The Rights of Prisoners with HIV

> *'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'*
> – Article 10 (1), International Covenant on Civil and Political Rights

The voices on HIV care reveal that prisoners with HIV struggle with dignity and rights as they grapple with systems that seem to emphasise control over care. The story of a woman prisoner in Canada bears this out:

> 'I was H's case worker while at PASAN (Prisoners with HIV/AIDS Support Action Network) and there are horror stories with regards to her case. Overall, the system did not look after her. Women prisoners were bathing her, feeding her, doing general care and emotional support. They would try to look after her, cooking, putting lotion on her sore body parts, doing make-up. Right before she was brought to the hospital, she was found lying in her own vomit with rotting food in her cell, cigarette butts everywhere and fruit flies all over. Her case management officer did an informal "sit in" and wouldn't leave the prison until someone went to see her and took her to the outside hospital. Women were yelling well wishes to H as she left the prison. I met with several women after the funeral service for her (at the prison) and they all told me similar horror stories about her not getting proper care.
>
> 'Compassionate release for people living with HIV/AIDS in prisons is a huge area of concern. PASAN has done a great deal of advocacy in this area because people are often days or moments away from dying before they are released (sent to hospital or home to be with family). People have died in the ambulance while on the way to the hospital so that there is no inquest into prisoners deaths. CSC (Correctional Service of Canada) does not have to do an inquest if a prisoner is no longer in custody.'

In accordance with the United Nations' Basic Principles for the Treatment of Prisoners (United Nations 1990), prisoners are in the custody of the State. Principle 1 of this document states that: 'All prisoners shall be treated with the respect due to their inherent dignity and value as human beings'. This is in alignment with article 10.1 of the ICCPR. Principle 9 states that: 'Prisoners shall have access

to the health services available in the country without discrimination on the grounds of their legal situation'.

These agreements designate the State as the primary carer for people in prison. This is critical for prisoners with HIV or AIDS because many do not have sustainable contact with family and others outside, who often provide emotional support, money for medication and food to sustain the health of those inside (Goyer 2003; Avert.org 2010). Some prisoners have no external supports at all. Compliance with article 10.1 of the ICCPR is therefore necessary for the provision of quality care for those incarcerated in respect of their dignity and humanity.

An interview between a PASAN caseworker and Carol, an inmate from a Canadian women's prison, shows the reality for prisoners with HIV.

> Carol: 'My friend H (referred to earlier) was more sick and she should have been in hospital. She should have at least been in the health-care centre because they did have a couple rooms there for inmates. You know, in the hospital, in their health-care system, but it was like they neglected her.'
>
> Caseworker: 'So what kind of care was she getting while she was in that centre?'
>
> Carol: 'None ... they waited until the very end, until she was on her death bed to give her compassionate parole. They waited until she had, in fact, dementia, where she didn't know where she was anymore or what was going on ... she couldn't feed herself anymore. She couldn't bathe herself anymore ... she didn't know who you were. You know, she'd just go blank.'

While there were services provided by paid prison staff, chaplains, NGOs and other 'external' supporters, the interview notes show that a significant and valuable part of care-giving was provided by fellow inmates. These included bathing and providing moral and emotional support – functions willingly carried out despite institutional rules that barred prisoners from entering each other's 'houses' (cells) – and advocating on behalf of each other. Carol spoke of the closeness that developed between inmates in the care-giving process, reflecting respect for each other's dignity and humanity.

> 'I used to draw her (H) pictures and write her poems and all that ....'

Carol spoke of another inmate she helped care for who had HIV, and said this of prison authorities...'you know they had to wait until, you know, she couldn't hurt ... like she wouldn't ... she couldn't walk

no more and she couldn't hurt anybody else. Like that's in my eyes, that's what, you know then they let her out...'

ICCPR reports: the Commonwealth picture

A review of the UN Human Rights Index[1] shows that, of the 53 Commonwealth nation members,[2] the following 17 nations submitted reports to the ICCPR between 2000 and 2010: Australia, Barbados, Botswana, Canada, The Gambia, Guyana, Kenya, Mauritius, Namibia, New Zealand, Rwanda, Sri Lanka, Trinidad and Tobago, Uganda, United Kingdom and Northern Ireland (and the associated States of the UK), United Republic of Tanzania and Zambia. A specific review of section 10 of the ICCPR was made of the submitted reports.

A few national reports indicated policies around general access and entitlements of citizens with HIV or AIDS to health care; some also mentioned policies for prisoner access to drugs and support through publicly funded services. Relevant NGO reports that accompanied the country reports showed concerns about legislative and attitudinal discrimination against non-heterosexual people, which had implications for the funding of preventative initiatives to address HIV (see, for example, BONELA et al. 2008).

Overall, there were no questions by the Human Rights Committee (HRC) on country reports that requested details of how prisoners with HIV or AIDS were being cared for and by whom. There was insufficient information in the reports or the HRC responses to enable an analysis of the humane and dignified treatment of prisoners with HIV. The HRC did from time to time – as with Botswana (HRC 2006), Namibia (HRC 2004a) and Uganda (HRC 2004b) – raise issues with nations about 'efforts to protect (their) populations from HIV/AIDS' and say that they should adopt comprehensive measures encouraging greater numbers of persons suffering to obtain adequate ART and facilitate such treatment.

Despite statements from countries that access to health services – in some places free care – was assured in policies, their reports did not illuminate how prisoners actually accessed such care, nor how resource-strapped prisons and State bodies accessed and then made available such resources (drugs, professionals, equipment, emotional support, NGO support, contact with family/significant others) to prisoners in facilities. The HRC's questions were often about the wider issues of overcrowding, prisoner safety and lack of basic hygiene, food and health care (HRC 2003). The Committee also expressed concern about the lack of guarantees in a few places of the separation of

juveniles from adults while in detention (HRC 2009). Despite policies indicating that terminally ill prisoners can be granted compassionate leave, inmates with HIV in both developed and developing countries continue to die in prison before being released to their families and significant others (IRIN/Plus News 2009).

The length of time between reports to the HRC under the ICCPR, and the absence of reports for the majority of Commonwealth nations, made it difficult to assess breaches of ICCPR article 10.1 in the non-reporting countries or compliance in those who did report.

In the real world, glimpses obtained from NGO reports, articles and testimonies of individuals show severe and significant breaches of this article for prisoners with HIV and AIDS. The presence of well-intentioned policies in country reports masks the struggles to guarantee the upholding of people's rights and dignity and the realities for individual lives even in better-resourced nations. A survey of prisons received by the Prison Reform Trust (PRT) in the UK – with 63 completed surveys received from the 139 prisons in England and Wales, 11 from the 16 prisons in Scotland and 1 from the Northern Ireland Prison Service (NIPS) – found that over one third of prisons had no HIV policy; over half had no sexual health policy (PRT and NAT 2005).

The types of issues in relation to the care of prisoners with HIV varied between countries, although negative stigma against same sex relationships, drug use and ignorance about how HIV is spread appear to be the common barriers to the provision of any health care and support to inmates. Poor treatment includes inadequate and inappropriate supervision to protect from sexual abuse, unsafe needle sharing, limited access to condoms, inappropriate nutrition, ongoing negative stigma from officials including health professionals, inadequate staffing and unhelpful bureaucratic procedures that are administered regardless of their detrimental impacts on prisoner health, such as removal of medication from holders, delays in getting medication and gaps in continuity of care (UK AIDS and Human Rights Project 2008).

> 'One woman attending the group in Manchester needed to take her medication at a specific time on a full stomach. It was agreed she could have a sandwich at that time, but every day the guards grabbed it off her. Every day she had to explain that she was allowed it. When another detainee said that it was ridiculous that every day this woman had to fight for a sandwich she had to eat to take her medication, she was told that it was none of her business. There was no mechanism, no continuity. Every day there were different people on the wing. The detainees were told not to expect the guards to know their situations.' (PRT and NAT 2005, p.36)

Legislative barriers and state-promoted attitudes against homosexuality in sub-Saharan Africa (UNODC et al. 2007), the Caribbean (Day 2007) and India (Johari and Mansuri 2006) prevent the distribution of condoms in prisons and make inmates reluctant to go for HIV testing or other activities that could support their care as this would identify them and cause them to be subjected to inhumane and undignified treatment. The Prison Reform Trust report showed how stigma affected an HIV-positive female prisoner in the UK who reported experiencing discrimination from the prison officers, health-care staff and fellow inmates. The inmate said that she was not allowed in the kitchen because of her HIV status and that a nurse also refused to take a sputum sample. The prisoner reported being verbally and physically abused and had witnessed other prisoners being abused by fellow inmates and staff. Other inmates confirmed that an HIV-positive prisoner would be physically and/or verbally abused or isolated if his or her status were known (PRT and NAT 2005).

For resource-strapped nations – particularly in the Caribbean and sub-Saharan countries where there is severe overcrowding and multiple individuals are held in one space – issues of prisoner dignity, confidentiality, access to condoms and medication paled in comparison to prisoners basic needs such as food, water, sleep, sanitation, security from sexual assault and protection from exposure to other diseases such as tuberculosis and Hepatitis C. Uganda is even considering legislation that potentially assigns the death penalty to a prisoner with HIV (UN News Centre 2009). In both developed and developing Commonwealth nations, the negative stigma associated with homosexuality and the ignorance of professionals and others about HIV and AIDS are still strong barriers to the prevention of the spread of HIV and lead to negligence in the care for prisoners with HIV and AIDS.

A prisoner's story illustrates reality in a cell in the UK:

> 'I was 25 when I was banged up. I was also on combination therapy ... before I went to jail ... After months of regular beatings ... [t]his big, mean, menacing bloke has summoned me to his cell. He said he'd decided to take me under his wing .... You can't say no - I wouldn't be here if I had. In the beginning we would have sex every day, sometimes three times a day .... Now condoms are hard to come by in prison. As I went down to the medical quarters twice a day (to get my medication), I used to ask there. But I was rationed to one a day ... I was told that if I took the dirty condom back – to prove it had been used – they would give me more .... But even taking dirty condoms back didn't always guarantee fresh supplies ... I doubt the authorities would admit it, but prisoners are constantly

> treated for sexually transmitted diseases. It goes on daily. If I hadn't gone in with HIV, I'd have been damned surprised if I hadn't come out with it.' (PRT and NAT 2005, p.17)

In Cameroon prisoners with HIV and other illnesses lacked access to health services and facilities to cater to their specific needs, particularly in rural areas (IRIN 2006). Budgetary constraints meant that inmates had to buy their own drugs – if they and their family could afford it – as prison facilities had limited funds to provide these. Staff and inmates assisted sick prisoners by supporting them on a day-to-day basis and engaging in fundraising activities for their needs. Consider this statement from a prison official:

> '"We are abandoned here in these bush prisons – all assistance stops at Douala and Yaounde [the capital]," Wantoh Francis Teih, prison director said, adding that there is no budget whatsoever for health care and medicines for the more than 300 detainees.' (Ibid.)

Stigma against homosexuality and HIV and AIDS hindered people from offering or consenting to be tested in prisons, affecting estimates of disease prevalence and health-care needs. This negative stigma became a barrier to inmates supporting each other.

The State is responsible for the 24/7 care of prisoners with HIV in ways that uphold their dignity and respect their humanity, in accordance with article 10.1 of the ICCPR and with the UN Basic Principles for the Treatment of Prisoners. Our research shows consistently lower thresholds of dignity accruing to these persons than to those cared for in their own homes and with no resources. At the World AIDS Conference in Vienna in July 2011, the United Nations Rapporteur on torture and punishment warned: 'that overcrowded prisons were breeding grounds for AIDS. Manfred Nowak, who has visited detention facilities around the world, said inmates were often held in inhumane conditions in which the HIV virus spread through the use of non-sterile drug injection equipment, sexual contacts, tattooing and sharing of razors. Nowak told the conference that governments should, among other things, inform prisoners of the risk of HIV infection, offer free HIV testing and counselling as well as provide needle and syringe programmes and opiate substitution therapy' (Jürgens et al. 2011).

On 21 August 1997, after statements by the Commissioner of Corrections in Jamaica that condoms would be distributed to inmates and warders to prevent the spread of HIV, the warders went on strike. The result was chaos and rioting in the two largest correctional institutions. Inmates with scores to settle used the opportunity and those perceived to be homosexual were targeted, with 16 prisoners

killed and more than 50 injured (Human Rights Watch 2004). The Commissioner resigned and a separate section was created in correctional institutions to house inmates labelled as homosexual. HIV and AIDS and their association with male homosexuality became the scapegoat for the prison riot, and a culture of fear paralysed HIV prevention efforts in the correctional system.

After assurances from the Commissioner of Corrections that condoms would not be made available, the HIV testing and treatment services resumed, with a focus on clinical services for all inmates. This distancing technique allowed the programme to continue and provide needed medical support for inmates living with HIV and AIDS, but the ability to effectively reduce transmission was lost. It should be noted that half of the inmate population is released to the community each year (Government of Jamaica 2008). Inmates separated in the 'homosexual' section continue to face stigma and discrimination and suffer a disproportionate burden of infection without access to standard methods of HIV prevention.

Few correctional systems in low- and middle-income countries provide even the basic HIV testing and treatment services now available in Jamaica (Dolan, Kite and Black 2007; Andrinopoulos et al. 2010), and condom distribution in prisons is a contested issue world-wide (Júrgens 2007; Okie 2007).

Conclusion

Given the voice of the woman with HIV who recounted her experiences in prison and the analysis of the Commonwealth situation based on ICCPR reports and other publications, it is clear that the rights of prisoners with HIV are severely compromised.

Notes

1. United Nations Human Rights Index of Human Rights Documents http://www.universalhumanrightsindex.org/en/index.html
2. Fiji Islands is excluded as its membership is currently suspended.