



## DEATH PENALTY AND MENTAL HEALTH

### Factsheet for Medical Professions

#### 12<sup>th</sup> World Day Against the Death Penalty

On 10 October 2014, the World Coalition Against the Death Penalty and other abolitionists worldwide will mark the 12<sup>th</sup> World Day Against the Death Penalty by drawing attention to the special concerns faced by accused and condemned prisoners with mental health problems. While opposing the death penalty absolutely, abolitionists are also concerned to see existing protections implemented. Among these is the requirement in human rights standards that persons with serious mental illness or intellectual disabilities should not face the death penalty.

#### Background

The death penalty, where it is provided for in law, is required to be reserved for the most serious offenders (the “worst of the worst”) and to offer the highest level of protection for those subject to it. International standards provide protection for specific populations who should never be subject to execution: children, pregnant women and “the insane”. However, “The real difficulty with the safeguard lies not in its formal recognition but in its implementation. (...) There is an enormous degree of subjectivity involved when assessing such concepts as insanity, limited mental competence and ‘any form of mental disorder’. The expression ‘any form of mental disorder’ probably applies to a large number of people sentenced to death.”<sup>1</sup>

While the death penalty remains, persons with mental disabilities are at risk of being sentenced to death and executed in breach of international standards. **This briefing paper provides concrete examples of what can be done to address this risk, including by the adoption by national medical professional bodies of codes of conduct ensuring that professionals do not act unethically or unprofessionally in capital cases.**

#### Medical ethics, mental health and the death penalty

The existence of mental health issues among prisoners facing capital charges or a death sentence immediately raises problems of medical ethics among those responsible for medico-legal assessments and medical care for such persons. The most extensive debate of the ethics of execution within the medical profession happened in the USA following the introduction of lethal injection executions in 1977.<sup>2</sup> While the initial concern focused on the issue of active participation by doctors in executions, the question of “competence” or fitness for execution was also on the agenda. The question could simply be stated: given the doctor's commitment to the well-being of patients is it ethical for a doctor to assist the state to execute a prisoner?

<sup>1</sup> Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Report of the Secretary-General. UN Doc. E/2010/10, December 2009.

<sup>2</sup> The first such execution did not take place until 1982 – in Texas -- by which time both the American and World Medical Associations had adopted initial statements against doctors' participation in the death penalty.

## What do medical bodies say?

A wide range of international and national health professional bodies oppose either the death penalty as such (e.g. International Council of Nurses) or professional participation in aspects of the penalty (World Medical Association, World Psychiatric Association).

There is a consensus among international medical professional bodies against such a role even though states still appear to want medical assistance in the death penalty, from medical testimony in the court case through to presence at the execution. At the national level, a significant number of medical associations oppose a doctor's participation in the death penalty.

In the USA, the widest range of health professional bodies encompassing doctors, nurses, psychologists, psychiatrists, public health physicians, emergency technicians and anaesthesiologists all oppose some or all aspects of the death penalty. The American Medical Association (AMA) has the most detailed review of ethical aspects of capital punishment and sets out in their ethics guidelines a detailed analysis of the role of the physician faced with a death penalty case.<sup>3</sup>

### Position of international medical, nursing and psychiatric bodies on the death penalty

**World Medical Association:** "it is unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process..."<sup>4</sup>

**International Council of Nurses:** "Participation by nurses, either directly or indirectly, in the preparation for and the implementation of executions is a violation of nursing's ethical code".<sup>5</sup>

**World Psychiatric Association:** (i) "Conscious that psychiatrists may be called on to participate in any action connected to executions, declares that the participation of psychiatrists in any such action is a violation of professional ethics"; and (ii) "Under no circumstances should psychiatrists participate in legally authorized executions nor participate in assessments of competency to be executed."<sup>6</sup>

The **American Psychiatric Association** (APA) (2008) and the **American Board of Anesthesiologists** (2010) have incorporated the AMA policy E-2.06 (adopted in 1980) on the death penalty, with the APA earlier in 2000 approving a "Moratorium on Capital Punishment," citing the "weaknesses and deficiencies of the current capital sentencing process including considerations in regard to the mentally ill and developmentally disabled."<sup>7</sup>

The **World Psychiatric Association** declared in 1989 that participation by psychiatrists in the death penalty was unethical<sup>8</sup> and, in 1996, that psychiatrists should not participate in executions or in assessments of competence to be executed.<sup>9</sup>

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<sup>3</sup> AMA. Opinion 2.06 Capital punishment. <http://www.ama-assn.org//ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion206.page>

<sup>4</sup> WMA. Resolution on Physician Participation in Capital Punishment. Available at: <http://www.wma.net/en/30publications/10policies/c1/>

<sup>5</sup> ICN. Torture, Death Penalty and Participation by Nurses in Executions. Geneva, 1998. <http://www.icn.ch/publications/position-statements/>

<sup>6</sup> World Psychiatric Association. (i) Declaration on the participation of psychiatrists in the death penalty, 1989; [http://www.wpanet.org/detail.php?section\\_id=5&content\\_id=25](http://www.wpanet.org/detail.php?section_id=5&content_id=25); (ii) Madrid Declaration on Ethical Standards for Psychiatric Practice, 1996, [http://www.wpanet.org/detail.php?section\\_id=5&content\\_id=48](http://www.wpanet.org/detail.php?section_id=5&content_id=48)

<sup>7</sup> 2000 APA resolution: "American Psychiatric Association. Position Statement on Moratorium on Capital Punishment in the United States, Approved by the Board of Trustees, October 2000. Available at: [http://www.psych.org/File Library/Advocacy and Newsroom/Position Statements/ps2000\\_CapitalPunishmentMoratorium.pdf](http://www.psych.org/File Library/Advocacy and Newsroom/Position Statements/ps2000_CapitalPunishmentMoratorium.pdf)."

<sup>8</sup> World Psychiatric Association (WPA). Declaration on the Participation of Psychiatrists in the Death Penalty (1989).

<sup>9</sup> WPA. Madrid Declaration on Ethical Standards for Psychiatric Practice,

## Policy of mental health advocacy organizations (extracts)

### Mental Health America<sup>10</sup>

Mental health conditions should be taken into account during all phases of a death penalty case. This includes the execution itself. No legitimate government purpose is served by the execution of someone who is not competent at the time of the execution... MHA is opposed to the practice of having a psychiatrist or other mental health professional treat a person in order to restore competency solely to permit the state to execute that person...<sup>11</sup>

### National Alliance on Mental Illness

NAMI opposes the death penalty for persons with serious mental illnesses [and] urges jurisdictions that impose capital punishment not to execute persons with mental disabilities in cases where they [lack competency]<sup>12</sup>

## Key definitions:

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### What is mental health?

**The World Health Organization (WHO)** defines health not only in terms of physical health but also with respect to *mental* health. According to the WHO, **good mental health refers to “a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.”**<sup>13</sup> By contrast, mental ill-health or mental disorder comprises various conditions characterized by impairment of cognitive, emotional, or social functioning caused by psychosocial or biological factors. In other cases, impairments of intellectual capacity occurs as a result of developmental disorders.

Both types of impairments and disorders affect behaviour, decision-making and culpability for actions and for this reason are widely considered in legal processes including capital trials. Mental illness can often be alleviated by treatment and is generally not related to intellectual capacity, while intellectual disability (called mental retardation in legal and medical texts) which starts before the age of 18, is generally lifelong, and is manifested by sub-average intellectual capacity.

### What are mental disabilities?

The language of disability is rapidly changing. Terms from the medical and legal fields such as mental illness and mental retardation are being supplemented by terms from the disability advocacy movement such as psychosocial disability (rather than mental illness) and intellectual disability (rather than mental retardation). However most death penalty laws retain earlier terminology and for that reason it is hard to avoid the existing legal terms.

- **“Insanity”**. This term which still appears within legal and legislative terminology refers to persons’ capacity to understand “the nature and quality” of their acts or, if they did understand it, not to know of the wrongness of their action. “Insanity” is not found in psychiatric diagnostic manuals – it is a legal term.
- **Mental illness / Psychosocial disability**. These terms refer to: (i) a medical or psychological condition that disrupts a person's thinking, feeling, mood, ability to relate to others and daily functioning<sup>14</sup>; (ii) the interaction between psychological and social/cultural components of ... disability. The psychological component refers to ways of thinking and processing... experiences and...perceptions of the world...The social/ cultural

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<sup>10</sup> Formerly known as the National Committee for Mental Hygiene and the National Mental Health Association.

<sup>11</sup> Mental Health America. Position Statement 54: Death Penalty and People with Mental Illnesses.

<http://www.mentalhealthamerica.net/positions/death-penalty>

<sup>12</sup> NAMI. Public Policy: 10. Criminal Justice and Forensic Issues, Policy 10.9 Death penalty, and 10.10 Insanity defence. Available at [www.nami.org](http://www.nami.org)

<sup>13</sup> WHO. Strengthening mental health promotion. Geneva, World Health Organization, 2001: Fact sheet, No. 220.

<sup>14</sup> National Alliance on Mental Illness. What is mental illness? [http://www.nami.org/Template.cfm?Section=By\\_Illness](http://www.nami.org/Template.cfm?Section=By_Illness)

component refers to societal and cultural limits for behaviour that interact with those psychological differences/madness as well as the stigma that society attaches to ...[the]...label ...of... disabled.<sup>15</sup>

- **Mental retardation / Intellectual disability / Intellectual Developmental Disorder** is a disorder with onset during the developmental period that includes both intellectual and adaptive deficits in conceptual, social and practical domains.<sup>16</sup> With appropriate support, people with intellectual disability can function semi-independently, but will always have significant deficits and support needs.
- **Organic brain injury.** This refers to injury to the brain caused by a variety of traumatic events such as blows to the head, car accidents, or falls, or events such as asphyxiation, stroke, and substance abuse. The impact of these events is to decrease the capacity of the brain to function effectively leading to cognitive impairments which may (depending on the age at which the injury occurred, and the existence of sufficient adaptive deficits), to also cause the individual to be diagnosed with intellectual disability.
- **Degenerative brain disorders.** These include dementia and usually occur in later life, causing limits to intellectual functioning.

Increasingly, since the adoption of the Convention on the Rights of Persons with Disabilities<sup>17</sup> the concepts and language of “mental illness” have been challenged by a disability perspective reflecting the core values of non-discrimination and equal rights. The term “psychosocial disabilities” is emerging as an alternative to “mental illness”, to underline both psychological and social components and to focus on the disabling effect of the disorder.

#### **Convention on the Rights of Persons with Disabilities (2007)**

States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention... Article 14(2)

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Full Factsheet available here: [www.worldcoalition.org/worldday](http://www.worldcoalition.org/worldday)

<sup>15</sup> World Network of Users and Survivors of Psychiatry, 2008, Implementation Manual for the UN Convention on the Rights of Persons with Disabilities.

<sup>16</sup> The principal US organization on intellectual disability—the American Association on Intellectual and Developmental Disabilities -- changed terminology from “mental retardation” to “intellectual disability” in 2005. The American Psychiatric Association has adopted the term “Intellectual Disability (Intellectual Developmental Disorder)” in its most recent diagnostic manual (DSM-5 Guidebook, p. 34). The WHO is expected to do likewise in the forthcoming edition of its diagnostic manual (ICD-11).

<sup>17</sup> The Convention on the Rights of Persons with Disabilities. UN Doc. A/61/611, 6 December 2006, <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>.