

MENTAL DISORDER IS  
**NEVER A CRIME**



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World Day Against  
the Death Penalty | **10.10.14**  
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**WORLD  
COALITION**  
AGAINST THE DEATH PENALTY

## **DEATH PENALTY AND MENTAL HEALTH**

### **Factsheet for Prison Staff**

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

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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 aims to help prison staff act ethically and professionally when dealing with people on death row.**

#### **Conditions on Death Row**

Although prison administrations are not directly responsible for whether the death penalty is imposed or not, they are responsible for the conditions of those upon whom any sentence has been imposed. Conditions of prisoners under sentence of death are often much worse than those of their fellow prisoners. They are often held for many years when there are lengthy appeal procedures or when a state has suspended executions but has not abolished the death penalty or commuted existing sentences. Even countries that have abolished the death penalty in practice may still have prisoners on death row.

In most countries which retain the death penalty, prisoners under sentence of death are separated from other inmates and have a special regime in the prison. They are generally confined to maximum-security areas, often in a specific building, and are subjected to severe security measures which are rarely justified based on the real level of danger they pose. Isolation is often the worst aspect of the death row regime: to be separated from one's family and friends is among the most acute pains of imprisonment. As a result of these conditions, as well as the stress of facing a death sentence, death row prisoners are vulnerable to mental strain, legal frustrations, and often neglect for months, years, and even decades.

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<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.

### **Case study - Morocco**

A study undertaken in Morocco in 2013 has shown that half of the people on death row take neuroleptics administered at the infirmary. The majority of the pathologies are characterised as psychotic and 17% of the inmates develop other chronic illnesses that are also classified as a form of psychosis such as paranoia, manic depression, chronic hallucinatory psychosis, etc. Consequently, 67% of the death row inmates have serious psychiatric illnesses that require psychiatric treatment. Furthermore, among those interviewed, 35% had suicidal thoughts.<sup>2</sup>

### **Minimum Standards for Death Row**

It is important that everyone involved understand how prisoners under sentence of death should be treated according to international standards:

- There should be an initial medical and psychiatric evaluation when the prisoner first enters death row, with constant monitoring of their physical and mental health afterwards. Prisoners under sentence of death should have the same access to doctors and medical services as other prisoners free of charge.
- Prisoners should not be held in unduly restrictive circumstances. The period for legal appeal against a sentence of death can be lengthy, so there is no justification for placing death row prisoners in solitary confinement or in excessively restricted environments during this time simply because they have been sentenced to death.
- Accommodation for prisoners sentenced to death, in particular sleeping accommodation, shall meet the same health requirements as other prisoners. All detainees must have access to fresh air and sunshine, adequate lighting, minimum floor space, heating, and ventilation. The prison administration should ensure access to private and hygienic sanitation, bedding and water.
- Prisoners on death row should have access to the same activities and employment, educational and training opportunities as other prisoners. Reading and writing materials in their cells should be readily available. Where libraries exist, they should be accessible to death row prisoners. This access should include law books, which for death row inmates may be the only avenue to submit an appeal that might save their lives.
- Death row prisoners should not be discriminated against in access to work: they should have the opportunity to work in the same manner as other inmates. Like other inmates they should never be subject to humiliations like being chained together in groups for work.
- Concerning written correspondence, as for other inmates, there should be no limits imposed on the number of letters a prisoner may send or receive and the number of correspondents a prisoner may have. Communication with the outside world shall not be denied for more than a matter of days.
- Like all other prisoners, they should be provided recreational activities, including at least one hour of suitable exercise in the open air daily, for the benefit of their mental and physical health.
- Disciplinary punishments for death row inmates should not be more severe than those received by other prisoners. Chains, shackles, fetters, handcuffs and other mechanical restraints should not be used routinely on prisoners facing the death penalty. Punishments should never include the reduction of food or hygiene.

### **Mental Health of Prison Staff**

Looking after a prisoner who has been sentenced to death is a stressful responsibility, especially once a date for execution has been set. The knowledge that a prisoner is awaiting an execution is likely to have an adverse effect on all around him, including the staff members who care for him.

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<sup>2</sup> Ensemble contre la peine de mort and Organisation marocaine des droits humains, “Voyage au cimetière des vivants : Enquête dans les couloirs de la mort marocain”, 2013. p. 37.

In some countries prison staff are required to carry out executions – which can be a harrowing experience.

Prison staff, including guards and medical staff, may feel psychological repercussions from working on death row and may be in need of support themselves. The prison administration should provide confidential counselling to all staff members who work with death row prisoners. Staff members who are in charge of prisoners under sentence of death should be carefully selected. They should be given special training and support.

### Access to Legal Assistance

For prisoners under sentence of death, there is the immediate threat of execution and therefore a great urgency to obtain proper legal representation. International standards are clear that anyone sentenced to death should have the right to an appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory. Anyone sentenced to death shall also have the right to seek pardon or commutation of the sentence. Pardon or commutation of the sentence of death may be granted in all cases. Appeal processes, legal assistance at this stage is essential to guarantee the rights of prisoners to access justice. In practice, however, it is very common those sentenced to death to have had (and to continue to have) inadequate legal representation – both during the trial and after conviction.

Prison administrations can help by keeping adequate records, responding promptly to requests for information, and allowing prisoners full access to legal aid and assistance. Prisoners should be provided with adequate opportunities, time, and facilities to be visited by and to communicate with a lawyer without delay or censorship and in full confidentiality. If professional legal assistance is not available, prison administrations can encourage prisoners with training and experience to help other prisoners file appeals. This type of prisoner-to-prisoner support programme would be especially helpful in situations where professional legal assistance is not available. Having access to legal resources could help some prisoners prepare an appeal.

### 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>3</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

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<sup>3</sup> WHO. Strengthening mental health promotion. Geneva, World Health Organization, 2001: Fact sheet, No. 220.

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>4</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 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>5</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 in conceptual, social and practical domains.<sup>6</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.

### Acknowledgements:

This factsheet primarily uses information from Penal Reform International’s training resource ‘Protecting the rights of those facing the death penalty and life and long-term imprisonment’ and from a detailed Factsheet prepared by Mr James Welsh, a former researcher and adviser on ‘Health and Detention’ at Amnesty International.

To access the resource please click on the following link: [http://www.penalreform.org/wp-content/uploads/2013/05/PRI\\_Training\\_Resource\\_1.pdf](http://www.penalreform.org/wp-content/uploads/2013/05/PRI_Training_Resource_1.pdf)

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

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<sup>4</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)

<sup>5</sup> World Network of Users and Survivors of Psychiatry, 2008, Implementation Manual for the UN Convention on the Rights of Persons with Disabilities.

<sup>6</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).