

Input for the United Nations General Assembly Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons

Response for Focus area on “Access to Justice”

30 November 2019

Introduction

This submission largely draws on PRI's *Global Prison Trends 2019* report and expert blogs written for our website.¹ Access to justice and discrimination issues affect older people throughout the criminal justice system at arrest and adjudication, detention, and transition back to the community.

Lack of data and evidence-based policy

There is a lack of data and comprehensive research available on older people in criminal justice systems, however from what is available it is clear that the proportion of older people in prison is rising in many countries. Singapore saw the number of prisoners aged over 60 doubled between 2012 and 2016, and in Australia, those imprisoned above 15 years old grew by a third in just five years. In the UK, the number of prisoners over 60 has tripled in 15 years. Longer sentences (including life imprisonment) are one contributing factor to these statistics.

Arrest and adjudication

As the population ages, a growing proportion of arrestees are older. Yet staff who interact with older adults entering the criminal justice system are rarely sufficiently trained to identify and respond to health-related concerns. For example, older adults may suffer from sensory impairments (such as vision and hearing loss) that make it difficult for them to comply with police officers during an arrest, adequately participate in their own defense at adjudication, or avoid victimization while detained. Identifying sensory impairment is not always easy as some older adults hide impairments fearing

¹ Please see the following blogs for further reading:

Vicki Prais, *Elderly life-sentenced prisoners: a forgotten and 'invisible' group*,

<https://www.penalreform.org/blog/elderly-life-sentenced-prisoners-a-forgotten-and-invisible/>

Bridget Sleaf, *Old age behind bars: how can prisons adapt to the needs of increasingly elderly populations?*

<https://www.penalreform.org/blog/age-bars-prisons-adapt-increasingly-elderly-populations/>

Cyrus Ahalt and Brie Williams, *How can criminal justice systems from police to probation address the medical and social care needs of elderly prisoners?* <https://www.penalreform.org/blog/declining-health-advancing-years-prison-call-policy-oriented/>

that disclosure will increase their vulnerability. Similarly, substance misuse, depression, anxiety, and cognitive impairment are all common in older adults but may be particularly difficult to differentiate in the criminal justice population, particularly for police officers, attorneys, or correctional staff in pre-trial detention centres who are not trained in aging-related health. Each of these health concerns has unique relevance when adjudicating an older arrestee. For example, “odd behaviour” leading to arrest can be the result of early dementia.²

Courts and sentencing of older persons

In the US, the “elder court” concept – a special court that could link older adults with legal and social services staff trained in geriatrics before adjudication – is slowly gaining interest. But such courts’ focus is typically narrow, hearing mostly cases where the victim is older.³

In Kenya, an appeal court questioned the use of mandatory sentences for older people ‘as the compulsory sentences amounted to committing them to a slow death behind bars.’⁴ In some jurisdictions, there is the possibility for older prisoners to be given early release on compassionate grounds; for example, in Cambodia prisoners over the age of 65 are eligible to request a royal pardon.⁵ However, research in the US has found that early release programmes on compassionate grounds exclude many prisoners who are not eligible because of the type of sentence or the crime committed, and some only allow release for people who are terminally ill – but lack an efficient process for application and approval, leaving sick prisoners to die before they can complete the process.⁶

Access to justice for older persons in prison

The increase of older prisoners creates new and difficult challenges for prison authorities to ensure they have access to justice, for example access to complaints mechanisms. Older people in prison face health conditions associated with the advancement of age, such as falls, increased frailty, dementia, incontinence and sensory impairment. This makes them vulnerable and unable to access services such as free lawyers or even visitors’ schemes which are all safeguards against ill-treatment, and prerequisites to access justice.

Some positive measures at national level

In Japan, a new policy to detect dementia in prisoners will be rolled out in 2019 with the aim of detecting the condition at an early stage and providing treatment to ensure effective reintegration on

² <https://www.penalreform.org/blog/declining-health-advancing-years-prison-call-policy-oriented/>

³ <https://www.penalreform.org/blog/declining-health-advancing-years-prison-call-policy-oriented/>

⁴ ‘Let court decide fate of elderly, says judge’, Standard Digital, 7 February 2019, www.standardmedia.co.ke/article/2001312226/unfair-keeping-elderlyprisoners-behind-bars-high-court.

⁵ ‘Inmates can now request royal pardons six times per year’, Khmer Times, 1 November 2018, www.khmertimeskh.com/546068/inmates-can-now-request-royal-pardons-sixtimes-per-year.

⁶ ‘Release programs for sick and elderly prisoners could save millions. But states rarely use them’, Milwaukee Journal Sentinel, 18 March 2018, projects.jsonline.com/news/2018/4/18/release-programs-for-sickelderly-prisoners-could-save-millions.html.

release.⁷ Prison officers in Scotland have been given training on how to work with people suffering from Alzheimer's and dementia.⁸

Recommendations

States need to collect data and information regarding the needs of older prisoners and explicitly address these in policy. Specific training for justice actors is required. Specific sentencing guidance is required for older persons. Early release mechanisms should be adopted and used for older prisoners.

Other key areas of reform include: placing older prisoners in facilities designed explicitly to care for them; improving their levels of safety given their vulnerability and risks of victimisation; and promoting their rehabilitation, given that this age group is highly unlikely to reoffend.⁹ An International Committee of the Red Cross report on ageing and detention concludes that policymakers need to have explicit strategies – with existing plans and resources falling short of what is required to guarantee basic dignity for older detainees.

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⁷ 'Justice Ministry to test new elderly inmates for dementia at 8 prisons', The Mainichi, 16 January 2018, mainichi.jp/english/articles/20180116/p2a/00m/0na/014000c.

⁸ 'North-east prison officers given dementia training sessions', The Press and Journal, 25 July 2018, www.pressandjournal.co.uk/fp/news/north-east/1527557/prison-officersgiven-dementia-training-sessions.

⁹ Kerbs, J. J., & Jolley, J. M. 'A commentary on age segregation for older prisoners: Philosophical and pragmatic considerations for correctional systems', *Criminal Justice Review*, Volume 34, Issue 1, pp119–139.