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## DOUBLE PUNISHMENT

Inadequate conditions for Prisoners with Psychosocial Disabilities  
in France



# **Double Punishment**

**Inadequate conditions for Prisoners with Psychosocial  
Disabilities in France**

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Printed in the United States of America

ISBN: 978-1-6231-33382

Cover design by Rafael Jimenez

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# Double Punishment

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## Summary

“I was depressed and no longer went out of my cell. I just took medication and I slept. [...] I didn’t even go out for walks. For six months [...] I didn’t see the light of day. [...] I never went out, I didn’t see a doctor or a psychiatrist.”

-“Sarah,” detained in a prison in France.

Spending up to 22 hours per day in a 3 by 3 meters cell. Having to share that small space with two other people. Constant noise. The inescapable smell of hundreds of people confined in a building, day and night. Or being locked in a cell alone, with virtually no human contact. Being disconnected from family and friends, whom you see rarely, if at all. Constant thoughts of a crime committed, or the anxiety of a trial to come.

Life behind bars is hard for everybody. Indeed a study conducted in France between 2006 and 2009 concluded that prisoners are seven times more likely to commit suicide than the rest of the population.

However, these hardships are amplified for the thousands of men and women detained in French prisons who have mental health conditions (also referred to as psychosocial disabilities)—including severe depression, bipolar disorder, or schizophrenia. For people with psychosocial disabilities a prison sentence can lead to damaging long-term consequences for their physical and mental health and even to suicide. Prisoners, who have a psychosocial disability are considered to be at higher risk of suicide than other prisoners.

The last comprehensive study on mental health in French prisons, published in 2004, found that almost a quarter of inmates had psychosis: 8 percent of men and 15 percent of women had schizophrenia – much higher than the 0.9 percent among of France’s general population. Estimates by people interviewed for this report by Human Rights Watch in 2015 – prison directors, psychiatrists, the inspector of prisons, government officials and prisoners themselves – suggest the proportion of prisoners with psychosocial disabilities in prison remains high.

A frequent explanation given for the disproportionate number of people with psychosocial disabilities in French prisons is a 1994 law stating that the court should “take into account” a mental health condition when imposing a sentence on people whose judgment was “altered” (but not fully “vitiating”) by a mental health condition (referred to as a “neuro-psychiatric disorder” in the law) when they committed the offence.

While the intention of this law was clearly that impairment of the state of mind should be considered a mitigating factor, the law was not specific on what the modification should be. In practice judges and juries have tended to view defendants with mental health conditions as more dangerous than those without, and consequently handed down harsher sentences. If it is the case that people with psychosocial disabilities have been handed harsher sanctions due to their disability and perceived dangerousness, and not based on objective criteria applicable to all persons found guilty of committing crimes, this constitutes discrimination on the basis of disability and is prohibited under international human rights law.

In August 2014 the law was amended as part of a legislative reform seeking to make criminal sanctions more individualized and tailored to the defendant’s circumstances. As a result of this amendment a defendant whose state of mind when they committed the offence was compromised by a mental health condition now have their sentence reduced by one third.

Prisoners with psychosocial disabilities have a right to reasonable accommodations – or appropriate modifications - to address their disability and to access services or support. But as this report highlights, such accommodations and access are inadequate in many of France’s prisons. For example the location of some prisons render them difficult to access for medical staff and prisoners’ relatives. There is a lack of communication between medical and prison staff in certain facilities. Such problems have been identified by members of the French parliament and the French inspector of prisons for years, but successive French governments have so far failed to address them.

Imprisonment by its nature places restrictions on the imprisoned individual’s rights, including the right to liberty and other rights that flow from that such as privacy and freedom of movement. However prisoners should not endure suffering that exceeds the level of hardship inherent in the deprivation of liberty. The European Court of Human

Rights in its case law on the prohibition of torture or other cruel or inhuman or degrading treatment or punishment (article 3 of the European Convention on Human Rights - ECHR) has made this abundantly clear.

France has ratified several international human rights treaties that provide certain guarantees to those deprived of their liberty and impose clear obligations on France to uphold prisoners' rights. France has a duty to protect prisoners' rights to the highest attainable standard of physical and mental health and respect their right to physical and mental integrity (protected for example under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 8 of the ECHR respectively). Furthermore, Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD), requires France provide persons with disabilities with the highest attainable standard of health without discrimination on the basis of their disability.

And yet, in 2015, Human Rights Watch spoke with men and women who, in addition to the hardships of life in prison, endure additional suffering due to psychosocial disabilities. Such additional suffering documented by Human Rights Watch included being stigmatized by other prisoners, anxiety due to being locked in their cells all night and sometimes all day, and lack of adequate mental health care. Human Rights Watch spoke with four men and women whose arms were scarred from slashes they inflicted on themselves. Two of them and two other prisoners said they had attempted to take their own lives.

Female prisoners with psychosocial disabilities face particularly harsh conditions in French prisons. Women in general, who are a minority in prison, are more restricted in their movements than men and have less access to treatment for mental health conditions than their male counterparts. Women detained in a prison with separate quarters for female and male prisoners described to Human Rights Watch how, unlike the men in the same facility, they had to be escorted in all their movements. Besides making them feel isolated, this gives women the sense that they are treated more harshly only because they are women. Female prisoners also face discrimination in their access to mental healthcare: while 26 Regional Medico Psychological Services (SMPR) in French prisons provide mental healthcare during the day and beds for the night, only one of them has beds for women.

Prison guards told Human Rights Watch they had little or no training on mental health despite being in daily contact with prisoners who have psychosocial disabilities and



despite being responsible for their safety. In prisons where people are serving a sentence following conviction guards may know individual prisoners and their behaviors, especially if they have been incarcerated in the same prison for a long time. In such circumstances if a guard has concerns about the health of a prisoner, then he or she can raise the case with medical staff. But in overcrowded remand facilities where one guard is responsible for up to 100 inmates and is constantly opening and closing cell doors and escorting prisoners there is no time for meaningful interaction.

The quality of mental health care varies significantly among the 188 prisons in France. Some are equipped with an SMPR that includes a team of psychiatrists, nurses and psychologists, and a number of beds where patients can stay as they receive comprehensive care. But in others, there is a severe shortage of mental health professionals either due to a lack of resources, or because it is difficult to recruit people, given the challenging and unattractive conditions for health staff in prisons. This can result in prisoners having insufficient or poor quality mental health care. Our research suggests that prisoner consultations with mental health staff are often cursory and limited to prescribing medication.

When a person's mental health condition worsens to the point where they are considered to need intensive care, they are frequently hospitalized in public psychiatric hospitals, with or without their consent, where they are treated as prisoners first and patients second. They are often placed in isolation not because of their medical needs or behavior, but because they are prisoners and psychiatric hospitals lack secure wings that would allow them to be treated in a less harsh setting. Such isolation can constitute cruel or inhuman or degrading treatment or punishment, as confirmed by the UN expert on torture.

People can also be admitted to one of the seven existing Specially Adapted Hospital Units (unités hospitalières spécialement aménagées, UHSAs), structures with between 40 and 60 beds within psychiatric hospitals, where prisoners receive inpatient-level psychiatric care. These are managed by the Prison Administration and the Ministry of Health. Medical care is provided by professionals affiliated with the hospital, under the security of prison staff. Consent of the prisoner is not always required by law for admission to a UHSA. At the time of writing, not all prisons in France were within the geographical range of a UHSA.

When prisoners are transferred to a UHSA or a psychiatric hospital, they stay for a few days or weeks, and once their condition stabilizes they return to prison. Since they are not returned to an environment with adequate support for people with psychosocial disabilities and do not get reasonable accommodations and support for their disabilities in prison, this can lead to a recurrence of their mental health conditions and lead to their re-hospitalization, sometimes ensnaring prisoners in an endless cycle of hospitalization, recovery, discharge, deterioration and rehospitalization. Such a cycle is both harmful to the patient's health and disruptive and costly to the prison and the hospital involved.

The August 2014 law is an important step forward: it provides that prison sentences can be suspended on medical grounds, including mental health grounds, if a prisoner's condition is incompatible with his or her detention. But finding structures that will provide appropriate support for people with psychosocial disabilities who have also been convicted of crimes within the community following their release can be challenging. An official at the General Inspector of Social Affairs told Human Rights Watch that "it can be complicated [for community-based services] to receive people who have committed criminal acts [offenses]" as it could cause "tensions" with the goal of these facilities to integrate clients into the community.

The detention of people with psychosocial disabilities in conditions that fail to accommodate their disability and have a disproportionately negative impact on their mental health breaches the state's obligations to respect their right to be treated with humanity and dignity, their right to the highest attainable standard of physical and mental health, and their right to physical and mental integrity. By failing to equip prisons with adequate resources in mental health staff, France is failing to provide inmates with psychosocial disabilities with the mental health care they are entitled to under French and international law.

To address these shortcomings, the French government should make available the necessary resources for quality mental health care for all inmates, on the basis of free and informed consent, wherever they are detained and regardless of their gender. This should include efforts to make working in prisons more attractive for medical and mental health professionals.

The government should also expand the availability of specialized psychiatric hospital units for inmates, ensuring that the number of beds available for women corresponds to the incidence of psychosocial disabilities among female prisoners. Prisoners admitted to regular psychiatric hospitals should be treated in a non-discriminatory manner and their rights are respected, including their right to treatment based on informed consent. Prisoners should not be put in seclusion for non-therapeutic reasons, such as based on their status as prisoners and in no circumstances should they be placed there purely on the basis of an existence of a disability.

France should also remove the numerous ways in which, at present, women prisoners are discriminated against through less freedom of movement, less access to activities and less access to mental health care than male prisoners – all of which have a detrimental effect on women’s health and rehabilitation.

France should also make use of the new provisions in French law that allow people to be released if their detention is incompatible with their health and ensure that they have access to mental health care in the community on the basis of free and informed consent and without being discriminated against because of their criminal record.

# Recommendations

## To the Ministers of Justice and Health

- As a first step, commission an independent study of the mental health condition of prisoners in French prisons with details on the number of prisoners, (disaggregated by gender) who have psychosocial disabilities and the type of disability.
- Explore ways to improve constructive interactions between mental health professionals and prison staff, with due regard to medical confidentiality, to ensure good working relations between people interacting with people with mental health conditions.
- Provide more effective daily care and better living conditions to prisoners with psychosocial disabilities based on their needs and wishes. This should be based on an evaluation of existing Specially Adapted Hospital Units (UHSAs), and an assessment of the current shortcoming in daily care and living conditions inside prisons highlighted in this report.
- Introduce policies that ensure prisoners with psychosocial disabilities cannot be held in solitary confinement.
- Prisoners who have to appear before a disciplinary commission should have the opportunity to request that a medical or mental health professional be called as a witness. The prisoner should be given appropriate time to consult with the medical or mental health professional prior to and during the commission's proceeding and have the right to waive confidentiality in order to permit the medical or mental health professional to discuss her/his illness and treatment, as part of the determination of what sanction if any may be imposed on the prisoner.

## To the Minister of Justice

- Work towards reducing overcrowding in prisons, particularly in remand prisons, by directing prosecutors and judges to make use of the law of August 15, 2014 that allows for sentences for defendants whose judgment was altered by a psychosocial disability when he or she committed the offense, to be reduced by a third.

- Work towards reducing the ratio between prison guards and prisoners for whom they are responsible at any one time. Addressing this issue in remand prisons is a priority.
- Ensure prisoners' mental health is taken into account when new prisons are built, and that the architecture and organization of the prison allows for regular human interactions for prisoners. New prisons should also be in locations that are easily accessible to prisoners' visitors and medical professionals.

### **To Judges and Prosecutors**

- Reduce the incarceration of persons with severe psychosocial disabilities by ensuring that people do not receive harsher sentences as a consequence of their disability, which would constitute discrimination.
- Where appropriate, apply Article 122-1 of the Criminal Code as amended by the law of August 15, 2014 on the individualization of sentences and reinforcing the effectiveness of criminal sanctions, which provides for a reduction of prison sentences by a third if a person's judgment was altered by a psychosocial disability when he or she committed the offense. This reduction of sentences applies to sentences handed down after its entry into effect, but not before.
- Judges should also make use of the option provided by the law of August 15, 2014, to suspend the sentence or release persons who are in pretrial detention if detention is incompatible with their mental health under Articles 720-1-1 and 147-1 of the Code of Criminal Procedure respectively.

### **To the Director of the Prison Administration**

- Ensure that all prison guards receive regular training on mental health and that they are provided with sufficient time to participate in those trainings. Trainings should include sessions on the signs of mental health conditions, ways to support prisoners with mental health conditions, verbal de-escalation techniques, tools to interact effectively and humanely with inmates who have such disabilities, suicide prevention and side effects of medication.
- Ensure all cells are equipped with functioning intercoms that prisoners can use day and night.

- In particular in new prisons where there are fewer opportunities for interactions between inmates and prison staff, ensure that time is set aside for dialogue, based on mutual respect, and social interaction. Such interactions can help avoid conflicts and improve relations between inmates and guards and contribute to a better environment for prisoners and better working conditions for guards.
- Ensure that women are not detained in conditions that are less favorable than those of men due to their status as women and smaller number in comparison to men in prison. They should have equal access to health care, activities and vocational training, and should not be any more restricted in their movements than men.

## To the Minister of Health

- Address shortages of mental health staff working in French prisons. Consult with mental health staff working in prisons on how to improve their working conditions. Provide the necessary financial resources to hire and retain necessary staff. Address the unattractiveness of employment in prisons through improved communication between prison and health staff and through guaranteeing medical confidentiality in prison.
- Ensure that health services in the community provide for the needs of former prisoners after their release, including release on suspended sentences. Ensure these services do not discriminate against people on the basis of their criminal record and provide services on the basis of free and informed consent.
- Ensure that mental health staff can provide input to forums where prison staff can raise appropriate concerns about prisoners' mental health, including risks of self-harm. The participation of health professionals in such meetings should take place with due regard to prisoners' right to medical confidentiality and to health professionals' duty to respect medical confidentiality.
- If the prisoner wishes, provide for a mental health professional to appear as a witness in disciplinary commissions, so as to ensure the impact of disciplinary actions on prisoners' mental health are taken into account. Ensure prisoners with psychosocial disabilities are not held in isolation in disciplinary cells where their mental health is put at risk.

- Equip more prisons with Regional Medico Psychological Services (SMPR), in a way that reflects the needs of prisoners for mental health care. Beds in SMPRs should be available for women as well as men.

### **To Directors of Psychiatric Hospitals that Admit Patients from Prisons**

- Ensure that when prisoners are admitted into psychiatric hospitals, they are treated in a non-discriminatory manner and their rights are respected, including the right to treatment based on free and informed consent. Where it is not therapeutically required, they should not be isolated, contained or put in seclusion based on their status as prisoners or purely on the basis of their criminal record. To the extent that additional security measures are required to prevent a prisoner from absconding, these should be put in place in a way that does not interfere with good clinical practice in the treatment of the patient.

### **To the Inspector of Prisons**

- Include a detailed section on the situation of people with mental health conditions in all reports on prison visits that reflects the experiences of male and female prisoners with psychosocial disabilities.
- Conduct a study of the conditions in which prisoners are hospitalized in public psychiatric hospitals during their incarceration, and make specific recommendations to improve conditions and ensure they comply with patients' rights to health and to be free from inhuman or degrading treatment.
- Conduct a study on the mental health of female prisoners and their access to mental healthcare, and make specific recommendations to ensure respect for their right to access the highest attainable standard of health, and their equal treatment compared to male prisoners. Such a study would be a welcome follow-up to her opinion of January 25, 2016; on the situation of women deprived of their liberty.

## Methodology

Human Rights Watch conducted research for this report between January and July 2015.

A female Human Rights Watch researcher visited eight prisons and for some visits she was accompanied by another member of Human Rights Watch staff. The prisons visited were the Sud-Francilien prison in Réau, the remand prisons in Nanterre and Marseille, the prison in Poissy, the Women's prison in Rennes, the remand prison in Fresnes, the prison in Rennes-Vezin and the prison in Château-Thierry. In the first five, Human Rights Watch conducted interviews with a total of 50 prisoners: 17 women and 33 men. Interviews with prisoners were conducted in private, with no member of prison staff present. In two cases, two prisoners were interviewed together with their consent. In one case, the prisoner's psychiatrist and a trainee in the medical unit were present during the interview with his consent.

Interviews were conducted in French with the exception of three interviews that were in English, the language preferred by the interviewee.

Human Rights Watch also interviewed members of the prison staff including directors, counselors and guards and members of the medical teams (psychiatrists, psychologists, general practitioners and nurses).

Access to prisons was granted by the central Prison Administration at the Ministry of Justice in Paris. Human Rights Watch selected facilities that represented different types of prisons: remand prisons (Fresnes, Marseille, Nanterre), a prison for people serving long sentences (Poissy), prisons with a combination of different detention regimes (the penitentiary centers in Réau and Rennes-Vezin, both new facilities), the only prison exclusively for women, on remand or serving a sentence (Rennes) and a prison where a significant proportion of inmates have psychosocial disabilities (Château-Thierry).

At the time of writing, there were 188 prisons in France, of which 91 are remand prisons. Eighty-eight were for people serving a prison sentence (« établissements pour peine ») and included six facilities for people serving long sentences or who were considered to represent a security risk (« maisons centrales »), 25 facilities for people serving sentences



of over two years and who were considered to have good rehabilitation perspectives (« centers de detention »), 11 facilities for people with a mixed detention/liberty regime (« centers de semi-liberté ») and 46 facilities with a combination of two or more of those regimes («centres pénitentiaires»). There were also six facilities for the detention of minors and a National Public Health Facility on the premises of the Fresnes prison.

The selection of prisoners to interview took place in different ways. The Human Rights Watch researcher explained the topic and methodology of the research to the director, medical staff and prison staff, who suggested people they believed could contribute to the research with their experience. Interviews only proceeded with the prisoners' informed consent. In some cases, prisoners approached Human Rights Watch researchers and expressed their wish to be interviewed.

During the course of the research, Human Rights Watch also interviewed officials working in the cabinet of the Minister of Justice, the Office of the Administration of Sanctions and Pardons within the Ministry of Justice, the Prison Administration and the Ministry of Health. We interviewed the current Inspector of Prisons, Ms. Adeline Hazan, as well as Jean-Marie Delarue, who acted in that role between 2008 and 2013. We also interviewed criminal lawyers representing prisoners in French prisons, the International Observatory of Prisons and a representative of a trade union of prison guards.

The names of the men and women interviewed while in detention have been changed, and the names of mental health professionals and prison guards have been withheld to protect their identities.

## **A Note on Terminology**

Although the term mental disability can embrace a wide range of conditions, including cognitive disabilities, in this report we use it solely to refer to mental health conditions such as bipolar disorder, schizophrenia, and depression that may cause intense distress, be accompanied by psychosis, or substantially interfere with or limit one or more major life activities.

The Convention on the Rights of Persons with Disabilities recognizes that disability is an evolving concept and that it results from the interaction between persons with

impairments and social, cultural, attitudinal and environmental barriers that prevent their full and effective participation in society on an equal basis with others. The mental impairments that can lead to mental disabilities include psychological conditions commonly referred to in the French criminal justice system, including by mental health professionals, courts, lawyers, prison guards and staff and the media—as “psychiatric disorders” or “mental disorders” (“troubles psychiatriques” or “troubles mentaux”).

## Terms

**Psychosocial disability**<sup>1</sup>: The preferred term to describe persons with mental health conditions such as depression, bipolar disorders, schizophrenia. This term expresses the interaction between psychological differences and social or cultural limits for behavior, as well as the stigma that the society attaches to persons with mental health conditions.<sup>2</sup>

**Bipolar disorder**: A mental health condition that brings severe disturbances in mood and activity levels and changes in sleep, energy, thinking, and behavior.

**Psychosis**: A mental health condition that can result in distortions of thinking and perception, inappropriate emotions, incoherent speech, hallucinations, delusions, and excessive suspicions.

**Schizophrenia**: A severe and chronic mental health condition resulting from brain disorder that brings hallucinations and delusions.

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<sup>1</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, <http://www.un.org/disabilities/convention/conventionfull.shtml> The UN Convention on the Rights of Persons With Disabilities, which France has ratified, does not include a definition of the term “disability” but recognizes that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

<sup>2</sup> World Network of Users and Survivors of Psychiatry, “Manual on Implementation of the Convention on the Rights of Persons with Disabilities”, 2009, [http://www.wnusp.net/documents/WNUSP\\_CRPD\\_Manual.pdf](http://www.wnusp.net/documents/WNUSP_CRPD_Manual.pdf) (accessed August 19, 2015), p. 9.

# I. Background: Prisoners with Psychosocial Disabilities in French Prisons

## Over-representation of people with psychosocial disabilities in prison

There are no recent figures on the number of people with psychosocial disabilities currently detained in French prisons. The latest comprehensive study was published over a decade ago, in December 2004, based on interviews with 1,000 prisoners in 23 prisons in France in 2003 and 2004.<sup>3</sup>

The researchers found that eight out of ten men and over seven out of ten women had at least one mental health condition, most of them acquiring multiple conditions.<sup>4</sup> They found that 35 percent of the male prisoners they interviewed were “manifestly ill, seriously ill or among the patients who were the most ill.”<sup>5</sup>

According to that study, 23.9 percent of male prisoners in metropolitan France had psychosis. Thirty nine percent of male prisoners had a depressive syndrome, 8 percent had schizophrenia (accounting for 19 percent in prisons for long sentences, i.e. “maisons centrales”), 5.5 percent had bipolar disorder (14 percent of those in prisons for long sentences).<sup>6</sup> Twenty-six percent of all female prisoners had psychosis, of whom 15 percent had schizophrenia. Thirty-nine percent had a depressive syndrome, and 4 percent had bipolar disorder.<sup>7</sup> The study found that before their incarceration 4 out of 10 female prisoners had consulted a psychiatrist, psychologist or general practitioner for psychiatric reasons, the same rate as men.<sup>8</sup> The study found that 11 percent of the men and a quarter of the women questioned had been hospitalized for mental health conditions at least once before their incarceration.<sup>9</sup>

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<sup>3</sup> Anne Duburcq et al., *Enquête de prévalence sur les troubles psychiatriques en milieu carcéral (phase 1 de l'étude épidémiologique)*, Etude pour le Ministère de la Santé (Direction Générale de la Santé) et le Ministère de la Justice (Direction de l'Administration Pénitentiaire), December 2004, [http://www.justice.gouv.fr/art\\_pix/rapport\\_detenus\\_MS\\_2004pdf.pdf](http://www.justice.gouv.fr/art_pix/rapport_detenus_MS_2004pdf.pdf) (accessed July 20, 2015).

<sup>4</sup> Ibid., p.21 and 44.

<sup>5</sup> Ibid., p.26.

<sup>6</sup> Ibid., p. 21-22.

<sup>7</sup> Ibid., p. 45.

<sup>8</sup> Ibid., p. 32 and 42.

<sup>9</sup> Ibid., p.32 and p. 42 .

According to the National Institute of Health and Medical Research (Institut national de la santé et de la recherche médicale, INSERM), as of May 2014 around 0.7 percent of the world population had schizophrenia, including 600,000 in France. Of the total French population, 0.9 percent have schizophrenia.<sup>10</sup> When compared to the proportion of people with psychosocial disabilities detained in French prisons in the study conducted in 2003, people with psychosocial disabilities are dramatically overrepresented in prison.

Directors, guards and health professionals in the prisons visited by Human Rights Watch between January and May 2015 had differing estimates of what proportion of the people held in their institution live with a psychosocial disability, but all said it was a high proportion and a serious challenge.

“There is a huge prevalence of mental health problems among the prisoners,” the director of the Rennes prison for men told Human Rights Watch. “At least 20 or 25 percent of the detainees are mentally ill, or have personality disorders.”<sup>11</sup>

A mental health professional in a prison for people serving medium and long sentences estimated that 40 percent of prisoners have a psychosocial disability, including depression, and 10 percent have psychosis.<sup>12</sup>

The director of the prison of Poissy, which holds men serving sentences longer than 10 years, told Human Rights Watch that, due to their psychosocial disability, “with certain people, it’s not possible to explain to them the meaning of their sentence. In those cases, we’re powerless.” He said that the other prisoners call them “the tired ones.”<sup>13</sup>

Jean-Marie Delarue, who was France’s inspector of prisons from 2008 to 2014, told Human Rights Watch he estimated that a quarter of prisoners had a serious mental health condition, which amounts to between 16,000 and 17,000 prisoners.<sup>14</sup>

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<sup>10</sup> National institute of health and medical research (Inserm), information file on schizophrenia, May 2014, <http://www.inserm.fr/thematiques/neurosciences-sciences-cognitives-neurologie-psychiatrie/dossiers-d-information/schizophrenie> (accessed July 22, 2015). INSERM is a scientific research institute placed under the authority of the French ministries of health and research.

<sup>11</sup> Human Rights Watch interview with Jacques Gombert, Director of the prison of Rennes-Vezin, Rennes, April 14, 2014.

<sup>12</sup> Human Rights Watch interview with a mental health professional in a prison for people serving medium and long sentences, 2015.

<sup>13</sup> Human Rights Watch interview with François Goetz, Director of the prison of Poissy, Poissy, March 19, 2015.

<sup>14</sup> Human Rights Watch interview with Jean-Marie Delarue, Paris, May 26, 2015.

There is a need for a new independent study on the prevalence of psychosocial disabilities in French prisons. Such research should be designed to inform health professionals and officials in charge of the prison administration on the proportion of prisoners who have psychosocial disabilities and help take measures to improve the living conditions and access to mental healthcare in prison for those who want it. The need for such a study was echoed by officials Human Rights Watch met with in the prison administration.<sup>15</sup>

## Why people with psychosocial disabilities are over-represented in French prisons

Under the French criminal code, a person who committed an offense is not responsible for his or her actions if “at the time of the offense, that person had a mental or neuro-psychiatric disorder that vitiated his or her judgment or control over his or her actions.”<sup>16</sup> The situation of people found to be not guilty for this reason goes beyond the scope of this report.

A 1994 law stated that if a person, at the time of committing an offense, had a mental or “neuro-psychiatric disorder” that “*altered* his or her judgment or impeded the control of his or her actions” (emphasis added), the person remained legally responsible for his or her actions, but the court was to take this into account during sentencing. Although the legislative intent may have been for this to act as a mitigating factor, in practice the finding that someone’s judgment was only “altered” but not “vitiating” due to a mental disorder was rather treated as an aggravating factor and often resulted in harsher, not lighter sentences. The fact that a person with a psychosocial disability could be given a harsher sentence, directly as a consequence of the fact that they had or were perceived to have a disability constitutes discrimination on grounds of disability.

Speaking before parliament on the then draft law on the individualization of sanctions and reinforcing the effectiveness of criminal sanctions, enacted on August 14, 2015, the then Minister of Justice Christiane Taubira stated that “experts as well as courts had come to consider that the alteration of judgment was an aggravating factor, and that it should

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<sup>15</sup> Human Rights Watch interview with officials at the Prison Administration May 15, 2015.

<sup>16</sup> French criminal code, Article 122-1,

[http://www.legifrance.gouv.fr/affichCode.do;jsessionid=48DE9E4A21FBAF7D68CE172A6B659Do8.tpdila07v\\_1?idSectionTA=LEGISCTA000006149818&cidTexte=LEGITEXT000006070719&dateTexte=20150711](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=48DE9E4A21FBAF7D68CE172A6B659Do8.tpdila07v_1?idSectionTA=LEGISCTA000006149818&cidTexte=LEGITEXT000006070719&dateTexte=20150711)

therefore lead to more serious sentences.”<sup>17</sup> Indeed a report by Senator Jean-Pierre Michel in 2011 found that “mental illness, when criminal responsibility is admitted, [appears to] lead to an aggravation of the sentence, at least for the most serious acts. Indeed, for juries in particular, mental illness often acts as a sign of extra danger.”<sup>18</sup>

A psychiatrist in a remand prison said “the alteration of judgment is seen as a risk of reoffending. They’re put in prison with the idea that they’ll be taken care of.”<sup>19</sup> However, Human Rights Watch research found that far from being “taken care of” in prison, people with psychosocial disabilities often did not receive the accommodation they needed in prison leading to further deterioration of their mental health condition.

Adeline Hazan, Inspector of France’s prisons, told Human Rights Watch that some judges even justified handing down prison sentences to defendants with mental health conditions on the grounds that they would receive better treatment for mental health conditions in prison than outside.

“Often, judges say to themselves, ‘he will be better treated in prison than outside.’ It’s extremely dangerous. You don’t put people in prison to be treated for a medical condition. It’s a total misuse [of the system],” Hazan said. “I’m struck by the number of people in prison who have mental disorders,” she said. “There are a great deal of people in prison who shouldn’t be there.”<sup>20</sup>

Failure to diagnose psychosocial disabilities when charging and convicting people was also stated as a reason why people with psychosocial disabilities are imprisoned in France. French law provides that people charged with certain serious crimes such as sex offenses, murder of children or acts of torture should undergo an evaluation of their mental health by a psychiatrist, but such an evaluation is not required in other cases.<sup>21</sup> In summary proceedings for offenses other than those for which a psychiatric expertise is

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<sup>17</sup> Senate debate on the bill on increasing the effectiveness of criminal sanctions, intervention by Christiane Taubira, Minister of Justice, June 26, 2014, [http://www.senat.fr/seances/s201406/s20140626/s20140626\\_mono.html#Niv1\\_SOM6](http://www.senat.fr/seances/s201406/s20140626/s20140626_mono.html#Niv1_SOM6) (accessed July 23, 2015).

<sup>18</sup> Senator Jean-Pierre Michel, *Report on the Bill Proposed by Jean-René Lecerf, Gilbert Barbier and Christiane Demontès on the Reduction of Criminal Responsibility for People Who Have a Mental Disorder that Altered their Judgment at the Time of the Facts*, January 12, 2011, p.8, <http://www.senat.fr/rap/l10-216/l10-2161.pdf> (accessed July 14, 2015).

<sup>19</sup> Human Rights Watch interview with a psychiatrist in a remand prison, 2015.

<sup>20</sup> Human Rights Watch interview with Adeline Hazan, Inspector of Prisons, Paris, May 12, 2015.

<sup>21</sup> Articles 706-47 and 706-47-1 of the Code of Criminal Procedure.

required, lawyers and judges may not have the time or the ability to identify signs of serious mental health conditions which may lead to offenders with psychosocial disabilities serving their sentence in conditions that do not accommodate their disability.

Following an amendment to the French criminal code in August 2014, French law now provides that prison sentences pronounced for a person whose judgment was “altered” are to be reduced by a third, or, if the person is sentenced to life imprisonment, that the sentence is limited to 30 years.<sup>22</sup> But if the person is convicted of a misdemeanor, the court can decide not to reduce the sentence by issuing a specially substantiated decision. Since August 2014, Article 122-1 of the criminal code provides that “when, following a medical opinion, the court considers that the nature of the disorder justifies it, the court can ensure that the sentence pronounced allows the person sentenced to receive care that is adapted to his or her condition.”

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<sup>22</sup> Law of August 15, 2014, on the individualization of sentences and reinforcing the effectiveness of criminal sanctions. The change was introduced through an amendment by the senate, which had previously attempted to make this change through a bill in 2011 that was not subsequently debated by the National Assembly.



## II. Organization of Mental Healthcare in French Prisons

Until 1986, mental health care in French prisons was under the authority of the Prison Administration, which is part of the Ministry of Justice.<sup>23</sup> In an attempt to improve prisoners' access to health care, it was then transferred to the Ministry of Health. Physical health care was placed under the authority of the Ministry of Health in 1994.<sup>24</sup> Medical staff working in prisons are now systemically independent from the prison authorities and are affiliated with a hospital. They provide both physical and mental health care and include general practitioners, psychiatrists, psychologists, nurses, dentists and other specialists.

All prisons in France have a medical unit that provides physical and mental health care, but their size and resources vary greatly from one facility to another.

Out of the 188 prisons in France only 26 have Regional Medico Psychological Services (SMPRs), providing mental health care including consultations with psychiatrists and psychologists.

These 26 SMPRs have a total of 380 beds so prisoners can stay overnight. However, SMPRs provide treatment during the day. Medical staff are not present during the evening or night and prisoners who occupy the beds are guarded by prison guards. Prisons without an SMPR have Outpatient Consultation and Treatment Units (Unités de consultations et de soins ambulatoires - UCSAs) where psychiatrists working in the hospital to which the facility is affiliated provide consultations on certain days of the week. The full-time position of a psychiatrist, for instance, can be shared by several professionals.

Under French law, psychiatric treatment in prison requires the patient's consent.<sup>25</sup> However, under general mental health laws, prisoners, like other members of the population, may be involuntarily admitted to a psychiatric hospital upon a decision by the prefect of a *département* - in their case the *département* where the prison is located.

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<sup>23</sup> Decree no. 86/602 of March 14, 1986 on the fight against mental illness and the organization of psychiatric sectors.

<sup>24</sup> Law no. 94-43 of January 18, 1994, concerning public health and social protection. The law also provides for the affiliation of prisoners to the general system of social security.

<sup>25</sup> Article L3214-1 I of the Code of Public Health.

The French Code of Public Health provides that, “when a person who is detained needs immediate care with constant observation in a hospital setting due to mental disorders that make his or her consent impossible and that constitute a danger for himself/herself or others,” the state representative in the department where the prison is located has the authority to order his or her admission in a psychiatric hospital.<sup>26</sup>

That French law allows persons to be involuntarily hospitalized with a view to subjecting them to treatment without their consent is problematic, and should only be possible as a last resort in narrowly defined emergency situations where there is a life threatening situation or one of comparable gravity, in the same manner as it would be given to any other person. Any treatment should be strictly limited in scope and duration to what is deemed medically necessary to avert the life threatening situation.

Human rights law guarantees that all patients, including those in detention, have a right to medical treatment based on free and informed consent. This means that prisoners with psychosocial disabilities have the right to free and informed consent, on an equal basis with others. While human rights law foresees that authorities may legitimately make decisions about the transfer between facilities of someone already lawfully detained, this should not include authority to transfer a person to a hospital for the purpose of involuntary treatment, in particular on the grounds of disability.

In cases where the transfer of a prisoner to a medical facility is sought a doctor, who is not affiliated to that medical facility, issues a medical certificate on the basis of which the prefect issues the order for his or her admission to a psychiatric unit where they may be subjected to treatment without their consent, which would be a breach of the right of people – including prisoners – to be treated with their informed consent.<sup>27</sup> People can be admitted to a psychiatric hospital or in a Specially Adapted Hospital Unit (UHSA).<sup>28</sup> At the time of writing, seven UHSAs were operational, and two more were under construction near Bordeaux and in Marseille.<sup>29</sup> Some prisoners with psychosocial disabilities may be temporarily transferred to the prison in Château-Thierry, in the north east of France which the director of the prison described to Human Rights Watch as specializing in the

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<sup>26</sup> Article L3214-3 of the Code of Public Health.

<sup>27</sup> Article L3213-1 of the Code of Public Health.

<sup>28</sup> Article L3214-1 of the Code of Public Health.

<sup>29</sup> At the time of writing, a second group of eight UHSA was scheduled to open after the completion of the first nine.

detention of persons “who have difficulties adapting to classical detention” for reasons that include psychosocial disabilities. Reasons for transfer to Chateau-Thierry include poor personal hygiene, self-harm or violence against others, people who have spent a long time in isolation or who are withdrawn.<sup>30</sup> Chateau-Thierry is a regular prison and not a medical facility. When Human Rights Watch visited in May 2015, the hours in which staff were available to provide psychiatric care amounted to less than the hours of a single full-time psychiatrist, even though 80 percent of the inmates were estimated to have some kind of psychosis.<sup>31</sup>

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<sup>30</sup> Human Rights Watch interview with the director of the prison of Château-Thierry, Château-Thierry, May 12, 2015.

<sup>31</sup> Human Rights Watch interview with the director of the prison of Chateau-Thierry, May 12, 2015.

### III. Life Behind Bars for Prisoners with Psychosocial Disabilities

The restrictions and tensions of prison are difficult for all prisoners. But for people living with psychosocial disabilities the difficulties can be especially acute. People with psychosocial disabilities can find it particularly hard to adapt to the requirement to respect strict rules of prison life, limited human contact and separation from loved ones. They may also suffer the stigma of their disability, bullying from other prisoners, and in many cases withdrawal from alcohol and narcotics. These problems are often compounded by insufficient mental healthcare which can cause additional suffering with potentially detrimental effects on their short and long term mental health. Inappropriate prison conditions can result in violations of the right to health and of the rights to physical and mental integrity.<sup>32</sup> Conditions of detention, particularly as experienced by persons with disabilities, may also violate the prohibition of torture or other cruel or inhuman or degrading treatment or punishment.<sup>33</sup>

As noted by the UN Special Rapporteur on the Rights of Persons with Disabilities in July 2015, governments should “respect, in particular, the right to life and the inherent dignity of detainees with disabilities and “provide reasonable accommodation in detention.”<sup>34</sup>

#### Living conditions

According to the World Health Organization (WHO) and the International Committee of the Red Cross (ICRC), factors in prisons that have negative effects on mental health include “overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects (work, relationships, etc.), and inadequate health services, especially mental

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<sup>32</sup> International Covenant on Economic, Social and Cultural Rights (ICESR), 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, ratified by France November 4, 1980; UN Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, entered into force May 3, 2008, ratified by France February 18, 2010.

<sup>33</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217(A)(III), U.N. Doc. A/810 at 71 (1948).

<sup>34</sup> UN rights experts urge Pakistan to halt ongoing surge in executions and reinstate moratorium on death penalty, July 29, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16275&LangID=E#sthash.eRwCuSkR> (accessed March 18, 2016).

health services.”<sup>35</sup> During our research in French prisons in 2015, we found that prisoners living with psychosocial disabilities experience one or more of those factors.

### *Overcrowding in old remand prisons*

Overcrowding in French remand prisons is an ongoing problem. According to the Council of Europe’s annual prison statistics, as of September 1, 2014 the occupancy rate in French prisons was on average 114.5 percent, higher than the average of the 47 member states of the Council of Europe which was 91.6 percent.<sup>36</sup> However, the occupancy rate is much higher in some remand prisons (“maisons d’arrêt”) in France, since there is no requirement for prisoners in pretrial detention to be alone in their cell. As of February 1, 2016, there were 1,200 mattresses on the floors of cells in French prisons.<sup>37</sup>

For instance, as of February 1, 2016, the remand quarter of the Les Baumettes prison in Marseille was occupied at 138.5 percent of its capacity. The rate reached 176 percent in Fresnes, 136.9 percent in Rennes-Vezin (the men’s prison in Rennes), and 178.2 percent in Nanterre. Some prisons in France’s overseas territories are even more overcrowded; for instance, the remand quarter of the Ducos prison in Martinique was occupied at 230.3 percent of capacity, and the remand quarter in the Faa’a Nuutania prison in French Polynesia 307.4 percent.<sup>38</sup>

Following its review of France’s compliance with the ICCPR in July 2015 the UN Human Rights Committee expressed concern about the persistence of overcrowding in French prisons and called on the government to continue its efforts to reduce prison overcrowding, even though it welcomed France’s efforts to modernize prisons and the adoption of the law of August 2014 on the individualization of sentences.<sup>39</sup>

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<sup>35</sup> World Health Organization and International Committee of the Red Cross, Information sheet on Mental Health and Prisons, [http://www.who.int/mental\\_health/policy/mh\\_in\\_prison.pdf](http://www.who.int/mental_health/policy/mh_in_prison.pdf) (accessed July 22, 2015).

<sup>36</sup> Council of Europe Annual Penal Statistics, SPACE I – Prison Populations, Survey 2014, December 2015, [http://wp.unil.ch/space/files/2016/03/Council-of-Europe\\_SPACE-I-2014\\_Final\\_160308.pdf](http://wp.unil.ch/space/files/2016/03/Council-of-Europe_SPACE-I-2014_Final_160308.pdf) (accessed March 9, 2016). As of February 1, 2016, the average occupancy rate in French prisons was 115 percent according to the monthly statistics of the Prison Administration, [http://www.justice.gouv.fr/art\\_pix/mensuelle\\_fevrier\\_2016.pdf%20](http://www.justice.gouv.fr/art_pix/mensuelle_fevrier_2016.pdf%20) (accessed March 9, 2016).

<sup>37</sup> Directorate of the Prison Administration, monthly statistics of persons incarcerated and detained in France (statistique mensuelle des personnes écrouées et détenues en France) as of February 1, 2016, [http://www.justice.gouv.fr/art\\_pix/mensuelle\\_fevrier\\_2016.pdf%20](http://www.justice.gouv.fr/art_pix/mensuelle_fevrier_2016.pdf%20) (accessed March 9, 2016).

<sup>38</sup> Directorate of the Prison Administration, monthly statistics of persons incarcerated and detained in France (statistique mensuelle des personnes écrouées et détenues en France) as of February 1, 2016, [http://www.justice.gouv.fr/art\\_pix/mensuelle\\_fevrier\\_2016.pdf%20](http://www.justice.gouv.fr/art_pix/mensuelle_fevrier_2016.pdf%20) (accessed March 9, 2016).

<sup>39</sup> Human Rights Committee, Concluding observations on France, July 2015 (CCPR/C/FRA/CO/5), paragraph 17.

Some prison staff in remand prisons told Human Rights Watch that they took account of prisoners' mental health condition when allocating them to a cell. They said they put them in cells alone, or with prisoners whom they deemed compatible. Stéphane Scotto, the director of the remand prison of Fresnes told Human Rights Watch that prisoners with psychosocial disabilities are placed in cells alone if they are aggressive towards others, and with another prisoner in a cell if they self harm.<sup>40</sup>

But prison administrators and staff are not mental health professionals, and do not have the training to assess prisoners' mental health or their compatibility with others in a cell.

Overcrowding, which exacerbates prison's lack of privacy and close contact with others in a small space, can be particularly difficult for people who have psychosocial disabilities.

It can also be difficult for fellow prisoners who do not understand the other person's disability or how to react to behaviors caused by the disability, such as anxiety, withdrawal or lack of personal hygiene.

For example, a guard in a remand prison, speaking about a prisoner who was not speaking or cleaning himself, said that "in a remand prison, it can create tensions. A prisoner who doesn't wash, it's badly perceived [by other prisoners]. When he arrived, he was put in a cell with someone else. But the smell, the strange behavior, the fact that he doesn't talk" were reasons he was subsequently placed alone. "In prisons where sentences are being served, it's one person per cell," the guard said. "Here we have varying numbers [of prisoners] and we make people who shouldn't be together share cells."<sup>41</sup>

Another consequence of overcrowding is that guards are responsible for a high number of prisoners. They are therefore unable to dedicate necessary time and attention to individual prisoners, and may fail to notice signs of the deterioration of their mental health.

A more reasonable ratio of prison guards per prisoners – that allows for interactions and dialogue that are key to detecting signs of mental health conditions – can help avoid

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<sup>40</sup> Human Rights Watch interview with Stéphane Scotto, director of the remand prison of Fresnes, Fresnes, March 17, 2015.

<sup>41</sup> Human Rights Watch interview with a guard in a remand prison, 2015.

escalating situations of distress and feelings of isolation among prisoners and contribute to better relations between guards and prisoners overall.

“The people in detention who are most affected [by a mental health condition], we leave them alone [in the cell], unless we have instructions from the psychiatrist that there is a risk of self-harm, in which case we put them in a cell with someone who has a behavior disorder [a mental health condition],” a senior guard in a remand prison told Human Rights Watch. When asked why the choice was not to put people with psychosocial disabilities with prisoners who do not have any mental health conditions, she added “prisoners are already punished. If we put them with someone who has behavior disorders, it’s a second punishment; they will have to take care of that person. It’s a very heavy task.”<sup>42</sup>

The inspector of prisons wrote in her 2014 annual report: “Certain persons who have a mental or physical disability are no longer able to ensure their cleanliness nor that of their cell, and sometimes live in undignified dirty conditions, without anything being organized to overcome this loss of autonomy. In the absence of measures to help the person, [prisons often rely on] other prisoners, voluntary or not, who bring their support to vulnerable or dependent persons.”<sup>43</sup>

### *Lack of human contact in new prisons*

“We’re lost in this world where there are only metal gates.”

- A woman detained in a prison.

While the new prisons visited by Human Rights Watch were cleaner and had better facilities than old prisons, such as individual showers and intercoms in cells, interviewees said there was less human contact between prisoners and prison staff than in old prisons. To move within the prison, one must go through numerous metal gates that are opened remotely via intercoms. Prisoners and visitors must speak through tinted glass to guards they cannot see. In particular for prisoners living with a psychosocial disability, the lack of human contact and feelings of isolation resulting from these conditions can have very negative impact on prisoners’ health and their physical and mental integrity. Living

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<sup>42</sup> Human Rights Watch interview with a senior guard in a remand prison, 2015.

<sup>43</sup> General Inspector of places of deprivation of liberty, activity report for 2014, [http://www.cgpl.fr/wp-content/uploads/2015/04/CGLPL\\_rapport-2014\\_version-web\\_3.pdf](http://www.cgpl.fr/wp-content/uploads/2015/04/CGLPL_rapport-2014_version-web_3.pdf), p. 97 (accessed July 14, 2015).

conditions that have a disproportionate impact on prisoners with psychosocial disabilities in comparison to other prisoners, and where no reasonable accommodation is made to address the increased suffering of prisoners with psychosocial disabilities, can also constitute discrimination on grounds of disability.

Human Rights Watch observed informal, respectful interactions between prisoners, prison staff and guards in some older facilities that appeared to have a direct and immediate impact on mitigating or preventing feelings of isolation. Such interactions can also help guards to get to know the prisoners for whose safety they are responsible and to detect changes in their behavior that can indicate depression or decompensation and require their referral to the medical unit. Human Rights Watch concluded from its own observations and from interviews that these kinds of interactions appeared to be less frequent in the newer prisons.

“New prisons are dehumanizing” a mental health professional in a prison for people serving medium and long sentences told Human Rights Watch. “Prisoners suffer a lot. The conditions in the cells are better, but due to the lack of human interaction, prisoners prefer old prisons. [...] New prisons have been thought through in terms of comfort, but not psychology,” she said.<sup>44</sup>

“It’s completely disconcerting,” “Elise,” a woman detained in a prison for people serving medium and long sentences told Human Rights Watch. “When we arrive, we’re lost in this world where there are only metal gates...it’s extremely shocking. And what’s more there’s no contact with the guards. On the human level, here, it’s complete despair.”<sup>45</sup>

“The comments we receive are that [new prisons are] clean but dehumanizing,” François Bès of the International Observatory of Prisons (OIP) told Human Rights Watch. “There is a consensus between guards and inmates. They all tell us about dehumanization because there is no longer any human contact.”<sup>46</sup>

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<sup>44</sup> Human Rights Watch interview with a mental health professional in a prison for people serving medium and long sentences, 2015.

<sup>45</sup> Human Rights Watch interview with “Elise,” in a prison for people serving medium and long sentences, 2015.

<sup>46</sup> Human Rights Watch interview with Francois Bes, International Observatory of Prisons (OIP), July 22, 2015.



### *Nighttime regimes*

Depending on the prison and the regime under which inmates are placed, their movements within the prison are more or less restricted during the day. Regimes are “open”, allowing prisoners to move within the prison during the day, or during parts of the day (“semi-open”) or they are “closed,” their doors locked all day, with a guard needed to open the door for any movement. But at night all inmates are locked in their cells. New prisons visited by Human Rights Watch had intercom systems in individual cells, but in older prisons many prisoners had to put a piece of paper (referred to in the prisons as a “flag”) through the door to draw attention from the guard on duty.

Guards on night shift conduct several rounds and inspect cells through spyholes. Inspections can be more frequent for prisoners considered to be particularly vulnerable because of their physical or mental condition, or because of a particular event, for instance if the prisoner recently received bad news. But the guards who conduct those rounds do not have the keys of the cells unless they are a senior officer who is in charge of the building, the only person to have the keys to the cells at night. Prison guards interviewed by Human Rights Watch in the prisons of Nanterre and Marseille said they were in favor of this system, as it protects them from attacks by prisoners and it puts a time limit on when prisoners can ask services from guards. However the system can cause delays if there is a need for an urgent intervention and it is a source of anxiety among prisoners.

“I can get an anxiety attack anywhere, at any time, especially in the evening. There are prisoners who have buttons [intercoms]. It would be good if all cells had them,” “Ali,” a man detained in a prison for people serving long sentences, told Human Rights Watch. “If I have an anxiety attack, I put a paper through the door. I don’t have an alarm. It’s happened that I had to wait for one and a half hours [for a guard].”<sup>47</sup>

This system, which leaves prisoners having to call out and wait for help if they need it during night hours when they are locked in their cell, also means that if a guard does come, they must speak through the door, reinforcing the lack of human contact and confidentiality. “Sophie,” a female prisoner, told Human Rights Watch about when she was feeling anxious at night: “I’ve never used the alarm. I cry and wait for it to pass. (...) I don’t want to disturb,” she said. “Once I wasn’t feeling well at all, I wrote a note and

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<sup>47</sup> Human Rights Watch interview with “Ali,” a man detained in a prison for people serving long sentences, 2015.

slipped it through the door. So that when the guards did the rounds they saw it and we talked through the door.”<sup>48</sup>

Francois Bès, coordinator at the International Observatory of Prisons (OIP) told Human Rights Watch that his organization receives many complaints from prisoners about the regime at night, where they are locked in their cells knowing that there could be a significantly long response time in the event of an incident. “It causes a lot of anxiety. They say “between 5pm and 7am, ‘I hope nothing will happen to me.’ There are very few guards (...). It’s a constant anxiety,” he said.<sup>49</sup>

“At night, if we have a problem we must use the alarm,” “Sarah,” a female prisoner, told Human Rights Watch. “But at night it takes the guards 45 minutes to arrive. Between 7:30 p.m. and 7 a.m. there’s no one. I feel bad at night because I’m afraid that I’ll commit suicide during the night. During the day I say to myself that if ever I do something foolish and then I commit suicide, or I try to commit suicide, there will always be a guard who will be able to see me in my cell. Whereas at night if I commit suicide, if I take [too many] medicines or I cut my veins, there won’t be anyone to see me since the guards only do rounds once every two hours,” she said.<sup>50</sup>

In the prison of Château-Thierry, there are intercoms only in the disciplinary quarter.<sup>51</sup>

A lack of on-site medical and psychiatric staff compounds the prison guards’ inability to assist prisoners directly during the night. A senior guard explained to Human Rights Watch that “on night shifts, if a senior guard is called by a prisoner and she says that she doesn’t feel well, the senior guard calls the number 15 [the national number for emergency medical services]. If the doctor considers that she needs to be seen, an ambulance will come. But not in psychiatry, there are no emergency services for psychiatry, no psychiatrist on the phone. We tell the [emergency services] I have a prisoner who has disorders [a mental

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<sup>48</sup> Human Rights Watch interview with “Sophie,” a woman detained in a French prison, 2015.

<sup>49</sup> Human Rights Watch interview with François Bès, International Observatory of Prisons (OIP), Paris, July 22, 2015.

<sup>50</sup> Human Rights Watch interview with “Sarah,” a female prisoner, 2015.

<sup>51</sup> Human Rights Watch interview with Bénédicte Riocreux, director of the prison of Château-Thierry, Château-Thierry, May 12, 2015.

health condition], and the physical doctor requests compulsory hospitalization [in a psychiatric hospital].”<sup>52</sup>

“During the night you have to be almost dead for the senior officer to come and take you to hospital,” “Anna,” a female prisoner, told Human Rights Watch. “Otherwise they just say, take your medication, calm down. There is no doctor here at night.”<sup>53</sup>

The fact that prisons are not adapted for people with psychosocial disabilities also has consequences on prison staff. Referring to the situation in prisons where cells are not equipped with intercoms and where, to attract attention, inmates must put a piece of paper or flag through the door, a representative of a union of prison guards told Human Rights Watch: “a prisoner puts out a flag [through the door], but the guard is busy and doesn’t see it. At the end of the day, when the guard comes to give out the meal, he opens the door, and there can be an attack [by the prisoner] (...). The mental integrity of prisoners has dramatic consequences on the working conditions of guards because the psychosis can lead to aggression.”<sup>54</sup>

## Disciplinary measures

Prison life is regulated by rules, and there are sanctions against prisoners who breach them. Breaches can constitute disciplinary offences, the most serious of which can be punished by detention in a disciplinary cell. But no medical professional is involved in the prisons’ disciplinary commissions which determine if a person will be disciplined and how. In the prisons visited by Human Rights Watch, responses by prison staff and medical professionals to disciplinary offences committed by inmates with psychosocial disabilities varied on a case by case basis. Human Rights Watch found that there were tensions between enforcing prison rules and ensuring care for the mental health of prisoners, some of whom may commit disciplinary infractions as a direct result of their psychosocial disabilities. The tension is particularly apparent when the offense is a physical attack of a prison guard.

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<sup>52</sup> Human Rights Watch interview with a senior guard in a French prison, 2015.

<sup>53</sup> Human Rights Watch interview with “Anna,” a female prisoner, 2015.

<sup>54</sup> Human Rights Watch interview with a representative of the union Union Générale des Syndicats Pénitentiaire – Confédération Générale du Travail (UGSP-CGT), Paris, May 13, 2015.

Disciplinary offences include possessing a mobile phone (which are prohibited in French prisons), refusing to obey a prison officer, and violence against prison guards.<sup>55</sup>

A prisoner punished by detention in a disciplinary cell is held there alone, banned from participating in activities and from working. They have the right to go outside for an hour per day for exercise in a special courtyard, where they are alone with a guard. In such circumstances, prisoners with psychosocial disabilities may experience the punishment as disproportionately harsh compared to prisoners without such disabilities.

As noted, doctors do not take part in disciplinary commissions, where decisions on disciplinary sanctions are taken, and they have valid ethical and professional reasons not to want to get involved in such commissions.<sup>56</sup> A psychiatrist in a remand prison told Human Rights Watch “the act that constitutes the disciplinary fault can be due to the [mental] illness. We don’t participate in the disciplinary commission. There are guards who realize that it’s in that context and who don’t send them [to a disciplinary cell]. But it depends on the guard.”<sup>57</sup>

The impact that the specific conditions of disciplinary cells may have on the health and mental and physical integrity of the prisoner should be taken into account when determining if a prisoner may be held in a disciplinary cell. Prisoners should have the choice to have a mental or medical health professional give evidence during the disciplinary commission, and provide expert opinion on the impact of the conditions of a disciplinary cell on the prisoner, particularly in light of any mental health issues or psychosocial disability.

For serious breaches of prison rules, there is inevitably some tension between maintaining order in prison and the risk of detaining a prisoner who is experiencing psychosis in a disciplinary cell, where his or her mental health can deteriorate and he or she can self-

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<sup>55</sup> Code of Criminal Procedure, Art R57-7-1 to 57-7-3, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=7580737C6E1E8F3EECA2E6351DEB853E.tpdila23v\\_1?idSectionTA=LEGISCTA000023349070&cidTexte=LEGITEXT000006071154&dateTexte=20150714](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=7580737C6E1E8F3EECA2E6351DEB853E.tpdila23v_1?idSectionTA=LEGISCTA000023349070&cidTexte=LEGITEXT000006071154&dateTexte=20150714) (accessed March 19, 2016).

<sup>56</sup> Code of Criminal Procedure, Article R57-7-6: Disciplinary commissions include the director of the prison or a delegate, a prison guard and a person that is external to the prison administration, [http://www.legifrance.gouv.fr/affichCode.do;jsessionid=DA1BDD12DFFC057C5CDAE790E7C9CB5B.tpdila23v\\_1?idSectionTA=LEGISCTA000023349411&cidTexte=LEGITEXT000006071154&dateTexte=20150714](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=DA1BDD12DFFC057C5CDAE790E7C9CB5B.tpdila23v_1?idSectionTA=LEGISCTA000023349411&cidTexte=LEGITEXT000006071154&dateTexte=20150714) (accessed March 19, 2016).

<sup>57</sup> Human Rights Watch interview with a psychiatrist in a remand prison, 2015.

harm. However, the prisoner should be given ample time to consult with a medical or mental health professional prior to and during the commission's session and should have the right, under conditions of informed consent, to waive medical confidentiality in order to allow a medical or mental health professional to speak as a witness in the disciplinary proceedings and discuss the prisoner's condition and treatment.

"Doctors never participate [in disciplinary commissions]," the director of the prison of Château-Thierry, where a large proportion of prisoners experience psychosis, told Human Rights Watch. "It's happened a few times that we ask the psychiatrist if a person can go to the disciplinary quarter. But very, very rarely," she said. The director added that it did occur that prisoners experiencing psychosis were sent to a disciplinary cell. "The specificity of the facility, the disorders of the prisoners and the rules: we're always trying to juggle between them."

A 2011 circular by the Minister of Justice says that there should be at least two visits by a doctor per week to prisoners in disciplinary cells, but it does not specify whether it should be a general practitioner or a psychiatrist.<sup>58</sup> In prisons Human Rights Watch visited, a general practitioner, not a psychiatrist, conducted those visits. The circular also states that "a sanction of [placement in] a disciplinary cell can only be carried out if the person concerned is in a physical and mental state that allows him or her to endure it." It further provides that if the doctor, while visiting an inmate in a disciplinary cell, finds that the inmate's placement in the disciplinary cell "is of a nature to compromise his or her health," the doctor transmits a medical certificate to the prison director, allowing the latter to suspend the placement. The circular specifies that such a determination is binding on the prison director.<sup>59</sup>

The circular also provides that a psychiatrist must immediately be informed if a person who is treated in the regional medico-psychological service (SMPR) or is receiving psychiatric treatment for behavioral disorders is placed in a disciplinary cell and evaluate the impact of the measure on that person's mental health.<sup>60</sup> However prisoners who have

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<sup>58</sup> Circular of June 9, 2011 on the disciplinary regime of adult prisoners, JUSK1140024C, paragraph 3.2.7.4.10, [http://www.textes.justice.gouv.fr/art\\_pix/JUSK1140024C.pdf](http://www.textes.justice.gouv.fr/art_pix/JUSK1140024C.pdf) (accessed March 19, 2016).

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

psychosocial disabilities but are in a facility that has no SMPR and do not otherwise have access to psychiatric care, will not benefit from this safeguard.

For the most serious offenses, prison staff can place a prisoner in a disciplinary cell preventively for up to 48 hours, “to put an end to a disciplinary offense or to preserve the internal security of the facility.”<sup>61</sup>

“There is no longer a compulsory medical assessment before placements in the disciplinary unit,” Yves Bidet, the director of the women’s prison in Rennes told Human Rights Watch.<sup>62</sup> “When we need to put someone in prevention in the disciplinary unit, we don’t call the medical staff. But we conduct an interview. The medical staff then gets involved to enable the medical care to be continued.”

“Psychiatric disorders are taken into account,” Jimmy Delliste, the director of the Nanterre prison told Human Rights Watch, explaining that a psychiatrist was consulted when a person was held preventively in the disciplinary quarter.<sup>63</sup> “Sometimes the situation is such, the incident is so serious, that the disciplinary cell is the most appropriate [...]. When there is a placement in the disciplinary quarter, we ask the general practitioner. He has the medical file. There are very few contra-indications for the disciplinary quarter. There is nothing worse than to pronounce a sanction that will be invalidated for medical reasons, because it can accentuate the sense of impunity among the staff, and the person can do it again.”

Some senior prison guards, who can participate in disciplinary commissions, told Human Rights Watch that when they knew a prisoner had serious psychosocial disabilities, they took that into consideration to avoid sending them to a disciplinary cell.

A mental health professional in a prison for people serving medium and long sentences told Human Rights Watch that the prison authorities at that prison followed the advice of the general practitioner or psychiatrist with regard to placements in the disciplinary unit.

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<sup>61</sup> Code of Criminal Procedure, Art R57-7-18 and R57-7-19, <https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000023349427&cidTexte=LEGITEXTo00006071154&dateTexte=20150714> (accessed March 19, 2016).

<sup>62</sup> Human Rights Watch interview with Yves Bidet, director of the women’s prison in Rennes, Rennes, April 15, 2015.

<sup>63</sup> Human Rights Watch interview with Jimmy Delliste, director of the prison of Nanterre, Nanterre, May 28, 2015.

However, she also said, “if someone has behavioral disorders, we only go against a placement in the disciplinary unit if it’s to hospitalize. We hospitalize some people for 24 or 48 hours so they calm down.”<sup>64</sup>

## Stigma and fear of other prisoners

A psychiatrist in a remand prison told Human Rights Watch that persons with psychosocial disabilities are stigmatized and that other prisoners call them “the drugged ones”. She also noted that prisoners are vulnerable to being extorted by other inmates and those with psychosocial disabilities are more vulnerable. She said “I have patients who say to me ‘No, Doctor, I prefer not to come, or otherwise call me in once per month,’ because just crossing the hall makes them targets in several ways: either because they [the other prisoners] know they might have medicines so they may stop them, extort them, or because they’re vulnerable [...] they’re forced to act as mules [to carry drugs].”<sup>65</sup>

This was echoed by a psychiatrist working in a remand prison and a prison for people serving medium sentences. “Psychotropic drugs are objects of desire, trafficking, extortion. People who see the psychiatrist are identified by other prisoners. They can face extortion, have their treatment stolen, or even want to make a trade out of them. If the nurse stops at a cell, the other prisoners know that. Half of the medicines distributed in prison are psychotropic drugs,” she said.<sup>66</sup>

In a report on his visit to Baumettes prison in Marseille in 2012, Jean-Marie Delarue, the then inspector of prisons noted that “many patients spoke of the fear that tormented them at the thought of having to cross the entire detention building and the chances of ‘getting stabbed’ [slang in French] to go to the SMPR.”<sup>67</sup>

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<sup>64</sup> Human Rights Watch interview with a mental health professional in a prison for people serving medium and long sentences, 2015.

<sup>65</sup> Human Rights Watch interview with a psychiatrist in a remand prison, 2015.

<sup>66</sup> Human Rights Watch interview with a psychiatrist working in a remand prison and a prison for people serving medium sentences, 2015.

<sup>67</sup> Jean-Marie Delarue, General Inspector of Prisons, report on a visit to the prison of Marseille, October 8 to 19, 2012 and September 23 to 27, 2013, p. 248, <http://www.cglpl.fr/wp-content/uploads/2014/04/Rapport-de-visite-du-CP-de-Marseille.pdf> (accessed July 20, 2015).

“Younes,” a young man diagnosed with schizophrenia detained in a remand prison, said “when I’m outside, I don’t mix with the other prisoners. I tell myself they must know that I’m ill. Some of them see me going to the medical unit every day.”<sup>68</sup>

According to the director of the prison of Château-Thierry, where a majority of prisoners are estimated to have psychosocial disabilities, there is a stigma attached to having been to that prison. “It can be detrimental to the prisoner,” she said. “Some will stabilize, and when they arrive [in the other prison] and they’re told (by members of staff, or other prisoners) ‘here’s the crazy one from Château-Thierry,’ we feel like the work of several months collapses in five seconds. One word is enough.”<sup>69</sup>

## Discrimination Against Women in Prison

Women are a small minority among prisoners in France, yet studies have shown that women in prison are more likely to have psychosocial disabilities. Human Rights Watch has found that in France female prisoners with psychosocial disabilities also face barriers in accessing the help or basic services they need.

Of the prison population in France as of February 1, 2016, just over 3 percent were women.<sup>70</sup> There is only one prison exclusively for women in France, in Rennes, Brittany. In other prisons, women are held in sections of prisons where a much larger male population is detained.

In total only six prisons in mainland France have places for women serving sentences, most of them in the north of France.<sup>71</sup> This can impact their ability to maintain contact with their families, the conditions in which they are detained, and their access to healthcare. All of this can in turn impact their mental health.

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<sup>68</sup> Human Rights Watch interview with “Younes,” a man detained in a remand prison, 2015.

<sup>69</sup> Human Rights Watch interview with Bénédicte Riocreux, Director of the prison of Château-Thierry, Château-Thierry, May 12, 2015.

<sup>70</sup> Prison Administration, Monthly statistics of people incarcerated [how to translate “écrouées?”] and detained in France as of February 1, 2016, [http://www.justice.gouv.fr/art\\_pix/mensuelle\\_fevrier\\_2016.pdf](http://www.justice.gouv.fr/art_pix/mensuelle_fevrier_2016.pdf) (accessed March 9, 2016).

<sup>71</sup> The prisons of Rennes, Bapaume, Joux-la-Ville, Roanne, Marseille and Réau have places for women serving sentences, and the prisons of Fleury-Mérogis, Fresnes, Rennes and Versailles have places for women on remand.



Human Rights Watch also found that women incarcerated in the prisons it visited were at a disadvantage compared to men in terms of detention conditions, particularly access to vocational training and access to health care services. This situation is clearly incompatible with France’s obligations not to discriminate on the basis of gender.

A large proportion of women in prison in France—up to three quarters according to some estimates—require mental health care. This corresponds to the findings of surveys which register higher rates of mental health conditions among women than men in prison globally.<sup>72</sup> The 2004 survey on the prevalence of mental health conditions in French prisons found that “three quarters of the women interviewed had at least one psychiatric disorder, most of them have a high number of disorders (over three on average).”<sup>73</sup>

Research by the Directorate of Research, Studies, Evaluation and Statistics (Direction de la recherche, des études, de l’évaluation et des statistiques, DREES) in Regional Medico Psychological Services (SMPR) in 2001 found that 59 percent of women who arrived in prison had psychosocial disabilities of varying degrees of seriousness, compared to 54 percent of men. According to that research, psychiatrists found that the most common conditions among women were anxiety (67 percent) and depression (45 percent), whereas among men, disorders related to drug, alcohol and tobacco dependence were the most frequent (56 percent). The study also found that 10 percent of women were treated in an SMPR, compared to 4 percent of men.<sup>74</sup>

On the day of the visit by Human Rights Watch to the prison in Réau, out of the 67 women detained in the women’s quarter, ten were in a psychiatric hospital or in a Specially Adapted Hospital Unit (UHSA).<sup>75</sup>

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<sup>72</sup> World Health Organization Europe, *Prisons and Health*, 2014, p. 92, [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0005/249188/Prisons-and-Health.pdf](http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf) (accessed July 22, 2015), UN Office on Drugs and Crime, *Health of Women in prison* (cites previous studies and figures), 2009, p. 19 [https://www.unodc.org/documents/hiv-aids/WHO\\_EURO\\_UNODC\\_2009\\_Womens\\_health\\_in\\_prison\\_correcting\\_gender\\_inequity-FR.pdf](https://www.unodc.org/documents/hiv-aids/WHO_EURO_UNODC_2009_Womens_health_in_prison_correcting_gender_inequity-FR.pdf) (accessed July 22, 2015).

<sup>73</sup> Anne Duburcq et al., *Enquête de prevalence sur les troubles psychiatriques en milieu carcéral (phase 1 de l’étude épidémiologique)*, Etude pour le Ministère de la Santé (Direction Générale de la Santé) et le Ministère de la Justice (Direction de l’Administration Pénitentiaire), December 2004, p. 44 [http://www.justice.gouv.fr/art\\_pix/rapport\\_detenus\\_MS\\_2004pdf.pdf](http://www.justice.gouv.fr/art_pix/rapport_detenus_MS_2004pdf.pdf) (accessed August 6, 2015).

<sup>74</sup> Directorate of Research, Studies, Evaluation and Statistics (DREES), *la santé des femmes en France*, 2009, p. 282, [http://www.drees.sante.gouv.fr/IMG/pdf/sante\\_femmes\\_2009.pdf](http://www.drees.sante.gouv.fr/IMG/pdf/sante_femmes_2009.pdf) (accessed August 6, 2015).

<sup>75</sup> Human Rights Watch interviews with members of the medical team at the prison of Réau, Réau, January 22, 2015.

According to the director of the women’s prison in Rennes, at the time of the visit by Human Rights Watch in April 2015, women took up 30 percent of the places in the UHSA in Rennes (where both male and female prisoners are admitted), whereas women represented only 7 percent of people incarcerated in the Rennes region.<sup>76</sup>

The director of the prison in Fresnes told Human Rights Watch that “the [psychiatric] profile of women is more serious than men’s.”<sup>77</sup> This was echoed by the head of a psychiatric unit in a remand prison, who said that “the women in detention are more vulnerable [psychologically].” She said that 7 or 8 of the 45 or 50 people in the UHSA at the time were women, indicating an overrepresentation of women who only make up 3 percent of the entire prison population in France.<sup>78</sup>

As noted by the non-governmental organization International Observatory of Prisons (Observatoire International des Prisons, OIP), “the “women’s quarters in facilities that accommodate men and women are generally cut-off and isolated from the rest of the prison [...] In facilities where men are incarcerated as well, [women] must be accompanied in all their movements.”<sup>79</sup>

In the prison of Réau, there are 90 places for women out of a total of 798. The women’s quarter is separate from the men’s, and all contact between men and women is avoided. Following his visit to the Réau prison in April 2013, the Inspector of Prisons noted that women were constantly dependent on guards in their movements, that most women on the first floor of the women’s quarter walked up and down the hall for hours, and that women complained about not having access to the sports field because it is situated under windows of the men’s detention center.<sup>80</sup> Female prisoners in Réau echoed this to Human Rights Watch researchers in an interview at the prison.<sup>81</sup> The Inspector concluded that “the

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<sup>76</sup> Human Rights Watch interview with Yves Bidet, director of the women’s prison of Rennes, Rennes, April 15 2015.

<sup>77</sup> Human Rights Watch interview with Stéphane Scotto, director of the prison of Fresnes, Fresnes, March 17, 2015.

<sup>78</sup> Human Rights Watch interview with the head of a psychiatric unit in a remand prison, 2015.

<sup>79</sup> International Observatory of Prisons, March 8 – International Women’s Rights’ Day – Incarcerated women: a minority discriminated against in the prison institution, March 8, 2015, <http://www.oip.org/index.php/publications-et-ressources/actualites/1185-8-mars-femmes-detenues2> (accessed November 14, 2015).

<sup>80</sup> Report by the General Inspector of Places of Deprivation of Liberty on his visit to the prison of Reau from April 8 to 19, p. 67, <http://www.cglpl.fr/wp-content/uploads/2014/12/Rapport-de-visite-du-centre-p%C3%A9nitentiaire-sud-francilien-de-R%C3%A9au-Seine-et-Marne.pdf> (accessed November 14, 2015).

<sup>81</sup> Human Rights Watch interview with two female prisoners in Réau, 2015.

detention conditions in the women’s quarter create a sense of disappointment, or even despair, for many of the people detained.”<sup>82</sup>

“Elise,” a woman detained in a prison for people serving medium and long sentences, told Human Rights Watch, “There are very few activities. People are all alone, they’re lost. I want to make it clear: this is specific to women. Men have many activities.”<sup>83</sup>

“The way women are treated isn’t equal to the way men are treated,” Yves Bidet, director of the prison for women in Rennes told Human Rights Watch. “There is less choice of vocational trainings. There isn’t much.”<sup>84</sup>

Article 47 of the Prison Law of 2009 provides that “female prisoners should be provided with medical care that is adapted to their needs, whether they are detained in a women’s quarter or a specific facility [for women].”<sup>85</sup> But Human Rights Watch research found that female prisoners in France face discrimination in their access to mental health care in contrast to male prisoners, in breach of that provision. In an opinion published in February 2016, the General Inspector of Prisons concluded that the situation of women deprived of their liberty is not in line with the principle of equality between men and women that is guaranteed under French and international law. The Inspector found that “a minority, [women deprived of their liberty] face serious discrimination in their access to fundamental rights” including maintaining their family links, unsatisfactory detention conditions and inadequate access to activities.<sup>86</sup>

Women in French prisons who have psychosocial disabilities have access to less favorable standards of intensive mental health care, than men do. Of the 26 SMPRs in prisons around France, where inmates can stay for a number of days or weeks on the premises of the SMPR and receive care, only the SMPR in the prison of Fleury-Mérogis has beds for women. As a result, women detained in other facilities only have the choice of receiving care by way of individual appointments in prison or hospitalization in a psychiatric

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<sup>82</sup> Ibid.

<sup>83</sup> Human Rights Watch interview with “Elise,” a woman detained in a prison for people serving medium and long sentences, 2015.

<sup>84</sup> Human Rights Watch interview with Yves Bidet, director of the prison for women in Rennes, Rennes, April 16, 2015.

<sup>85</sup> Article 47 of Law n°2009-1436 of November 24, 2009 on prisons.

<sup>86</sup> General Inspector of Prisons, Opinion of January 25, 2016 on the situation of women deprived of their liberty, February 18, 2016, [http://www.cglpl.fr/wp-content/uploads/2016/02/joe\\_20160218\\_0041\\_0089.pdf](http://www.cglpl.fr/wp-content/uploads/2016/02/joe_20160218_0041_0089.pdf) (accessed March 9, 2016).

hospital, and nothing in between. As noted by a member of the National Assembly in a 2009 report on women in detention, as a result of the lack of SMPR for women other than in Fleury-Mérogis, “access to psychiatric care [for women] is more difficult and, in the most serious cases, there is no other solution than compulsory hospitalization.”<sup>87</sup>

“It’s discriminatory,” a mental health professional working in a prison told Human Rights Watch. “Women are deprived of a level of care, they would need to go to Fleury-Mérogis [in the Paris area, to be able to stay in the SMPR].”<sup>88</sup>

“When someone [a female prisoner] deteriorates, it’s either maintenance with medicines, or the person needs to be hospitalized. If the person must be hospitalized, she is hospitalized [in a psychiatric hospital],” the director of the women’s remand prison in Marseille, Laurence Pascot, told Human Rights Watch. This women’s prison is part of a larger facility where men are also detained. But the Regional Medical and Psychological Service (SMPR) only accommodates men. “It could be good in big facilities like this one to have a little SMPR [for women],” she said.<sup>89</sup>

Prisons should be able to provide access to adequate and appropriate support and mental health services for those who want to use them. However, admission to a psychiatric facility and treatment should be voluntary and based on the free and informed consent of the prisoner. Involuntary admission and forced treatment violates the person’s right to treatment based on free and informed consent, unless it is an emergency situation where it is necessary to address a life-threatening or similarly grave situation and the patient is temporarily unable to give free and informed consent.

The director of the women’s remand prison also explained that there was often a waiting time for a place in a public psychiatric hospital. “It’s overflowing, and not just for prisoners,” she said. “We often have to wait for a place to be available. Sometimes we have to wait 24 hours or 48 hours. For women, they wait in their cell. There is an emergency

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<sup>87</sup> Guénh el Huet, Member of the National Assembly, “Women in detention: an unknown reality,” in the name of the Delegation on women’s rights and equal chances between men and women, September 2009, <http://www.assemblee-nationale.fr/13/rap-info/i1900.asp> (accessed July 17, 2015).

<sup>88</sup> Human Rights Watch interview with a mental health professional working in a prison, 2015.

<sup>89</sup> Human Rights Watch interview with Laurence Pascot, Director of the women’s prison in Marseille, Marseille, May 6, 2015.

protection cell for men, but not for women.”<sup>90</sup> Such cells are designed to prevent suicide, with no corners from which prisoners can hang themselves and where they are given paper pajamas and sheets that cannot be torn.

## Prisons Not Equipped to Adequately Support People with Psychosocial Disabilities

### *Understaffing*

“In the relationship between a guard and a prisoner there’s no time for the sort of discussion a doctor would have [with a patient,” Cyrille Canetti, a psychiatrist and inspector of prisons, told Human Rights Watch. “They work in terrible conditions: more and more prisoners, fewer and fewer guards. We see during our visits that they [the guards] are running from one place to another.”<sup>91</sup>

The lack of sufficient prison staff has an impact both on the attention guards can give to prisoners in general, particularly to people who have psychosocial disabilities. Overcrowding also means that guards are less available to receive training on mental health. It is particularly a concern in overcrowded remand prisons, where a guard can be responsible for as many as 100 prisoners.<sup>92</sup>

“For instance in Fleury [the prison of Fleury-Mérogis], there is one guard for 80 prisoners. How can a guard observe, have relationships that can ease tensions?” asked a representative of a union of prison guards during an interview with Human Rights Watch.<sup>93</sup>

In his 2013 report, the then General Inspector of Prisons stated that during visits to prisons, members of his team often noticed that prison guards alerted nurses (who give out medicines to prisoners) that a certain prisoner wasn’t feeling well, had no visitors, or had received bad news. “This attention,” he noted, “is much harder to implement when a

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<sup>90</sup> Ibid.

<sup>91</sup> Human Rights Watch interview with Cyrille Canetti, psychiatrist and inspector of prisons, Paris, May 12, 2015.

<sup>92</sup> Human Rights Watch interview with a guard in a remand prison, and with the director of the prison of Nanterre, Nanterre, May 28, 2015.

<sup>93</sup> Human Rights Watch interview with a representative of the union Union Générale des Syndicates Pénitentiaire – Confederation Générale du Travail (UGSP-CGT), Paris, May 13, 2015.

guard is running from one end of a corridor to another without being able to spend time in a cell, which is most often the case.”<sup>94</sup>

### *Lack of training for prison guards*

“For guards, there isn’t any training that is adapted to deal with people with psychosis,” a representative of a union of prison guards told Human Rights Watch. “Medical assistants and nurses in psychiatric hospitals have specific training. There are people who should be sent there [to a psychiatric hospital] but there isn’t enough space, so they’re in prison,” he said.<sup>95</sup>

Despite the high number of persons with psychosocial disabilities in French prisons, prison guards lack the necessary training on mental health. Interviewees also said that due to understaffing, even if training were available, it would be difficult for them to attend. The then General Inspector of Prisons noted in his 2013 report that “the training of guards mainly focused on security, and does not prepare them at all to deal with mental illness.”<sup>96</sup>

“In the initial training, there is information on criminal psychiatry,” the director of the women’s prison in Marseille told Human Rights Watch. “But there is no training on how to care for people with mental illness. The focus of the prison administration is on managing suicide risks,” she said. “Training on mental health would be useful. It’s important for guards to know how to identify and adapt their professional practices to the cause of the behavior.”<sup>97</sup>

A guard in a prison for people serving long sentences said he felt prison guards didn’t have adequate training on mental health, even though many prisoners had psychosocial

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<sup>94</sup> General Inspector of prisons, activity report for 2013, p. 206, [http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL\\_rapport-2013\\_version-WEB.pdf](http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL_rapport-2013_version-WEB.pdf) (accessed July 15, 2015).

<sup>95</sup> Human Rights Watch interview with a representative of the union Union Générale des Syndicats Pénitentiaire – Confédération Générale du Travail (UGSP-CGT), Paris, May 13, 2015.

<sup>96</sup> General inspector of prisons, 2013 activity report, p. 203, [http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL\\_rapport-2013\\_version-WEB.pdf](http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL_rapport-2013_version-WEB.pdf) (accessed July 15, 2015).

<sup>97</sup> Human Rights Watch interview with Laurence Pascot, Director of the women’s prison (Maison d’arrêt pour femmes) in Marseille, Marseille, May 6, 2015.

disabilities “I don’t feel ready to really manage these people, I don’t have the right skills. To control them yes, but that’s not what it’s about,” he said.<sup>98</sup>

In the absence of time and resources to provide comprehensive training for prison staff on mental health issues, the prison system focuses on the bare essentials—trying to keep prisoners alive. “Seventy percent of training is on prevention of suicide,” a senior guard in a remand prison told Human Rights Watch. “The problem is that even if there is training, the guard doesn’t necessarily have the time [to attend].”<sup>99</sup>

The issue of understaffing was also raised by the director of the prison of Château-Thierry. “More training on psychopathology, more often, all training would be good for the staff,” she said. “But we can [only] do training if there isn’t understaffing.”<sup>100</sup>

For the director of the women’s prison in Rennes, “the offer of training exists. What is difficult is to send staff. We can no longer send a group of guards. We need to make guards work extra hours. [...] More training on mental health is a need,” he said. “Staff regularly identify it—they say, ‘we’re not psychiatrists.’”<sup>101</sup>

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<sup>98</sup> Human Rights Watch Interview with a guard in a prison for people serving long sentences, 2015.

<sup>99</sup> Human Rights Watch interview with a senior guard in a remand prison, 2015.

<sup>100</sup> Human Rights Watch interview with Bénédicte Riocreux, director of the prison of Château-Thierry, Château-Thierry, May 12, 2015.

<sup>101</sup> Human Rights Watch interview with the director of the women’s prison in Rennes, Rennes, April 15, 2015.

## IV. Inadequate Access to Mental Health Care

“It’s been over a year that I’m here and I’m waiting for my first appointment. We’re on a waiting list for between one or two years before seeing a psychologist.”

-A female prisoner in France.

### Insufficient Access to Care

Human Rights Watch research in prisons in France indicates that prisoners do not have access to adequate mental health care. This constitutes a failure by France to provide everyone, including prisoners, with the highest attainable standard of physical and mental health and in so far as persons with disabilities suffer disproportionately from the absence of adequate mental health care it is also discriminatory.

Accessing mental health care services in French prisons, like other types of medical care, is based on prisoners’ consent. Prisoners can write to the medical unit to request an appointment. In the prisons visited by Human Rights Watch, prison staff said they also notified the medical unit of persons they thought needed medical attention. But such a system depends on prisoners being aware that they need mental health care and proactively seeking it, and on prison staff – who are inadequately trained - identifying people in that situation and communicating with medical staff.

A psychiatrist in a remand prison told Human Rights Watch “the problem we have is that patients experiencing psychosis who don’t say anything, don’t ask for anything, aren’t notified to us. We find out by chance.”<sup>102</sup>

This concern was raised by the then Inspector of Prisons in his 2013 report, where he stated that “the inspectors [the General inspector’s team] have found that genuinely mentally ill people stayed confined to their cell, left to their own devices, without any medical professional intervening because ‘the patient didn’t request it.’”<sup>103</sup>

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<sup>102</sup> Human Rights Watch interview with a psychiatrist in a remand prison, 2015.

<sup>103</sup> General inspector of prisons, activity report for 2013, p. 198, [http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL\\_rapport-2013\\_version-WEB.pdf](http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL_rapport-2013_version-WEB.pdf) (accessed July 15, 2015).



The issue was also raised by the director of the men’s prison in Rennes: “One of the difficulties here in Rennes is that a prisoner who no longer eats, whose feces aren’t cleaned up, will not be seen [by a psychiatrist]. So it’s the GP who requests a hospitalization.”<sup>104</sup>

In the prison of Château-Thierry, where the majority of prisoners are estimated to have psychosocial disabilities, the director told Human Rights Watch that the psychiatrists sometimes go to see patients in their cells, but that it was not the norm. A senior guard in that prison said that “if the person refuses several times to go to the psychiatrist, the psychiatrist comes, but it’s rare.”<sup>105</sup>

Within 48 hours of their arrival in a prison, people are examined by a General Practitioner who may direct them to a psychiatrist if he or she considers it relevant.

The head of the medical unit in a remand prison told Human Rights Watch that prisoners spend eight days in an intake unit where newly arrived prisoners undergo screening, “but a psychotic [prisoner] who is not delirious can go through [undetected],” he said.<sup>106</sup>

Prisoners, prison staff and medical staff who spoke to Human Rights Watch all identified the limited number of available mental health professionals as a barrier to ensuring adequate care was provided in prisons.

A female prisoner who said she was seeing a psychiatrist and a psychologist, said she used to see them once per week but that at the time of the interview with Human Rights Watch she only saw them once per month because of understaffing.

“I keep complaining because it’s not enough,” she said. “I need to see them but the problem is that when I’m not feeling well I can’t see anyone...because the psychiatric team works in the hospital and in the men’s prison, so I can’t always see them.”<sup>107</sup>

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<sup>104</sup> Human Rights Watch interview with the director of the prison of Rennes-Vezin, Rennes, April 14, 2015.

<sup>105</sup> Human Rights Watch interview with the director of the prison of Château-Thierry and a senior guard, Château-Thierry, May 12, 2015.

<sup>106</sup> Human Rights Watch interview with the head of the medical unit in a remand prison, 2015.

<sup>107</sup> Human Rights watch interview with “Sarah,” a female prisoner in France, 2015.

She said that the previous year, she had spent six months in her cell: “I was depressed and no longer went out of my cell. I just took medication and I slept. [...] I didn’t even go out for walks. For six months... I didn’t see the light of day. [...] I never went out, I didn’t see a doctor or a psychiatrist. For six months I didn’t set foot outside my cell.”<sup>108</sup>

“Elise,” a woman detained in a prison for people serving medium and long sentences, said she had been waiting a long time to see a psychologist: “it’s been over a year that I’m here and I’m waiting for my first appointment. We’re on a waiting list for between one or two years before seeing a psychologist.”<sup>109</sup>

The director of the prison of Poissy told Human Rights Watch, “A prisoner who finally accepts care by the psychologist, it’s 30 minutes once per month. There is a waiting list. The offer of physical care is good, but for psychiatric care, there isn’t enough availability for those who need it, or accept to receive it.”<sup>110</sup>

Many of the prisoners interviewed by Human Rights Watch who saw a psychiatrist and/or a psychologist while in prison said their appointments were brief and infrequent, another consequence of the shortage of mental health professionals and the large number of people who want access to mental healthcare in prison.

“To see the psychologist and the psychiatrist there’s a long waiting list,” “Clara,” a female prisoner, told Human Rights Watch. “Since I arrived here I asked [to see the psychologist] because I knew I was depressed. It took a suicide attempt for me to be able to see a psychologist at last.” She said she saw the psychiatrist once per month for 30 minutes, though at the time of the interview her psychiatrist had left and she was awaiting a replacement so that she could continue her care. She said she met the psychologist for 40-45 minutes per week.<sup>111</sup>

“Marc,” a man detained in a prison for people serving long sentences, said “I see the psychiatrist once per month for five minutes. She asks, ‘How are you? Is the treatment

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<sup>108</sup> Ibid.

<sup>109</sup> Human Rights Watch interview with “Elise,” a woman detained in a prison for people serving medium and long sentences, 2015.

<sup>110</sup> Human Rights Watch interview with the director of the prison of Poissy, March 19, 2015.

<sup>111</sup> Human Rights Watch interview with “Clara,” a female prisoner, 2015.

ok?” He said he also saw a psychologist once per week for 15 minutes, and a psychiatric nurse every week. On the day of the interview, he had visible marks of self-harm on his arms. He said he cut himself every time he thought of the crime he had committed.<sup>112</sup>

## Unequal distribution of Mental Health care among French Prisons

Of the 198 prisons in France, only 26 have an SMPR (regional medico-psychological service) within the prison. Two of those have no beds. As their name indicates, SMPRs are supposed to treat people detained in any prison located in the same region. In practice however, with the sole exception of the SMPR in Marseille prison, the SMPR only receive people detained in the same prison as the SMPR. In other prisons, mental health professionals provide care on certain days of the week.

“Prisons aren’t equipped [in mental health services] consistently at all,” the head of the psychiatric unit at a remand prison told Human Rights Watch. “Structurally, it’s unfair. The offer of care isn’t equal.”<sup>113</sup>

Proximity from city centers and hospitals, where mental health professionals – including those who work in prisons – are employed plays an important role in the availability of adequate mental healthcare for inmates. During the course of the research by Human Rights Watch, this was raised as a particular concern in new, remote, prisons.

In his 2013 activity report, the then Inspector of prisons criticized the distance of many prisons and psychiatric hospitals from city centers. “The negative effects of this logic of locating prisoners and the mentally ill far away add to those that are due to the sole fact of detention,” he wrote. “People deprived of their liberty and of their loved ones, like external staff and interveners, suffer from the geographic location of the facility and its conditions of access.”<sup>114</sup>

As noted in a 2010 French senate report on mental health care in French prisons, “the unequal distribution of psychiatrists throughout the territory has effects not only on the

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<sup>112</sup> Human Rights Watch interview with “Marc,” a man detained in a French prison, 2015.

<sup>113</sup> Human Rights Watch interview with the head of the psychiatric unit at a remand prison, 2015.

<sup>114</sup> General inspector of places of deprivation of liberty, Activity report for 2013, p. 167 [http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL\\_rapport-2013\\_version-WEB.pdf](http://www.cglpl.fr/wp-content/uploads/2014/04/CGLPL_rapport-2013_version-WEB.pdf) (accessed July 14, 2015).

organization of the sectors of psychiatry that don't always provide sufficient care to their patients, but also makes it very difficult to allocate posts in the SMPR and UCSA, given how little doctors are attracted to an activity that has the reputation of being difficult.”<sup>115</sup>

## Shortage of medical staff

The lack of sufficient mental health professionals, either due to a lack of financial resources or because of the difficulty of attracting professionals to work in prisons, combined with the large demand for mental healthcare in prisons and overcrowding, means people with psychosocial disabilities do not receive adequate mental health care while in prison nor enjoy their right to the highest attainable standard of mental health care.

According to figures provided to Human Rights Watch by the Ministry of Health, on December 31, 2012, there was the equivalent of 175.8 full time posts of psychiatrists working in French prisons for a prison population of 66,572 as of January 1, 2013.<sup>116</sup> The national average was 0.9 per 1,000 prisoners, the lowest being in remand prisons (0.64) and the highest in prisons for long sentences (maisons centrales, 2.19). However, the numbers vary significantly between remand prisons with an SMPR and those without. General practitioner doctors had the equivalent of 280.8 full time posts, with a national average of 1.46 per 1,000 prisoners.

The Inspector of Prisons, Adeline Hazan, told Human Rights Watch that mental healthcare in prison is not provided adequately due to the lack of staff and overcrowding. “Many requests for care aren't answered,” she said. “There is no care in accordance with the conditions of article 46 of the 2009 law [on prisons, which provides for equal access to healthcare in prison and outside].”<sup>117</sup>

According to the director of the prison of Château-Thierry, in 2007, a study commissioned by the Prison Administration found that 85 percent of the prisoners in the “maison

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<sup>115</sup> “Prison et troubles mentaux: Comment remédier aux dérives du système français?” Information report No. 434 (2009-2010) by senators Gilbert Barbier, Christiane Demontès, et al., May 2010, [http://www.senat.fr/rap/r09-434/r09-434\\_mono.html#toc120](http://www.senat.fr/rap/r09-434/r09-434_mono.html#toc120) (accessed August 2, 2015).

<sup>116</sup> Ministère des Affaires Sociales et de la Santé, Observatoire des structures de santé des personnes détenues, rapport d'exploitation des données 2012, (accessed August 7, 2015).

<sup>117</sup> Human Rights Watch interview with Adeline Hazan, General inspector of places of prisons, Paris, May 12, 2015.

centrale” section (for people serving long sentences) prison of Château-Thierry had psychosis.<sup>118</sup> The director of the prison explained to Human Rights Watch that the “maison centrale” of Château-Thierry had a capacity of 101 places, but that 75 prisoners were held there following the findings of the report by the Prison Administration that it should not be filled at more than 75 percent of its capacity. On the day of the visit by Human Rights Watch, the director stated that “most of the people here are very ill, a large part are very dangerous.” And yet at the time of the visit, there was the equivalent of 0.9 of a full-time psychiatrist, shared between three practitioners, and two psychologists shared the equivalent of 1.5 full-time posts.<sup>119</sup>

“There is a problem with recruiting psychiatrists,” Elise Theveny, deputy director of the prison of Poissy, where men serving long sentences are held, told Human Rights Watch. “The psychiatrist in Poissy is alone, on the equivalent of 0.7 of a full time position. It is not a budgetary problem,” she said.<sup>120</sup>

In the prison of Nanterre, at the time of the visit by Human Rights Watch in May 2015 there was the equivalent of 1.5 full time psychiatrists.<sup>121</sup> Nine hundred and ninety-three inmates were detained in the prison that day.<sup>122</sup>

Speaking of the insufficient presence of medical professionals in the facility, Bénédicte Riocreux, director of the prison of Château-Thierry told Human Rights Watch that “the geographic location isn’t attractive, working in prison isn’t attractive (...) In the summer, when the doctors are on holiday, they’re not always replaced for the whole duration [of their absence].”<sup>123</sup>

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<sup>118</sup> Senators Gilbert Barbier, Chistianne Demontès et al., Prisons et troubles mentaux : Comment remédier aux dérives du système français ? Rapport d’information n°434 (2009-2010), May 2010, <http://www.senat.fr/rap/ro9-434/ro9-434.html> (accessed July 16, 2015).

<sup>119</sup> Human Rights Watch interview with Bénédicte Riocreux, Director of the prison of Château-Thierry, Château-Thierry, May 12, 2015.

<sup>120</sup> Human Rights Watch interview with Elise Theveny, deputy director of the prison of Poissy, Poissy, March 19, 2015.

<sup>121</sup> Human Rights Watch interview with the head of the medical unit in the prison of Nanterre, May 28, 2015.

<sup>122</sup> Human Rights Watch interview with Jimmy Delliste, director of the prison of Nanterre, Nanterre, May 28, 2015.

<sup>123</sup> Human Rights Watch meeting with Bénédicte Riocreux, director of the prison of Château-Thierry, Château-Thierry, May 12, 2015.

Speaking of the fact that working in prison is challenging for health professionals, an official at the Ministry of Health agreed that “it’s less attractive, it’s more activists [who choose to work there].”<sup>124</sup>

A psychiatrist in a remand prison told Human Rights Watch that while there was no shortage of psychiatrists in that prison, 15 beds in the SMPR had been closed for a month because of a lack of funding for nurses.<sup>125</sup>

The fact that mental health treatment is taken into account by judges when deciding on the early release of prisoners also creates increasing demands on mental health professionals, reducing the already limited resources that are available to people who require it.

“There is a lot of work to prioritize between those who need [to see the psychiatrist or the psychologist] and those who are seeking a stamp for the judge [for their early release],” a medical professional in a prison for people serving long sentences told Human Rights Watch. “For the judiciary, the more the person sees the psychologist or the psychiatrist, the better it is. It gives them a bonus at the time of the reduction of their sentence.”<sup>126</sup>

“Psychological care looks good before a judge,” a mental health professional in a prison for people serving medium and long sentences told Human Rights Watch. “There is a three month waiting list.”<sup>127</sup>

“People know there is a moment when they will receive a letter from the Judge of the Application of Sentences asking them to provide [evidence of] their care,” the head of the medical unit in a remand prison told Human Rights Watch. “They [the psychologists] are overwhelmed with requests that don’t cover anything,” he said. “Half the time, it’s for reductions of sentences. For psychologists to prioritize, it’s complicated.”<sup>128</sup>

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<sup>124</sup> Human Rights Watch meeting with an official at the Ministry of Health, Paris, May 29, 2015.

<sup>125</sup> Human Rights Watch interview with a psychiatrist in a remand prison, 2015.

<sup>126</sup> Human Rights Watch interview with a medical professional in a prison for people serving long sentences, 2015.

<sup>127</sup> Human Rights Watch interview with a mental health professional in a prison for people serving medium and long sentences, 2015.

<sup>128</sup> Human Rights Watch interview with the head of the medical unit in a remand prison, 2015.

These demands on mental health staff, for people who may not genuinely want mental health care but feel compelled to seek it because it will help with their early release, take up already insufficient resources in mental health care, resulting in less time for mental health staff to dedicate to prisoners who have psychosocial disabilities.

## Medication

“When we take the treatment, we’re zombies. We’re regulated, we clear-up everything, we put things away like we’re soldiers.”

-“Younes,” a man with schizophrenia detained in a remand prison.<sup>129</sup>

The perception that mental health staff working in prison prescribe high doses of medicines to prisoners, and that their role is essentially limited to issuing those prescriptions, was shared by many interviewees, including both prisoners and prison staff.

Human Rights Watch interviewed several prisoners who listed many treatments they had been prescribed including antipsychotics, anti-anxiety medications, antidepressants and sleeping pills. Some prisoners interviewed by Human Rights Watch said their understanding was that the role of mental health staff was limited to prescribing medication. This perception risks deterring prisoners from seeking the care they may need.

Human Rights Watch was not in a position to verify whether the medication interviewees said they were prescribed was clinically indicated in the case of individual patients or to draw conclusions on that basis. However, the issue of overmedication of prisoners with psychosocial disabilities was repeatedly mentioned during the research.

“The job of the psychiatrist is to prescribe, it’s chemical, to calm anxieties,” “Christophe,” a man detained in a prison, told Human Rights Watch.<sup>130</sup>

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<sup>129</sup> Human Rights Watch interview with “Younes,” a man detained in a remand prison, 2015.

<sup>130</sup> Human Rights Watch interview with “Christophe,” a man detained in a prison, 2015.

The perception was shared by “Julien,” a man detained in a prison, “The UCSA [the medical unit] is good for some prisoners but their aim is to knock us down like trees, to give us medicines to sleep all day,” he said.<sup>131</sup>

Speaking of medicines to treat mental health conditions in prison former Inspector of Prisons Jean-Marie Delarue said that “in general, there is an overprescription of medicines by those who prescribe them.”<sup>132</sup>

François Bès, coordinator at the International Observatory of Prisons (OIP) in Paris, told Human Rights Watch that the OIP received complaints from families about the apparently excessive medication of their loved ones. “[For example,] they say they saw him during a visit and that “he’s a ghost.” [...] Given the lack of medical staff, it’s easier to give out [prescribe] medicines during one visit per month, than [to do] weekly psychotherapy.”<sup>133</sup>

Interviewees also described sessions with psychiatrists being limited to issuing or renewing prescriptions for medicines.

“Marc,” a man detained in a prison, said: “I see the psychiatrist once per month for five minutes. She asks, ‘How are you? Is the treatment ok?’”<sup>134</sup>

“When [my clients] see the psychiatrist, it’s not to talk, it’s to fetch a prescription,” a lawyer who specializes in detention conditions, including for people with psychosocial disabilities, told Human Rights Watch.<sup>135</sup> An independent evaluation, by medical professionals, of the way medicines are prescribed to prisoners with psychosocial disabilities would be key to ensure that medicines are not overprescribed given the negative effects on prisoners’ health and risks the availability of large doses of strong medicines can pose to their physical and mental integrity.

Depending on the facility and on the type of medication prescribed for a prisoner, prisoners with psychosocial disabilities may receive their medication in their cells on a

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<sup>131</sup> Human Rights Watch interview with “Julien,” a man detained in a prison, 2015.

<sup>132</sup> Human Rights Watch interview with Jean-Marie Delarue, former inspector of prisons, Paris, May 26, 2015.

<sup>133</sup> Human Rights Watch interview with Francois Bès, International Observatory of Prisons (OIP), Paris, July 23, 2015.

<sup>134</sup> Human Rights Watch interview with “Marc,” a man detained in a prison, 2015.

<sup>135</sup> Human Rights Watch phone interview with lawyer Etienne Noel, July 31, 2015.



daily basis or periodically during the week – e.g. two or more times per week. The medication is distributed by nurses – accompanied by prison guards. However some medication, in relevant facilities, is dispensed only in the medical unit, and prisoners have to go to the unit to obtain and ingest their medication. Some of the medication prescribed for psychosocial disabilities is more heavily regulated because they can be dangerous if taken in high doses. There may also be risks to the patients if the medication is not taken.

When prisoners receive their medication in their cells, there is a risk that they could accumulate their medication for days or weeks, and then take them all at once—for reasons which could include an attempt to commit suicide--or sell them to other prisoners to whom they were not prescribed. It can also make prisoners to whom medicines are prescribed a target for extortion by others.

In its recommendation on the organization of health care in prisons, the Council of Europe Committee of Ministers recommended that “where appropriate, prisoners should be allowed to carry their prescribed medication. However, medication which is dangerous if taken as an overdose should be withheld and issued to them on an individual dose-by-dose basis.”<sup>136</sup>

## Abuses During Hospitalization

“I prefer 1000 times to be in a cell than in an isolated room in hospital, my arms and feet attached as if I were an animal, an injection in my buttocks.”

-“Sarah,” a female prisoner.

Under French law prisoners who require urgent and intensive psychiatric care can be admitted to hospital with their consent.<sup>137</sup> They can also be admitted without their consent if they “need immediate care and constant monitoring in a hospital setting due to mental disorders that make their consent impossible and constitute a danger for themselves or

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<sup>136</sup> Council of Europe Committee of Ministers, Recommendation No. R(98) 7 concerning the ethical and organizational aspects of health care in prison, Adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers’ Deputies, para 48, [http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+\(98\)+7+concerning+health+care+in+prisons.pdf/16c64309-1794-4210-9d88-c4f435730095](http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(98)+7+concerning+health+care+in+prisons.pdf/16c64309-1794-4210-9d88-c4f435730095).

<sup>137</sup> Article L3214-1 of the Code of Public Health.

others.”<sup>138</sup> This can be either in a psychiatric hospital or one of the seven Specially Adapted Hospital Units for prisoners (UHSA).<sup>139</sup> Other members of the public can be admitted in a psychiatric hospital without their consent upon a decision of a government representative if their mental health condition “requires medical care and compromises people’s safety or seriously undermines public order.”<sup>140</sup> The scope under which involuntary hospitalization of any person can take place under French law is problematic as discussed above, although a full analysis of the operation of the law is beyond the scope of this report.

The opening of UHSAs in France, as an increase in available resources for patients who seek treatment for mental health conditions, is a positive development. In addition to the seven that were operational at the time of writing, two more were under construction and a second group of UHSAs were to be opened after the completion of the first group. When there is no UHSA near a prison, or there are no available places in a UHSA, prisoners who seek treatment are held in psychiatric hospitals instead, or wait in prison cells.

The physical conditions in which prisoners were held when admitted to psychiatric hospitals were criticized by the Council of Europe’s Committee for the Prevention of Torture (CPT) following its visit to France in 2010. The Committee noted that the way prisoners were cared for when admitted to psychiatric hospitals visited by the Committee “was a source of grave concern. These patients were almost systematically placed in isolation rooms the entire time they were in hospital, generally completely contained during the first 48 hours or even their whole stay. This measure was dictated by security considerations and not by their clinical condition.”<sup>141</sup>

The UN Special Rapporteur on torture and other cruel or inhuman or degrading treatment or punishment has found that prolonged isolation, including as a way to “manage” prisoners

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<sup>138</sup> Article L3214-3 of the Code of Public Health.

<sup>139</sup> At the time of writing, UHSA had opened in Lyon (60 places), Toulouse, Nancy, Rennes and Orleans (40 places each), in Villejuif in the Paris region and in Lille (60 places each). At the time of writing two more, in Cadillac (40 places) and Marseille (60 places), were under construction. A second group of UHSA, with a total of 265 places, is planned after the first group is completed.

<sup>140</sup> Article L3213-1 of the Code of Public Health.

<sup>141</sup> Report by the Committee for the Prevention of Torture (CPT) on its visit to France between November 28 and December 10, 2010, paragraph 150. The Committee had visited the hospitals of Paul Guiraud in Villejuif (Val de Marne, in the Paris region), Le Vinatier in Bron (Rhone) and Val de Lys-Artois in Saint-Devant (Pas-de-Calais), <http://www.cpt.coe.int/documents/fra/2012-13-inf-fra.pdf> (accessed July 28, 2015).

considered to be in need of psychiatric care, can be a form of inhuman, cruel or degrading treatment. He stated that isolation “should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort.”<sup>142</sup>

In August 2014 the UN Human Rights Committee asked the French government to comment on allegations that “prisoners undergoing involuntary psychiatric care are subject to isolation or physical restraints throughout their stay in most health facilities” as part of their reporting on their compliance with respect for the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.<sup>143</sup> However, the French government did not address this in its response to the Committee’s list of issues.<sup>144</sup>

The director of the men’s prison in Rennes told Human Rights Watch that “if there is no space in the UHSA, they’re hospitalized [in a psychiatric hospital]. It happens. There are cases when we’re not in favor of it. There are prisoners who use it to try to escape. In the meantime, they stay in an Emergency Protection Cell [in prison].”<sup>145</sup> Those are cells inside the prison aimed at suicide prevention, with smooth surfaces and nothing on which prisoners can attach a rope or cloth to hang themselves. They can also be required to wear paper pajamas in those cells.

Prisoners who had been admitted in psychiatric hospitals without their consent as well as medical staff and the former inspector of prisons described harsh conditions for prisoners in psychiatric hospitals. As a matter of policy, they are placed in isolation because of their status as prisoners, not because their mental health condition justifies it.

Prisoners interviewed by Human Rights Watch shared painful memories of past stays in psychiatric hospitals as prisoners. “I was injected. I found myself in an isolated cell,

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<sup>142</sup> Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, July 2008, A/63/175, paragraphs 77, 79 and 83, <http://www.refworld.org/docid/48db99e82.html> (accessed October 24, 2015).

<sup>143</sup> Human Rights Committee, list of issues in relation to the fifth periodic report of France, August 18, 2014, CCPR/C/FRA/Q/5, paragraph 10, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=899&](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=899&) (accessed October 24, 2015).

<sup>144</sup> Human Rights Committee, List of issues in relation to the fifth periodic report of France, Addendum, Replies of France to the list of issues, April 30, 2015, CCPR/C/FRA/Q/5/Add.1, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsmtlAMSUVPZr5NwSxcDwgKL8hKglmrQkoC8CXsUqPRINGhcElBp6KZmUjJuaDYoQqQrHNAM4%2baE5NOpvJ8UftpasV675CjnGcziUuabdH9HRagQHG3t2ys7HnuKjN%2bpZA%3d%3d> (accessed October 24, 2015).

<sup>145</sup> Human Rights Watch interview with Jacques Gombert, director of the prison of Rennes-Vezin, April 15, 2015.

completely naked, handcuffed behind my back,” “Mathieu,” a man detained in a remand prison, said.<sup>146</sup>

“Sarah,” a female prisoner, told Human Rights Watch what she remembered being held in two psychiatric hospitals in the past: “In both there was a lot of ill-treatment. Since then, I have a phobia of hospitals, doctors and psychiatrists,” she said. “Sometimes [...] nurses dragged me by my feet to an isolation room, they attached me to the bed, even though I hadn’t done anything wrong. I prefer a thousand times to be in a cell than in an isolation room in hospital, my arms and feet attached as if I were an animal, an injection in my buttocks,” she said.<sup>147</sup>

The former Inspector of Prisons Jean-Marie Delarue confirmed that prisoners hospitalized in psychiatric hospitals “are held in isolation rooms, systematically, whatever their conditions. These rooms are tougher than prison: no visits, no walks. Many people ask to go back to prison.”<sup>148</sup>

“The SMPR is overbooked,” a psychiatrist working in a psychiatric hospital and in two prisons, told Human Rights Watch. “When there is an emergency, it’s a hospitalization under Article D398 of the code of criminal procedure. In my psychiatric hospital, a D398 is hell. Prisoners are systematically in isolation, and not for therapeutic reasons,” she said.<sup>149</sup> “There are prisoners who arrive [in the psychiatric hospital] in a bad state, but they’re not agitated. But they have the same regime of hospitalization as those who are agitated [and are placed] in their cell for 24 hours per day.”<sup>150</sup>

A mental health professional in a prison told Human Rights Watch that hospitalization of prisoners in a psychiatric hospital without their consent was “worse than the disciplinary

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<sup>146</sup> Human Rights Watch interview with “Mathieu,” a man detained in a remand prison, 2015.

<sup>147</sup> Human Rights Watch interview with “Sarah,” a female prisoner, 2015.

<sup>148</sup> Human Rights Watch meeting with Jean-Marie Delarue, Paris, May 26, 2015.

<sup>149</sup> Article D398 of the code of criminal procedure provides that “prisoners who have mental disorders referred to in Article L. 3214-3 of the code of public health [prisoners who need immediate health care with constant monitoring in a hospital because of mental disorders that make their consent impossible and constitute a danger to themselves or others] cannot be maintained in a prison.” It further provides that the prefectural authority proceeds to hospitalize them in a psychiatric hospital, and that unlike hospitalisations for reasons other than mental disorders, they are not guarded by police or gendarmes during their stay in hospital.

<sup>150</sup> Human Rights Watch interview with a psychiatrist working in a psychiatric hospital, a remand prison and a prison for people serving medium sentences, 2015.

quarter. In general, prisoners prefer to go to the disciplinary quarter. [...] The psychiatric hospital sector is not equipped. They're afraid they [the patients who are serving a prison sentence] will run away.”<sup>151</sup>

This was echoed by the director of the prison of Nanterre. “The problem in France is that prisoners who arrive in hospitals scare others,” he said. “There are no longer any closed sectors [in psychiatric hospitals]. When there are escapes [by prisoners], that’s scary.”<sup>152</sup>

The administrative procedure for a person to be admitted in a UHSA without their consent requires a medical certificate from a doctor who is not affiliated with the same hospital as the one to which the UHSA is affiliated (the General Practitioner in the prison’s medical unit, who is affiliated with a different hospital from the psychiatrist, can issue the certificate).<sup>153</sup> If there is space in the UHSA, the prefect (the government representative) in the *département* where the prison is located issues an order to admit the person in the UHSA. However, if the UHSA is located in a different *département* than the prison, an order from the prefect of that *département* is also required. If the person is serving a sentence that is longer than ten years, the approval of the prison administration in Paris is also necessary.<sup>154</sup>

As people cannot be admitted in a UHSA during weekends, prisoners can be sent to a psychiatric hospital in the meantime, also without their consent. The director of the women’s prison in Rennes explained that in such situations “one must first go to the [psychiatric] hospital in isolation. It happens regularly.”<sup>155</sup>

In her 2014 annual report, the Inspector of prisons noted that she had received “many testimonies from patients saying they had been completely abandoned during their stay in an isolation room [in a psychiatric hospital]: some expressed the feeling of being punished by medical professionals; many mentioned restrictions that were difficult to accept without understanding the motives (limited exits from their room, no authorized objects,

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<sup>151</sup> Human Rights Watch interview with a mental health professional in a prison for prisoners serving medium and long sentences, 2015.

<sup>152</sup> Human Rights Watch interview with the Jimmy Delliste, director of the prison of Nanterre, May 28, 2015.

<sup>153</sup> Article L3214-3 of the Public Health Code.

<sup>154</sup> Human Rights Watch interviews with the director and deputy director of the prison of Poissy, March 19, 2015; and the then head of the medical unit of the remand prison of Nanterre, May 28, 2015.

<sup>155</sup> Human Rights Watch interview with Yves Bidet, director women’s prison in Rennes, Rennes, April 16, 2015.

prohibition to smoke, indignity linked to the obligation to use a hygienic bucket, degraded material conditions); a great majority indicated they had suffered from a lack of information and consideration.”<sup>156</sup>

## Suicide and self-harm

“To see women with big big scars on the veins, who take medicines, who drool, completely spaced out, it’s true that it feels weird. To have spoken to certain women and then hear that they committed suicide, it feels weird too. So of course I thought, if she can’t cope, will I be able to?”

-“Sarah,” a female prisoner who had scars on her arms from self-harm.

A study of suicides of prisoners between 2006 and 2009 in French prisons revealed that they were seven times more frequent than in the general population.<sup>157</sup> The study found that the prisoners who were most vulnerable to suicide were people in pre-trial detention, or remand, (twice as high as for people who had been sentenced) or in detention in a disciplinary cell (15 times higher than in an ordinary cell). Other factors were a lack of visits and the seriousness of the criminal offense. The study also found that people who had been previously hospitalized were more vulnerable to suicide when they returned to the main prison population than others. While the reasons for the admissions to hospital were not available, the researchers stated that it was possible that they were based on mental health problems, given the strong link between suicide on the one hand, and psychosocial and behavioral disabilities on the other.<sup>158</sup>

In 2015, 113 people committed suicide in French prisons. The number of suicides has decreased since 2009, when there were 123 suicides in French prisons. But the number of suicide attempts continued to be high in recent years.<sup>159</sup>

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<sup>156</sup> General inspector of places of deprivation of liberty, Activity report for 2014, p. 142, [http://www.cglpl.fr/wp-content/uploads/2015/04/CGLPL\\_rapport-2014\\_version-web\\_3.pdf](http://www.cglpl.fr/wp-content/uploads/2015/04/CGLPL_rapport-2014_version-web_3.pdf) (accessed July 14, 2015).

<sup>157</sup> Duthé, Hazard and Kensey, Suicide des personnes écrouées en France: évolution et facteurs de risque, *Population-F*, 69(4), 2014, 007-038, [https://www.ined.fr/fichier/rte/General/Publications/Population/articles/2014/population\\_2014\\_4\\_suicide\\_prison\\_france.pdf](https://www.ined.fr/fichier/rte/General/Publications/Population/articles/2014/population_2014_4_suicide_prison_france.pdf) (accessed November 14, 2015).

<sup>158</sup> *Ibid.*, p. 23.

<sup>159</sup> Reply by the French government to the UN Committee against Torture’s list of issues in relation to the seventh periodic review of France, February 2016, Annexes 14 and 15, [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/FRA/INT\\_CAT\\_RLI\\_FRA\\_23052\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/FRA/INT_CAT_RLI_FRA_23052_E.pdf) (accessed March 4,

According to the latest figures of the Council of Europe, in 2012, 57.8 percent of the deaths in prisons in France were suicides, a significantly higher rate than the median rate of 16.8 percent in Council of Europe member states.<sup>160</sup>

As well as having a duty to protect the physical and mental integrity of people incarcerated in French prisons, France has a duty to protect their right to life. The European Court of Human Rights has interpreted the obligation to protect the right to life under the ECHR as including a duty to take “appropriate steps to safeguard the lives of those within its jurisdiction.”<sup>161</sup>

The prison authorities rightly focus on preventing suicide in prisons. However, academic research has shown that self-harm is a strong risk factor for suicide in prison.<sup>162</sup> Prison authorities need to take appropriate steps when prisoners self-harm to address the factors that led them to do so, which can be a result of their detention conditions or their lack of access to adequate mental health care. Failure to do so may constitute a violation of their obligations to protect the right to life of all prisoners.

In the four prisons where Human Rights Watch conducted interviews with prisoners, four prisoners (among the 50 interviewed) had scars on their arms from self-harm. Two of them and two other prisoners said they had attempted suicide.

In the prison of Fresnes, the director told Human Rights Watch that there was a system of assigning a prisoner identified as being at risk of suicide a co-prisoner of “support,” with whom they would share a cell. “If they just want to scar themselves, we don’t assign a co-prisoner for their support, because no one likes to see so much blood,” he said. “We can’t

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2016). There were 1,033 suicide attempts in 2014. The prison administration noted 1,391 suicide attempts in 2013, 1,671 in 2012 and 1,932 in 2011, Observatoire National du Suicide, Suicide – Etat des lieux des connaissances et perspectives de recherche, suicide des personnes détenues en France, November 2014, p. 169, [http://www.sante.gouv.fr/IMG/pdf/rapport\\_ONS\\_2014.pdf](http://www.sante.gouv.fr/IMG/pdf/rapport_ONS_2014.pdf) (accessed August 9, 2015).

<sup>160</sup> Council of Europe, SPACE I 2013.13.1., deaths in penal institutions in 2012, <http://wp.unil.ch/space/files/2015/02/SPACE-I-2013-English.pdf> (accessed August 9, 2015).

<sup>161</sup> European Court of Human Rights, *Keenan v. the United Kingdom*, April 3, 2001, Application no. 27229/95, paragraph 89.

<sup>162</sup> Hawton, Linsell and al., *Self-harm in prisons in England and Wales: an epidemiological study of prevalence risk factors, clustering, and subsequent suicide*, *The Lancet*, volume 383, No. 9923, p1147-1154, March 2014, [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)62118-2/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)62118-2/fulltext) (accessed October 24, 2015).

do anything, we can't take any objects away from them because they'll always find another way of cutting themselves."<sup>163</sup>

In the prison of Nanterre, the director also said that the system was only for suicide risks.<sup>164</sup>

A guard in a prison explained to Human Rights Watch that self-harm was frequent and that in such cases, prisoners were monitored by guards every two hours, or even every one and a half hours.<sup>165</sup>

The director of the men's prison in Rennes said that self-harm was very frequent there as well.<sup>166</sup>

"I was feeling bad. I took a week's worth of medication. I woke up in a wheelchair, handcuffed, in [the prison]," "Marc," a man detained in a prison said of a suicide attempt he had made. "I spent a night in hospital and then came back to my cell. A guard came every five minutes, I couldn't stand it. I said to the guard, 'That's enough, stop it.' Some [guards] were discreet, others weren't."<sup>167</sup>

When a person in prison is considered in need of emergency psychiatric care and is to be transferred to a hospital setting, he or she can be placed in a cell designed to avoid self-harm for up to 24 hours, while they await transfer. Such cells are called "emergency protection cells." They are bare, with no sharp edges and nothing to which the person can attach a piece of cloth to hang themselves. Prison authorities can require the person to wear paper pajamas, also to avoid hanging. This system whereby prisoners with psychosocial disabilities can be placed in isolation cells and may be subject to forced hospitalization and treatment in circumstances which do not constitute steps of last resort in response to a life threatening or equally grave situation violates a number of rights of prisoners with psychosocial disabilities including their right to bodily integrity and non-discrimination.

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<sup>163</sup> Human Rights Watch interview with Stéphane Scotto, director of the prison of Fresnes, Fresnes, March 17, 2015.

<sup>164</sup> Human Rights Watch interview with Jimmy Delliste, director of the prison of Nanterre, Nanterre, May 28, 2015.

<sup>165</sup> Human Rights Watch interview with a guard in a prison for people serving medium and long sentences, 2015.

<sup>166</sup> Human Rights Watch interview with the director of the prison of Rennes-Vezin, Rennes, April 15, 2015.

<sup>167</sup> Human Rights Watch interview with "Marc," a man detained in a prison, 2015.



## Relations between medical professionals and prison staff

“We’re interested in health and we speak of patients. For the prison administration, it’s about guarding prisoners. These are two different kinds of logic that can be in opposition.”

-An official at the Ministry of Health.<sup>168</sup>

While researching detention conditions for people with psychosocial disabilities in France, Human Rights Watch found, in certain facilities, there was little cooperation between prison and medical staff, which can be detrimental to prisoners’ mental health. On the one hand, medical professionals, who report to a hospital and are independent of the prison administration, have the difficult task of treating people in a prison setting and protecting medical confidentiality, and on the other prison staff are responsible for the safety and containment of prisoners day and night, including people with psychosocial disabilities whose diagnosis they are not entitled to know or trained to detect. In particular with regards to mental health, good cooperation and communication between the two is crucial.

Guards see prisoners on a daily basis. They are the best placed to know their habits and behaviors and to alert the medical staff if they notice signs of poor mental health. Mental health professionals, on the other hand, can provide prison guards with tools to help them understand situations they may be faced with, including behaviors resulting from psychosocial disabilities and side effects of medication, without breaching medical confidentiality, and how to de-escalate situations without the use of force. Good cooperation between prison staff and mental health staff is crucial, and it can also enable the latter to have a better understanding of the prison environment, a key factor in their patients’ mental health.

Prisoners’ right to medical confidentiality and to the confidentiality of consultations, as recommended by the Council of Europe Committee of Ministers in its recommendations on the European Prison Rules, is protected by French law.<sup>169</sup> It need not, however, be an

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<sup>168</sup> Human Rights Watch interviews with officials at the Ministry of Health, Paris, May 29, 2015.

<sup>169</sup> Article 45 of the prison law of November 24, 2009, law No 2009-1436, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021312171&dateTexte=20150730> (accessed March 19,

obstacle to effective cooperation between medical and prison staff with the aim of providing access to the best attainable care and protecting prisoners' right to mental and physical integrity.

A 2012 directive by the ministries of health and justice calls on medical professionals working in prisons to participate in joint meetings with prison staff when relevant and contribute “elements that allow for more adapted care of the patients thanks to better cooperation between professionals, while respecting medical confidentiality.”<sup>170</sup> The directive strongly recommends the effective participation of medical professionals in joint meetings about suicide prevention. But several medical professionals told Human Rights Watch that they did not actively participate in such meetings with prison staff to discuss the health of prisoners, including suicide risks, in order to protect their patients' right to medical confidentiality.

A 2008 report by the French senate's law commission found that “the quality of relations between the prison administration and doctors has a great influence on detention conditions, the medical care of prisoners and the prevention of violence or suicide,” and that those relations can vary a great deal from one prison to another. The report found that while “many doctors do not hesitate to alert the prison administration of the risks linked to the evolution of the – mainly mental – health of a prisoner, others, on the other hand, understand medical confidentiality as an absolute prohibition to communicate any document concerning the possible dangerousness of a prisoner.”<sup>171</sup>

Medical professionals are right to be respectful and protective of medical confidentiality. Following a visit to the remand prison of Strasbourg in 2012, the Inspector of prisons found that CCTV cameras had been installed in rooms where activities of the psychiatric service

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2016); Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, January 2006, <https://wcd.coe.int/ViewDoc.jsp?id=955747> (accessed March 19, 2016).

<sup>170</sup> Interministerial instruction n. DGS?MC1/DGOS/R4/DAP/DPJJ/2012/94 of June 21, 2012, on national recommendations concerning the participation of medical professionals working in prisons in multidisciplinary commissions (Commissions Pluridisciplinaires Uniques, CPU) provided by Article D90 of the code of criminal procedure or the meeting of the multidisciplinary team provided by Article D514 of the same code and on the sharing of operational information between medical professionals, professionals of the prison administration and of the judicial protection of youth, [http://circulaire.legifrance.gouv.fr/pdf/2012/06/cir\\_35431.pdf](http://circulaire.legifrance.gouv.fr/pdf/2012/06/cir_35431.pdf) (accessed July 30, 2015).

<sup>171</sup> Senator Jean-René Lecerf, report n. 143 (2008-2009) in the name of the senate law commission on the prison bill, December 2008, <http://www.senat.fr/rap/lo8-143/lo8-1436.html#toc37> (accessed July 30, 2015).

take place.<sup>172</sup> When nurses obstructed the cameras in protest, they lost their authorizations to work in prisons. Citing the requirement, for the confidentiality of therapeutic activities, to ban CCTV cameras in a place of medical care, the inspector called for their removal. The Minister of Justice responded that the decision to install the cameras had been taken with the agreement of the chief of the SMPR and of the hospital to which the SMPR is affiliated.<sup>173</sup> In her response in May 2015, the Minister of Social Affairs, Health and Women's Rights stated that the decision had been made unilaterally by the prison authorities and that the cameras were still in place.<sup>174</sup> The case highlights the challenges mental health professional can face in preserving the medical confidentiality of their patients and providing mental health care in a prison setting.

However, there is a risk to the mental health of prisoners with psychosocial disabilities, including self-harm, if prison staff and medical professionals do not communicate at all and share necessary information with due regard to medical confidentiality, and both parties should make efforts to work together in a climate of trust, having the prisoners' right to physical and mental integrity as their priority.

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<sup>172</sup> Inspector of prisons, emergency recommendations of April 13, 2015, on the remand prison of Strasbourg, <http://www.cglpl.fr/wp-content/uploads/2015/05/Journal-officiel-de-la-R%C3%A9publique-fran%C3%A7aise-N%C2%B0-110-du-13-mai-2015.pdf> (accessed March 19, 2016).

<sup>173</sup> Response by Christiane Taubira, then Minister of Justice, to the recommendations by the Inspector of prisons on her visit to the remand prison of Strasbourg, April 27, 2015, <http://www.cglpl.fr/wp-content/uploads/2015/05/Journal-officiel-de-la-R%C3%A9publique-fran%C3%A7aise-N%C2%B0-110-du-13-mai-2015.pdf> (accessed July 30, 2015).

<sup>174</sup> Response by Marisol Touraine, Minister of Social Affairs, Health and Women's Rights to the recommendations by the Inspector of prisons on her visit to the remand prison of Strasbourg, May 6, 2015, <http://www.cglpl.fr/wp-content/uploads/2015/05/Journal-officiel-de-la-R%C3%A9publique-fran%C3%A7aise-N%C2%B0-110-du-13-mai-2015.pdf> (accessed July 30, 2015).

## V. Domestic and International standards

### France's duties under European and International law

#### *The prohibition of torture and cruel or degrading treatment or punishment*

France is bound by the prohibition of torture and cruel or degrading treatment or punishment as a matter of customary international law, and specifically under treaties it has ratified such as the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture.<sup>175</sup>

Article 7 of the ICCPR provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”<sup>176</sup> and article 10 provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

The new UN Standard Minimum Rules for the Treatment of Prisoners, while they are not binding, provide guidelines to governments on how to treat prisoners in accordance with international norms and principles. The first rule is that “all prisoners shall be treated with the respect due to their inherent dignity and value as human beings,” and that “no prisoner shall be subjected to, and all prisoners shall be protected from torture and other cruel, inhuman or degrading treatment or punishment.”<sup>177</sup>

The right of prisoners to be free from such treatment is also guaranteed under Article 3 of the ECHR.<sup>178</sup> The European Court of Human Rights has interpreted this provision as including living conditions in prisons, which can amount to violations of the prohibition of

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<sup>175</sup> UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, Article 5; UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, Article 2.

<sup>176</sup> UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171, accession by France on November 4, 1980.

<sup>177</sup> UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by the Commission on Crime Prevention and Criminal Justice, May 21, 2015, E/CN.15/2015/L.6/Rev.1, [http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_24/resolutions/L6\\_Rev1/ECN152015\\_L6Rev1\\_e\\_V1503585.pdf](http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf) (accessed March 19, 2016).

<sup>178</sup> European Convention on Human Rights, Article 3.

torture and other forms of ill treatment.<sup>179</sup> The Court has interpreted Article 3 as obliging the state to ensure that “a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.”<sup>180</sup>

In its case law, the Court has established that “the assessment of whether the treatment or punishment concerned is incompatible with Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their ability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment.”<sup>181</sup> In its 2009 case *Slawomir Musial v. Poland* that concerned the detention of a man diagnosed with schizophrenia, the Court stated that “there are three particular elements to be considered in relation to the compatibility of an applicant’s health with his stay in detention: a) the medical condition of the prisoner, b) the adequacy of the medical assistance and care provided in detention, and c) the advisability of maintaining the detention measure in view of the state of health of an applicant.”<sup>182</sup> The Court held that “while maintaining the detention measure is not, in itself, incompatible with the applicant’s state of health, detaining him in establishments not suitable for the incarceration of the mentally ill raises a serious issue under the Convention,” and concluded that Poland had violated the prohibition of torture and other cruel or inhuman or degrading treatment or punishment under Article 3 of the ECHR.<sup>183</sup>

In a 2008 report focusing on the situation of persons with disabilities with regard to torture and other cruel or inhuman or degrading treatment or punishment, the then Special Rapporteur on torture stated that in his view, “the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances,

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<sup>179</sup> See for instance European Court of Human Rights, *Ananyev and Others v. Russia*, January 10, 2012, Applications No. 42525/07 and 60800/08, and *Canali v. France*, April 25, 2013, Application No 40119/09.

<sup>180</sup> European Court of Human Rights, *Kudla v. Poland*, Application No. 30210/96, October 26, 2000, para 94.

<sup>181</sup> European Court of Human Rights, *Renolde v. France*, Application No. 5608/05, October 16, 2008, para 120; *Aerts v. Belgium*, July 30, 1998, Application No. 61/1997/845/1051, para 66, *Keenan v. United Kingdom*, Application No. 27229/95, March 4, 2001, para 111, *Riviere v France*, Application No. 33834/03, July 11, 2006, para 63.

<sup>182</sup> European Court of Human Rights, *Slawomir Musial v Poland*, Application No. 28300/06, January 20, 2009, paragraph 88.

<sup>183</sup> European Court of Human Rights, *Slawomir Musial v Poland*, Application No. 28300/06, January 20, 2009, paragraphs 94 and 97-98.

may amount to torture.<sup>184</sup> He noted that “sometimes [...] it is used as a form of treatment or punishment of persons with disabilities in institutions or to manage certain groups of prisoners, such as those considered in need of psychiatric care.”<sup>185</sup>

The Special Rapporteur stated that “the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services.”<sup>186</sup>

### *The right to life*

Article 2 of the ECHR guarantees the right to life. It provides that “everyone’s right to life shall be protected by law.” The European Court of Human Rights has interpreted this as imposing on states a duty “not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”<sup>187</sup> In relation to prisoners, the Court ruled that “persons in custody are in a vulnerable position and the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent where that individual dies.”<sup>188</sup> Concerning the suicide of a prisoner while in detention, the Court emphasized “there are general measures and precautions which will be available [to the prison authorities] to diminish the opportunities of self-harm, without infringing on personal autonomy.”<sup>189</sup>

The European Court of Human Rights also held in the case of *Renolde v France* that “prisoners known to be suffering from serious mental disturbances and to pose a suicide risk require special measures geared to their condition in order to ensure compatibility with the requirements of humane treatment.”<sup>190</sup>

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<sup>184</sup> Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, July 2008, A/63/175, paragraph 77, <http://www.refworld.org/docid/48db99e82.html> (accessed October 24, 2015).

<sup>185</sup> *Ibid.*, paragraph 79.

<sup>186</sup> *Ibid.*, paragraph 83.

<sup>187</sup> European Court of Human Rights, *Keenan v. the United Kingdom*, April 3, 2001, Application no. 27229/95, paragraph 89.

<sup>188</sup> *Ibid.*, paragraph 91, and *Salman v. Turkey*, June 27, 2000, Application no. 21986/93, paragraph 99.

<sup>189</sup> *Keenan v. the United Kingdom*, paragraph 92.

<sup>190</sup> European Court of Human Rights, *Renolde v France*, October 16, 2008, Application no. 5608/05, para 128.

The right to life is also guaranteed under article 6 of the ICCPR.

### *The right to the highest attainable standard of health*

As a party to the ICESCR, France has a duty to provide prisoners with the highest attainable standard of physical and mental health.<sup>191</sup> The UN Committee on Economic, Social and Cultural Rights has stated that “[s]tates have 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, (...) to preventive, curative and palliative health services; abstain from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women’s health status and needs.”<sup>192</sup>

### *The right to physical and mental integrity*

Article 8 of the ECHR provides that “everyone has the right to respect for his private and family life, his home and his correspondence.”

The European Court of Human Rights has ruled that “the preservation of mental health is an indispensable condition to effective enjoyment of the right to respect for private life.”<sup>193</sup> Under Article 8, States not only have a duty to refrain from breaching the right of anyone under their jurisdiction, including prisoners, to the preservation of their mental health but also a duty to take concrete steps to protect that right. Indeed the Court has ruled that “although the object of Article 8 is essentially that of protecting the individual against arbitrary interferences by public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life.”<sup>194</sup>

Under Article 17 of the CRPD, “every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.”

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<sup>191</sup> Article 12 of the ICESCR.

<sup>192</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to the highest attainable standard of health, August 11, 2000, E/C.12/2000/4, paragraph 34 (accessed November 23, 2015)

<sup>193</sup> European Court of Human Rights, *Bensaid v. the United Kingdom*, February 6, 2001, Application no. 44599/98, paragraph 47.

<sup>194</sup> European Court of Human Rights, *Airey v. Ireland*, October 9, 1979, Application no. 6289/73, paragraph 32.

### *The right to access mental health care while in prison*

Article 25 of the CRPD provides that “persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.”<sup>195</sup> The ICESCR also provides for the right to the highest attainable standard of physical and mental health.<sup>196</sup>

Under the new UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), “the provision of health care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”<sup>197</sup> The Rules provide that “every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.”<sup>198</sup> The Rules also provide that “the Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.”<sup>199</sup>

### *The prohibition of discrimination*

The ECHR (in article 14), the ICCPR and ICESCR (both in article 2) all prohibit governments from discriminating against anyone on the basis of disability or gender in their enjoyment of the rights under the respective treaties: this includes their rights to life, mental and physical integrity and to not be subjected to torture or cruel, inhuman or degrading treatment.<sup>200</sup> The CRPD explicitly prohibits discrimination on the basis of disability (article 5).

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<sup>195</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution adopted by the General Assembly, January 24, 2007, A/RES/61/106, Article 25, ratified by France on February 2, 2010.

<sup>196</sup> UN General Assembly, International Convention on Economic, Social and Cultural Rights (CESCR), December 16, 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 12, France acceded to the CESCR on November 4, 1980.

<sup>197</sup> UN Standard Minimum Rules on the Treatment of Prisoners, Rule 24.1.

<sup>198</sup> UN Standard Minimum Rules on the Treatment of Prisoners, Rule 25.1.

<sup>199</sup> UN Standard Minimum Rules on the Treatment of Prisoners, Rule 5.

<sup>200</sup> Article 14 of the ECHR provides that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without any discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”



Article 12 of the Convention on the Elimination of Discrimination Against Women provides that States should “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men, access to health care services.” As a party to the ICESCR, France should ensure that the rights guaranteed by the Covenant, including the right to health, are enjoyed without discrimination on grounds of sex.<sup>201</sup> The ICESCR also provides that States should “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights” under the Covenant.<sup>202</sup>

### France’s domestic law

The French law of 2009 on prisons provides that “the prison administration guarantees to every person that is detained respect for his or her dignity and for his or her rights. The exercise of those rights cannot be subjected to restrictions other than those that result from the constraints that are inherent to detention, to maintaining facilities’ security and good order, preventing reoffending and protecting the interests of victims. These restrictions take into account the age, health condition, disability and personality of the person who is detained.”<sup>203</sup>

The prison law also provides that “the quality and continuity of care are guaranteed to prisoners in conditions that are equivalent to the rest of the population” and that “the psychological state of prisoners is taken into account when they are incarcerated and during their detention.”<sup>204</sup> Article 47 of that law provides that women prisoners must be provided with care adapted to their needs.

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<sup>201</sup> Article 2.2 of the ICESCR.

<sup>202</sup> Article 3 of the ICESCR.

<sup>203</sup> Law No. 2009-1426 of November 24, 2009 on prisons, Article 22.

<sup>204</sup> Law No. 2009-1426 of November 24, 2009 on prisons, Article 46.

## VI. Acknowledgements

Izza Leghtas, Western Europe researcher at Human Rights Watch, researched and wrote this report.

The report was reviewed by Benjamin Ward, deputy director of the Europe and Central Asia division; Jean-Marie Fardeau and Bénédicte Jeannerod, former and current France directors; Shantha Rau Barriga, director of the Disability Rights division; Heather Barr and Hillary Margolis, senior researcher and researcher in the Women's Rights division; Richard Pearshouse, senior researcher on Health and Human Rights; Aisling Reidy, senior legal adviser and Tom Porteous, deputy program director.

Anže Močilnik, associate in the Europe and Central Asia division, and Olivia Hunter, publications associate, provided production assistance.

Human Rights Watch thanks the officials at the Prison Administration who met with us and facilitated our access to prisons for this research. We also thank the officials at the Ministries of Justice and Health and the Ombudsperson's office, the current and former General Inspector of Prisons and representatives of the Independent Observatory of Prisons as well as the lawyers who met with us and provided us with information. We thank the directors and staff in the prisons we visited for allowing us to conduct our visits and interview detainees and for answering our questions; and the health professionals who took the time to meet with us and provide us with information for our report.

Human Rights Watch especially thanks the men and women detained in prisons who agreed to speak and share their stories with us.

# DOUBLE PUNISHMENT

## Inadequate conditions for Prisoners with Psychosocial Disabilities in France

Thousands of men and women detained in French prisons are estimated to have a psychosocial disability such as severe depression, bipolar disorder or schizophrenia. Yet they are held in conditions that do not accommodate their disability and can worsen their physical and mental health, and even put them at a heightened risk of suicide.

This 79-page report is based on research conducted by Human Rights Watch in prisons in France in 2015. We interviewed prisoners, prison staff, medical professionals, government officials and lawyers and documented the inadequate conditions in which prisoners with psychosocial disabilities are held. These include overcrowded facilities or, on the contrary, prisons where people are isolated and have little human contact, and stigma from other prisoners because of their disability. Due to a shortage of mental health staff, many prisoners with psychosocial disabilities are unable to access the care they want. For those who do, appointments are often brief and limited to prescribing medication.

Human Rights Watch urges the French government to commission an independent study of the mental health of prisoners. France should address the need for reasonable accommodation for prisoners with psychosocial disabilities, and ensure all prisoners, including women, can enjoy their right to the highest attainable standard of health without discrimination based on gender or disability.



*France, Bourges prison, corridor.*

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