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**Hearing on H.R. 4109, the “Prison Abuse Remedies Act of 2007”**  
US House of Representatives  
Committee on the Judiciary  
Subcommittee on Crime, Terrorism and Homeland Security  
*April 22, 2008*

Human Rights Watch is grateful for the opportunity to submit a statement in support of H.R. 4109, the Prison Abuse Remedies Act of 2007, which would amend various provisions of the Prison Litigation Reform Act (PLRA).

In November 2007, this Subcommittee held an oversight hearing on the PLRA. At that time, Human Rights Watch presented testimony setting forth our grave concerns about several provisions of that statute. That testimony was made a part of the record and is available at <http://hrw.org/english/docs/2007/11/07/usdom17277.htm>. Today, we write to supplement that testimony by focusing on one provision of the PLRA, 42 U.S.C. § 1997e(e), and its inconsistency with treaty obligations undertaken by the United States. By amending the PLRA to repeal this provision, H.R. 4109 would bring the United States closer to compliance with its treaty obligations. Accordingly, Human Rights Watch respectfully urges the Subcommittee to support and pass H.R. 4109, the Prison Abuse Remedies Act of 2007.

### **Introduction**

Under the Constitution, treaties signed and ratified by the United States “shall be the supreme Law of the Land.” US Const., Art. VI, cl. 2. The United States has signed and ratified a number of human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The Prison Litigation Reform Act provides that “[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” 42 U.S.C. § 1997e(e). As demonstrated below, this provision – known as the “physical injury requirement” – is inconsistent with US obligations under these human rights treaties.

## The PLRA's physical injury requirement is inconsistent with US obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The United States ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994. This treaty defines "torture" as

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.

CAT, Art. 1, sec. 1 (emphasis added). Thus, the intentional infliction of severe mental pain or suffering by prison officials can constitute torture prohibited by the treaty. This definition is consistent with domestic law; indeed the US Supreme Court has characterized "solitary confinement" as one of the techniques of "physical and mental torture" that have been used by governments to coerce confessions. *Chambers v. Florida*, 309 U.S. 227, 237-38 (1940).

The treaty also requires that those who have been subjected to torture have a right to compensation; "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." CAT, Art. 14, sec. 1.

The Committee against Torture, the body of independent experts that monitors states parties' compliance with the CAT, most recently reviewed US compliance with the Convention in 2006. In its Conclusions and Recommendations, the Committee explicitly recognized that the PLRA's physical injury requirement contravenes Article 14 of the treaty, and called for its repeal:

The Committee is concerned by section 1997e(e) of the 1995 Prison Litigation Reform Act which provides "that no federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury." (article 14).

**The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly.**

Conclusions and Recommendations of the Committee against Torture, United States of America, CAT/C/USA/CO/2, 25 July 2006, ¶ 29 (emphasis in original). Enactment of H.R.

4109 would be in conformity with this recommendation of the Committee against Torture, and bring the United States closer to compliance with its treaty obligations under CAT.

### **The PLRA's physical injury requirement is inconsistent with US obligations under the International Covenant on Civil and Political Rights**

The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992. The ICCPR specifically addresses the rights of prisoners:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

\* \* \*

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

ICCPR, Art. 10. The ICCPR also provides that a person whose rights guaranteed by the treaty have been violated must have access to an "effective remedy" for that violation:

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

ICCPR, Art. 2, sec. 3.

The Human Rights Committee, the expert body that monitors compliance with the ICCPR, last reviewed US compliance in 2006. The Committee expressed concern that conditions in some high-security US prisons – particularly the regimes of isolated confinement common to such prisons – may violate Art. 10:

32. The Committee reiterates its concern that conditions in some maximum security prisons are incompatible with the obligation contained in article 10 (1) of the Covenant to treat detainees with humanity and respect for the inherent dignity of the human person. It is particularly concerned by the

practice in some such institutions to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment. It is also concerned that such treatment cannot be reconciled with the requirement in article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners.

\* \* \*

**The State party should scrutinize conditions of detention in prisons, in particular in maximum security prisons, with a view to guaranteeing that persons deprived of their liberty be treated in accordance with the requirements of article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

Concluding Observations of the Human Rights Committee, United States of America, CCPR/C/USA/CO/3/Rev. 1, 18 December 2006, ¶ 32 (emphasis in original).

The PLRA's physical injury requirement bars a remedy for prisoners wrongfully subjected to isolated confinement, in violation of Art. 2, sec. 3 of the ICCPR. For example, in *Pearson v. Welborn*, 471 F.3d 732, 744-45 (7<sup>th</sup> Cir. 2006), a jury concluded that the prisoner had been wrongfully held in a "supermax" prison, in conditions of extreme isolation, for more than a year in retaliation for his complaints about prison conditions. Nevertheless, the Seventh Circuit held that under the PLRA's physical injury requirement, he could not recover any compensation. *See also Royal v. Kautzky*, 375 F.3d 720, 723-24 (8<sup>th</sup> Cir. 2004) (physical injury requirement barred compensation for prisoner wrongfully placed in segregation).

**The PLRA's physical injury requirement is inconsistent with US obligations under the International Convention on the Elimination of All Forms of Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was ratified by the United States in 1994. This treaty requires the United States to "pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms" and to "ensure that all public authorities and public institutions, national and local," refrain from engaging in racial discrimination. ICERD, Art. 2, sec. 1(a).

The treaty also requires that persons who have suffered racial discrimination have the right to seek judicial remedies, including compensation:

States 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 which violate his human rights and fundamental freedoms contrary to this Convention, as well

as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

ICERD, Art. 6.

By denying compensation to a prisoner unless he or she has suffered a physical injury, the PLRA is inconsistent with US treaty obligations under ICERD. At least one federal court has held that the physical injury requirement bars compensation for prisoners who allege that they have been subjected to racial discrimination by prison officials. *See Jones v. Pancake*, 2007 WL 2407271 (W.D. Ky., August 20, 2007), at \*3.

In sum, the PLRA's physical injury requirement cannot be reconciled with treaty obligations the United States has voluntarily undertaken by ratifying CAT, ICCPR and ICERD. By repealing the physical injury requirement, H.R. 4109 would bring the United States closer to compliance with its obligations under these treaties. Accordingly, Human Rights Watch respectfully urges the Subcommittee to support and pass H.R. 4109.