



The Impact of Prison on the Human Right to Mental Health

O impacto da prisão no direito humano à saúde mental

El impacto de la prisión en el derecho humano a la salud mental

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ABSTRACT

This paper addresses the impact of prison on the right of prisoners and their families to enjoy their highest attainable standard of mental health. I argue that: Prison conditions - as they exist in most parts of the world - violate the human right of every person to enjoy the social conditions necessary to realise their highest attainable standard of mental health (i.e. the social determinants of mental health). They also violate the right to mental health of family members, especially children. The right to the social determinants of mental health is a justiciable right, which States are obligated to respect, protect, and fulfil under widely ratified international human rights treaties. A person's right to enjoy the highest attainable standard of mental health does not disappear simply because they are in prison. Children's rights to enjoy the highest attainable standard of mental health do not disappear because their father or mother is in prison. The rights exist; but only in theory because they are not being fulfilled. Prison and the criminal justice system are a state responsibility. The risks to mental health posed by current prison conditions are well-known. The impact of parental imprisonment on children is well-known. Yet States are rarely held to account for failure to address the impact of imprisonment on the right to mental health of prisoners and their families. To advance a more inclusive implementation of the right to health, international human rights monitoring bodies should require States to provide disaggregated data on the impact of imprisonment on enjoyment of the social determinants of mental health of prisoners, and their families, using criteria such as race, gender, age, income and neighbourhood. This data could

be used by civil society as an additional argument in support of existing campaigns towards abolition¹ (or radical change in the criminal justice system) and to further transformative change towards racial justice and equality in the enjoyment of the right to health.

RESUMO

Este artigo aborda o impacto do encarceramento no direito dos presos e de suas famílias de desfrutar do mais alto padrão possível de saúde mental. Argumento que: As condições prisionais – tal como existem na maior parte do mundo – violam o direito humano de toda pessoa de desfrutar das condições sociais necessárias para alcançar o mais alto padrão possível de saúde mental (ou seja, os determinantes sociais da saúde mental). Violam também o direito à saúde mental dos familiares, especialmente das crianças. O direito aos determinantes sociais da saúde mental é um direito justiciável, que os Estados são obrigados a respeitar, proteger e cumprir, de acordo com tratados internacionais de direitos humanos amplamente ratificados. O direito de uma pessoa de desfrutar do mais alto padrão possível de saúde mental não desaparece simplesmente porque ela está na prisão. O direito das crianças de desfrutar do mais alto padrão possível de saúde mental não desaparece porque seu pai ou sua mãe estão na prisão. Os direitos existem; mas apenas em teoria, porque não estão sendo cumpridos. O sistema prisional e o sistema de justiça criminal são de responsabilidade do Estado. Os riscos para a saúde mental decorrentes das atuais condições prisionais são bem conhecidos. O impacto do encarceramento dos pais sobre os filhos também é bem conhecido. No entanto, os Estados raramente são responsabilizados por não abordarem o impacto do encarceramento sobre o direito à saúde mental dos presos e de suas famílias. Para promover uma implementação mais inclusiva do direito à saúde, os órgãos internacionais de monitoramento dos direitos humanos devem exigir que os Estados forneçam dados desagregados sobre o impacto do encarceramento no gozo dos determinantes sociais da saúde mental dos presos e de suas famílias, utilizando critérios como raça, gênero, idade, renda e bairro. Esses dados poderiam ser utilizados pela sociedade civil como um argumento adicional em apoio às campanhas existentes pela abolição (ou mudança radical no sistema de justiça criminal) e para promover mudanças transformadoras rumo à justiça racial e à igualdade no gozo do direito à saúde.

¹ See for example A.Y. Davis et al, *Abolition. Feminism, Now*, (Hamish Hamilton 2022).

RESUMEN

Este artículo aborda el impacto de la prisión en el derecho de las personas privadas de libertad y sus familias a disfrutar del máximo nivel posible de salud mental. Argumento que: Las condiciones penitenciarias, tal como existen en la mayor parte del mundo, violan el derecho humano de toda persona a disfrutar de las condiciones sociales necesarias para alcanzar el máximo nivel posible de salud mental (es decir, los determinantes sociales de la salud mental). También violan el derecho a la salud mental de los familiares, especialmente de los niños. El derecho a los determinantes sociales de la salud mental es un derecho justiciable, que los Estados están obligados a respetar, proteger y garantizar en virtud de tratados internacionales de derechos humanos ampliamente ratificados. El derecho de una persona a disfrutar del máximo nivel posible de salud mental no desaparece simplemente por estar en prisión. El derecho de los niños a disfrutar del máximo nivel posible de salud mental no desaparece porque su padre o madre esté en prisión. Los derechos existen, pero solo en teoría, porque no se están cumpliendo. El sistema penitenciario y de justicia penal es responsabilidad del Estado. Los riesgos para la salud mental que plantean las condiciones penitenciarias actuales son bien conocidos. El impacto del encarcelamiento parental en los niños es bien conocido. Sin embargo, rara vez se exige responsabilidades a los Estados por no abordar el impacto del encarcelamiento en el derecho a la salud mental de los reclusos y sus familias. Para promover una implementación más inclusiva del derecho a la salud, los organismos internacionales de vigilancia de los derechos humanos deberían exigir a los Estados que proporcionen datos desglosados sobre el impacto del encarcelamiento en el disfrute de los determinantes sociales de la salud mental de los reclusos y sus familias, utilizando criterios como la raza, el género, la edad, los ingresos y el vecindario. Estos datos podrían ser utilizados por la sociedad civil como un argumento adicional en apoyo de las campañas existentes para la abolición (o un cambio radical en el sistema de justicia penal) y para promover un cambio transformador hacia la justicia racial y la igualdad en el disfrute del derecho a la salud.

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INTRODUCTION

The impact of imprisonment on mental health is well-known and has been well-known for decades. The right to the social determinants of health is also well-known and has been well-known for decades. Given that it is clear that the human right to health (and many other human rights) of prisoners and of their families are being violated routinely, every day, year in year out, it is past time that something should be done about this. At a minimum the number of people affected by imprisonment should be reduced by minimising the size of the prison population. But the opposite is happening, prison population numbers are increasing and sentences are increasing.² In 2024, over 11 million people were imprisoned worldwide, the highest number ever recorded.³ 1 in 3 are in pretrial detention.⁴

The increased rate of female incarceration is especially concerning; between 2000 and 2024 the number of women in prison rose more than 57%.⁵ Since 2000 economic equality has also increased dramatically. Globally between 2000 and 2024, the richest 1% captured 41% of all new wealth, the poorest 50% captured only 1% of all new wealth.⁶ 90% of the world's population live in countries that have income inequality, and 2.3 billion people (one in four) face moderate to severe food insecurity.⁷ Research by Penal Reform International and Women Beyond Walls suggests that the dramatic rise in female incarceration is the result of 'practices that criminalise women for their socio-economic status and vulnerabilities.'⁸ The majority of incarcerated women are Black and are serving sentences for crimes related to poverty such as petty theft, begging, drug abuse, working in the informal economy, and prostitution or for breaches of patriarchal morality standards (such extra-marital sex, violations of dress codes).⁹ A high proportion of female prisoners are parents and some are pregnant. In 2021 nurses and midwives have reported that over 80% of the pregnant women incarcerated in the United States were shackled "sometimes" or "all the time".¹⁰

² Global Prison Trends 2025, Executive Summary, Penal Reform International, page 16

³ Ibid

⁴ Ibid

⁵ H. Fair and R. Walmsley, 'World Female Imprisonment List' 6th Edition, (Institute for Crime and Justice Policy Research, 2025) page 2.

⁶ J. Stiglitz and others, *G20 Extraordinary Committee on Global Inequality*, 4 November 2025, Summary Report, page 5

⁷ Ibid

⁸ *From poverty to punishment Examining laws and practices which criminalise women due to poverty or status worldwide*, (Penal Reform International and Women Beyond Walls 2025), Executive Summary, page 3.

⁹ Ibid, pages 5-7

¹⁰ Ibid, para. 38; Lorie S. Goshin and others, "Perinatal nurses' experiences with and knowledge of the care of incarcerated women during pregnancy and the postpartum period", (2019) 48 *Journal of Obstetric, Gynaecologic, and Neonatal Nursing*, 1; Report of UN Special Rapporteur Tlaleng Mofokeng, *Racism and the right to health*, A/77/179 20 July 2022, para. 39; P. A. Ocen, "Punishing pregnancy: race, incarceration, and the shackling of pregnant prisoners", (2012) 100 *California Law Review*, 5; Suarez, A. I wish I could hold your hand": Inconsistent interactions between pregnant women and prison officers' (2021) 27 *Journal of Correctional Healthcare*, 23

Globally there is a higher proportion of people in prison experiencing mental disorders and psychological distress as compared with the general population and this is particularly true of incarcerated women.¹¹ Prison conditions remain a significant risk factor for poor mental health even after adjustment for preexisting mental health conditions.¹² Environmental factors contributing to the poor mental health of prisoners include unsanitary physical space, limited autonomy, and vulnerability to the violence that is pervasive in most prisons and distress and anxiety at amongst incarcerated parents separated from their children. People who experience poor mental health in prison are at increased risk of violence, victimisation, and self-harm while in custody.¹³ The World Health Organisation reports that suicide is the main cause of death in European prisons and that suicide rates are three times higher in male and nine times higher in female prisoners, when compared to the general population.¹⁴

Imprisonment also affects the families of prisoners. Penal Reform International estimates that millions of children worldwide have a parent in prison: and an estimated 19,000 are living in prison with their parent.¹⁵ These children are often invisible to the justice systems and for the most part are not considered when courts make decisions regarding the imprisonment of parents.¹⁶ Multiple studies have shown that children of incarcerated parents are at a higher risk of experiencing mental health difficulties compared with children without a history of parental incarceration.¹⁷ As well as the loss that comes from being without their parent, many children experience stigma, social isolation, shame and fear, that may result in low self-esteem, depression, disturbed sleeping patterns and symptoms of post-traumatic stress.¹⁸

The prison environment also affects the mental health of prison officers. As Penal Reform International has observed the physical environment in most prisons is 'typically oppressive, not only for people in prison but also the staff

¹¹ L. Favril and E. Van Ginneken, (2024) 'Individual and environmental contributors to psychological distress during imprisonment' *European Journal of Criminology*, 350-369, page 350

¹² Ibid, page 360

¹³ Ibid, page 351

¹⁴ Fact Sheet-Prison Mental Health Disorders, (World Health Organisation Regional Office for Europe, 2022), [https://www.who.int/europe/publications/factsheet---prison-health--mental-health-disorders-\(2022\)](https://www.who.int/europe/publications/factsheet---prison-health--mental-health-disorders-(2022))

¹⁵ Penal Reform International 'Children of imprisoned parents'

<https://www.penalreform.org/issues/children/what-were-doing/children-incarcerated-parents/>

¹⁶ The Australian Institute of Family Studies reports that two in five people entering prison have children that depend on them for their basic needs, and that most females in prison are mothers: M. Truong, 'The impact of parental incarceration on child behaviour and development,' *Australian Institute of Family Studies*, May 2025, <https://emergingminds.com.au/resources/the-impact-of-parental-incarceration-on-child-behaviour-and-development/>

¹⁷ M. Truong, 'The impact of parental incarceration on child behaviour and development,' *Australian Institute of Family Studies*, May 2025, <https://emergingminds.com.au/resources/the-impact-of-parental-incarceration-on-child-behaviour-and-development/>

¹⁸ S. Beresford, N. Loukes and B. Raiques, 'The health impact on children affected by parental imprisonment' (2020), *BMJ Paediatrics Open*, 1-3, page 1

who work there.¹⁹ Research in the UK by the Centre for Crime and Justice Studies has found that the psychosocial impacts of violent prison environments, alongside overwork and ‘toxic macho cultures,’ frequently impact negatively on the mental health of prison officers and their families resulting in post-traumatic stress disorders and depression.²⁰ Globally suicide rates for prison officers is higher than in the general population.²¹

THE RIGHT TO MENTAL HEALTH UNDER INTERNATIONAL HUMAN RIGHTS LAW

Almost all states are party to at least one treaty that requires them to take concrete targeted action towards realising the right of every person to enjoy their highest attainable standard of mental health ‘without discrimination of any kind.’²² Clearly the right to the highest attainable standard of mental health can only be realised if the conditions necessary to enjoy high levels of health are met. Most states are party to international human rights treaties that require them to respect, protect and fulfil the right to health, including the right to its social determinants. The most relevant treaties are the Covenant on Economic Social and Cultural Rights (ICESCR), which has 171 state-parties; the Convention on the Rights of the Child (CRC), which has 196 state-parties; and the International Convention on the Elimination of Racial Discrimination (ICERD) which has 186 state-parties. Brazil is party to all of these treaties. The Committee on Economic Social Cultural Rights (CESCR), the Committee on the rights of the Child (CRC) and the Committee on the Elimination of Racial Discrimination (CERD) have each produced detailed commentary stating clearly and unequivocally that the right to health encompasses the right to the social determinants of health.

The CESCR’s General Comment 14 on the right to health, published in 2000, states that ‘the drafting history and the express wording’ of the right to health under the ICESCR acknowledge that the right to health encompasses a right to the social and environmental conditions in which people can lead a healthy life.²³

The CRC Committee’s General Comment 15 on the right to health, published in 2013, states that children’s right to health, encompasses ‘a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health.’²⁴ State-parties must ‘systematically identify’ the risks and protective factors that impact on the ‘physical, mental, moral, spiritual and social dimensions’ of the health of the child; must ensure that state policies, administrative structures and systems ‘are supportive of children’s right to live in conditions that enable them to

¹⁹ A. Bertelson, ‘A Social Service of Great Importance: Recognising the role of prison staff in rehabilitation,’ 18 January 2022, *Penal Reform International*.

²⁰ K. Harrison and L. Hall, ‘Editorial,’ *Prison Service Journal Special Edition, Issue 268* (Centre for Crime and Justice Studies 2023) <https://www.crimeandjustice.org.uk/prison-service-journal-268>

²¹ PTSD in Prison Employees, *PTSD UK*, <https://www.ptsduk.org/ptsd-in-prison-employees/>

²² E.g. International Covenant on Economic Social and Cultural Rights, Article 12 and 2 (2); Convention on the Rights of the Child, Articles 24 and 2 (1) and 24

²³ CESCR, General Comment 14, E/C.12/2000/4, 11 August 2000, para. 4

²⁴ CRC, General Comment 15, CRC/C/GC/15, 17 April 2013, para. 2

attain the highest standard of health;’ and must take action to address social conditions that are known to have the capacity to compromise children’s health, ‘notably the violence’ that threatens many children.²⁵

CERD Recommendation 37 on the right to health states that:

Freedom from racial discrimination and structural inequalities in key determinants of health includes freedom from disproportionate exposure to vulnerability and health-harming conditions, the right to equal protection of necessary material and psychosocial conditions, the right to be equally protected against practices by private actors that cause harm and the right to the mitigation and reparation of harm.²⁶

In the early days of the development of human rights law, economic, social and cultural rights were commonly viewed as non-justiciable (in contrast to civil and political rights) because implementing them involved political decisions regarding the distribution of economic resources. This view has long since been discarded. As the Committee on Economic Social and Cultural Rights stated in its General Comment 14, regardless of limitations in resources States parties have an immediate obligation to take ‘deliberate, concrete and targeted’ steps towards the full realization of the right to health and ‘have a specific and continuing obligation to move as expeditiously and effectively as possible’ towards that goal.²⁷ Likewise the Committee on the Rights of the Child stated in its General Comment 15, that all state-parties, even where the resources are demonstrably inadequate, are nevertheless ‘required to take immediate action to implement these obligations as a matter of priority and without discrimination of any kind’ and must ‘undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of children’s right to health.’²⁸ Today it is axiomatic within the human rights law field that the right of every person, including every child, to enjoy the social determinants of mental health is as enforceable and justiciable as any other human right – at least in theory.²⁹

But not in practice. The gap between theory and practice is most marked in relation to the rights of communities and individuals that experience racial and/or gender discrimination, especially those who live in economically marginalised neighbourhoods. And it is particularly marked in the context of the criminal justice system. In 2022 the UN Special Rapporteur on the right to health, Tlaleng Mofokeng, produced a report *Racism and the right to health*, based on extensive research, consultation and contributions from civil society. Her report highlighted the fact that Africans and people of African descent are disproportionately represented in prisons in many countries, including Brazil, Colombia, Ecuador, Italy, Portugal and the United States.³⁰

²⁵ Ibid, paras. 16, 17 and 64

²⁶ CERD, *General recommendation No. 37 (2024) on equality and freedom from racial discrimination in the enjoyment of the right to health* CERD/C/GC/37, 21/2/2025, para. 19

²⁷ CESCR, General Comment 14, E/C.12/2000/4, 11 August 2000, paras. 30 and 31

²⁸ CRC, General Comment 15, CRC/C/GC/15, 17 April 2013, para. 72

²⁹ See e.g., B. Saul, D. Kinley, J. Mowbury, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press 2014), 986

³⁰ Report of UN Special Rapporteur Tlaleng Mofokeng, *Racism and the right to health*, A/77/179 20 July 2022, para. 43;

Africans and people of African descent also experience harsher outcomes in terms of bail, prosecutions, convictions, sentence length and capital punishment.³¹ She cites racial profiling and harassment by the police, discriminatory stop and search, ill-treatment, arbitrary arrests, excessive use of force and broad impunity for such violations³² as factors that often amount to violations of the right to health, including mental health. Her report cites higher rates of trauma, anxiety, acute stress and hypertension among highly policed communities. These are also the communities in which many children have parents in prison and to which prisoners will return.³³

THE COLLAPSE OF INTERNATIONAL LAW

It makes no sense to discuss failures in the implementation of human rights law without acknowledging the widespread consensus amongst international lawyers that international law is at a point of partial collapse – particularly in the areas governing use of force, international humanitarian law, international criminal law and international human rights law.³⁴ The United Nations has a core role in upholding international law, and it is clear that it is failing in that task. Alongside a failure to take effective action in response to the rise in authoritarianism globally, the invasion of Ukraine, the Sudan and Rohingya genocides, the world has stood by and watched a genocide against the Palestinian people, directly supported by the United States, Germany, and the UK, which continued to supply arms to Israel during the genocide - and tacitly supported by many other states that have failed to take effective action to stop the genocide. The UN Commission of Inquiry has found that Israel has committed genocide,³⁵ and the International Criminal Court has called for arrests.³⁶ All to no practical effect. A ceasefire supposedly came into effect on 10 October 2025 but Amnesty International reports that the genocide continues unabated.³⁷

As Ardi Imseis has argued ‘the anti-Apartheid Palestine freedom struggle is now *the* socio-political cause of our time, an issue on which the measurement of our collective morality turns and with it, how we read,

³¹ Ibid

³² Report of UNSR Tlaleng Mofokeng, A77/197, 20/7/2022, para. 41

³³ Ibid

³⁴ M. Milanovic, Dystopian International Law (September 05, 2025). *American Journal of International Law*, forthcoming, Available at SSRN: <https://ssrn.com/abstract=5446315>; L. Kinstler, ‘Are we witnessing the death of international law?’ *Guardian* 26 June 2025;

³⁵ UN Human Rights Council Commission of Inquiry ‘Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide’ A/HRC/60/CRP.3, 16 September 2025, <https://www.un.org/unispal/document/commission-of-inquiry-report-genocide-in-gaza-a-hrc-60-crp-3/> ;

³⁶ International Criminal Court Press Release 21 November 2024 <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>

³⁷ A. Callamard, ‘Israel’s genocide against Palestinians in Gaza continues unabated despite ceasefire’ Amnesty International, 27 November 2025, <https://www.amnesty.org/en/latest/news/2025/11/israels-genocide-against-palestinians-in-gaza-continues-unabated-despite-ceasefire/>

understand and apply international law.³⁸ This is not only because of the scale of the genocide but because of the complicity of so many states in carrying out the genocide, particularly the major powers of the global north; also because of the unprecedented scale of the repression of protest in so many states that laud themselves as beacons of democracy. This repression has resulted in an increase in the number of people in prison or facing charges that carry a lengthy prison sentence, at a time when prisons are already overcrowded. In the UK in the last three months alone over 2000 people have been arrested for attending peaceful vigils holding a placard stating 'I oppose genocide. I support Palestine Action.'³⁹ If convicted, the people arrested face up to ten years in prison. A high proportion of the people arrested for protesting the genocide in Gaza and protesting the designation of Palestine Action as a terrorist organisation are older people, some of whom are in their seventies and even eighties. The reason there are so many older people participating in the protests is because they fear that the impact of imprisonment on younger people, especially those with families, will be more severe. If a breadwinner goes to prison the family may face poverty. If a parent goes to prison the children are at a high risk of experiencing mental health challenges and the parent whose spouse is in prison faces a heavy burden too.

Amnesty International has condemned the arrests of peaceful protestors as a violation of international law.⁴⁰ UN experts, including Ben Saul, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have also condemned the proscription of Palestine Action as a violation of human rights law.⁴¹ The UK government has responded by removing Judge Chamberlain, who was due to hear an appeal against the group's proscription, on the day the hearing was supposed to start, without giving any explanation for his removal and also insisting that for security reasons the defendants were not allowed to hear some of the charges against them.⁴²

I think it likely that similar patterns of repression and disregard for human rights law are happening in many other countries, along with

³⁸ A. Imseis, 'On Palestine and the Death of the West's International Legal Order' EJIL Talk! 26 November 2025, <https://www.ejiltalk.org/on-palestine-and-the-death-of-the-west-international-legal-order/>

³⁹ In July 2025, the UK government designated direct action protest group Palestine Action as terrorist organisation because the group damages the property of arms companies that supply Israel (particularly Elbit Systems). This means that any expression for support for the group, even silent peaceful protest against its proscription, is a crime that carries a prison sentence of up to 10 years. THE TERRORISM ACT 2000 (PROSCRIBED ORGANISATIONS) (AMENDMENT) ORDER 2025 2025 No. 803

⁴⁰ Amnesty International UK, 'Palestine Action judicial review a chance for 'disproportionate' proscription to be reversed' Press Release 25 November 2025

⁴¹ UN experts urge United Kingdom not to misuse terrorism laws against protest group Palestine Action, 1 July 2025 <https://www.ohchr.org/en/press-releases/2025/07/un-experts-urge-united-kingdom-not-misuse-terrorism-laws-against-protest> High court hears Palestine Action judicial review challenge in terrorism proscription case, Doughty Street Chambers, 27 November 2025 <https://www.doughtystreet.co.uk/news/high-court-hears-palestine-action-judicial-review-challenge-terrorism-proscription-case>

⁴² H. Siddique, 'Removal of judge in Palestine Action ban legal challenge 'deeply concerning',' *Guardian* 25 November 2025

increased use of incarceration as a means of controlling and suppressing any form of opposition. The International Federation of Human Rights published a report in October 2025 criticising France, Germany, the United Kingdom, and the United States for having weaponised counter-terrorism narratives to suppress dissent, silence solidarity, and criminalise non-violent protest against the genocide in Gaza.⁴³

THE COLLAPSE OF INTERNATIONAL LAW AND INCREASE IN AUTHORITARIANISM AND THE RIGHT TO MENTAL HEALTH OF PRISONERS

It is inevitable that the break-down of key elements of international law will impact particularly severely on prisoners. In this conference Sahar Francis has described the brutal treatment of Palestinian prisoners held in Israeli gaols. The UN Committee on Torture (CAT) in its Concluding Observations following its 6th periodic review of Israel stated that it is deeply troubled by reports of:

a de facto State policy of organized and widespread torture and ill-treatment ...allegations of repeated severe beatings, dog attacks, electrocution, waterboarding, use of prolonged stress positions, sexual violence, threats against detainees and their family members, insults to personal dignity and humiliation such as being made to act like animals or being urinated on, systematic denial of medical care, excessive use of restraints, in some cases resulting in amputation, the performance of surgeries without anaesthetic, exposure to extreme cold or heat, including boiling water, denial of adequate nutrition and water, deprivation of clothing, sleep and access to hygiene facilities and products, including feminine hygiene products, deprivation of light or darkness, use of loud music and noises, denial of the right to freely practice ones religion, and the forcible use of hallucinogenic medication, in a discriminatory manner, against Palestinians, and for purposes including the extraction of information or confessions and as a means of exacting punishment, including collective punishment.⁴⁴

The CAT review of Israel highlights shocking practices of abuse against Palestinians deprived of their liberty, but people in prisons everywhere are vulnerable when torture is perpetrated with impunity. Clearly for people of racially marginalised communities, the international human rights systems established to protect the human rights of prisoners and prevent discriminatory over-policing of communities are not working and have not been working for a long time, in fact probably never worked in practice.

Given the severity and scale of human rights violations to which prisoners are subjected and the current collapsed (or partially collapsed) state of international law, why am I focusing on the right to the social determinants of mental health? After all, the World Health Organisation has been working

⁴³ FIDH, *Solidarity as a Crime: Voices for Palestine Under Fire*, 14 October 2025, <https://www.fidh.org/en/issues/freedom-of-expression/fidh-publishes-a-report-on-the-repression-of-the-solidarity-movement>

⁴⁴ Committee Against Torture, *Concluding observations on the sixth periodic report of Israel*



on the social determinants of health since at least 2008 and have produced an Operational Framework on the Social Determinants of Health Equity in 2024 and a World Report on the Social Determinants of Health Equity – but neither of them makes any reference at all to the human right to the social determinants of physical and mental health.⁴⁵ But if we allow some human rights to continue to be treated as less pressing or less important than other human rights we entrench inequality. Yes, we must highlight and campaign against violations of peremptory norms such the prohibition on torture and other horrific crimes but we also need to address the systemic violations of the right to health that prison conditions engender and that affect generations of predominantly poor racialised communities.

CONCLUSION

In this presentation I have focused on the right to the social determinants of mental health, which is just one of many human rights violations associated with imprisonment. I think it is important to campaign about the right to mental health – as one among many other issues – because the right to the social determinants of mental health has been widely and concretely recognised but there has been virtually no attempt to implement it – which gives a very specific ground to challenge current practices. And it ties in with the work of the World Health Organisation which has been working on the need to address inequities in enjoyment of the social determinants of health since 2008 and produced several detailed reports – which unfortunately fail to address human rights effectively or in any depth.⁴⁶ It's a gap that can be worked on through advocacy.

And there are new materials available to support that work. For example, the Committee on the Elimination of Racial Discrimination published *General recommendation No. 37 on equality and freedom from racial discrimination in the enjoyment of the right to health* in November 2024. It states that in order to comply with their right to health obligations under ICERD, ‘States parties should refrain from: “Engaging in the overpolicing of communities, racial profiling, increased surveillance and other forms of policing activity that have a negative impact on the mental health and well-being of individuals and their families.”⁴⁷ Recommendation 37 also states that state-parties should refrain from the use of solitary confinement and chemical agents, except under strictly defined conditions that are assessed regularly for racial bias.⁴⁸ Members of racial and ethnic groups ‘have the right not to be subjected to disproportionate incarceration, which exposes them to

⁴⁵ *Operational Framework for Monitoring Social Determinants for Health Equity* (WHO 2024); *World Report on the Social Determinants of Health Equity* (WHO 2025).

⁴⁶ *Closing the gap in a generation: health equity through action on the social determinants of health - Final report of the commission on social determinants of health*, (WHO 2008); *Operational Framework for Monitoring Social Determinants for Health Equity* (WHO 2024); *World Report on the Social Determinants of Health Equity* (WHO 2025),

⁴⁷ CERD, *General recommendation No. 37 (2024) on equality and freedom from racial discrimination in the enjoyment of the right to health* CERD/C/GC/37, 21/2/2025, paragraph 51(j)

⁴⁸ *Ibid*, paragraph 51 (l)



inadequate healthcare, violence, mental health challenges and barriers to reintegration into society.⁴⁹ The report states that this requires the provision of alternatives to detention and the provision of humane conditions where detention is strictly necessary.⁵⁰ State-parties at their periodic review before the Committee on the Elimination of Racial Discrimination, or before the Human Rights Council or other treaty bodies, such as the Committee on the Rights of the Child, will need to explain what steps they have taken to comply with this recommendation – and NGOs and civil society can use this to push for change.

⁴⁹ Ibid, paragraph 27

⁵⁰ Ibid, paragraph 27

