

## ***Human Rights Violations throughout the PA DOC***

During the last two years HRC/Fed Up! has reviewed thousands upon thousands of pages of prisoner letters/reports, civil actions, institutional paperwork, affidavits, criminal complaints, and additional documentation detailing patterns of widespread, systemic, deliberate human rights violations throughout the PA DOC. The thrust of this documentation has been corroborated via countless hours of conversation and interviews with current and former prisoners and their families conducted by HRC members, allies, supporters, and others working directly and indirectly with HRC, in both their personal and professional capacity.

In this context, the reports from SCI Dallas summarized in section II represent a minor, albeit illustrative, fraction of the human rights violations perpetrated by the PA DOC on a daily basis.

The patterns of violations gravitate around the solitary confinement units, which are the core of control throughout the state just as in SCI Dallas. According to PA DOC official statistics for the month of October 2009, there were 2,846 prisoners in some form of solitary confinement.<sup>1</sup>

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<sup>1</sup> These numbers do not identify prisoners in the Special Management Unit (SMU) or Death Row prisoners, and appear to be incomplete in identifying those confined in a series of Secure Special Needs Units (SSNU) around the state such as those at SCI Pittsburgh, SCI Retreat, and others. Whether these prisoners are included in

Unlike many other states, where high-security prisoners are confined in one or two supermaximum-security prisons, the PA DOC has a decentralized system of high-security solitary confinement/control units (known as Restricted Housing Units, or RHUs) in each of the 26 prisons it operates.<sup>2</sup> Fifteen of these control units confine over 100 prisoners, with SCIs Graterford (250), Greene (241), Camp Hill (218), Fayette (197), Huntingdon (141), Forest (134), and Dallas (119) possessing the largest. The two women's prisons, SCIs Cambridge Springs (13) and Muncy (117) accounted for 130 of the solitary confinement population at the end of October.<sup>3</sup>

While many of those in the RHU serve a 30-60 day sentence in solitary for an alleged disciplinary infraction, a number of others have been subjected to long-term isolation with no means for improving their confinement status. Several of these prisoners have been confined for 5 years and longer, even more than 25 years in a few instances. As at SCI Dallas, those most heavily targeted for indefinite lockdown are jailhouse lawyers,

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the total for RHU classifications or elsewhere, or not included, is not clear.

<sup>2</sup> The PA DOC actually operates 27 facilities when the Quehanna Boot Camp is included. The boot camp does not have a RHU.

<sup>3</sup> Figures taken from the PA DOC Monthly Population Report for October 2009, [http://www.cor.state.pa.us/portal/lib/portal/monthly\\_population.pdf](http://www.cor.state.pa.us/portal/lib/portal/monthly_population.pdf).

political activists, the mentally ill, and blacks and Latinos.

The effect of the regime of solitary confinement on the rest of the prisoner population is predictable and undoubtedly intentional: to terrorize prisoners into total submission to the arbitrary power of prison staff and officials regardless

of whether that power is being exercised in accordance with policy and law.

The subsequent capsule descriptions of major human rights violations in the PA DOC situates the conditions at SCI Dallas in a broader context and hence renders them more comprehensible.

## ***Summary Report on Human Rights Violations in the PA DOC***

### **Assault/physical abuse**

PA DOC policy stipulates that “When force is used, the least amount of force, reasonably necessary to achieve the authorized purpose is to be used and the use of force will stop once control is achieved.”

There is also a prohibition on the use of force “as a means of punishment or revenge.”<sup>4</sup> These policy mandates are routinely subordinated when prison personnel find it in their interest to terrorize specific individuals and the rest of the prisoner population by making an example of someone.

Assaults, physical abuse, and threats of violence from guards occur with systematic frequency, establishing a baseline of terror throughout the prisoner population. Those who file grievances or pursue other avenues for redress such as civil litigation or reporting to outside authorities are regularly targeted for verbal and

physical harassment. General population prisoners who are subject to provocation and assault by staff are virtually always issued fabricated misconduct charges for assaulting staff and sentenced to a term in solitary confinement. Once in solitary these prisoners are often deprived food, personal property, writing materials and grievance forms, access to medical treatment, and otherwise subjected to deprivations and punitive measures designed to reinforce the total helplessness of prisoners and their absolute dependency on staff for their very survival. Prisoners held in solitary confinement who insist on exercising their rights to file grievances and lawsuits, or who otherwise develop an antagonistic relationship with staff are even more vulnerable to physical abuse since they are not permitted to leave their cells without being handcuffed and often shackled. Reports of guards throwing handcuffed prisoners against walls, yanking their handcuffed arms through the tray slot in the door, and punching and kicking defenseless victims are not uncommon. The threat and reality

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<sup>4</sup> PA DOC Policy DC-ADM 201-1, Use of Force, section V(B)(D), [http://www.cor.state.pa.us/standards/lib/standards/DC-ADM\\_201\\_Use\\_of\\_Force.pdf](http://www.cor.state.pa.us/standards/lib/standards/DC-ADM_201_Use_of_Force.pdf).

of arbitrary and excessive bodily violence is both the psychological and physical lynchpin of control. Such acts violate, *inter alia*<sup>5</sup>, article V of the Universal Declaration of Human Rights (UDHR) prohibiting torture and other ill-treatment, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>6</sup>

### **Mental Health and the Psychological Impact of Solitary Confinement**

A vastly higher prevalence of psychological instability and disorder exists amongst the prisoner population than within the population at large.<sup>7</sup> The rate of mental illness becomes higher yet amongst those confined in control units. Responses to questionnaires sent to large numbers of prisoners led the U.S. Bureau of Justice Statistics to claim in a September 2006 report that as many as 56% of state prisoners likely suffer from a mental health problem,<sup>8</sup> based on the presence of a recent history or

symptoms of mental health problems.

The Vienna, Virginia-based corporation MHM Correctional Services, Inc. (MHM) signed a new contract with the PA DOC towards the end of 2008 for the provision of mental health care services between January 1, 2009 and August 31, 2013. The contract is worth \$91,000,000.<sup>9</sup>

While MHM claims that it is “successful” in meeting the “unique challenge” posed by prisoners with mental illness<sup>10</sup>, reports of severe psychological deterioration and inadequate, often non-existent, and sometimes abusive treatment are commonplace. Those held in solitary confinement are treated to cursory visits from psych staff and forced to speak with them at their cell door, which has an inhibiting effect on one’s willingness to discuss his symptoms for fear of being overheard by guards and other prisoners. Prisoners prescribed medication to counter suicidal depression have had these prescriptions discontinued with devastating consequences, none more so than the case of Matthew Bullock. In other instances excessive medication is substituted for mental health care.

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<sup>5</sup> a legal term meaning “amongst other things.”

<sup>6</sup> Brownlie and Goodwin-Gill, eds., *Basic Documents on Human Rights, Fifth Edition*, p. 25 and 405-416 respectively.

<sup>7</sup> Terry Kupers, *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It*. Dr. Kupers writes that “The prevalence of mental disorders among prisoners is quite high, at least five times the prevalence rates in the general population,” p. 11.

<sup>8</sup> “Mental Health Problems of Prison and Jail Inmates,” Doris J. James and Lauren E. Glaze, *Bureau of Justice Statistics Special Report*, September 2006.

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<sup>9</sup> Service Purchase Contract between Pennsylvania, Department of Corrections and MHM Correctional Services, Inc., [http://www.cor.state.pa.us/boa/lib/boa/MHM\\_Correctional\\_Services\\_Inc.SP\\_1181000376.pdf](http://www.cor.state.pa.us/boa/lib/boa/MHM_Correctional_Services_Inc.SP_1181000376.pdf).

<sup>10</sup> <http://www.mhm-services.com/services/correctional-mental-health.html>

The regime of solitary confinement both exacerbates and generates psychological instability, abnormality, and disorder, therefore perpetuating an escalating cycle of mental illness and suffering inside and outside the prisons. The scientific consensus deduced from copious research on the psychological impact of solitary confinement is that the experience generates considerable and sometimes permanent mental suffering. One of the foremost experts on the subject, Dr. Stuart Grassian, reveals that “even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium,” and outlines the following seven symptoms as being characteristic of an “organic brain delirium” associated with solitary confinement:

- a) hyperresponsivity to external stimuli;
- b) perceptual distortions, illusions, hallucinations;
- c) panic attacks;
- d) difficulties with thinking, concentration, and memory;
- e) intrusive obsessional thoughts: emergence of primitive aggressive ruminations;
- f) overt paranoia;
- g) problems with impulse control.<sup>11</sup>

Questionnaires submitted by HRC/Fed Up! to over 75 prisoners in

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<sup>11</sup> Stuart Grassian, “Psychiatric Effects of Solitary Confinement,”

SCI Dallas and throughout the state confirm the presence of these same symptomatic patterns amongst a disturbingly large number of the solitary confinement population. Incidents of self-harm, including suicide attempts, occur regularly and are certainly under-reported. Prisoners have reported setting their cells on fire, self-mutilation, and attempts to hang themselves. The common response from prison staff in these circumstances is to send guards in riot gear into the cell to “extract” the prisoner, often attacking him with pepper spray first, and then forcibly transporting the cuffed and shackled inmate to a psychiatric observation cell where he is subjected to even more intensive isolation. Several prisoners have reported being kept in such cells without bedding, a mattress, running water, or clothes for days at a time. This brutality exacerbates and multiplies the incidence of mental health problems inside prisons where “a large subgroup develop[] the disturbances that make their lives more miserable only after being incarcerated.”<sup>12</sup>

Other rights to adequate mental health care are violated by structural and procedural deficiencies, including lack of funding, staffing, privacy, inpatient treatment programs, and negligent and abusive practices.

HRC/Fed Up! finds the predictable psychological consequences of these

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<sup>12</sup> Terry Kupers, *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It*, p. 38.

conditions is of such an egregious and apparent nature that it cannot be credibly understood as anything other than the deliberate intention of the PA DOC to inflict severe mental pain on prisoners targeted for prolonged solitary confinement. While the utilization of solitary confinement as a retaliatory measure represents an obvious human rights violation, the application of these techniques of control is invalid—and illegal—if there is no identifiable rehabilitative or penological consequence as well.

Simply put, there is no legitimate rehabilitative pretext that can justify subjecting those found guilty of violating prison rules and regulations to conditions of isolation so extreme as to constitute torture.

The proliferation of solitary confinement units represents the ascendance of a purely punitive approach to incarceration. While the dominant discourse on questions of crime and incarceration validate the debate between a punitive or rehabilitative approach to incarceration, black-letter international law is unambiguous on this matter. The role of solitary confinement in perpetuating an ever-escalating cycle of incarceration in PA and throughout the U.S. subverts article 10(3) of the International Covenant on Civil and Political Rights, which mandates that “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social

rehabilitation.”<sup>13</sup> “Tough on crime” punitive approaches that fail to address root social causes of crime and neglect to provide adequate educational, vocational, therapeutic, and counseling services to people sentenced to prison are not only responsible for propagating the cycle of violence and social deterioration—and therefore decidedly not “tough” on crime—but are also in violation of international law.

These conditions also violate, *inter alia*, article V of the UDHR and the Convention against Torture<sup>14</sup>. By exacerbating and generating a greater incidence of mental illness and denying adequate treatment the PA DOC is also violating the United Nations’ Standard Minimum Rules for the Treatment of Prisoners rule 22(1), which states that: “The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality”.

### **Malign Neglect: Profit over Prisoners**

In 1988 the United Nations General Assembly passed Resolution 43/173, the Body of Principles for the Protection of All Persons Under

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<sup>13</sup> Brownlie and Goodwin-Gill, eds., *Basic Documents on Human Rights, Fifth Edition*, p. 362

<sup>14</sup> Brownlie, p. 25 and 405-416 respectively.

Any Form of Detention or Imprisonment. Principle 24 states:

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.<sup>15</sup>

This provision affirming a right to medical care corresponds with the 1978 U.S. Supreme Court ruling in *Estelle v. Gamble*, which found that deliberate indifferences to serious medical needs of prisoners constitutes a violation of 8<sup>th</sup> amendment rights to be free from cruel and unusual punishment.<sup>16</sup>

Summarizing data on infectious diseases in prison populations, a 2007 report found that rates of HIV/AIDS and other sexually transmitted diseases (STDs), tuberculosis (TB), and Hepatitis A, B, and C amongst the incarcerated far exceed occurrences amongst the general public. The rate of HIV/AIDS in prisons has been estimated at five to seven times greater than in the general population. The proportion of prisoners with hepatitis falls within the approximate range of 15 and 30 percent. TB cases in prisons are five times the national average. The report continues:

An analysis conducted for the U.S. Congress, by the National

<sup>15</sup> Brownlie, p. 93.

<sup>16</sup> *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

Commission on Correctional Health Care, found that 20 to 26 percent of the U.S. population living with HIV/AIDS, 29 to 32 percent of persons with Hepatitis C, and 38 percent of those with TB were *released* from a correctional facility. Transmitted through unprotected sex, tattooing, sharing syringes, and close living quarters, and fostered by inadequate prison health care, these diseases are ravaging the prison population. Public health experts are beginning to ponder the consequences of this health crisis, as the large majority of these prisoners will one day be released back to society.<sup>17</sup> [emphasis in original]

Another threat to public health is the rapid spread throughout the nation's prisons and jails of the "superbug", methicillin resistant staphylococcus aureus, or MRSA. Determined to be the "cockroach of bacteria" by the Centers for Disease Control and Prevention, MRSA (pronounced mer-sa) "has the power to disable, disfigure and kill the people who come into contact with it." 19,000 out of the estimated 94,000 U.S. Americans with MRSA died as a result of the "superbug" in 2005 alone. Pennsylvania is amongst a handful of states with

<sup>17</sup> *Violations of Articles 1, 2 and 5 of the International Convention on the Elimination of all forms of Racial Discrimination in U.S. Prisons: A Response to the Periodic Report of the United States of America*, Prison Working Group, p. 20, October 2007.

particularly virulent outbreaks of MRSA in detention facilities.<sup>18</sup>

Given that prisons are incubators of disease and that over 90% of prisoners will be released into our communities someday, the imperative for providing adequate health care to the incarcerated population is not only a legally-mandated but pragmatic and commonsense public health policy as well. For this reason it is nothing short of scandalous that the PA DOC has privatized the provision of medical services and contracted this responsibility to Prison Health Services, Inc. (PHS), a Tennessee-based for-profit corporation that has left a trail of corpses and lawsuits in its wake around the country.

In 2005 Paul von Zielbauer published an expose of PHS in the pages of the New York Times based on extensive investigations of PHS practices around the U.S., documenting widespread instances of wrongful death, malpractice, skeletal staffing, denial of medications, and other neglectful and abusive practices. Summarizing his findings Zielbauer wrote, “A yearlong examination of Prison Health by The New York Times reveals repeated instances of medical care that has been flawed and sometimes lethal. The company’s performance around the nation has provoked criticism from judges and sheriffs, lawsuits from inmates’ families and whistle-

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<sup>18</sup> “Deadly Staph Infection ‘Superbug’ Has a Dangerous Foothold in U.S. Jails,” Silja J.A. Talvi, *Prison Legal News*, May 2008.

blowers, and condemnation by federal, state and local authorities. The company has paid millions of dollars in fines and settlements.”<sup>19</sup>

The PA DOC signed a five-year contract with PHS for the provision of medical care, excluding mental health and pharmacy services, to all facilities under their control that initially went into effect on September 1, 2003.<sup>20</sup> The contract was worth \$308,254,642. In February 2007 the contract was extended from its initial expiration date of August 31, 2008 to August, 31 2013.<sup>21</sup>

Incentives for denying care are embedded in the contract, in particular the section on the annual aggregate cap, which reads in part:

PHS has budgeted an annual aggregate cap of **twenty million five hundred thousand dollars (\$20,5000,000)** to cover outside medical services in contract Year One. Additionally, PHS proposes a 50/50 sharing between PHS

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<sup>19</sup> Paul von Zielbauer, “Harsh Medicine: As Health Care in Jails Goes Private, 10 Days Can Be a Death Sentence,” *New York Times*, February 27, 2005.

<sup>20</sup> Medical Services Agreement Between Commonwealth of Pennsylvania, Department of Corrections and Prison Health Services, Inc., signed August 6, 2003, <http://www.cor.state.pa.us/boa/lib/boa/phsSignedContract.pdf>.

<sup>21</sup> Contract Modification Agreement No. 3 to Medical Services Agreement Between Commonwealth of Pennsylvania, Department of Corrections and Prison Health Services, Inc., signed February 4, 2007, <http://www.cor.state.pa.us/boa/lib/boa/PHSAttachment3.pdf>.

and the DOC of any costs incurred between **\$20,500,000** and **\$22,500,000**. Costs that *exceed* \$22,500,00 in Year One shall be the responsibility of the DOC.<sup>22</sup>

Outside medical services include “medical and psychiatric hospitalization, off-site physicians’ and specialists’ fees, emergency room fees, ambulance transportation expenses, off-site and mobile surgery services, and the cost of any dialysis treatment provided off-site as well as on-site dialysis services at SCI Graterford and SCI Muncy.”<sup>23</sup>

By entrusting the health and lives of PA prisoners to the likes of PHS it is no surprise that reports of medical neglect and abuse are rampant. Examples of poor practices and inadequate treatment include withholding of medications; refusal of outpatient services and necessary surgeries; denial of prisoner requests to view their medical records; failure to follow policy and document injuries when these might indicate staff liability for injuries (i.e. after guards beat or abuse a prisoner); the absence of any mechanisms other than civil litigation for prisoners to seek remedy, which—in the rare cases where claims are upheld—provide redress for wrongs virtually always after the damage has been done.

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<sup>22</sup> Medical Services Agreement Between Commonwealth of Pennsylvania, Department of Corrections and Prison Health Services, Inc., <http://www.cor.state.pa.us/boa/lib/boa/phsSignedContract.pdf>.

<sup>23</sup> *ibid.*

Skin conditions, hernias, and cataracts have been ignored or given cursory attention. Prisoners concerned about their exposure to infectious diseases, especially those in solitary units who have been placed in cells with blood and bodily waste, have been denied diagnostic tests or had the documented results withheld.

HRC/Fed Up! has accumulated ample testimony to conclude that the business practices detailed in the 2005 New York Times expose of PHS have not been amended in any substantive manner and persist to this day.

### **White Supremacist Racism**

The U.S. criminal legal system is saturated with white supremacist racism at every level, from policing priorities to arrests, convictions to sentencing.

In April 2007, a group of human rights workers concerned with the U.S. prison system issued a shadow report to the United States periodic report to the United Nations regarding compliance with the International Convention on the Elimination of all forms of Racial Discrimination. The shadow report, in which the normalized racism of the prison system is summarized, states the matter with blunt clarity: “Conditions in prisons and jails in the US are horrific. The notion of rehabilitation in most facilities has been forgotten and prisons/jails have become warehouses for many

of the marginalized segments of American society.”<sup>24</sup>

In reviewing the U.S. report the UN Committee on the Elimination of Racial Discrimination (CERD) noted that the “stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, may be regarded as factual indicators of racial discrimination,” and subsequently recommended that “all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs of administering justice” be taken and advocated “the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.”<sup>25</sup>

The concerns articulated by the CERD acknowledge, however modestly, that the criminal legal system operates according to the logic of white supremacy. While this structure of domination functions within a complex variety of social

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<sup>24</sup> *Violations of Articles 1, 2 and 5 of the International Convention on the Elimination of all forms of Racial Discrimination in U.S. Prisons: A Response to the Periodic Report of the United States of America*, Prison Working Group, October 2007.

<sup>25</sup> Committee on the Elimination of Racial Discrimination (CERD), “Consideration of Reports Submitted by State Parties Under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, United States of America,” CERD/C/USA/CO/6, May 8, 2008.

institutions and at varying degrees of psychological awareness, white supremacy is and always has been a reality of life in the United States.

Illustrating some markers of this reality, the Pew Center on the States issued a report in 2009 revealing that “Black adults are four times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults—9.2 percent—was under correctional supervision at year end 2007.”<sup>26</sup>

Perhaps even more illuminating is the fact that black males are incarcerated at a rate of 4,919 per 100,000 in the U.S. today, while apartheid South Africa, by comparison, incarcerated black males at a rate of 851 per 100,000 in 1993.<sup>27</sup>

These same patterns are apparent in Pennsylvania as well, where blacks account for 48.8% of the total state prison population despite only representing 10.8% of the state population. Similarly, while persons of Hispanic or Latino origin represent but 4.8% of the state population they account for 10.8% of the state prison total.<sup>28</sup> That all but

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<sup>26</sup> “One in 31: The Long Reach of American Corrections,” The Pew Center on the States, 2006.

<sup>27</sup> Figures on incarceration rates taken from [http://www.prisonpolicy.org/articles/not\\_equal\\_opportunity.pdf](http://www.prisonpolicy.org/articles/not_equal_opportunity.pdf).

<sup>28</sup> State prison population figures taken from the Pennsylvania Department of Corrections Monthly Institutional Profile, October 31, 2009, [http://www.cor.state.pa.us/portal/lib/portal/monthly\\_profile.pdf](http://www.cor.state.pa.us/portal/lib/portal/monthly_profile.pdf). State population percentages

one of Pennsylvania's state prisons are situated in locales with a predominant—often over 90%—white/euro-American population has helped fuel the racial discrimination and brutality that are defining characteristics of the state prison system. Of the 24 locales in which the PA DOC's 27 institutions are found—including the two women's prisons, the boot camp, and a facility for juvenile offenders—15 of these possess a white population in excess of 95%. 17 out of 24 have an over 90% white population, while a full 22 of 24 have white populations above 80%.<sup>29</sup>

These patterns correspond to national trends to push prison expansion on economically depressed white rural communities as a means of job creation, which generates an incentive for working class whites and political representatives from those communities to develop a vested interest in the warehousing of vast numbers of poor people from communities of color.

While such statistical indicators of racial discrimination can be multiplied at considerable length<sup>30</sup>

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can be found at the U.S. Census Bureau website, State and County QuickFacts, <http://quickfacts.census.gov/qfd/states/42000.html>.

<sup>29</sup> Figures taken from the U.S. Census Bureau website,

<http://factfinder.census.gov/home/saff/main.html?lang=en>

<sup>30</sup> See *Race to Incarcerate*, Marc Mauer, for information and analysis on racial disparities in policing practices, arrest rates, sentencing practices, and drug enforcement; for evidence on

numbers can never begin to adequately depict the human impact of structural racism. The reports received by HRC/Fed Up! testify to the reality of widespread racism on the part of prison personnel. We have received a number of reports about flagrantly racist guards, some even boasting of their membership in white nationalist organizations such as the Ku Klux Klan. The use of racist slurs to intimidate, humiliate, and terrorize prisoners are commonplace in the control units, which have a higher proportion of people of color than the general population. While there have been reports of guards threatening to lynch prisoners and racist pictures and graffiti being left for intended targets, much of the racism occurs in the context of daily operations. For example, the issuance of fabricated misconducts and placement in solitary confinement, or verbal abuse of a racist type directed at those who file grievances. Other examples of racism include reports from several Latino prisoners that they are being held in solitary confinement on the basis of confidential evidence alleging gang affiliation, and black Muslims being denied Nation of Islam and other related literature.

Structural racism and the manifestations thereof detailed in this report violate Article 2 of the

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racial disparities in life sentences see The Sentencing Project's July 2009 report *No Exit: The Expanding Use of Life Sentences in America*; and see *Punishment and Prejudice: Racial Disparities in the War on Drugs*, Human Rights Watch, May 2000.

UDHR<sup>31</sup> and, articles II and V of the International Convention on the Elimination of all forms of Racial Discrimination. The severe obstacles for prisoners who seek protection and remedy in instances of racial discrimination (see the section on the Denial of Due Process) violate Article VI of the ICERD, which stipulates that “State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination . . .”<sup>32</sup>

Conditions in PA prisons and SCI Dallas in particular also fit the definition of the crime of apartheid as defined in Article II(a)(ii) of the International Convention On the Suppression and Punishment of the Crime of Apartheid. The relevant sections stipulate that apartheid is present when there is a “Denial to a member or members of a racial group or groups of the right to life and liberty of person” via “the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or

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<sup>31</sup> Brownlie and Goodwin-Gill, eds., *Basic Documents on Human Rights, Fifth Edition*, p. 24. Article II of the UDHR states “Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>32</sup> *Ibid.* p. 340

degrading treatment or punishment.”<sup>33</sup>

### **Denial of Due Process: Grievances, Misconducts, and Access to the Courts**

Any analysis of the factors that generate, enable, and sustain human rights violations in U.S. prisons has to take into account the role of the courts in monitoring conditions, adjudicating disputes, and enforcing rulings in particular instances. Prisoners’ rights in this respect are enshrined in articles VI and VII of the Universal Declaration of Human Rights, which respectively proclaim that “All are equal before the law and are entitled without any discrimination to equal protection of the law”, and that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.<sup>34</sup> Affirming the same principles of due process and equal protection, Amendment XIV of the U.S. Constitution, proclaims that no state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.

### **Prison Litigation Reform Act**

The rights of prisoners to access the courts have been severely restricted as a consequence of the Prison Litigation Reform Act (PLRA), passed into law by the U.S. Congress in

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<sup>33</sup> *Ibid.* p. 383

<sup>34</sup> *Ibid.* p. 25

1996. Barriers to the exercise of this fundamental constitutional and human right erected by the PLRA relevant to this report include:

- 1) the exhaustion of remedies requirement: Prior to filing a lawsuit prisoners are required to exhaust the prison's administrative grievance procedure;
- 2) the physical injury requirement: mental or emotional injury is insufficient to substantiate a claim that one's right were violated unless it can be demonstrated that there was a prior physical injury;
- 3) restrictions on court oversight of prison conditions: the power of federal courts to enforce orders that provide correctives to unlawful conditions has been hindered;
- 4) limitations on attorney fees: the amount of money attorneys are able to collect from successful cases brought on behalf of prisoners whose rights have been violated has been limited by the PLRA.<sup>35</sup>

Proponents of the legislation alleged that prisoners were prone to filing excessive and frivolous lawsuits, and that the PLRA would eliminate abuse of the courts and weed out unworthy claims. Contrary to these assertions, prisoner lawsuits were about as common as lawsuits brought by non-prisoners, and these

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<sup>35</sup> *No Equal Justice: The Prison Litigation Reform Act in the United States*, Human Rights Watch, May 2009; p. 2

often involved non-frivolous claims similar to the violations detailed in this report.<sup>36</sup> Furthermore, if the actual intent of the legislation were to discourage and hinder the filing of unworthy lawsuits then it follows that prisoners should have begun to win a higher percentage of cases subsequent to the passage of the PLRA. But the PLRA has had precisely the opposite effect as prisoners have filed less lawsuits and won an even smaller proportion of these cases.<sup>37</sup>

In May 2009, Human Rights Watch (HRW) released a report on the effects and constitutionality of the PLRA, finding that "The effect . . . on prisoners' access to the courts was swift. Between 1995 and 1997, federal civil rights filings by prisoners fell by 33 percent, despite the fact that the number of incarcerated persons had grown by 10 percent in the same period. By 2001 prisoner filings were down 43 percent from their 1995 level, despite a 23 percent increase in the incarcerated population. By 2006 the number of prisoner lawsuits filed per thousand prisoners had fallen 60 percent since 1995."<sup>38</sup> The report also found that "the number of states with less than 10 percent of their prison populations under court supervision more than doubled, from 12 to 28."<sup>39</sup>

As a consequence of the PLRA's restrictions on prisoners' rights to

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<sup>36</sup> *ibid.* p. 9

<sup>37</sup> *ibid.* p. 3

<sup>38</sup> *ibid.* p. 3

<sup>39</sup> *ibid.* p. 35

access the courts and its erosion of judicial power to regulate conditions by court order HRW concluded that the PLRA is “fundamentally at odds” with the requirements of international law, specifically article 14 of the International Covenant on Civil and Political Rights, which stipulates that “All persons shall be equal before the courts and tribunals”.<sup>40</sup> The UN Committee Against Torture also found that the PLRA violated fundamental human rights, noting that the physical injury requirement is a contravention of article 14 of the Convention Against Torture, which requires redress for victims. The Committee accordingly recommended that “The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly”.<sup>41</sup>

It is in this context of an expanding prison population that possesses increasingly diminished access to the courts that the routine reports of anti-prisoner bias in the administration of grievance and misconduct processes are to be understood.

## Misconducts

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<sup>40</sup> <sup>40</sup> Brownlie and Goodwin-Gill, eds., *Basic Documents on Human Rights, Fifth Edition*, p. 362

<sup>41</sup> Committee Against Torture (CAT), “Consideration of Reports Submitted by State Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, United States of America,” CAT/C/USA/CO/2, May 18, 2006.

Prisoners alleged to have violated prison rules and regulations are to be issued a misconduct report stating the “facts upon which the charges are based” as written by the staff member making the charges, a contractor employee with personal knowledge of the violation, or by another staff member who has been instructed to do so at the request of a person with personal knowledge of the incident in question.<sup>42</sup> Aside from lesser offenses, which might be subject to informal resolution, in which no hearing takes place, prisoners charged with a misconduct are granted an appearance before the institution’s hearing examiner. While policy stipulates that prisoners are permitted to call witnesses to testify to their knowledge of the events in question, this aspect of due process is frequently subverted on the grounds that such witnesses are not needed to determine guilt or innocence. Prisoner requests for the presentation of security camera footage regarding the incident at hand are virtually always denied as well.

Such a rationale does make for a consistent kind of logic, as the primary factor in determining guilt or innocence in misconduct cases is apparently not evidence, but rather the fact that one is a prisoner typically determines that he or she is guilty as well. Once found guilty a stint in solitary confinement follows. These can last from 30 days to

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<sup>42</sup> PA DOC Policy DC-ADM 801, Inmate Discipline, Section 1(B), [http://www.cor.state.pa.us/standards/lib/standards/801\\_Inmate\\_Discipline.pdf](http://www.cor.state.pa.us/standards/lib/standards/801_Inmate_Discipline.pdf).

longer, and can of course be extended without restraint given the rubber-stamp quality of misconduct procedures.

Reports of guards abusing the misconduct system to “bury” somebody in solitary are received from all over the state each week. Most reports of this kind usually begin with a description of how a prisoner felt compelled to file a grievance against an abusive staff member and was subsequently issued a misconduct for an infraction that they did not commit. If the prisoner still feels aggrieved and unwilling to acquiesce silently to the arbitrary machinations of prison staff misconducts can be issued endlessly with little concern that supervisory staff will disapprove let alone discipline staff who abuse their authority in such a manner. Along with SCI Dallas, the prisons at Camp Hill, Fayette, Greene, and other control units have made this a normalized tactic in silencing grievances and intimidating those who file lawsuits.

## **Grievances**

Prisoners in the PA DOC have the option of filing grievances regarding staff misconduct and/or inadequate conditions of confinement. The initial grievance is handled by an institutional grievance officer, appeals go to the Superintendent, and the third and final level of appeal is DOC Central Office in Camp Hill.<sup>43</sup> While the formal

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<sup>43</sup> PA DOC Policy DC-ADM 804, Inmate Grievance System,

purpose of the grievance system is to provide an avenue for prisoners to resolve problems within the institutional framework of the PA DOC, the operative reality of the grievance system is that it functions to repress claims of abuse and substandard conditions and obstruct access to the courts.

Official PA DOC grievance statistics for the period between January 1, 2008 and April 29, 2009 obtained through a Right-To-Know request reveal the systematic anti-prisoner bias in the system with stark clarity. During this sixteen-month period less than 2% of prisoner grievances were decided in favor of the inmate. For the years 2008 and the first four months of 2009 respectively, approximately 20% and 18% of grievances were unilaterally resolved by the prison administration, which does not mean the inmate is satisfied. The remainder are denied or dismissed on their merits or because of failure on the part of the prisoner to adhere to procedural requirements. To put it another way, over 98% of prisoner grievances are not resolved in a manner that is satisfactory to the inmate.<sup>44</sup>

The systematic refusal to address prisoner grievances in an honest and constructive way discourages many from using the system at all. Those who do learn quickly not to expect fairness. Several prisoners have reported being told explicitly that

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[http://www.cor.state.pa.us/standards/lib/standards/DC-ADM\\_804\\_Inmate\\_Grievances.pdf](http://www.cor.state.pa.us/standards/lib/standards/DC-ADM_804_Inmate_Grievances.pdf).

<sup>44</sup> PA DOC Inmate Grievance Tracking System Summary Totals, on file.

the testimony of guards will be believed no matter the truth of the matter. Refusal to permit prisoners to call witnesses or present security camera footage in support of their claims is as prevalent in the grievance system as it is in the misconduct process. The frustration, demoralization, and anger engendered by these practices is predictable and of no apparent concern to DOC administrators and personnel.

As evidenced in the preceding pages, prisoners who file grievances almost invariably arouse the ire of staff and consequently find themselves targeted by retaliatory actions. HRC/Fed Up! has received countless reports from people subjected to long-term solitary confinement on the basis of fraudulent misconducts that were issued after the inmate attempted to utilize the grievance system.

Given the conditions of solitary confinement outlined above and the brutality, filth, racism, and psychological disorientation accompanying such conditions, the issuance of fabricated misconducts for retaliatory purposes should be understood as a violation of the Convention Against Torture. The UN Committee Against Torture, in its consideration of a U.S. report regarding its compliance with the convention, noted in regard to conditions in U.S. prisons that “The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their

mental health and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).”<sup>45</sup>

Prisoners in solitary confinement are hindered from utilizing the grievance system in other ways as well, including the confiscation and destruction of necessary paperwork for filing grievances and appeals in a timely manner, denial of grievance forms and writing tools, and administrative refusal to respond to claims in a timely manner. These actions not only deter the possibility of prisoners obtaining a fair and satisfactory resolution of their grievances within the prison system, which is not a serious possibility in any event, but serve to frustrate potential legal action as well. Failure to conform to the procedural requirements of the grievance system means that any lawsuit brought regarding the grievance in question has a higher probability of being thrown out on the technical grounds that the inmate did not exhaust administrative remedies as required by the PLRA.

For those who seek justice the PLRA and its requirement that administrative remedies be exhausted prior to bringing a lawsuit necessitate that prisoners continue to file grievances. Despite

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<sup>45</sup> Committee Against Torture (CAT), “Consideration of Reports Submitted by State Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, United States of America,” CAT/C/USA/CO/2, May 18, 2006.

the all but total improbability of a grievance being resolved and the threat and reality of being subjected to control unit torture, perhaps indefinitely, countless members of PA's incarcerated population continue to file grievances so that their claims will not be dismissed on technical/procedural grounds.

Survivors of torture and others struggling against the dehumanizing violations of their rights inside the PA DOC need dedicated and organized support from those of us on the outside if their grievances are to be addressed, their rights and lives respected, and those guilty of perpetrating criminal acts against them held accountable. The concluding section of this report summarizes a series of recommendations to be pursued by a broad coalition of current and former prisoners, their families and support people, human rights defenders, and civil society organizations.

## ***Recommendations—Human Rights and Accountability: Organizing to Enforce the Law***

The contents of this report describe an unsustainable and appalling culture of criminal conduct within the PA DOC. To date, no effective action has been taken by those in positions of power to address the human rights crisis inside the prison system. The inaction and indifference from DOC and state officials when presented with substantial documentation of crimes of the state can only be understood as tacit approval at worst or a decision of political expedience at best.

Rather than address our concluding remarks to agents and institutions of a criminal state we offer the following recommendations to our allies in civil society as a framework for sustained, principled, committed political struggle. These recommendations are in no way comprehensive and demand further elaboration and integration into a broader movement for the enforcement of human rights law and a corresponding restructuring of the political, economic, and social relationships and institutions that govern our communities and shape our collective future.

Legislators, law enforcement personnel, state employees, and other government officials and employees are encouraged to review and adopt this framework as well. HRC/Fed Up! believes that it is correct to give those in positions of

power the opportunity to do the right thing, but imperative to prepare for the possibility that they will not. For this task we need a mass movement.

As an organization comprised of prisoners, their families and support people, and human rights defenders, we expect these constituents to be most receptive to the following recommendations. From this basis of understanding it is necessary to build a movement throughout communities targeted by twin policies of mass impoverishment and mass incarceration, reaching out to build principled alliances with other sectors of society concerned with the rule of law, human rights, and social justice.

## ***Recommendations***

## **1. Investigate and prosecute crimes of torture and other cruel, inhuman or degrading treatment or punishment.**

On the basis of the elements and guidelines of international law discussed below, prisoners, support people, and individual and organizational human rights defenders must make the investigation and prosecution of the crime of torture a non-negotiable demand.

The filing of criminal complaints at every jurisdictional level, especially with the Civil Rights Division of the U.S. Department of Justice, will assist in compiling and preserving evidence, exposing torture and related human rights violations, and building public and institutional momentum for accountability. State or federal investigative commissions created by legislative acts expressly for the purpose of investigating and prosecuting torture and human rights violations in PA prisons are other potential avenues.

Even if the political realities that dictate how the law is or is not enforced are not significantly altered soon and our efforts to seek justice and accountability are denied for the time being, the preservation of evidence and exposure of conditions inside PA prisons will assist in creating awareness of human rights law, crimes of the state, and the question of power, thus helping generate the necessary preconditions for widespread social transformation.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines the crime of torture as follows:

For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>46</sup>

State officials and employees who organize, sanction, enable, participate in, or otherwise fail to act when presented with evidence of control unit torture and human rights violations not amounting to torture but rather constituting cruel, inhuman and degrading treatment bear primary

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<sup>46</sup> *Ibid.* p. 406.

criminal responsibility for the operation of the prison system in the state of Pennsylvania and demand to be investigated and prosecuted.

Article 12 of the CAT mandates that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” Article 13 enshrines the right of those allegedly subjected to torture to a prompt and impartial examination of their claims and protection against retaliation.<sup>47</sup>

The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides further instruction for individuals and organizations advocating for investigations and prosecutions of torture and other ill-treatment. Principle 1 articulates the objective of the resolution:

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment . . . include the following:

- (a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;
- (b) Identification of measures needed to prevent recurrence;
- (c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.<sup>48</sup>

Aspects of legitimate investigations identified in the document include impartiality, promptness, competence, authority to compel witness testimony and obtain all available evidence, necessary budgetary and technical resources, physical and psychological medical examinations of alleged victims of torture and other ill-treatment, and the production of a public, written report.<sup>49</sup>

Investigations conducted in accordance with internationally accepted standards serve to further the principles articulated in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

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<sup>47</sup> *Ibid.* 409.

<sup>48</sup> UN Resolution 55/89, see *Annex: Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/564/73/PDF/N0056473.pdf?OpenElement>

<sup>49</sup> *ibid.*

Serious Violations of International Law.<sup>50</sup> These guidelines specify three core components of accountability constituting the victims' right to remedies:

- (1) **Justice:** Equal and effective access to justice;
- (2) **Reparations:** Adequate, effective and prompt reparation for harm suffered; and
- (3) **Truth:** Access to relevant information concerning violations and reparation mechanisms.<sup>51</sup>

The guidelines provide further insight into appropriate mechanisms for actualizing the above three components. From this framework human rights defenders can create and implement strategies to hold the PA DOC accountable to the rule of law and seek justice for victims of severe human rights violations.

## **2. Restructure the criminal legal system according to international law.**

In order to effectively prevent torture and other human rights violations inside PA prisons it is necessary to restructure the entire criminal legal system so as to ensure that it conforms to international law. While it is beyond the scope of this report to engage in an extended analysis of the issues involved, it is sufficient to note that race and class based policies and practices of policing, prosecution, and sentencing need to be abolished. Toward that end community oriented strategies involving the expansion and proliferation of educational and vocational programs, along with access to comprehensive and effective substance abuse treatment, counseling, and mental health services need to be at the forefront in the struggle to ensure safe communities and public welfare (see recommendation 6).

Further advocacy efforts relating to conditions of confinement can be found in the UN Standard Minimum Rules for the Treatment of Prisoners (discussed below). Practical measures that can be integrated into the demands and development of a mass movement for implementing human rights standards throughout the criminal legal and broader social, political, and economic systems include the following:

- removal of arbitrary visitation restrictions, especially the limits in number of visits and the policy of non-contact visitation for those in solitary confinement and on Death Row;

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<sup>50</sup> Brownlie and Goodwin-Gill, 275-282.

<sup>51</sup> Brownlie and Goodwin-Gill, 279.

- all visits should permit contact and prisoners should never be handcuffed or shackled during a visit; in exceptional circumstances appropriate alternative practices can be adopted to ensure the health and security of prisoners, visitors, and prison personnel while simultaneously permitting contact and prohibiting the use of handcuffs and shackles;
- permission for visitors to be on more than one prisoners list per institutions so as to remove undue obstruction to prisoners' rights to maintain contact with family and support people and services;
- expansion of the PA official visitor status program, currently mediated through the PA Prison Society, so as to permit all citizens, especially human rights defenders, the opportunity to visit any prisoner willing to receive them with full and un-mediated legal authorization and recognition of such status as a basic human right;
- geographic re-organization of the prisoner population so as to enable more frequent visitation and continuing interaction with a prisoner's family and community;
- immediate moratorium on prison construction and diversion of funds to vocational, educational, counseling, substance abuse treatment, and mental health services and programs;
- creation of associations of human rights defenders inside (see recommendation 4) and outside the prison to monitor, document, and publish reports of alleged human rights violations and procedures being advocated or enacted by prisoners, PA DOC and state officials, and citizens, acting on their own or in coordination, to remedy grievances and ensure the realization of human rights law in the operation of the prison system;
- establishment of an independent monitoring agency whose personnel, methods of operation, tactics and strategies for implementing human rights standards, and spokespeople shall be accountable to prisoners, their families, and the populations most impacted by mass incarceration; such an agency must have access to constitutional and human rights lawyers and be granted legal authority to subpoena witnesses and evidence and file criminal complaints requiring a mandatory investigation and prosecution when dictated by available evidence.

Taken individually each of these proposals serves to strengthen the others. Taken collectively these suggestions provide the basis for a restructuring of the prison system along rehabilitative lines and human rights principles.

As noted in section 3 of this report, article 10(3) of the International Covenant on Civil and Political Rights (ICCPR) mandates that "[t]he

penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation.”<sup>52</sup> The UN Standard Minimum Rules for the Treatment of Prisoners (SMRTP) provides the supporting framework for realization of article 10(3) of the ICCPR.

Articles 58 and 59 of the SMRTP articulate the common sense underlying article 10(3) of the ICCPR:

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.
59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

Some of the minimal standards enumerated in the SMRTP include those relating to:

- clean living conditions;
- adequate access to natural light and recreation;
- healthy and filling food portions;
- medical services “organized in close relationship to the general health administration of the community”;
- impartial and fair disciplinary and grievance procedures;
- prohibitions on use of handcuffs, chains, irons or other instruments of restraint as punishment;
- prohibition on excessive force or violence for the sake of punishment;
- access to educational and religious materials;
- respect, encouragement, and facilitation of contact with family and social service agencies;
- access to work and vocational training and opportunities that develop skills and qualities of self-sufficiency vital to social reintegration;
- observation and treatment of prisoners suffering from mental health needs in “specialized institutions under medical management.”<sup>53</sup>

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<sup>52</sup> Brownlie and Goodwin-Gill, 362.

<sup>53</sup> Ibid. 29-44.

Rule 55 stipulates that [T]here shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.”

### **3. Encourage prisoners to form associations for the defense of human rights.**

The PA DOC currently recognizes prisoners associating in any form and for any reason as a disciplinary infraction of sufficient cause to justify indefinite/permanent placement in solitary confinement.<sup>54</sup> Such a policy prohibits prisoners from exercising core rights and needs of human personality, which include the right and need to interact and make collective decisions in any given social setting. By depriving prisoners of the ability to adequately associate, rather than say prohibiting organization for harmful or illegal ends, the PA DOC is sabotaging the most elemental features of self-supportive, self-empowered, and socially responsible behavior necessary for social reintegration.

Building on the recommendations above, another element that will enhance these efforts is the creation of associations for the defense of human rights inside the prisons. Based on the rights articulated in the UN Declaration on Human Rights Defenders (see Recommendation 5), prisoners in correspondence with human rights organizations and advocates need to be provided a mechanism whereby they can pledge to adhere to the principles outlined in the Universal Declaration of Human Rights, the Declaration on Human Rights Defenders, and other relevant aspects of human rights principles, practices, and law. Human rights defenders inside the prison can further state their intention to work for human rights by exercising their constitutional prerogative to file grievances and/or lawsuits, document and communicate violations to outside agencies, or other peaceful means of seeking resolution.

Such a declaration of intentions and principles by prisoners supportive of and adherent to the protection of human rights and fundamental freedoms contains many positive attributes. Perhaps foremost among these is that in working with prisoners to collectively formulate and develop human rights literature and curricula those incarcerated and non-incarcerated men and women engaged in this process will be encouraged to nurture recognition of and respect for the human rights of all. Prisoners who in the past have engaged in acts of violence and deceit against family and community, prisoners and prison personnel, will have

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<sup>54</sup> PA DOC Policy DC-ADM 802, Administrative Custody Procedures, section 1(B)(2)(e).

a much greater likelihood of avoiding such personal and socially harmful behaviors in the future.

The potential impact on recidivism is significant and human rights oriented educational and vocational programs should become mandatory aspects of a genuine rehabilitative and preventive approach to crime. These programs will not be effective, or will be severely diminished in potential, if prisoners are not given a central role in shaping the curricula and practices so as to address their own individual and collective needs and problems.

Prisoners' rights to exercise all necessary rehabilitative ends needs to become another non-negotiable demand that we can initiate immediately. This requires building mass social support for the protection of human rights defenders inside the prison so as to prohibit retaliation and intimidation. There is no need to wait for permission from the state to exercise our basic right to create and implement educational programs and strategies for the defense of human rights in partnership with prisoners.

#### **4. Abolish solitary confinement.**

Solitary confinement as currently instituted by the PA DOC constitutes torture, cruel, inhuman and degrading treatment and is strictly prohibited by international law.<sup>55</sup> Ongoing investigations and monitoring of conditions of confinement by HRC/Fed Up! provide an unassailable basis for the conclusion that the solitary confinement units in the PA DOC are never operated in accordance with policy and law. Rather, solitary confinement units by design or default generate severe human rights violations against prisoners and criminal conduct on the part of PA DOC personnel. Physical abuse and assault, sexual harassment and violence, overt and malicious racism, psychological torment, medical deprivation, starvation, exposure to dangerously un-hygienic conditions, constant intimidation and retaliation, and the subversion of prisoners' due process rights are normative features of the regime of solitary confinement operated by the PA DOC.

If the PA DOC wants to honestly address institutional security then they are required not to implement and enable policies and practices of dehumanization that guarantee future antagonisms and violence between prisoners and prisoners, prisoners and prison personnel, and former prisoners and the public once the former are released into the

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<sup>55</sup> see Rodley and Pollard, *The Treatment of Prisoners Under International Law, Third Edition*, (2009) chapter 2, for discussion of the prohibition of torture as constituting a 'peremptory norm' of international law binding on all states in all circumstances.

community. Prisoners who engage in disruptive and/or violent behavior can be separated from the general population while still being permitted ample opportunity everyday to engage in supervised congregate activities and provided access to educational and creative stimulation. If an altercation ensues that requires physical intervention on the part of prison staff and the isolation of an individual, the period of segregation needs to be as limited as possible and counseling staff and access to mental stimulation need to be provided to the disturbed person as soon as possible. Psychotically violent prisoners need greater attention, not severe isolation, primarily in the form of intensive mental health treatment conducted in a secure mental-health institution.

There is no legitimate basis for the state of Pennsylvania to be operating a regime of control unit torture under the color of law. Those in positions of executive authority in the state of Pennsylvania and its Department of Corrections are guilty of perpetrating crimes against humanity.

The abolition of solitary confinement is a necessary prerequisite if the state of Pennsylvania and the U.S. are to adhere to the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment.

## **5. Create a culture of human rights defenders.**

Human rights are not and never have been the gift of benevolent authorities, but have been won through decades and centuries of human struggle against cruelty, exploitation, and oppression. For this reason those of us concerned with the rights and lives of prisoners need to deepen our understanding of and participation in movements for social justice.

Any human rights movement has to address the fundamental question of power: who holds it, how it is defined, to what ends it is used, how are decisions made, who suffers the consequences and who reaps the benefits. Given the controlling power of concentrated wealth and the human rights violations that *always* occur when too few people hold too much power, we must realize that the protection and expansion of human rights depends upon the power of the movement to redistribute and redefine social, economic, and political power.

Providing a basic framework for the protection and expansion of a human rights culture is the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect

Universally Recognized Human Rights and Freedoms.<sup>56</sup> Also known as the Declaration on Human Rights Defenders, this document outlines the rights and responsibilities of people in their personal, vocational, and communal roles toward the observance and realization of human rights.

This document proclaims “[e]veryone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Also enshrined are the rights to peaceful assembly, formation and participation in non-governmental organizations dedicated to the defense of human rights, and the right to obtain and disseminate information relating to the rights and freedoms of people.<sup>57</sup>

Outlining responsibilities of States, article 15 declares:

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their programs.

Complementing these responsibilities are those accorded to non-state actors in article 16:

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.<sup>58</sup>

One practical application of this document is for civil society organizations, including human and civil rights groups, communities of faith, educational associations, legal service providers, and others, to act in accord with the role described in article 16 in order to compel the observance of article 15 by the State at every level of jurisdiction.

Toward this end the formation and strengthening of human rights alliances, development of curricula and training programs on human rights, and the articulation and implementation of organizational methods for enforcing international human rights law must become our

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<sup>56</sup> Brownlie and Goodwin-Gill, p. 230-236.

<sup>57</sup> *Ibid.* Articles 1,5, and 6.

<sup>58</sup> *Ibid.* p. 235.

highest priority on individual, community, social, national, and international levels. Our success in this endeavor depends wholly on the degree to which popular political education and organization strengthens and expands a culture based on the recognition and defense of universal human rights for all peoples.

## **6. Enforce the Universal Declaration of Human Rights and Make Prisons Obsolete**

Any set of policies and institutions that generate greater and not less incarceration are clear failures. Existing economic structures exacerbate inequality and force ever larger numbers of the population to engage in occupations—such as prostitution, drug-dealing, burglary—that have been criminalized for their very survival.

The solution to addressing profound and deliberate inequalities in socio-economic power relationships is to organize mass political movements to redistribute and redefine wealth and power.

More extensive discussion and analysis of the necessity of such a movement is beyond the scope of this document, though it is sufficient to note that the basis for education, organizing, and action in this respect can be found in the Universal Declaration of Human Rights (UDHR) and related conventions and documents of international human rights law.<sup>59</sup>

The basis of human rights conventions, customs, practices, and ideology are embodied in articles 1-3 of the UDHR:

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: Everyone has the right to recognition everywhere as a person before the law.

The remainder of the UDHR and subsequent international treaties and UN resolutions and declarations articulate a body of principles that constitute an international order of legally binding rights and responsibilities and

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<sup>59</sup> Ibid. 23-28. See this source for other resolutions, declarations, conventions, and other documents that guide and structure basic international human rights law.

guidelines for their realization. Human rights and responsibilities represent an interdependent cluster of conventions and customs universal in their application. Amongst these are the following categories of human rights:

- Civil Rights – Equality before the law and throughout society is to be enforced by strict observance of due process rights, equal access to impartial and transparent court proceedings, and prohibition on discrimination on any basis, including race, gender, sexual orientation, religion, political affiliation or opinion, and class.
- Political Rights – These include the right for all social groups to equal access to and participation in democratic elections, freedom of speech and assembly, along with the institution of practices and structures for ensuring substantial and self-determining political power for all peoples. Self-determination is the core of international human rights law, as it is a prerequisite for developing liberated, democratic, and sustainable societies in which individuals and communities have the power to make decisions accorded to the degree in which those decisions impact their lives and communities.
- Social and Economic Rights – One’s choice of labor and right to equitable compensation for their work, the right to form unions, along with rights to social security, food, housing, health care, and education constitute fundamental social and economic rights.
- Cultural Rights – These guarantee cultural integrity to all peoples in the exercise of their religious, linguistic, and other customs and practices integral to their identities and way of life.
- Environmental Rights – These include the rights to clean and ample water, freedom from pollution, clean air, protection against climate destabilization, protection of forests and marine life, respect for the ecological balance necessary to sustain human and non-human life. These rights in combination with rights to equality and life are violated whenever communities – particularly indigenous communities and communities of color the world over – are selected as sites for toxic industrial processes and deposits.
- Sexual Rights – Another vital component toward the fulfillment of the right of self-determination can be found in sexual rights, which include the right to have or not have children, the right to marry and when, same-sex rights, trans-gender rights, rights to birth control and abortion, the right to sexual pleasure, and the right to define families.<sup>60</sup>

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<sup>60</sup> Special gratitude to our allies at New Voices Pittsburgh: Women of Color for Reproductive Justice for clarifying and strengthening our conception and understanding of human rights. Also,

When interdependent communities have won the power to organize their own economic and political institutions and activities in harmony with the earth so that basic rights to life, health care, education, food, housing, sexual orientation and practice, due process and equal access to and equality before the law, and an ecologically sustainable environment are universally recognized and realized by and for everybody, prisons will be unnecessary.

Immediate steps toward this end involve the development and implementation of de-carceration strategies geared at localizing the economy along ecological and democratic bases. Alliances with community organizations, small-scale producers, organic and sustainable farmers, teachers, health care workers, communities of faith and other individuals and groups supportive of basic human rights suggest a way to link diverse movements, social institutions and agencies, and people.

Ultimately, and not too far in the future, the question of power must be effectively confronted by human rights alliances at every jurisdictional level, from community to municipal to county to state to national to international. The human rights movement needs to redefine power and shape the structures that govern social and economic activity so that the Universal Declaration of Human Rights can be fully realized by free peoples in liberated communities inhabiting a livable planet.