

THE RIGHT TO ED of persons in detention

Peter de Graaff

In April 2009 United Nations Special Rapporteur on the right to education, Vernor Munoz, delivered a Report to UN Human Rights Council on the right to education for persons in detention.

During 2008 Mr Munoz circulated a questionnaire to member states concerning this matter, and sought input from non-government organisations, interested persons and in particular, inmates. The Australian Government is not listed as having responded, even though imprisonment rates across Australian jurisdictions have continued to rise and Indigenous peoples continue to be massively over-represented.

The report argues that the "role of education in places of detention must be examined against the broader objectives of penal systems, which are inherently institutions of coercion, serving a set of complex and mutually conflicting objectives. They reflect, to differing degrees, prevailing societal calls for punishment, deterrence, retribution and/or rehabilitation — all carrying ambiguous connotations — and a managerial focus on resource management and security".

Some of these penal objectives have been characterised in Australia by debates around "truth in sentencing" and "incapacitation" of offenders through increasing levels of imprisonment as a way of supposedly lowering crime rates, reducing re-offending, re-integration and so on.

Mr Munoz observes that when education is provided in penal settings its presence tends to be justified with a range of models which can be described, "as the 'medical', 'cognitive deficient' or 'opportunistic' models. Briefly, the medical model tends to focus on and treat the perceived psychological deficiencies of the criminal; the cognitive deficiency model on promoting moral development; and the opportunistic model on linking learning with training for employment".

‘As education is uniquely and pre-eminently concerned with learning, fulfilling potential and development, it should be a fundamental concern of education in detention, not simply a utilitarian add-on should resources allow it.’

Across Australia in recent years there has been a growth of delivery focusing programming on the first and second of these models, oriented around the so-called criminogenic needs and cognitive skills models.

The *Report on Government Services 2009* published on the Australian Government

Productivity Commission website provides detailed information in Chapter 8 on Corrective Services. Data in the report is compiled according to a range of indicators. It states that: *‘Education’ is an indicator of governments’ objective of providing program interventions to reduce the risk of re-offending, including providing access to programs that address the causes of offending and maximise the chances of successful reintegration into the community.*

...and that,

‘Education’ is defined as the number of prisoners participating in one or more accredited education and training courses under the Australian Qualifications Framework... Education figures do not include participation in non-accredited education programs, or a range of offence related programs that are provided in prisons such as drug and alcohol programs, psychological programs, psychological counseling and personal development courses.

Table 8A.21 in the *Report on Government Services 2009* provides national data on the education of inmates. In 2007-08, across all jurisdictions, the national average for participation in education courses by inmates was 30.2%. Of these, 2.9% nationally participated in Pre-certificate Level 1 Courses, 6.7% in secondary school education equivalent courses, and 24.1% participated in Vocational Education and Training. Only 1.7% of inmates participated in higher education.

Interestingly, in NSW, 15.8% of inmates participated in secondary school education equivalent courses, in which there remains a greater focus on building foundation and general education skills.

Data from the NSW Department of Corrective Services Annual Reports give indications of the educational attainment of inmates incarcerated within NSW:

EDUCATION

21% were in vocational education and training courses; and 1.5% were in higher education via distance delivery" (Annual Report NSW Department of Corrective Services 2004/2005).

While it is likely that the educational profile of inmates across Australia would exhibit similar educational needs as in NSW, it is apparent that in most jurisdictions there is a greater emphasis on vocational education and training.

There has been some concern internationally amongst correctional educators that the growth of influence of the medical/criminogenic needs model and cognitive deficiency models has reduced the range of educational delivery in correctional settings to a narrow band of vocational training which is justified on utilitarian grounds.

The Special Rapporteur observes in the Report that, "such models and resultant educational practice certainly contain some positive features. Estranged from them all, however, is the concept of the human dignity of all persons, a concept unambiguously and frequently referred to in various international, regional and domestic instruments. Human dignity, core to human rights, implies respect for the individual, in his actuality and also in his potential.

As education is uniquely and pre-eminently concerned with learning, fulfilling potential and development, it should be a fundamental concern of education in detention, not simply a utilitarian add-on should resources allow it. It should be aimed at the full development of the whole person requiring, among other things, prisoner access to formal and informal education, literacy programs, basic education, vocational training, creative, religious and cultural activities, physical education and sport, social education, higher education and library facilities".

The Report then proceeds from examining philosophical underpinnings to legal and political developments, such as the Universal Declaration of Human Rights, the Basic Principles for the Treatment of Prisoners, levels and trends in global detention and barriers to education in detention. Data suggests that "over 9.25 million people are detained globally, either as pre-trial detainees or as sentenced prisoners. Almost half of these are in the United States of America (2.19 million), China (1.55 million) or the Russian Federation (870,000)". It is estimated that imprisonments levels are increasing in an estimated 73% of UN member states.

Barriers to education include public opinion and the media, producing a "reluctance to embed prisoners' right to education in

continued on page 20 ➡

...approximately 85% of the inmate population did not complete Year 10 at school" (Annual Report NSW Department of Corrective Services 1997/98);

At least 65% of inmates entering the correctional system have low to non-functional literacy, numeracy and communication skills. Research indicates a correlation

between low levels of literacy, low economic status and imprisonment" (Annual Report NSW Department of Corrective Services 2000/2001).

In 2004/05 there were 3,286 inmates enrolled in education courses. Of these, 23% were in adult basic education courses from foundation to Certificate 3 level;



legislation and to develop models of education and delivery consistent with the full development of the human personality”.

Dispositional barriers to education for the learner include disadvantage during childhood, prior educational failure and negative experience, low self-esteem, drug and alcohol abuse, communication and other disabilities.

More importantly, the report recognises the institutional and situational barriers external to the learner, which Mr Munoz has compiled from inmate responses.

Their list is long, globally relevant and includes troubling examples of education interrupted or terminated on the personal whims of prison administrators and officers and by frequent lockdowns and abrupt transfers between institutions; the absence of libraries; the absence and confiscation of written and educational material generally; waiting lists of up to three years for courses; limited, and often complete absence of, access to and training in Information Technology and related skills necessary in today's computer-driven community. Specifically linked to this is a perceived focus on education linked to prison management rather than the specific needs and rights of prisoners.

Other barriers include access to participation being limited by staff shortages, irrelevant or out of date courses, indifference to specific disabilities, an absence of safe places to learn, financial penalties imposed when education is pursued in place of prison employment, “discriminatory access to education based on place of detention, sentence length and/

or security category” and failure to cater adequately for women and minorities.

Those familiar with the delivery of education in correctional setting in Australia would no doubt recognise that many of the barriers enumerated by the Special Rapporteur are yet to be overcome, in spite of the best efforts of teaching and working in these environments.

In his Report the Special Rapporteur observes in replies from responses of member states that:

... a number of notable themes are apparent, the first of which is a general acknowledgement that the right to education enshrined in the Constitution or national legislation applies equally to persons in detention. Not all States, however, explicitly guarantee such a provision in legislation. Of particular concern is the reply of one State that “the implementation of the right to education is a matter of policy of rights, which largely depends on the resources of the State”. The Special Rapporteur reiterates that, while resources may have an impact on the implementation of policy, conditions in detention that may impinge fundamental human rights are not justified by lack of resources.

The NSW Teachers Federation has called for the NSW Labor Government to introduce legislation guaranteeing the provision and access to educational programs for inmates in NSW Correctional Centres. In most Australian jurisdictions access to education and vocational training within correctional settings has yet to become a legislated right.

Responding to this campaign the Minister for Corrective Services, John Robertson, wrote to the NSW Teachers Federation in February 2009 and claimed that legislation could not be introduced into Parliament making education for inmates a right or its provision mandatory, as the Commissioner needed to maintain discretion. How can a right be discretionary?

The Report concludes with a number of recommendations, including:

- education for people in detention should be guaranteed and entrenched in constitutional and/or other legislative instruments
- the provision of education for persons in detention should be adequately resourced from public funds
- authorities in charge of public education should make available to all detainees education programs that would cover at least the curriculum of compulsory education at the primary and, if possible, at the secondary level also
- authorities in charge of public education

should arrange comprehensive education programs aimed at the development of the full potential of each detainee

- education programs should be integrated with the public system so as to allow for continuation of education upon release
- detention institutions should maintain well-funded and accessible libraries
- teachers in places of detention should be offered approved training and ongoing professional development, a safe working environment and appropriate recognition in terms of working conditions and remuneration
- evaluation and monitoring of all education programs in detention should become the norm and a responsibility of the ministry of education.

The Special Rapporteur concluded by stressing that deprivation of liberty should be a measure of last resort:

“Given the considerable negative long-term economic, social and psychological consequences of detention for detainees, their families and the community alike, the Special Rapporteur urges considerably greater attention be paid to identifying and implementing alternatives to detention for children and adults alike, and reiterates that people sentenced to prison are still entitled to their inherent human rights, including their right to education.” ❖

The full Report can be found at <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>

Peter de Graaff is Relieving Assistant General Secretary for Post School Education for the NSWTF and the AEU NSW National TAFE Council Executive Member

