

CHAPTER 6: FREEDOM FROM TORTURE AND OTHER FORMS OF ABUSE

UN Convention on the Rights of Persons with Disabilities

Article 15, Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16, Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.



OBJECTIVES

The background information and exercises contained in this chapter will enable participants to work towards the following objectives:

- Define the right to be free from torture or cruel, inhuman, or degrading treatment or punishment
- Define the right to be free from exploitation, violence, and abuse
- Explain the importance for people with disabilities of the rights relating to freedom from torture and other forms of violence
- Understand the interrelationship between the right to be free from torture and other forms of violence and other human rights
- Identify ways in which the prohibitions against torture and other forms of violence have been violated and efforts to prevent such violations
- Describe the provisions regarding the right to be free from torture or other cruel, inhuman, or degrading treatment or punishment and the right to be free from exploitation, violence, and abuse.

GETTING STARTED: THINKING ABOUT THE RIGHT TO BE FREE FROM TORTURE AND OTHER FORMS OF VIOLENCE

People with disabilities are particularly at risk for exposure to torture and other forms of cruel, inhuman, or degrading treatment or punishment. Likewise, people with disabilities are vulnerable to exploitation, violence, and abuse. Many violations of these kinds against people with disabilities go unnoticed given their frequent occurrences in institutionalized settings or other places which are isolated and hidden from public scrutiny, such as private and group homes, detention centers, and prisons. Like all human beings, people with disabilities have the right under human rights law to be free from all of forms of violence and abuse.

The enjoyment of the right of people with disabilities to be free from torture and other forms of violence is also related to the enjoyment of other human rights. For example, if a person with a disability is subjected to torture, his or her right to life may well be compromised and his or her right to health – both physical and mental – is surely at risk. Where children with disabilities are subjected to violence and abuse in educational settings, their right to health and their right to an education are violated. (For more on the rights of children with disabilities, see Chapter 15, p. 191). Subjecting people with disabilities in institutional settings to degrading conditions where they receive little or no care, have no means to fulfil their basic necessities of personal hygiene, or have no access to meaningful activities of interest violates a number of human rights, not only the right to be free from inhuman and degrading treatment, but also the right to an adequate standard of living, the right to recreation, and the right to health. These examples demonstrate that human rights are **indivisible, interdependent, and interrelated**.

Typical Forms of Violence and Abuse against People with Disabilities

- The World Health Organization reports that violence against persons with disabilities occurs at three times the rate of their peers without disabilities.
- Maltreatment of children with disabilities is reported to be 1.7 times the maltreatment rate for children without disabilities.
- In the U.S.A., the Center for Research on Women with Disabilities concluded that students with disabilities experience higher rates of sexual harassment than students without disabilities. In addition, girls with disabilities experience sexual harassment at higher rates than boys with disabilities.
- A Canadian study found that 60% to 80% of women receiving psychiatric care in institutions experienced violence.
- More than 90% of persons with developmental disabilities will experience sexual abuse at some point in their lives.
- 12% of men with disabilities experienced serious neglect and 9% reported physical violence at the hands of care providers.
- An estimated 1 in 25 elderly people are victims of violence each year.¹

Human rights law draws some distinctions between torture on the one hand, and cruel, inhuman, or degrading treatment or punishment on the other. Where an action does not meet the precise definition of torture, it may be considered cruel, inhuman, or degrading treatment or punishment, depending on the form, severity and purpose of the conduct. Advocates need to understand the legal differences when they are making claims and reporting violations. It is also important to understand, however, that the lines between torture and cruel, inhuman, or degrading treatment or punishment may be difficult to draw in any given case. In part, it requires assessing the intensity and duration of pain and the particular circumstances of the individual. What some courts may agree amounts to torture in one case, may be characterized differently in another, albeit similar case.

Torture is one of the most serious violations of human rights. The right to be free from torture and other forms of physical and mental ill-treatment is absolute, and may not be suspended or restricted under any circumstances. Because of the risk of torture and other ill-treatment occurring during police custody, a number of procedural safeguards have been put in place in international human rights law documents that aim to substantially reduce the risk of torture occurring.

Torture is a frequent cause of disability, and when torture is inflicted on a person with a disability, it may lead to secondary disabilities or the onset of a serious medical condition. Interrogation techniques amounting to torture which are damaging to anyone, may be compounded for a person with certain disabilities or for those with medical conditions. In addition, the failure of an interrogator to recognize a person's disability could be mistaken for non-cooperation, as in the case of a prisoner who is unable to hear or process a question or communicate an answer as a result of a disability.

¹ Rousso, Harilyn. *Girls and Women with Disabilities: An International Overview and Summary of Research*. (Disabilities Unlimited Consulting Services, 2001); Saxton, Marsha. *The Impact of Violence on People with Disabilities*. (World Institute on Disability, 2007).



Factors Contributing to Violence against People with Disabilities

- Myths and stereotypes about disability that relegate persons with disabilities to powerless positions and the perception of being an “easy target” for perpetrators
- Power imbalances between persons with disabilities and their caregivers
- Isolation in homes or institutions away from public scrutiny
- Lack of education and training to help identify and address violence, especially for women and girls with disabilities
- Lack of training for family members, caregivers, and health professionals on appropriate care for people with disabilities
- Armed conflict and certain environmental hazards such as landmines
- Poverty
- Cultural practices, such as female genital mutilation.

Subjecting people with disabilities to harmful forms of treatment in the name of “fixing” or “curing” their disability has a long history. In many early cultures, disease was thought to be caused by an invasion of evil spirits, which healers attempted to exorcise with a variety of dangerous and potentially harmful techniques. The practices of displaying and photographing children with visible disabilities in hospital amphitheatres or subjecting people with disabilities to display in circuses with forced-labor conditions are degrading, as well as psychologically harmful. Many of these practices occur in a hospital or health-care setting and often against the most vulnerable populations of people with disabilities, such as people with psycho-social disabilities. Related practices occur in countries with under-developed health care systems.

The treatment of psycho-social illnesses especially illustrates such abusive practices that may amount to torture or cruel, inhuman, or degrading treatment or punishment. In many cultures persons with psycho-social illness are considered to be possessed by demons that must be driven out, often by violent means such as physical abuse, or even drilling into the skull to “release the demon.” In the European middle ages, a standard “cure” for “madness” was isolation in darkness or public whipping. In the 18th century “enlightenment,” people with psycho-social illness were often confined to public “madhouses” such as the infamous Bedlam Hospital in London, to which citizens could purchase tickets for the amusement of looking at the inmates.²

Such treatment of people with psycho-social disabilities is not confined to the past. Disability organizations have documented contemporary examples of such practices, which constitute some of the most extreme forms of torture and cruel, inhuman, and degrading treatment against people with disabilities. This includes the long-term use of restraints, especially under painful conditions; involuntary use of electroshock therapy (ECT) without anesthesia; and detention in dangerous facilities without any protection from violence or access to medical care for victims of violence. The use of brain-damaging surgeries without consent, such as lobotomy (brain surgery designed to numb the emotions), is still practiced, often performed on women deemed to be “too emotional.” The use of harmful medications designed to “subdue” people with

² Harris, James C. *Intellectual Disability: Understanding its Causes, Classification, Evaluation and Treatment* (Oxford: 2005), pp. 14-16; Albrecht, Gary L. et al., eds., *Handbook of Disability Studies* (Sage Publications: 2001), pp. 15-18.

psycho-social disabilities is another example of coercive treatments imposed on people that violate human rights. Mental Disability Rights International (MDRI) has exposed instances of abuse where a particular psychiatric “treatment” is in fact being used as a punishment and has argued persuasively that such conduct violates the torture prohibition, as in the case of using unmodified ECT without anesthesia.³

Physical and mental abuses and gross neglect endangering the lives of people with disabilities housed in institutional facilities are widespread. Reports issued by MDRI on conditions for people with mental disabilities warehoused in dismal and dangerous institutions detail unhygienic conditions of detention, excessive use of physical restraints, lack of adequate food, water, clothing and medical care, and other life-threatening conditions. MDRI has also documented instances of complete sensory deprivation in barren, long-term isolation cells in institutions.⁴ These conditions are examples of violations that may fall under torture or cruel, inhuman, or degrading treatment or punishment, depending on the circumstances.

Addressing Human Rights Abuse in Institutional Settings

- In 2007, a Czech regional court upheld the human rights of a woman who had been detained in a psychiatric hospital against her will and forced to accept psychiatric medication without her consent. She had been institutionalized simply on the basis of an initiative by her landlord who attempted to have her unlawfully evicted. The court ruled that the detention violated her human rights.
- In 2006, the Inter-American Court on Human Rights held that Brazil violated the Inter-American Convention on Human Rights in its first case concerning a person with a psycho-social disability. The case concerned the death of a man in a private psychiatric clinic who was subjected to beatings by clinic personnel and who died three days after his admission. The Inter-American Court held that Brazil violated his right to life and the right to be free from cruel, inhuman, and degrading treatment.
- In 2001, the European Court of Human Rights held that detaining a person with a psycho-social disability in the psychiatric wing of a prison in a very small, hot cell with one other person and inadequate ventilation violated the prohibition against degrading treatment under Article 3 of the European Convention on Human Rights.
- In 1999, the US Supreme Court ruled that requiring people with disabilities to live in institutions in order to access services constitutes illegal discrimination under the Americans with Disabilities Act. The *Olmstead* decision requires public entities to provide services and conduct activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

3 “Behind Closed Doors: Human Rights Abuses in the Psychiatric Facilities, Orphanages, and Rehabilitation Centers of Turkey.” *Mental Disability Rights International (MDRI)*. 2005. <http://www.mdri.org/projects/turkey>

4 “Ruined Lives: Segregated from Society in Argentina’s Psychiatric Asylums.” 2007. *Mental Disability Rights International (MDRI) and the Center for Legal and Social Studies (CELS)*. <http://www.mdri.org/projects/americas/Argentina/MDRI.ARG.ENG.NEW.pdf>



Medical and scientific experimentation without free and **informed consent** is a human rights violation to which people with disabilities continue to be subjected. Some of the worst and best-known examples of such abuse occurred during the Holocaust when people with disabilities were subjected to horrific medical experiments. At the Nuremberg Trials, Nazi doctors were ultimately tried and convicted of war crimes and crimes against humanity for their participation in such experiments. The prohibition of medical and scientific experimentation without informed consent is highly relevant in the context of certain diseases that cause disabling conditions and for which medical science offers no cure, but are the subject of medical research and experimentation. A situation often faced by persons with psycho-social disabilities is the provision of an untested regimen of various drugs or therapies that in their combination are unproven – such a practice must surely constitute “experimentation” as opposed to “treatment” and would therefore violate human rights law unless free and full informed consent is given.

People with disabilities are vulnerable to other forms of violence, abuse, and exploitation. Children with disabilities, particularly those living in large institutions, are exposed to many forms of violence which cause serious risks to their physical and mental integrity. Sexual abuse and exploitation is likewise a violation that people with disabilities – men and women, girls and boys – experience. Persons with disabilities living in institutions may be particularly vulnerable to such abuse and groups such as Mental Disability Rights International (MDRI) has documented sexual violence in such contexts.⁵ Economic exploitation, in which children and adults with disabilities are frequently subjected to forced-labor, working for little or no pay in often dangerous working conditions, also presents serious threats to the health and physical, mental, and social development of people with disabilities. Cultural practices, such as female genital mutilation and early marriage, impact women and girls with disabilities and may also result in physical and psycho-social disability.

EXERCISE 6.1: The Effects of Violence on Persons with Disabilities

Objective: To understand the effects of violence on different populations of people with disabilities.

Time: 30 minutes

Materials: Chart paper and markers or blackboard and chalk

1. Introduce:

Explain that people with disabilities are not at risk of violence and abuse because of their disabilities, but because of the actions of abusing individuals in society. Violence and abuse may affect different populations of persons with disabilities differently. These differences must be taken into consideration when designing violence and abuse prevention programs.

2. Brainstorm:

Divide participants into small groups and ask them to:

- list different populations of people with disabilities (e.g., women, children and teenagers, men, elders, refugees, internally displaced persons) and kinds of disability (e.g., visual, mobility, hearing, psycho-social); and
- provide examples of how violence and abuse may impact different populations.

Note to Facilitator: Save this list for use in Exercise 6.3.

⁵ “Not on the Agenda: Human Rights of People with Mental Disabilities in Kosovo.” 2002. *Mental Disability Rights International (MDRI)*. <http://www.mdri.org/pdf/KosovoReport.pdf>

3. Report:

Ask a spokesperson from each group to report their findings. List these on a chart like that below. When the first two columns are complete, ask participants to identify challenges to addressing violence and abuse against each different group. Write the responses in the third column.

4. Analyze:

Ask participants to consider the following based on their initial discussion:

- What actions could be taken to address violence and abuse prevention?
- Who must be involved in order for prevention to be effective?

Group of Disabled People	Kinds of Violence	Challenges to Addressing this Violence

Source: Adapted from Marsha Saxton, *The Impact of Violence on People with Disabilities*, World Institute on Disability: <http://www.wid.org>

WHAT DOES HUMAN RIGHTS LAW SAY ABOUT FREEDOM FROM TORTURE AND OTHER FORMS OF VIOLENCE?

The prohibition against torture is a core principle in human rights law; the right to be free from torture may not be suspended or limited under any circumstances. Reflected in the **Universal Declaration of Human Rights** (UDHR)⁶ and the **International Covenant on Civil and Political Rights** (ICCPR),⁷ the right to be free from torture and cruel, inhuman, or degrading treatment or punishment also finds expression in many other international documents, including a specialized treaty on the subject, the **Convention against Torture** (CAT).⁸ Specialized international human rights conventions have also sought to address forms of violence beyond torture and cruel, inhuman, and degrading treatment or punishment. For example, the **Convention on the Rights of the Child** (CRC)⁹ protects the right of the child to be free from torture and also specifically protects the right of the child to be free from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” and further recognize State obligations regarding sexual exploitation and abuse, economic exploitation, and promoting recovery of child victims.

Defining various categories of violence and abuse can be challenging and the lines between different forms of conduct are often not easily drawn. CAT provides detailed standards for the effective prohibition against torture and other ill-treatment, including guarantees of survivor assistance and legal redress for those who have experienced torture or other forms of prohibited treatment or punishment. Article 1 of CAT defines torture as “any act committed by a public official or other person acting in an official capacity or at the instigation of or with the consent of such a person – by which severe physical or mental pain or suffering is intentionally inflicted on a person for a specific purpose, such as extortion of information or confession,

6 See <http://www.unhchr.ch/udhr/lang/eng.htm>

7 See <http://www.ohchr.org/english/law/ccpr/htm>

8 See http://www.unhchr.ch/html/menu3/b/h_cat39.htm

9 See <http://www.ohchr.org/english/law/crc.htm>



punishment, intimidation or discrimination.” Actions that do not meet this definition in all its elements may fall under the category of cruel, inhuman or degrading treatment or punishment, depending on the type of conduct in question. Human rights tribunals have not offered clear standards by which to evaluate when conduct is torture, or when it falls under another prohibited category.

The **Convention on the Rights of Persons with Disabilities** (CRPD) addresses violence and abuse in two specific provisions: Articles 15 (Freedom from torture or cruel, inhuman, or degrading treatment or punishment) and 16 (Freedom from exploitation, violence, and abuse) which recognize:

- The right of people with disabilities to be free from torture, as well as cruel, inhuman, or degrading treatment or punishment;
- The right of people with disabilities to be free from medical or scientific experimentation unless they have provided informed consent;
- The right of people with disabilities to be free from all forms of exploitation and abuse;
- The obligation of States to take measures to prevent people with disabilities from being subjected to torture and other types of prohibited abuse;
- The obligation of States to take measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence, and abuse, including gender-related abuse;
- The obligation of States to take measures to prevent all forms of exploitation, violence and abuse. Such preventive measures must ensure, among other things, the availability of appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers. Examples include information and education on how to avoid, recognize, and report instances of exploitation, violence, and abuse;
- The obligation of States to ensure that protection services are age-, gender- and disability-sensitive;
- The obligation of States to ensure the effective monitoring of all facilities and programs designed to serve persons with disabilities;
- The obligation of States to take measures to promote the physical, cognitive and psychological recovery, rehabilitation, and social reintegration of persons with disabilities who become victims of any form of exploitation, violence, or abuse in an environment that respects the rights and dignity of victims, their age, and gender;
- The obligation of States to adopt laws and policies to ensure that exploitation, violence, and abuse against persons with disabilities are identified, investigated, and, where appropriate, prosecuted.

In sum, the right to be free from torture or other forms of abuse requires States to *respect*, *protect*, and *fulfill* these rights for people with disabilities. The obligation to “respect” means, among other things, that States must refrain from using torture in questioning prisoners with disabilities and refrain from subjecting people with disabilities in prison or otherwise detained or living in institutional settings from any form of abuse. States must also prohibit the subjection of people with disabilities to medical or scientific experimentation unless they are in a position to provide full and informed consent without any coercion or undue influence whatsoever. The obligation to “protect” means that States must protect people with disabilities against abuses by State and non-State actors, including inhuman or degrading conditions in both public and private institutional settings. The obligation to “fulfill” means that States must take active measures to ensure protection, such as training police officers in acceptable methods

of obtaining information and in how to accommodate prisoners with disabilities or monitoring facilities where people with disabilities receive services. Teacher training is required to ensure that children with disabilities are not subjected to forms of punishment that constitute violence and that they are protected against bullying and abuse by classmates.

EXERCISE 6.2: What Rights to Freedom from Torture and Other Forms of Abuse does the CRPD Affirm?

Objective: To review and understand CRPD Articles 15 and 16

Time: 30 minutes

Materials: Chart paper and markers or blackboard and chalk

1. Review:

Assign different parts of Articles 15 and 16 to small groups of participants (You may wish to divide Article 16 into four parts). Ask them to work together to paraphrase their section in common language and give some examples of how that right could be enjoyed and make a difference for people with disabilities.

2. Paraphrase/Give examples:

Read each section of Articles 15 and 16 aloud and ask the assigned group to give its paraphrase. Discuss the meaning of the section until everyone can agree on a paraphrase. Write the final paraphrase of Articles 15 and 16 on chart paper and post. After each section ask for examples of how that right could be enjoyed and make a difference for people with disabilities.

3. Discuss:

- How can Articles 15 and 16 of the CRPD be used to set national disability rights agendas and formulate platforms of action for submission to political parties or government decision-makers?
- How can these provisions be used to monitor conditions in prisons or institutions or other settings where people with disabilities may be vulnerable to violence and abuse?
- How can these provisions be used to help advocate for violence prevention programs?

PHYSICAL AND MENTAL INTEGRITY IN PRISON SETTINGS

Human rights law guarantees the right of all people deprived of their liberty to be treated with humanity and with respect for their inherent dignity. Article 10 of the **International Covenant on Civil and Political Rights** (ICCPR) states that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁰ The **UN Human Rights Committee**, which monitors implementation of the ICCPR, has stressed in **General Comment 21** that prisoners should not be “subjected to any hardship or constraint other than that resulting from the deprivation of their liberty.”¹¹ Little attention has been paid by the human rights community to the right of prisoners with disabilities. Accommodations must be provided for persons with disabilities while in prison to ensure respect for their human rights and dignity.

10 See <http://www.ohchr.org/english/law/ccpr.htm>

11 See <http://www1.umn.edu/humanrts/gencomm/hrcomm21.htm>



The prohibition against torture and abusive treatment applies to prison authorities and requires protection from violence by other prisoners. It also requires protection from prison conditions that amount to cruel, inhuman, or degrading treatment or punishment. International human rights instruments developed within the United Nations provide guidance as to how governments may comply with their international legal obligations in relation to prisoner rights. In some instances, specific guidance on the rights of prisoners with disabilities and detained persons with disabilities is also indicated. These documents include the **United Nations Standard Minimum Rules for the Treatment of Prisoners** (Standard Minimum Rules)¹² adopted by the Economic and Social Council in 1957; the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**,¹³ adopted by the General Assembly in 1988; and the **Basic Principles for the Treatment of Prisoners**,¹⁴ adopted by the General Assembly in 1990. While these instruments are not treaties, they provide authoritative guidance on the interpretation of binding human rights law.

It should also be noted that a separate but related body of law applies during times of armed conflict and is intended to provide protection to civilians. This body of law, referred to as **International Humanitarian Law**, specifies the rights of civilians and those who are not combatants. These laws are set forth in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.¹⁵

Human rights advocates have been successful in exposing and in many instances correcting human rights violations in prisons. Human Rights Watch has documented serious abuses against prisoners with psycho-social disabilities in US prisons.¹⁶ More recently, advocates have focused more specifically on accommodating the needs of prisoners with disabilities and some prison authorities have responded with their own initiatives. For example, the Northern Ireland Prison Service, in addition to appointing a human rights advisor, has adopted a disability action plan and has taken action to improve cell accessibility, modify educational programs to accommodate prisoners with intellectual and learning disabilities, and addressed communication needs of deaf and hard of hearing prisoners.¹⁷

EXERCISE 6.3: Understanding the Rights of People with Disabilities in Prison or Detention

Objective: To understand the particular needs of disabled people in prison or detention

Time: 30 minutes

Materials: Chart paper and markers or blackboard and chalk

Optional: Copies of list generated in Exercise 6.1.

1. Introduce:

Explain that disabled prisoners, like all persons with disabilities, require accommodation for their disability. Review case summaries from European Court of Human Rights involving prisoners with disabilities to provide some context. (See text box on next page). Reintroduce the list of disability populations created in Exercise 6.1 or create a new list of different groups of people

12 See http://www.unhchr.ch/html/menu3/b/h_comp34.htm

13 See http://www.unhchr.ch/html/menu3/b/h_comp36.htm

14 See http://www.unhchr.ch/html/menu3/b/h_comp35.htm

15 See <http://www.unhchr.ch/html/menu3/b/92.htm>

16 "Ill Equipped: U.S. Prisons and Offenders with Mental Illness." 2003. *Human Rights Watch*. <http://www.hrw.org/reports/2003/usa1003>

17 "Northern Ireland Prison Service Disability Action Plan: July 2007-March 2010." *Northern Ireland Office*. http://www.nio.gov.uk/nio_disability_action_plan_july_2007_-_march_2010.pdf

with disabilities (e.g., women, children and teenagers, men, elders, refugees) and kinds of disability (e.g., visual, mobility, hearing, psycho-social).

2. Discuss:

Divide participants into small groups and ask each to use the list as a guide to –

- Provide examples of how prison conditions and treatment in detention may affect a person with a disability and present risks of violence/abuse;
- Identify challenges to addressing the rights of persons with disabilities in prison or held in detention;

3. Analyze:

Ask participants to consider the following based on their initial discussion:

- What actions could be taken to address the rights of persons with disabilities in prison or detention?
- Who must be involved in order for prevention to be effective?
- What advocacy initiative might help create change in this area?

European Court of Human Rights Finds United Kingdom Violated Disabled Prisoner's Rights

In *Keenan v. the United Kingdom* (2001) the European Court of Human Rights held, among other things, that the treatment of a prisoner with a psycho-social disability was inhuman and degrading treatment and punishment in violation of Article 3. The prisoner was found dead in his cell after he hung himself while in solitary confinement. The Court found deficiencies in his medical care and monitoring of his condition. The Court also found that his placement in segregation and the addition of 28 days to his sentence just nine days before his expected release may have threatened his physical and moral resistance, and in these circumstances was “not compatible with the standard of treatment required in respect of a mentally ill person.”

In *Price v. United Kingdom* (2001), the European Court of Human Rights found that the United Kingdom violated the rights of a woman with a disability who had been held in detention. The applicant was a woman who was a wheelchair user and did not have the use of her limbs. She was sent to prison for one week and alleged that while in custody she was forced to sleep in her wheelchair, could not reach emergency buttons and light switches, and was unable to use the toilet. She was lifted onto a toilet by a female prison officer but was left there for over three hours until she agreed to allow a male nursing officer to assist her. The Court held that these conditions amounted to “degrading treatment contrary to Article 3.”¹⁸

18 “European Court of Human Rights - mental disability cases.” *Mental Disability Advocacy Center*. http://www.mdac.info/resources/echr_cases.htm



International Standards for Persons in Prison or Detention

Basic Principles for the Treatment of Prisoners

- Establishes prisoners' entitlement to a quality of health care comparable to that available in the outside community.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

- Establishes the obligation of authorities to ensure prisoners are given medical screening upon admission and provided appropriate medical care and treatment as necessary and free of charge.

Standard Minimum Rules

- Provide that appropriate medical and mental health services are integral to a properly run prison and to the goal of rehabilitation: "The medical services...shall seek to detect and shall treat any...mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary...psychiatric services shall be provided to that end."
- Recognize the need to vary the housing, supervision, and care of offenders with mental disorders according to the degree of their disability. Prison mental health staff should provide for the psychiatric treatment of all other prisoners who need it.
- Recognize that prisons must have sufficient numbers of appropriately qualified competent health care staff to meet their human rights obligations. To the extent possible, prison staff should also include specialists in addition to psychiatrists, including psychologists, and social workers. Standards of care should not be lowered because those needing medical treatment are prisoners. "Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standards as is afforded to those who are not imprisoned or detained."
- Stipulate that clinical medical decisions should be governed by medical criteria. International principles of medical ethics require prison medical staff to provide "the best possible health care for those who are incarcerated," and to make decisions regarding their care and treatment based on the prisoners' health needs, which should take priority over any non-medical matters.
- Recommend that proper psychiatric treatment in prison as in the community should be based on a treatment plan drawn up for each patient. The plan should consist of more than just medication. It should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports;
- Recognize that patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work.¹⁹

19 "Ill Equipped: U.S. Prisons and Offenders with Mental Illness." 2003. *Human Rights Watch*. <http://www.hrw.org/reports/2003/usa1003>

SEXUAL VIOLENCE, EXPLOITATION, AND ABUSE

Studies indicate that sexual exploitation and abuse is a widespread phenomenon among persons with disabilities, particularly women and girls, although disabled men and boys also experience sexual violence, exploitation, and abuse. Studies indicate that nearly 50% of women with disabilities report some form of sexual abuse during their childhood and some 30% of disabled women report being subjected to sexual abuse in their adult lives.²⁰ Most instances of abuse go unreported and, therefore, remain unaddressed. Very often, abuse takes place in a private home dwelling or in an institution where it is sometimes imagined that people with disabilities will be free from abuse.

Sexual violence, exploitation and abuse have long-lasting harmful effects on persons with disabilities. Where such abuses occur in isolated settings, the chances of accessing the assistance needed for recovery may be slim. Moreover, such traumatic experiences may increase disability-related functional limitations or create secondary disabilities. Programs and services that do address sexual violence and abuse in the community, particularly those targeting women and girls, very often do not reach out to disabled persons. Disability advocates are working to address these gaps and to ensure that programs and services are inclusive and accommodating to all. Violence prevention advocacy is an important component of ensuring the right of persons with disabilities to be free from violence and to lead self-determined lives.

EXERCISE 6.4: Making a Commitment to Promote Freedom from Torture and other Forms of Violence and Abuse

Emphasize that human rights involve both rights and responsibilities.

- Ask if after learning about the human right of people with disabilities to be free from torture and other forms of violence and abuse, the groups are ready to think about taking concrete action.
- Acknowledge that although there is still much planning and information gathering to do, commitment to creating change is also very important.
- Explain that you would like to ask each participant to name one individual action, however small, that she or he is willing and able to take in the next month to promote the human right of people with disability to be free from torture and other kinds of violence and abuse.

To plan advocacy for the human rights of people with disabilities, see Part 3, “Advocacy! Taking Action for the Human Rights of People with Disabilities,” p. 229.

USEFUL RESOURCES ON TORTURE AND OTHER FORMS OF ABUSE AGAINST PERSONS WITH DISABILITIES

- Human Rights Watch, *Ill Equipped: U.S. Prisons and Offenders with Mental Illness* (2003): <http://www.hrw.org/reports/2003/usa1003>
- Mental Disability Advocacy Center: <http://www.mdac.info/index.html>
- Mental Disability Rights International: <http://www.mdri.org>
- World Institute on Disability, *The Impact of Violence on People with Disabilities* (Marsha Saxton, 2006): <http://www.wid.org>

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