



February 18, 2022

International Association for Hospice and Palliative Care Submission for OEWSA12
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

The UK is a party to the ICPCR and the CRPD. There has been a great deal of work done in parts of the UK over the past 10 years to provide training and support for prison staff in relation to palliative care and to improve prisoners' access to palliative care. There are some good links between hospices and prisons, and a few prisons have even created palliative care suites. However, this provision is very patchy, and although it is true that prisoners should have access to the same standards of healthcare as the rest of the population, there are numerous reasons why in practice this often doesn't happen, or at best is extremely challenging. What is lacking is national policy about how to manage people in prison who are approaching the end of life, in particular those who are older and/or who have multiple and complex needs, as many of them do not have anywhere else to go even if they were to be released on compassionate grounds.



INTERNATIONAL ASSOCIATION FOR HOSPICE & PALLIATIVE CARE
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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>



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- International Convention for Civil and Political Rights
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- Interamerican Convention on the Rights of Older Persons
[Inter-American convention on protecting the human rights ohttps://www.oas.org › ... › Inter-American Treaties »](https://www.oas.org/interamerican-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 OEWGA10
<https://hospicecare.com/uploads/2019/1/IAHPC%20Submission%20to%20OEWGA10%20re%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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