



Mental Illness, Human Rights, and US Prisons

Human Rights Watch Statement for the Record

Senate Judiciary Committee

Subcommittee on Human Rights and the Law

Human Rights Watch appreciates the opportunity to present this statement on mental illness in US prisons to the Senate Judiciary Committee Subcommittee on Human Rights and the Law. We commend the Subcommittee for recognizing the importance of securing respect for human rights here in the United States as well as overseas. The specific focus on the rights of persons who have a mental illness and who are incarcerated in the United States is particularly welcome.

Human Rights Watch has worked for many years to improve protection for the rights of US prisoners, including those with mental illnesses, and we stand ready to assist the Subcommittee with its efforts in any way we can. In this statement we will present a brief overview of the problems faced by mentally ill persons who are incarcerated and the human rights that are implicated.¹ We will also offer several recommendations for Congressional action that we hope the Subcommittee will consider.

Prisons and Prisoners with Mental Illness: Overview

Prisons were never designed as facilities for the mentally ill, yet that is one of their primary roles today. Many of the men and women who cannot get mental health treatment in the community are swept into the criminal justice system after they commit a crime. According to the Bureau of Justice Statistics, 56 percent of state prisoners and 45 percent of federal prisoners have symptoms or a recent history of mental health problems.² Prisoners have rates of mental illness—including such serious disorders as schizophrenia, bipolar disorder, and major depression—that are two to four times higher than members of the general public. Studies and clinical experience consistently indicate that 8 to 19 percent of prisoners have psychiatric disorders that result in significant

¹ Our research, findings, and recommendations on this issue are fully developed in our report, Human Rights Watch, *Ill-Equipped: US Prisons and Offenders with Mental Illness*, October 2003, <http://www.hrw.org/en/reports/2003/10/21/ill-equipped-o>.

² Doris J. James and Lauren E. Glaze, “Mental Health Problems of Prison and Jail Inmates,” Bureau of Justice Statistics, September 2006, <http://www.ojp.usdoj.gov/bjs/abstract/mhppji.htm> (accessed September 21, 2009).

functional disabilities, and another 15 to 20 percent will require some form of psychiatric intervention during their incarceration.

Mental health treatment can help some prisoners recover from their illness and for many others it can alleviate its painful symptoms, prevent deterioration, and protect them from suicide. It can enhance independent functioning and encourage the development of more effective internal controls. By helping individual prisoners regain health and improve coping skills, mental health treatment promotes safety and order within the prison environment and enhances community safety when prisoners are ultimately released.

Unfortunately, prisons are ill-equipped to respond appropriately to the needs of prisoners with mental illness. Prison mental health services are all too frequently woefully deficient, crippled by understaffing, insufficient facilities, and limited programs. Many seriously ill prisoners receive little or no meaningful treatment.

Although there are many conscientious and committed mental health professionals working in corrections, they face daunting if not insurmountable challenges to meeting the needs of their patients: impossibly large caseloads, physically unpleasant facilities, and institutional cultures that are unsympathetic to the importance of mental health services. Gains in mental health staffing, programs, and physical resources that were made in recent years have all too frequently since been swamped by the tsunami of prisoners with serious mental health needs. Overburdened staff are hard pressed to respond even to psychiatric emergencies, much less to promote recovery from serious illness and the enhancement of coping skills. Mindful of budget constraints and scant public support for investments in the treatment (as opposed to punishment) of prisoners, elected officials have been reluctant to provide the funds and leadership needed to ensure prisons have sufficient mental health resources. Twenty-two out of forty state correctional systems reported in a recent survey that they did not have an adequate number of mental health staff.³

Without the necessary care, mentally ill prisoners suffer painful symptoms and their conditions can deteriorate. They are afflicted with delusions and hallucinations, debilitating fears, or extreme mood swings. They huddle silently in their cells, mumble incoherently, or yell incessantly. They refuse to obey orders or lash out without apparent provocation. They beat their heads against cell walls, smear themselves with feces, self-mutilate, and commit suicide.

Doing time in prison is hard for everyone. Prisoners struggle to maintain their self-respect and emotional equilibrium in facilities that are typically tense, overcrowded, fraught with the potential

³ Cece Hill, "Inmate mental health care," *Corrections Compendium*, vol. 29, no. 5, 2004, pp.15-31.

for violence, cut off from families and communities, and devoid of opportunities for meaningful education, work, or other productive activities. But life in prison is particularly difficult for prisoners with mental illnesses that impair their thinking, emotional responses, and ability to cope. They are more likely to be exploited and victimized by other prisoners. They are less likely to be able to adhere to the countless formal and informal rules of a strictly regimented life and often have higher rates of rule-breaking than other prisoners.

Supermaximum Security Prisons and Isolation

When mentally ill prisoners break the rules, officials punish them as they would any other prisoner, even when their conduct reflects the impact of mental illness.⁴ If lesser sanctions do not curb the behavior, officials “segregate” the prisoners from the general prison population, placing them in supermaximum security (“supermax”) prisons or in segregation units within regular prisons. Once isolated, continued misconduct—often connected to mental illness—can keep them there indefinitely. A disproportionate number of the prisoners in segregation are mentally ill.⁵

Prison officials across the country have increasingly embraced long-term segregation to manage and/or to discipline prisoners who are perceived to be dangerous, but also those who are seen as difficult or disturbing. Supermax prisons such as Tamms Correctional Center in Illinois or segregation units in other prisons constitute the modern day variant of solitary confinement. Prisoners are confined 23 to 24 hours a day in small cells that frequently have solid steel doors. They live with extensive surveillance and security controls, the absence of ordinary social interaction, abnormal environmental stimulus, a few hours a week of “recreation” alone in caged enclosures, and little, if any, educational, vocational, or other purposeful activities. They are handcuffed and frequently shackled every time they leave their cells.

Prolonged confinement under such conditions can be psychologically harmful to any prisoner, with the nature and severity of the impact depending on the individual, the duration, and the specific conditions (for example, access to natural light, radio, or books). It can provoke anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.⁶ But the risk of harm is particularly grave for prisoners who already have serious mental illnesses. The stress, lack of meaningful social contact, and unstructured days can exacerbate

⁴ Jamie Fellner, “A Corrections Quandary,” *Harvard Civil Rights-Civil Liberties Law Review*, vol. 41, 2006, pp. 391-412.

⁵ David Lovell, “Patterns of disturbed behavior in a supermax prison,” *Criminal Justice and Behavior*, vol. 35, no. 8, 2008, pp.985-1004; Maureen L. O’Keefe and Marissa J. Schnell, “Offenders with mental illness in the correctional system,” *Journal of Offender Rehabilitation*, vol. 45, no. 1, 2007, pp. 81-104.

⁶ Jeffrey Metzner and Joel Dvoskin, “An overview of correctional psychiatry,” *Psychiatric Clinics of North America*, vol. 29, no. 3, September 2006, pp. 761-772.

symptoms of illness or provoke a reoccurrence. Suicides occur proportionately more often in segregation units than elsewhere in prison. All too frequently, mentally ill prisoners decompensate in isolation, requiring crisis care or psychiatric hospitalization. Many simply will not get better as long as they are isolated. According to one federal judge, putting mentally ill prisoners in isolated confinement “is the mental equivalent of putting an asthmatic in a place with little air....”⁷ A recent story in the *Belleville News-Democrat* about Tamms profiled one prisoner with a well-documented history of paranoid schizophrenia who was held in solitary for nearly six years, mutilating himself and smearing feces.⁸ Other Tamms prisoners reportedly cut themselves, eat their own flesh, attempt suicide, and engage in other behaviors consistent with suffering from serious and untreated or poorly treated mental illness.

The psychological harm of supermaximum security confinement is exacerbated because mental health professionals are not permitted to provide a full range of mental health treatment services to the prisoners. Mental health services are typically limited to psychotropic medication, a health care clinician stopping at the cell front to ask how the prisoner is doing (that is, “mental health rounds”), and occasional meetings in private with a clinician.⁹ Individual therapy, group therapy, structured educational, recreational, or life-skill enhancing activities, and other therapeutic interventions are usually not available because of insufficient resources and clashes with prison rules—for example, insufficient numbers of custodial staff to take prisoners to and from their cells to private meetings with clinicians, and rules requiring prisoners to remain in their cells and prohibiting contact with other prisoners.¹⁰

In every class action challenging the placement of mentally ill prisoners in supermax confinement, plaintiffs have either won a court order or obtained a settlement prohibiting or greatly limiting such confinement.¹¹ As a result, in prisons covered by the litigation, mentally ill prisoners are given more time out of their cells and greater access to mental health professionals and programs. Improved clinical responses of prisoners with mental illness in these prisons have been achieved without compromising safety or security. Unfortunately, except in the small number of prisons covered by this litigation, mentally ill prisoners continue to be sent to segregation; indeed, they are often disproportionately represented in segregation units.

⁷ *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).

⁸ Beth Hundsdorfer and George Pawlaczyk, “Trapped in Tamms: Inmates in Illinois’ Only Supermax Prison Face Battle Proving Mistreatment,” *Belleville News-Democrat*, August 4, 2009, <http://www.bnd.com/600/story/865378.html> (accessed September 16, 2009).

⁹ See, for example, *Madrid v. Gomez*.

¹⁰ Jeffrey Metzner and Joel Dvoskin, “An overview of correctional psychiatry,” *Psychiatric Clinics of North America*.

¹¹ See David C. Fathi, “The Common Law of Supermax Litigation,” *Pace Law Review*, vol. 24, 2004, 681-682.

Re-entry

There is increasing awareness among public officials of the importance of providing re-entry services to prisoners leaving prison as an effective means of increasing the likelihood they will successfully make the transition back to the community. Men and women with mental illness have unique needs for discharge planning and re-entry services. In addition to support for housing, employment, and income, they also need links to appropriate mental health treatment and access to public assistance. According to the Council of State Governments:

individuals with mental illnesses leaving prison without sufficient supplies of medication, connections to mental health and other support services, and housing are almost certain to decompensate, which in turn will likely result in behavior that constitutes a technical violation of release conditions or a new crime.¹²

Unfortunately, the need for re-entry services far exceeds the supply. All too many mentally ill prisoners leave prison without arrangements to ensure they will continue to receive an appropriate level of mental health treatment, without ready access to public assistance, and without assistance to navigate the difficult waters of life after prison, in which the stigma of being a felon now accompanies all the problems that existed before incarceration.

Mental Health and American Prisons: A Human Rights Framework

Human rights standards acknowledge the unique vulnerability of prisoners to abuse and afford special protections to them. The UN Human Rights Committee has affirmed the “positive obligation” of states to protect the rights of those whose vulnerability arises from their status as persons deprived of their liberty.¹³

Several discrete but inter-related human rights concepts are particularly relevant to the treatment of prisoners with mental illness: human dignity, the right to rehabilitation, the right to the highest attainable standard of health, and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment. A prison operated within a human rights framework would provide a full range of mental health services with the staffing, resources, and facilities needed to serve the prison’s population. Custodial policies and practices would be adjusted to ensure security and

¹² Council of State Governments, “Criminal Justice/Mental Health Consensus Project Report, Chapter IV: Incarceration and Reentry, Policy Statement 21: Development of Transition Plan,” June 2002, http://consensusproject.org/the_report/ch-IV/ps21-transition-plan (accessed September 21, 2009).

¹³ Human Rights Committee, General Comment 21, article 10 (Forty-fourth session, 1992), replaces general comment 9 concerning humane treatment of persons deprived of liberty, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), <http://www.unhchr.ch/tbs/doc.nsf/o/3327552b9511fb98c12563ed004cbe59?Opendocument> (accessed September 21, 2009).

safety needs do not compromise mental health treatment. Staff would no longer constantly find themselves forced to choose between what they know they “should” be doing in terms of standards of care and sound principles of treatment, and what is feasible in the circumstances.

Respect for human rights of prisoners not only underpins and protects the fundamental values agreed on by the international community, it promotes safe and effective prison management. Unfortunately, human rights standards are all too often honored in the breach in US prisons. They are little known and almost never directly applied.

Right to Humane Treatment and Rehabilitation

All human rights are grounded in the inherent dignity of all persons, as affirmed in 1948 by the Universal Declaration of Human Rights. Recognizing the temptation to ignore the human dignity of persons who are confined in prisons, article 10(1) of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, expressly requires all prisoners to be treated, by all officials and anyone else, “with humanity and with respect for the inherent dignity of the human person.” Compliance with article 10 requires prison management to ensure mental health treatment for prisoners with mental disabilities as well as humane conditions of confinement. The failure to provide adequate mental health services in prison cannot be excused by the cost of ensuring adequate numbers of qualified staff or sufficient facilities for responding to mental health needs. The Human Rights Committee has affirmed that the application of article 10, promoting the right to humane treatment, “cannot be dependent on the material resources available.”¹⁴

Respect for the human dignity of prisoners also requires operating prisons in ways that will enhance the likelihood of their successful re-entry into the community upon release. Article 10 of the ICCPR requires the “essential aim” of imprisonment to be “reformation and social rehabilitation.” It thus mandates a positive goal for corrections, something beyond mere punishment through deprivation of liberty. As stated in the UN-approved Standard Minimum Rules for the Treatment of Prisoners (“SMR”), imprisonment should be “used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life....”¹⁵ Mental health treatment obviously has an important role in rehabilitation for prisoners who have or are at risk of developing mental disorders. As the SMR states:

¹⁴ Ibid.

¹⁵ Standard Minimum Rules for the Treatment of Prisoners (SMR), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of May 13, 1977, <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (accessed September 21, 2009), art. 58.

The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.¹⁶

The SMR also sets forth different regimes that are appropriate depending on the severity of the mental illness. According to the SMR, persons found to be "insane" should not be kept in prisons but should instead be transferred to appropriate medical institutions; prisoners who are "mentally abnormal" should be "observed and treated in specialized institutions under medical management."¹⁷ For prisoners with mental disabilities who remain in their care, all prisons should provide health services that are "organized in close relationship to the general health administration of the community or nation" and which include "a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality."¹⁸

A human rights approach to mental health treatment for prisoners further recognizes the importance of continuity of care to ensure that individuals have access to treatment once released. The SMR notes that correctional facilities should work with the appropriate agencies to determine what after-care services are necessary and can be arranged so that individuals will have necessary treatment, care, and support when they return to the community.¹⁹

Right to be Free from Abuse

Article 7 of the ICCPR states that no one "shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,"²⁰ a prohibition that is further developed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the United States is also a party.²¹ The Human Rights Committee has confirmed that "[n]o justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reason."²² Under

¹⁶ SMR, art. 62.

¹⁷ SMR, art. 82.

¹⁸ SMR, art. 22.1.

¹⁹ SMR, art. 81.

²⁰ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, <http://www.hrweb.org/legal/cpr.html> (accessed September 21, 2009).

²¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, <http://www.hrweb.org/legal/cat.html> (accessed September 21, 2009).

²² Human Rights Committee, General Comment 20, article 7 (Forty-fourth session, 1992), replaces general comment 7 concerning prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), <http://www.unhcr.ch/tbs/doc.nsf/o/6924291970754969c12563ed004c8ae5?Opendocument> (accessed September 21, 2009).

CAT, torture is defined as an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for a specific purpose (for example, to obtain a confession or as punishment) and with the involvement of a public official.²³ The infliction, or in many cases, the toleration of suffering that does not constitute torture—for example, because it is less severe or because it is not intentionally inflicted—constitutes cruel, inhuman, or degrading treatment. Neglecting to provide needed treatment to alleviate mental suffering may violate article 7 as may deliberately withholding such treatment. The prohibition should be interpreted to extend the widest possible protection against abuses, whether physical or mental.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment points out that persons with disabilities “are often segregated from society in institutions, including prisons ... [in which they] are frequently subjected to unspeakable indignities, neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence.”²⁴ In determining whether a person with disabilities has been subjected to torture or other prohibited cruel treatment, the Special Rapporteur notes that “assessing the level of suffering or pain, relative in its nature, requires considering the circumstances of the case, including the existence of a disability, as well as looking at the acquisition or deterioration of impairment as a result of the treatment or conditions of detention in the victim.”²⁵

If prisoners’ mental health deteriorates and they endure serious psychological suffering because they have not been provided the mental health treatment that is needed, their right to be free of cruel or inhuman treatment may have been violated. Article 7 may also be violated if prisoners are confined under conditions that put them at high risk of psychological harm, such as solitary confinement.

Right to Health

The Universal Declaration of Human Rights (UDHR) affirms a person’s right to health, irrespective of legal status.²⁶ Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the United States is a signatory, states must ensure “the right of everyone to the enjoyment of

²³ “The prohibition in article 7 [of the ICCPR] relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.” Human Rights Committee, General Comment 20. For a recent discussion of psychological torture, see Hernan Reyes, “The worst scars are in the mind: psychological torture,” *The International Review of the Red Cross*, vol. 89, no. 867, September 2007.

²⁴ UN General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/63/175, July 28, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/440/75/PDF/No844075.pdf?OpenElement> (accessed September 21, 2009), pp. 10-11.

²⁵ *Ibid.*

²⁶ Article 25.1 of the Universal Declaration of Human Rights (UDHR) states, “Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care...” UDHR, adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25.1, <http://www.udhr.org/UDHR/default.htm> (accessed September 17, 2009).

the highest attainable standard of physical and mental health” and, in furtherance of this goal, must create “conditions which would assure to all medical service and medical attention in the event of sickness.”²⁷ The Committee on Economic, Social and Cultural Rights interprets the right to health under article 12 of the ICESCR to place states “under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”²⁸ Although the United States has yet to ratify the Covenant, it is bound to honor its responsibilities as a signatory.

Principle 9 of the UN Basic Principles for the Treatment of Prisoners states, “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.”²⁹ Similarly, principle 20 of the UN Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care states that all persons serving sentences “should receive the best available mental health care” with treatment and care consistent with that outlined for individuals who are not incarcerated.³⁰

Convention on the Rights of Persons with Disabilities

On July 24, 2009, President Obama announced that the United States would sign the Convention on the Rights of Persons with Disabilities, which was then signed on July 30. Introducing this decision, President Obama stated, “Disability rights aren't just civil rights to be enforced here at home; they're universal rights to be recognized and promoted around the world.”³¹ The Convention makes clear that attention to disability—including mental disability—is not only an issue of treatment and welfare but is essential to the proper administration of justice.³² As a signatory to the Convention,

²⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <http://www.un-documents.net/icescr.htm> (accessed September 17, 2009), art. 12.

²⁸ CESCR, General Comment No. 14, The right to the highest attainable standard of health, E/C.12/2000/4 (2000), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358boe2c125691500509obe?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358boe2c125691500509obe?Opendocument) (accessed September 17, 2009).

²⁹ UN Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), <http://www.un.org/documents/ga/res/45/a45r111.htm> (accessed September 17, 2009).

³⁰ UN General Assembly, UN Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care, Principle 20, GA Resolution 46/119 (1991), principles 4.2, 4.3, 13.1(d), available at <http://www.un.org/documents/ga/res/46/a46r119.htm> (accessed September 17, 2009).

³¹ “Remarks by the President on the Signing of the Convention on the Rights of Persons with Disabilities Proclamation,” The White House Press Release, July 24, 2009, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Rights-of-Persons-with-Disabilities-Proclamation-Signing/ (accessed September 17, 2009).

³² Article 13 of the Convention emphasizes that prison staff need training “to ensure effective access to justice for persons with disabilities.” UN General Assembly, Convention on the Rights of Persons with Disabilities, adopted January 24, 2007, A/RES/61/106, entered into force May 3, 2008, signed by the United States on July 30, 2009, <http://www.unhcr.org/refworld/docid/45f973632.html> (accessed September 17, 2009).

the United States has an opportunity and an obligation to expand its protection of people with disabilities, including those with mental disabilities who are incarcerated.

Many of the provisions of the Convention have unique relevance for prisoners with mental disabilities. The Convention in article 5, for example, prohibits discrimination on the basis of disability, and requires states to provide “reasonable accommodation” to persons with disabilities. The Special Rapporteur on Torture has pointed out that the lack of reasonable accommodation in detention facilities may increase the risk of exposure to neglect, violence, abuse, torture, and ill-treatment.³³ In addition, article 15 of the Convention affirms the right to be free of torture or cruel, inhuman or degrading treatment or punishment, article 16 prohibits violence, abuse, and exploitation of persons with disabilities, and article 17 recognizes the right of every person with disabilities to respect for his or her physical and mental integrity. In addition to violating other rights, placing prisoners with mental disabilities in solitary confinement may constitute a violation of the Convention on the Rights of Persons with Disabilities.

Human Rights and Supermax Prisons

Human rights experts have long criticized prolonged solitary confinement, understood as physical isolation in a cell for 22 to 24 hours a day, such as exists in US supermax prisons. In 2008, the Special Rapporteur on Torture concluded that “the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment, and, in certain instances, may amount to torture.”³⁴ Based on his research, he found that “the key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well functioning.”³⁵ He stated that solitary confinement should only be used “in very exceptional cases” and “only as a last resort”;³⁶ the Special Rapporteur further noted that holding persons with mental illness in solitary confinement “cannot be justified for therapeutic reasons, or as a form of punishment.”³⁷ In 2007, the Special Rapporteur participated in the Fifth International Psychological Trauma Symposium held in Istanbul, Turkey, and with other prominent international experts produced a document titled the Istanbul Statement on the Use and Effects of Solitary Confinement. Noting that solitary confinement “harms prisoners who were not previously mentally ill and tends to worsen the mental health of those who are,” the Istanbul Statement concludes that “solitary confinement should only be used in very

³³ UN General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, July 28, 2008, pp. 10-11.

³⁴ *Ibid.*, p. 18.

³⁵ *Ibid.*, p. 21.

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 13.

exceptional cases, for as short a time as possible and only as a last resort.”³⁸ It should be “absolutely prohibited ... for mentally ill prisoners.”³⁹

In 2006, the Human Rights Committee, reviewing US compliance with the ICCPR, stated that it: reiterates its concern that conditions in some maximum security prisons are incompatible with the obligation contained in article 10 (1) of the Covenant to treat detainees with humanity and respect for the inherent dignity of the human person. It is particularly concerned by the practice in some such institutions to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment. It is also concerned that such treatment cannot be reconciled with the requirement in article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners. It also expresses concern about the reported high numbers of severely mentally ill persons in these prisons, as well as in regular in U.S. jails.⁴⁰

Similarly, the Committee against Torture on reviewing US compliance with CAT also expressed concern “about the extremely harsh regime imposed on detainees in ‘supermaximum prisons’. The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment.”⁴¹

Recommendations

Prescriptions for mental health care in prisons are plentiful. They are found in the standards and guidelines of the American Correctional Association and the National Commission on Correctional Health Care, in court rulings, expert reports, and in a voluminous professional literature. What is lacking in prison mental health services is not knowledge about what to do, but the resources and commitment to do it. We hope the work of the Subcommittee will help marshal those resources and that commitment. Compassion, common sense, fiscal prudence, and respect for human rights

³⁸ Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on December 9, 2007 at the International Psychological Trauma Symposium, Istanbul, available at: http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf (accessed September 21, 2009), pp. 80-81.

³⁹ Ibid.

⁴⁰ United Nations Human Rights Committee, “Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, United States of America,” U.N. Doc. CCPR/C/USA/CO/3 (2006), <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.USA.CO.3.En?Opendocument> (accessed September 21, 2009).

⁴¹ United Nations Committee Against Torture, “Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, United States of America,” U.N. Doc. CAT/C/USA/CO/2 (2006), <http://www1.umn.edu/humanrts/cat/observations/usa2006.html> (accessed September 21, 2009), art. 36.

dictate a better approach to the treatment of persons with mental illness in US prisons than is evident today.

The recommendations that follow focus on several key steps we believe Congress should take.

1. Amend the Prison Litigation Reform Act (PLRA)

The Prison Litigation Reform Act of 1996 has placed serious obstacles in the path of prisoners seeking to protect their rights while incarcerated, including their rights to mental health treatment and services.⁴² One PLRA provision requires federal courts to dismiss prisoner lawsuits if prisoners have not exhausted the prison or jail grievance system. Prisoners with mental illness can find it impossible to comply with all the deadlines and technical rules in a grievance system, and may then find themselves forever barred from vindicating their rights in court. On the other hand, correctional agencies legitimately want a reasonable opportunity to respond to prisoners' complaints before having to defend themselves in court. Congress should amend the PLRA to remove the current exhaustion requirement and substitute a provision allowing courts to stay lawsuits temporarily to allow prisoners to take their complaints through the grievance system. Congress should also repeal the PLRA provision that denies compensation for "mental or emotional injury" absent a prior showing of physical injury. Although isolated confinement and deficient mental health care can cause serious suffering and catastrophic injury to a prisoner's psychiatric condition, the PLRA's "physical injury" requirement bars a remedy for such injuries if the prisoner has not been physically injured as well. The Committee Against Torture called for repeal of the "physical injury" requirement when it last reviewed US compliance with the Convention Against Torture in 2006.⁴³

2. Reduce High Incarceration Rates

The United States has the highest rate of incarceration in the world because it puts so many people behind bars for low-level, nonviolent offenses and for lengthy periods of time. Prison should be reserved for dangerous or violent prisoners who must be securely confined; alternative sanctions should be used for low-level, nonviolent offenders. If prison populations were reduced there would be fewer persons with mental illness behind bars and more resources available for those who must be incarcerated. Congress should enact incentives to encourage states to reduce their prison populations and it should review federal laws to ensure federal prisons are not needlessly incarcerating low-level prisoners, including low-level drug offenders.

⁴² See Human Rights Watch, *No Equal Justice: The Prison Litigation Reform Act in the United States*, June 2009, <http://www.hrw.org/en/reports/2009/06/16/no-equal-justice-o>.

⁴³ United Nations Committee Against Torture, "Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, United States of America," U.N. Doc. CAT/C/USA/CO/2 (2006), <http://www1.umn.edu/humanrts/cat/observations/usa2006.html> (accessed September 21, 2009), art. 29.

3. Increase Funding for Mental Health Treatment in Prison

Through the Mentally Ill Offender Treatment and Crime Reduction Act of 2004, which was reauthorized and extended for an additional five years in 2008, Congress has provided resources to state and local governments to design and implement collaborative initiatives between criminal justice and mental health systems that will improve access to effective treatment for people with mental illnesses involved with the justice system. To date, however, most of the funding awarded by the Bureau of Justice Assistance under the Act has gone to either pre-trial or post-release initiatives. Congress should ensure that federal funds are also used to improve the provision of mental health services to persons with mental disorders while they are incarcerated.

4. Eliminate Prolonged Isolation of Mentally Ill Prisoners

Congress should use its powers to protect prisoners with mental illness from being confined in the harsh isolation conditions typical of supermax prisons and other segregation or isolation units. It should directly instruct the Bureau of Prisons (BoP) to end this harmful practice. It should also pass legislation precluding the awarding of federal funds for the construction or operation of any state prison or local jail if the jurisdiction has not instituted policies and practices to ensure mentally ill prisoners are not placed or kept in supermax prisons or other segregation units. Prisoners with mental illness who require extreme security precautions should be confined in specialized units that ensure human interaction and purposeful activities in addition to a full panoply of mental health services.

5. Improve Correctional Mental Health Services

In addition to increasing the flow of federal funds to support correctional mental health services provided by state and local jurisdictions, there are a number of other steps Congress could take to improve the treatment and conditions of confinement of prisoners with mental illness. We suggest only a few here.

- a) With regard to the BoP, it should ensure periodic performance reviews of its mental health services by independent and qualified experts. The results of those evaluations should be public (with the names of prisoners kept confidential).
- b) It should provide funds to states and localities to evaluate their mental health services and to develop corrective action plans.
- c) It should ensure that the Special Litigation Section of the Civil Rights Division of the Department of Justice has sufficient staff and resources to investigate and where

necessary litigate violations of the Eighth Amendment that result from deficient mental health treatment of prisoners and from their placement in supermax prisons or segregation units.

6. Improve Ex-prisoner Access to Public Benefits Covering Mental Health Services

Congress should secure changes to current law and regulations in federal programs that fund mental health services that lead to delays in the restoration of eligibility for benefits for prisoners released from prison. Enabling ex-prisoners to receive Medicaid, Supplemental Security Income, and Social Security Disability Insurance immediately upon leaving prison would enable them to pay for needed medication and mental health services in the community and to ensure continuity of care. Rapid restoration of benefits to released prisoners helps them manage their illness and reduces their risk of re-involvement with the criminal justice system.

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