



DEATH PENALTY AND MENTAL HEALTH

Factsheet for Journalists

12th World Day Against the Death Penalty

On 10 October 2014, the World Coalition Against the Death Penalty and other abolitionists worldwide mark the 12th 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.”¹

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 working towards the reduction of stigma against persons with mental or intellectual disabilities, particularly where media reports promote inaccurate public beliefs about risks posed by such persons.**

Media ethics, mental health and the death penalty²

450 million people worldwide have a mental health problem. Most people who experience mental health problems recover fully, or are able to live with and manage them, especially if they get help early on. But even though so many people are affected, there is a strong social stigma attached to mental ill health, and people with mental health problems can experience discrimination in all aspects of their lives.

Many people believe that people with mental ill health are violent and dangerous, when in fact they are more at risk of being attacked or harming themselves than harming other people. The situation is exacerbated by the media.

Media reports often link mental illness with violence, or portray people with mental health problems as dangerous, criminal, evil, or very disabled and unable to live normal, fulfilled lives. This is far from the case.

¹ 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.

² Abstract from <http://www.mentalhealth.org.uk/help-information/mental-health-a-z/S/stigma-discrimination/>

Stigma

It is important to stress that people with mental disabilities do not, in general, pose a higher risk of violence than the general population³ though there is considerable evidence that they are at greater risk of *becoming* victims of violence than average.⁴ However, there are numerous cases of people who were in need of mental health care which they did not receive – and they then went on to commit acts of violence.

Fighting Stigma

- Use respectful language
- Put the person before the illness: use phrases such as “a person with schizophrenia”. Never use terms like crazy, lunatic, psycho, retarded and correct people who do so.
- Include mental illness in discussions about acceptance of diversity, just as you would discuss cultural diversity, religious beliefs, physical disability, and sexual orientation.⁵
- Research shows that the best way to challenge these stereotypes is through firsthand contact with people with experience of mental health problems. A number of national and local campaigns are trying to change public attitudes to mental illness.⁶

Why people suffering from mental disabilities are more likely to be caught, to confess and be convicted, and are less likely to be paroled

Lack of availability of treatment can represent a missed opportunity

As commentators have noted, prisons are becoming the mental institutions of the 21st century.⁷ This reflects, at least in part, the failure of societies to provide adequate care and support to people with mental and intellectual disabilities. According to the World Health Organisation, between 76% and 85% of people with severe mental disabilities in low-income and middle-income countries receive no treatment for their disabilities, and in high-income countries, the figure is between 35% and 50%. Moreover, people with mental disorders find it difficult to integrate into society, exacerbating their marginalization and vulnerability.⁸

Reporting stories featuring violence and mental health problems⁹

- **stick to the facts** - don't speculate about someone's mental health being a factor unless the facts are clear
- **consider including contextualising** facts about how very few people with mental health problems are violent
- **seek comment from a mental health charity** such as Mind or Rethink Mental Illness
- **speak to the family** – often they are victims too with compelling stories to tell

³ There is an increased risk of violence in cases of persons with serious mental illness and concurrent substance misuse problems though the linkages are complex. (see, eg, Elbogen EB, Johnson SC. The Intricate Link between Violence and Mental Disorder.... *Archives of General Psychiatry* 2009;66(2):152-161;

<http://archpsyc.jamanetwork.com/article.aspx?articleid=210191>; and Fazel S, Gulati G, Linsell L, Geddes JR, Grann M. Schizophrenia and violence: systematic review and meta-analysis. *PLoS Med* 2009;6:e1000120; <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1000120>)

⁴ See, for example, Crump C et al. Mental disorders and vulnerability to homicidal death: Swedish nationwide cohort study. *British Medical Journal* 2013;346:

⁵ Abstract from <http://www.nami.org/ContentManagement/ContentDisplay.cfm?ContentFileID=5148>

⁶ Example: <http://www.time-to-change.org.uk>

⁷ White P, Whiteford H. Prisons: mental health institutions of the 21st century? *Medical Journal of Australia* 2006; 185 (6): 302-303.

⁸ WHO World Mental Health Survey Consortium. Prevalence, severity and unmet need for treatment of mental disorders in the WHO World Mental Health Surveys. *Journal of the American Medical Association*, 2004, 291:2581–2590.

⁹ Abstract from <http://www.time-to-change.org.uk/news-media/media-advisory-service/help-journalists/violence-mental-health-problems>

Vulnerability of people with mental disabilities to manipulation at the time of a crime and during police interrogation

According to Human Rights Watch, the disproportionate number of persons with intellectual disability in the US prison population probably reflects the fact that such people who break the law are more likely to be caught, are more likely to confess and be convicted, and are less likely to be paroled. They suggest that some of the people with intellectual disabilities who are serving prison sentences may be innocent, but that “they confessed to crimes they did not commit because of their characteristic suggestibility and desire to please authority figures.”¹⁰ A study on US prisoners released from prison after DNA evidence exonerated them lends weight to concerns about the vulnerability of people with intellectual disabilities to giving false confessions. It found that approximately two-thirds of intellectually disabled exonerated prisoners had been convicted on the basis of confession compared to around 8% among total exonerees.¹¹

Demeanour in court

A defendant with mental, psychosocial or intellectual disabilities can prejudice his or her own interests by unconventional behaviour in court. Actions such as verbal outbursts, threats or physical menace are clearly prejudicial but minor actions such as smiling or smirking at inappropriate moments (such as when the crime is being described) can appear to indicate lack of remorse or disrespect for the court.

Key Definitions

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.”**¹² 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 occur 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.

¹⁰ Human Rights Watch. *Beyond Reason: The Death Penalty and Offenders with Mental Retardation*. March 2001, p.15.

¹¹ Gross SR, Jacoby K, Matheson DJ et al., Exonerations in the United States 1989 Through 2003, 95 *Journal of Criminal Law and Criminology* 523-545 (2005). Roughly the same proportion was seen among mentally ill exonerees.

¹² WHO. Strengthening mental health promotion. Geneva, World Health Organization, 2001: Fact sheet, No. 220.

- **“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”¹³; (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 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.¹⁴
- **Mental retardation/Intellectual disability/Intellectual Developmental Disorder** is a disorder with onset during the developmental period that includes both intellectual and adaptive deficits in in conceptual, social and practical domains.¹⁵ 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.

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Full Factsheet available here: www.worldcoalition.org/worldday

¹³ National Alliance on Mental Illness. What is mental illness? http://www.nami.org/Template.cfm?Section=By_Illness

¹⁴ World Network of Users and Survivors of Psychiatry, 2008, Implementation Manual for the UN Convention on the Rights of Persons with Disabilities.

¹⁵ 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).