

# Drugs, Criminal Justice and Right to Health

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# International prison standards

- UN Standard minimum rules for the treatment of prisoners (1955)
- UN Code of conduct for law enforcement officials (1979)
- UN Principles of medical ethics (1982)
- UN Body of principles for the protection of all persons under any form of detention or imprisonment (1988)
- UN Basic principles for the Treatment of prisoners (1990)
- Bangkok Rules - 2010
- European prison rules (2006)

# “Right to the highest attainable standard of physical and mental health”

- Constitution of the WHO (1946)
- Article 12 Int’l Covenant on Economic Social and Cultural Rights (1966)
- Articles 11 and 13 European Social Charter (1996, revised)

# Basic minimum

## States must Respect, Protect, Fulfil...

- Right to medical care
  - Drug dependence treatment
  - Continuity
- Right to timely medical attention
  - Withdrawal (McGlinchy v UK)
  - Overdose
- Right to preventative health
  - Many cases re TB
  - OST, PNSP (CESCR, Mauritius)

# Basic minimum

- Right to mental health care
  - Edwards v UK: screening
  - Williams v Jamaica: Deterioration on death row
- Right to professional standard of care
  - Edwards v UK: inadequately trained staff
  - Robinson v Jamaica: no doctor
- Right to informed consent and to refuse treatment
- Right to environmental health

# International jurisprudence on harm reduction and right to health

- **Recommendations from UN treaty bodies** (Ukraine, Kazakhstan, Tajikistan, Russia, Sweden, Poland)
- Italy - gender specific harm reduction services
- High Commissioner for Human Rights
- UN Special Rapporteur on Torture
- UN Special Rapporteur on Health
- UN Special Rapporteur on Violence Against Women

# Scope of legal obligations and harm reduction

## How can we guarantee these are met?

- Progressive realisation' to the 'maximum of available resources'
- '3 A Q'
  - Available (systems must be in place)
  - Accessible (to all without discrimination)
  - Acceptable (Evidence-based and culturally sensitive)
  - Sufficient Quality (Best practice, fit for purpose)

# Equivalence of Standards or Equivalence of Objectives?

- 'Principle of equivalence' well established

but...

- Specific health risks in prisons
- Duty of care in taking someone into custody
- Ability to exercise rights impaired

e.g.

- Methadone and NSPs

# Equivalence of Objectives

- Equivalence is a minimum standard – gaps remain
- Rights and detention – restrictions and extra requirements
- In some circumstances, the right to the highest attainable standard of health entails an obligation to provide higher standards of healthcare inside prisons than outside

# Not a new idea...

- Act for preserving the health of prisoners in gaol and preventing the gaol distemper (GB, 1774)
  - Prison health an obligation of state
- Spicer v Williamson (Nth.Car. Sup Ct 1926)
  - Public ‘required to care for the prisoner’
- Estelle v Gamble (US Sup Ct 1976)
  - Affirmed govt’s ‘obligation to provide medical care for those whom it is punishing by detention’

# Prisoners' Right to Health: the bigger picture

- 'Underlying/social determinants'
  - Criminal laws and drug policies
  - Income inequality and poverty
  - Mental health
  - Education, recreation
  - Housing, employment
  - Stigma and discrimination
- Remember: Connection to other rights

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