

Prisoners' Rights are Human Rights

'The degree of civilization in a society can be judged by entering its prisons'
Fyodor Dostoevsky

Our prisons are full of people who are vulnerable and at risk. Prisoners are often young, mentally ill, suffering from drug dependency, poor or Indigenous – or all of these. It is for this reason that we must be committed to protecting the human rights of our prisoners, and prisons must be complemented with adequate housing, employment, drug treatment and mental health support.

PRISONERS: WHO ARE THEY?

More than 50% of prisoners have an intellectual or psychiatric disability. Of women prisoners, 'most have suffered physical or sexual abuse as a child and domestic violence as adults, and 90% have alcohol or other problems.'¹ Indigenous people make up 25% of the prison population.² By putting these already vulnerable people in prison we deprive them of liberty, a prized human right, and then compound the punishment by denying them the right to vote³ and limiting access to the media,⁴ making them an easy group for politicians to ignore.

REMAND & OVERCROWDING

There are a number of human rights issues facing prisoners today. One key issue is overcrowding, with the Australian Bureau of Statistics reporting that the prisoner population has increased by 43% since 1994. This outstripped the 15% growth in the Australian adult population. The median time spent on remand (in gaol awaiting trial or sentencing) is 2.8 months.⁵ These laws mean that people who have not been found guilty of any offence may be kept in prison awaiting trial. This imprisonment

¹ Eileen Baldry, 'Prison boom will prove a social bust', *SMH* Jan 18 2005

² *Australian Human Rights Commission, A statistical overview of Aboriginal and Torres Strait Islander peoples in Australia* (2008)

< http://www.hreoc.gov.au/Social_Justice/statistics/index.html#Heading496 > at 4 February 2010

³ Commonwealth Electoral Act (1918) Cth s93 (8AA)

⁴ According to one study of Victorian private prison regulation: Gow and Williamson (1998) in Jane Andrew and Damien Cahill, 'Submission to the Inquiry into the privatisation of prisons and prison-related' services, NSM Legislative Council General Purpose Standing Committee No. 3' (2009) 18 *Critical Perspectives on Accounting* s877, 890

⁵ Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2004* (2004) Australian Bureau of Statistics < <http://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/835F686B0BD2A444CA2570D8001B85B1?OpenDocument> > at 4 February 2010

undermines the cornerstone of our legal system: people are innocent until proven guilty.

An additional cause for concern is the Australian Institute of Criminology's research that 'remandees are more likely than sentenced prisoners to be homeless, unemployed or have some form of mental disorder'⁶, and they are more likely than sentenced prisoners to die in custody.⁷ Professor Chris Cunneen of the NSW Institute of Criminology gives one explanation for this disproportionate impact upon already vulnerable people: 'The changes in bail laws particularly affect marginalised groups, because they are less likely to be employed or at school' and thus be able to demonstrate ties to the community, which being released on bail calls for.⁸

IMPACT ON ABORIGINAL AND TORRES STRAIT ISLANDERS

These factors are more likely to coincide with Indigenous populations, who suffer an extremely high rate of incarceration in comparison with the broader population. The National Indigenous Drug and Alcohol Committee recently launched a paper entitled '*Bridges and Barriers: Addressing Indigenous Incarceration and Health.*'⁹ It revealed that, although Indigenous Australians make up one in forty Australians, they make up one in four prisoners. Chris Graham, of the National Indigenous Times, remarked that this figure means that Australians jail black males at a rate five times higher than Apartheid South Africa.¹⁰

PRIVATISATION: WHERE DOES THE BUCK STOP?

In 2009, there were moves to privatise prisons in NSW, in particular Sydney's Parklea. Parklea has been privatised, although attempts to privatise Cessnock Gaol have been suspended. Concerns had been raised by staff, unions and members of the public about both working conditions in privatised prisons and the level of care which would be provided to prisoners.¹¹

⁶ Morgan & Henderson (1998) in David Bamford, Sue King and Rick Sarre 'Remand in custody : critical factors and key issues' (2006) *Trends and Issues in Crime and Criminal Justice* (310) 1-6.

⁷ Joudo & Veld (2005) in David Bamford, Sue King and Rick Sarre 'Remand in custody : critical factors and key issues' (2006) *Trends and Issues in Crime and Criminal Justice* (310) 1-6.

⁸ Jonathon Pearlman, 'Our Convict State – one in 600 behind bars', *SMH* January 3 2006

⁹ National Indigenous Drug and Alcohol Committee, *Bridges and Barriers: Addressing Indigenous Incarceration and Health* (2009) NIDAC < http://www.nidac.org.au/publications/pdf/nidac_bridges_and_barriers.pdf > at December 3 2009 cited Graham, Chris 'We jail black men five times more than apartheid South Africa', *Crikey* July 2 2009 [online] <http://www.crikey.com.au/2009/07/02/we-jail-black-men-five-times-more-than-apartheid-south-africa/>

¹⁰ Chris Graham, 'We jail black men five times more than apartheid South Africa', *Crikey* July 2 2009 [online] <http://www.crikey.com.au/2009/07/02/we-jail-black-men-five-times-more-than-apartheid-south-africa/>

Publicly owned services or companies are held accountable to the Australian people through checks and balances on the use and abuse of power. This means that the buck stops with the Minister, who can be voted out if they act irresponsibly.

The process of privatisation takes this accountability out of the hands of Australian citizens. Privately held companies are run by directors whose primary legal responsibility is to their shareholders, not to the broader community. In effect: the more prisoners; the longer the sentences; the poorer the conditions; the higher the shareholders' profits.

Privatisation of prisons can also decrease transparency, as vital information about prison operations and agreements can be kept confidential in a way that government run operations cannot.¹²

'Incarceration and punitive measures are a fundamentally public role that should not be delegated to the private sector, where accountability, consistency, transparency and access to information will not be as forthcoming.'¹³

The USA provides an example of what can happen when privatisation of prisons occurs: journalist Eric Schlosser has described a 'prison-industrial complex' of bureaucracy, politicians and economic interests that 'encourage increased spending on imprisonment, regardless of the actual need.' He says that the 'eagerness of elected officials to pass 'tough-on-crime' legislation—combined with their unwillingness to disclose the true costs of these laws—has encouraged all sorts of financial improprieties.' His analysis serves as a warning for the Australian criminal justice system.¹⁴

ALTERNATIVES

There is a **'difference between being tough on criminals and reducing criminal behaviour.'** (The Age, July 21.)

¹¹'NSW prison guards call for Rees' scalp' *Ninemsn* 6 August 2009 < <http://news.ninemsn.com.au/national/846639/prison-guards-across-nsw-go-on-strike> > at Feb 4 2010

¹² 'Lawyers oppose jail system privatisation' *Lithgow Mercury* 9 August 2009
<http://www.lithgowmercury.com.au/news/local/news/general/lawyers-oppose-jail-system-privatisation/1590886.aspx>

¹³ Australian Lawyers Alliance 'Australian Lawyers Alliance submission to the inquiry about privatisation of prisons and prison related services in NSW' (2009) < http://www.lawyersalliance.com.au/documents/public_affairs/nsw_prison_privatisation_2009.pdf > at 3 December 2009

¹⁴ Eric Schlosser, 'The Prison-Industrial Complex' *The Atlantic* December 1998 < <http://www.theatlantic.com/doc/199812/prisons> > at 4 February 2010

Dr Don Weatherburn suggests that ‘measures that tackle the underlying causes of offending (for example drug and alcohol dependence, poor social skills, unemployment’ can reduce recidivism by up to 20 per cent. According to Dr Weatherburn, alternatives to imprisonment such as rehabilitation programmes and services might be seen as being kind to criminals, when ‘In truth it’s nothing more or less than enlightened common sense’.¹⁵ In NSW at the moment, very little is spent on mental health and affordable housing, and rates of recidivism are correspondingly high.¹⁶ Spending more money on health and housing is vital in supporting prisoners and keeping communities safe.

NSW prisons in general do not provide much in the way of programmes to address offending behaviours during terms in prison. Nor do they provide much post-release support. However, Marrickville Council in Sydney has one mentoring programme, StAMP. This programme does recognise the need to assist offenders as they exit prison and rejoin society. They provide support, mentoring and practical assistance to people who have been in prison or are at risk of going to prison. There are benefits for mentors too:

‘I feel like my involvement with people affected by the criminal justice system has humanised the mentees and demystified it for my family and friends.’¹⁷

‘Community work orders’ (CWOs) are far cheaper than keeping people behind bars as well as ‘getting offenders to use their time more constructively, with benefits accruing to themselves, their families and their communities’, and yet they are not. In the Northern Territory, where Aboriginal people make up to 80% of those in prison, CWOs are used at a lower rate than in other states and ‘the government’s intention to deter potential criminals with ever more draconian prison sentences has failed miserably,’¹⁸ with crime rates climbing.

Prisons alone cannot be the solution. There are alternatives out there – they just need to be utilised. Former Supreme Court Judge Bill Carter cites a report on Queensland’s prisons when he says that ‘Prison is a place where human beings are brutalised, sodomised and assaulted – but not corrected.’¹⁹

**With gratitude to Father Peter Carroll msc for his assistance
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¹⁵ Don Weatherburn, ‘Filling Prisons only part of the solution to cutting crime’ *Sydney Morning Herald*, February 6 2008

¹⁶ Eileen Baldry, ‘Prison boom will prove a social bust’, *SMH* Jan 18 2005

¹⁷ [StAMP Mentoring Program, Information Package 2009 p.5](#)

¹⁸ Graham Ring, ‘Locking them up, the easy option’ *National Indigenous Times*, March 4 2010

¹⁹ Bill Carter, ‘Prisoners of unreal world’ *Courier Mail* March 20 2006

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