

Prisoners and Human Rights – the Potential and the Reality

By Kate Mulvany

Despite generally declining crime rates in Victoria, the rate of imprisonment is increasing. This, in conjunction with recent media and political emphasis on a 'tough on crime' agenda, makes an informed discussion about the rights of prisoners particularly pertinent. In August, a capacity audience attended a Castan Centre public forum exploring the issue, led by Associate Professor Bronwyn Naylor, University of Ottawa professor and Canadian Association of Elizabeth Fry Societies (CAEFS) executive director Dr Kim Pate, and Sisters Inside chief executive Debbie Kilroy OAM.

Dr Naylor, an investigator in the three-year *Applying Human Rights in Closed Environments* research project, began by outlining current approaches to prison use. She emphasised that use of imprisonment as punishment is increasing within Australia, despite evidence demonstrating its associated harms. Additionally, she argued, many offenders do not need to be imprisoned, and prisons do little to address underlying factors contributing to imprisonment rates, such as poverty and mental health issues. As such, Dr Naylor asserted that the decision to imprison is political, and she advocated a rethink of the routine use of prisons as a penalty.

Dr Naylor then turned to the scope for protection of human rights within prisons. In Victoria, she explained, both the *Corrections Act 1986* and the *Victorian Charter of Human Rights and Responsibilities Act 2006* provide prisoners with some protection, including rights to reasonable medical treatment and respect for dignity when deprived of liberty, as well as protection from cruel and inhuman treatment. Dr Naylor noted that, in practice, prisoners' rights may be limited for security reasons, and are not directly enforceable.

Dr Naylor then outlined evidence from her research with prisoners about their experiences of overcrowding, limitations on health care and restrictions on family contact, and also what they identified as a fundamental lack of respect for the dignity and humanity of prisoners. Quoting earlier research by Alison Liebling, she highlighted the link between an absence of respect and psychological distress. She argued that, ultimately, changing the treatment of people in prisons will need a change in community attitudes toward prisoners, especially the perception of offenders as 'others'.

The message from the second speaker, Dr Kim Pate, was clear: the potential for prisoners to assert their human rights is infinite, but the reality is dismal. After 30 years working in legal and penal systems, Dr Pate admitted to some cynicism regarding the ability of the law to change prison practice. She noted that previous attempts involving progressive reform movements had failed in their implementation and pointed out that, despite a systematic review by the Canadian Human Rights Commission identifying discrimination on the basis of sex, race and disability, and criticism from both the United Nations Human Rights Committee and the Committee on the Elimination of Discrimination Against Women, human rights violations in Canadian prisons continued.

She asserted that motivating the general community offered greater potential for change than human rights instruments alone, referring to the case of Ashley Smith. Ms Smith, a teenager who died while in isolation and under suicide watch in a Canadian prison, was tasered, injected, gassed and transferred to different facilities seventeen times during her imprisonment. As Dr Pate explained,



(L-R) Speakers Bronwyn Naylor, Kim Pate and Debbie Kilroy

high-profile coverage of the case underscored the endemic and systemic nature of human rights breaches within Canadian prisons.

Dr Pate noted that most imprisoned women were not aware of their human rights, believing that staff were allowed to assault them. She argued that education of both the public and people within prisons about rights remains a challenge. Although Dr Pate's discussion focused on Canada, a clear analogy was drawn with Australia, particularly regarding the consequences of colonisation and the overrepresentation of indigenous people in prison.

Debbie Kilroy provided stark insight into the lack of human rights experienced by Australian prisoners, who include a disproportionate number of aboriginal women, reflecting the racist and sexist nature of the Australian prison system. Ms Kilroy challenged members of the audience to consider choices that they were free to make on a daily basis, in contrast to the strict schedules imposed upon prisoners. With 'squat and cough' strip-searches, limited contact with their children, and rape and violence perpetrated by officers, Ms Kilroy asserted that, fundamentally, women in prison are not treated as if they were entitled to human rights.

Ms Kilroy encouraged the audience to engage with the Victorian and Australian Capital Territory ('ACT') human rights instruments, in particular referring to the need for submissions to the ACT Human Rights Commissioner's current review of the treatment of female prisoners. Ms Kilroy also promoted the role of advocacy training, asserting that the key to change was for individuals to speak out.

Although the presentations from all three speakers painted a dire picture regarding the current reality of human rights within prisons, the forum ended on an optimistic note. A number of challenging questions posed by the audience stimulated discussion regarding the possibility of total abolition of prisons. Both Dr Pate and Ms Kilroy strongly advocated such an approach, emphasising that the majority of prisoners were not violent offenders needing to be excluded from the community. Instead, economic resources should be directed toward social mechanisms supporting individuals exiting prison, and preventing people, particularly the young, from being imprisoned in the first place.