SERIES ON HUMAN RIGHTS AND HEALTH

2. MENTAL HEALTH

A Human Rights-based Approach

PAHO Pan American Health Organization World Health Organization
2. MENTAL HEALTH: A Human Rights-based Approach

"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

Preamble to the Constitution of the World Health Organization

**VICTOR’S DEATH¹**

Victor staggered forward towards his mother. She had come to see him at the national psychiatric hospital just two days after he was admitted for treatment. He collapsed at her feet, with his hands tied behind his back and his body filthy. His nose was bleeding and there were big bruises on his head. His eyes were so swollen he couldn’t open them.

Desperate to find help for her son, Victor’s mother ran through the halls calling for a doctor. When she finally found one, the mental health specialist downplayed her concern and bluntly told her to stop crying. He didn’t bother to examine Victor and prescribed medication without even getting up from his desk. He was the hospital director. She left the hospital, her son lying naked on the floor of his room. When she got home, she found a message saying her son had died.

The medical examiner’s office issued an autopsy report stating that Victor’s death was “due to undetermined causes,” despite obvious signs of inhumane and degrading treatment. Victor’s family vowed to take his case to the highest court available to seek redress for the injustices committed against him.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have reviewed similar cases. The Member States have repeatedly pledged to take action to redress injustices committed against victims and their families. Among other commitments, the States have promised to investigate and punish those responsible for violating the rights of institutionalized people, develop a training program for all mental health staff to help them understand how to treat people with mental health conditions in accordance with the principles enshrined in international human rights policies and standards, and to compensate the victims’ families to cover material and moral damages.

¹This story is largely based on actual incidents occurring in Latin America.

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People with mental health conditions: Who are they and what is their current situation?

People living with mental health conditions are among the most vulnerable in society, as they are victims of enormous prejudice, discrimination, and violations of their fundamental rights. Throughout history, people with disabilities, particularly those with mental health conditions, have been denied the ability to make their own decisions and exercise personal and individual control in all areas of their lives. This is rooted in the false belief that these people are incapable of living independently in communities of their own choosing. Support is either not available or is tied to certain living arrangements, and community infrastructure does not conform to universal design principles. Resources are invested in institutions, rather than promoting the opportunity for these people to live independently in the community. This has led to abandonment, dependence on family members, institutionalization, isolation, and segregation.

In addition, people with mental health conditions are regularly denied access to employment, education, and housing in the Region of the Americas. What is worse, they are often placed in institutions against their will and without due process, where they could be abandoned for years, sometimes for their entire lives, living in inhumane conditions. Many of these people are forcibly institutionalized with little hope of their case being reviewed; others are kept in isolation in remote mental hospitals, far removed from any government scrutiny or compliance with regulations. Some are completely neglected in their own homes and suffer from cruel, inhumane, and degrading treatment.

Mental health conditions increase the risk of other illnesses and contribute to both unintentional and intentional injuries. Depression continues to be the number one mental health condition and is twice as prevalent in women as it is in men. Between 10% and 15% of women in industrialized countries and 20% and 40% of women in developing countries suffer from depression during pregnancy or the postpartum period (1).

Mental and neurological health conditions in the elderly, such as Alzheimer’s disease, other types of dementia, and depression, contribute significantly to the burden of noncommunicable diseases. In the Americas, the prevalence of dementia in the elderly (aged >60 years) ranges from 6.46% to 8.48%. Projections indicate that the number of people with dementia will double every 20 years (1).

Among adults with severe and moderate affective, anxiety, and substance use disorders, the median treatment gap is 73.5% in the Region of the Americas, 47.2% in North America, and 77.9% in Latin America and the Caribbean (LAC). In LAC, the gap is 56.9% for schizophrenia, 73.9% for depression, and 85.1% for alcoholism (1).

Why is this abuse so widespread?

For a country to effectively promote and protect the human rights and fundamental freedoms of persons with mental health conditions, it must at least adopt mental health instruments (policies, plans, laws, programs, budgets, etc.) that specifically protect the rights of these people and adhere to international human rights conventions and standards. The required legal framework is diverse, ranging from specific mental health laws to general disability and public health laws, among others.

Seventy-six percent of the Member States of the Pan American Health Organization (PAHO) have an independent mental health policy or plan, and 67% have an independent mental health law. In the last eight years, 46% of PAHO’s Member States have updated their policies and plans. Eleven countries have developed or updated their mental health policies or plans to align them with international and regional human rights instruments. However, the human and financial resources allocated to mental health are limited, which restricts the implementation of national plans (2).
Protections from international and regional human rights instruments

Both the United Nations and the Inter-American System of Human Rights (ISHR) have a comprehensive set of legal instruments that recognize and protect the rights and freedoms of all people. Because international human rights instruments protect all people without distinction of any kind, such as ethnicity, color, sex, language, religion, political or other ideology, national or social origin, economic, birth or any other social status, they are considered to also protect the rights and freedoms of people with mental health conditions.

Conventions or treaties are legal instruments that are binding on the States that have ratified them. There are also other instruments, such as declarations, resolutions, and comments issued by United Nations mechanisms and the ISHR, that establish international standards for human rights.

Human rights standards represent a consensus of international opinion. Most are issued by the United Nations General Assembly, the Human Rights Council, treaty monitoring mechanisms, other United Nations bodies, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), and specialized agencies of the United Nations and the ISHR.

These standards constitute a fundamental guide for implementing human rights treaties in countries, through the formulation and review of legislation, policies, plans, and programs that provide greater protection of the right to health and other related rights of people with psychosocial disabilities.

The United Nations human rights system

The United Nations human rights monitoring system consists of two types of bodies: those based on the United Nations Charter and those created under treaties (3). The Charter-based bodies are: the Human Rights Council (an intergovernmental body comprised of 47 members responsible for the promotion and protection of all human rights) (4); the Universal Periodic Review (a Member State-driven process for reviewing the human rights situation in all Member States, which gives each country the opportunity to declare what actions it has taken to address and improve its human rights situation) (5); and the Special Procedures of the Human Rights Council, a mechanism through which prominent human rights experts are given a mandate, either individually or as a task force, to address specific situations or thematic areas (6). An example of this mechanism is the mandate of the Special Rapporteur on the right of all people to enjoy the highest attainable standard of physical and mental health.2

United Nations treaty bodies are committees of independent experts that monitor the implementation of international human rights treaties (7). Their existence derives from the actual treaties; for example, the Committee on the Rights of Persons with Disabilities is a group of 18 independent experts that monitors the implementation of the Convention of the same name (8). These treaty bodies are mandated to receive and examine reports submitted periodically by the States Parties detailing how they are implementing the provisions of the treaty at the national level. Treaty bodies are also authorized to make general comments on matters affecting their mandate, and to engage in individual communications to issue recommendations on a specific case before them.

Binding international legal instruments

International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights establishes that every human being has the inherent right to life, and that no one shall be arbitrarily deprived of life, and that each State Party to the Covenant shall respect all persons within its territory and subject to its jurisdiction, without distinction of any kind, such as to race, color, sex, language, religion, political or other opinion, national or social origin, economic, birth, or other status. As for equality, it recognizes that all persons are equal before the law and are entitled, without any discrimination, to equal protection before the law.

In addition, the Covenant ensures that no one shall be subjected to torture or cruel, inhumane, or degrading treatment or punishment. In particular, no one shall be subjected without their free consent to medical or scientific experimentation. It also guarantees that everyone has the right to freedom and personal security and that no one shall be deprived of them, and that all persons deprived of their liberty shall be treated with humanity and with respect for their inherent human dignity. Finally, it recognizes that all persons are equal before the law and are entitled, without any discrimination, to equal protection before the law.

International Covenant on Economic, Social and Cultural Rights (1966)

This treaty recognizes a wide range of economic, social, and cultural rights, such as the right to health, education, work, and to social security and culture, among others, without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

In particular, this treaty recognizes the right of all persons to the enjoyment of the highest attainable standard of physical and mental health. In addition, it recognizes the right of every person to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Convention on the Elimination of All Forms of Discrimination against Women (1979)

This instrument of international law condemns discrimination against women in all its forms, and recognizes the rights and obligations of States Parties to promote and protect women’s rights. States Parties should eradicate any act or practice of discrimination against women, including women with mental health conditions, and in particular should ensure that public authorities and institutions take appropriate measures to eliminate discrimination against women in health care to ensure that men and women have equal access to health care services.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

The provisions of this Convention provide States Parties the obligation to take effective legislative, administrative, judicial, or other measures to prevent acts of torture and other cruel, inhuman, or degrading treatments in any territory under their jurisdiction. The Convention also requires each State Party to ensure that all acts of torture are offenses under its criminal law and to make these offenses punishable by the appropriate penalties that reflect their grave nature. This instrument provides that each State Party shall take the necessary steps to prevent cruel, inhuman, or degrading treatment or punishment in all territories under its jurisdiction 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. These provisions are extremely

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3 The use of the terms “covenant,” “convention” or similar words does not change the binding nature of these instruments. These are treaties within the meaning of the Vienna Convention on the Law of Treaties (1969), which states that every treaty is binding on the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its internal law to justify noncompliance with a treaty.
important to ensure the protection of the rights of persons with psychosocial disabilities, particularly in the context of care provided by public institutions.

**Convention on the Rights of the Child (1989)**

The Convention on the Rights of the Child recognizes the civil, political, economic, social, cultural and environmental rights of children and adolescents, without discrimination. In terms of the right to health, it stipulates that States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and access to facilities for the treatment of illnesses and rehabilitation of health. This treaty also specifically recognizes the right of children suffering from mental health conditions to receive special care and sets out the measures that States Parties should take to ensure the development of children as individuals and to ensure their participation in the community. It also recognizes the right to a periodic review of the treatment received by children who are placed in institutions for reasons of physical or mental health, as well as the right to be protected from performing any work that is likely to be hazardous or could interfere with their education or be harmful to their health or physical, mental, spiritual, moral, or social development (13).

**Convention on the Rights of Persons with Disabilities, 2006**

This Convention recognizes the special protection that States Parties must guarantee to persons with disabilities, as it establishes all their political, civil, economic, social, and cultural rights with the specificities this population requires. This instrument reflects a paradigm shift with respect to this population group, since it abandons the old medical model of both physical and mental disability, moving instead to a social model, which recognizes that the causes of disabilities are largely social.

The Convention is intended to be a human rights instrument with an explicit social and economic development dimension. It reaffirms that all people with any type of disability (including people with mental health conditions) are entitled to the enjoyment of all human rights and fundamental freedoms. It clarifies and describes how all categories of human rights and fundamental freedoms apply to persons with disabilities and identifies areas in which accommodations have been made so that persons with disabilities can effectively exercise their rights in areas where their rights have been violated, as well as areas in which the protection of rights should be strengthened. In particular, this instrument establishes the obligation of States Parties to provide the health services needed by persons with disabilities (including those with mental health conditions), such as early detection and intervention, if appropriate, and services aimed at preventing and minimizing the development of new disabilities.

Article 12 of the Convention is particularly important, as it recognizes the legal status of persons with disabilities on an equal basis with other people in all aspects of life. It further establishes the obligation of the States Parties to take appropriate measures to give persons with disabilities access to any support they may require in the exercise of their legal capacity, as well as appropriate and effective safeguards to prevent abuse, in accordance with international human rights law. Such safeguards should ensure that measures relating to the exercise of legal capacity respect the rights, will, and preferences of the person, are free of conflicts of interest and undue influence, are proportional and tailored to the person's circumstances, are applied for the shortest time possible, and are subject to periodic review by a competent, independent and impartial authority or judicial body. These safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests (14). Finally, under Article 12, States Parties agree to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs, and to have equal access to bank loans, mortgages, and other forms of financial credit, and to ensure that persons with disabilities are not arbitrarily deprived of their property (14).

As mentioned above, these provisions are fundamental for effectively guaranteeing the rights of people with mental health conditions who are often arbitrarily
deprived of their legal capacity, which limits their access to other rights, such as the right to own and manage property.

**International declarations, principles, recommendations, and guidelines**

**Universal Declaration of Human Rights (1948)**

The Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights. This general provision signifies that people with mental health conditions are also entitled to basic human rights and confers to all people all of the rights and freedoms set forth in the Declaration, without distinction of any kind.

It also states that all persons are equal before the law and have the right to equal protection of the law without any discrimination, and recognizes the right to freedom of opinion and expression, including the right to share opinions without interference, and to seek, receive, and impart information and ideas through any media and across borders. The Declaration recognizes the right to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, and to medical care; it also protects all persons from torture or cruel, inhuman, or degrading treatment or punishment (15).

**Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991)**

These principles are among the most comprehensive and detailed international standards or guidelines for protecting people with mental health conditions. They provide guidelines for establishing or evaluating national mental health systems and can be used to interpret general human rights standards in the context of mental health. They have often served as a model for formulating mental health legislation and as a guide for reviewing and formulating mental health policies and restructuring mental health services in some countries. The principles establish that persons with mental health conditions shall enjoy all the fundamental rights and freedoms set forth in general human rights conventions. They also establish that the most important rights and freedoms for persons with mental disabilities are the right to medical care, the right to be treated with humanity and respect, the right to equal protection before the law, the right to receive care in the community, the right to give informed consent before receiving any treatment, the right to privacy, freedom of communication and freedom of religion, the right to voluntary admission, and the right to due process (16).

**Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)**

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities establish guidelines for implementing the fundamental freedoms and basic rights set out in international treaties in relation to persons with disabilities. These Rules recommend that persons with mental health conditions and their organizations be involved in the drafting of legislation on matters that affect them. Governments are expected to facilitate this participation and to do so in a meaningful way. Rather than the purely symbolic participation of a few people with mental health conditions who are lost in large committees comprised of numerous professionals or government representatives, the Rules provide for a level of participation that ensures that the voices of these people are fully heard in the process. According to the Standard Rules, persons with mental health conditions and their families should be included in the planning, design, implementation, and evaluation of service, support, and monitoring programs (17).

**Committee on Economic, Social and Cultural Rights. General comment No. 5: Persons with Disabilities (1994)**

This general comment analyzes the obligations of the States with regard to equal rights under the law for men and women with a disability, labor-related rights, social security, protection of the family and mothers of disabled children, freedom of movement, enjoyment of

This general comment is central to understanding the scope of the right to health and the obligations assumed by States upon ratification of the International Covenant on Economic, Social and Cultural Rights. In this comment, the Committee on Economic, Social and Cultural Rights analyzes the content and scope of Article 12 of the Covenant on the right to health, as well as the obligations of States Parties derived from it, and provides clear guidelines on the measures to be taken to ensure that right. In the comment, the Committee establishes that the right to health is closely related to and dependent upon the exercise of other human rights, such as the rights to life, freedom from discrimination, equality, personal freedom, personal integrity, freedom of association, assembly, and movement, food, housing, employment, and education. It refers to persons with disabilities as a group whose vulnerable condition requires special programs that offer access to health facilities, goods, and services, without discrimination.

The Committee also sets out the four essential and interrelated elements contained in the right to health in all its forms and at all levels, the specific application of which will depend upon the conditions prevalent in a particular State Party:

(a) Availability. Functioning public health and healthcare facilities, goods and services, and programs must be available in sufficient quantity within the State Party. The precise nature of the facilities, goods, and services may vary depending on numerous factors, including the State Party’s level of development. These will, however, encompass the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics, and other health-related facilities; trained medical personnel and other professionals receiving domestically competitive salaries, and essential drugs, as defined by the World Health Organization (WHO) Action Programme on Essential Drugs;

(b) Accessibility. Health facilities, goods, and services must be accessible to everyone without discrimination, within the jurisdiction of the State Party. Accessibility has four overlapping dimensions: (i) non-discrimination; (ii) physical accessibility; (iii) economic accessibility (affordability); and (iv) access to information

(c) Acceptability. All health facilities, goods, and services must be respectful of medical ethics and culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples, and communities, sensitive to gender and life-cycle requirements, and designed to respect confidentiality and improve the health status of those concerned;

(d) Quality. As well as being culturally acceptable, health facilities, goods, and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.


The 2030 Agenda for Sustainable Development proposes ending poverty for all people, including people with mental health conditions, and working towards gender equality, women’s empowerment, healthy living, well-being at all ages, economic growth, full employment, and inclusive cities and human settlements.

Committee on the Rights of Persons with Disabilities. General comment No. 3 on women and girls with disabilities (2016)

In this general comment, the Committee urges States Parties to amend or repeal existing laws, regulations, customs, and practices that constitute discrimination against women with disabilities, including women with...
mental health conditions. Accordingly, States Parties must take all appropriate measures to eliminate discrimination on the basis of sex and/or disability by any person, organization, or private enterprise. It also includes the duty to exercise due diligence by preventing violence or violations of human rights, protecting victims and witnesses from violations, investigating, prosecuting, and punishing those responsible, including private actors, and providing access to redress and reparations when human rights violations occur. In addition, the Committee states that States Parties must adopt a dual approach: (a) by systematically mainstreaming the interests and rights of women and girls with disabilities in all national action plans, strategies, and policies concerning women, childhood, and disability, as well as in sectoral plans concerning, for example, gender equality, health, violence, education, political participation, employment, access to justice, and social protection; and (b) through targeted and monitored measures specifically aimed at women with disabilities, including women with mental health conditions (20).

Committee on the Rights of Persons with Disabilities. General comment No. 5 on living independently and being included in the community (2017)

This general comment interprets Article 19 of the Convention on the Rights of Persons with Disabilities, which recognizes the equal right of all persons with disabilities to live independently and be included in the community, with the freedom to choose and control their lives. This article is based on the core human rights principle that all human beings are born equal in dignity and rights and all lives are of equal worth. The general comment states that living independently means that individuals with disabilities, including persons with mental health conditions, are provided with all necessary means to enable them to exercise choice and control over their lives and make all decisions concerning their lives.

The Committee recommends that States promote, facilitate, and provide appropriate legislative, administrative, budgetary, judicial, programmatic, promotional, and other measures to ensure the full realization of the right to live independently and be included in the community as enshrined in the Convention. States Parties are also required to take measures to eradicate practical barriers to the full realization of the right to live independently and be included in the community, such as inaccessible housing, limited access to disability support services, inaccessible facilities, goods, and services in the community, and prejudices against persons with disabilities, as well as measures to prevent family members and third parties from directly or indirectly interfering with the enjoyment of the right to live independently within the community. Finally, it establishes the obligation of States Parties to refrain from directly or indirectly interfering with or in any way limiting the individual exercise of the right to live independently and be included in the community (21).

Committee on the Rights of Persons with Disabilities. General comment No. 6 on equality and non-discrimination (2018)

In this general comment, the Committee states that the human rights-based model of disability recognizes disability as a social construct, and that impairments should not be considered legitimate grounds for denying or restricting human rights. According to this model, disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. This model also recognizes that human rights are interdependent, interrelated, and indivisible (22). Thus, States should modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against these persons. In addition, the effective enjoyment of the rights to equality and non-discrimination requires the adoption of enforcement measures, such as: (a) measures to raise the awareness of all people about the rights of persons with disabilities under the Convention, the meaning of discrimination, and the ex-
isting judicial remedies; (b) measures to ensure that the rights contained in the Convention are actionable in domestic courts and provide access to justice for all persons who have experienced discrimination; (c) protection from retaliation, such as adverse treatment or adverse consequences in reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions; (d) the legal right to bring a lawsuit to court and to pursue claims through associations, organizations, or other legal entities that have a legitimate interest in the realization of the right to equality; (e) specific rules relating to evidence and proof to ensure that stereotyped attitudes about the capacity of persons with disabilities do not result in victims of discrimination being inhibited in obtaining redress; (f) effective, proportionate, and dissuasive actions for breach of the right to equality and adequate remedies; (g) sufficient and accessible provision of legal aid to ensure access to justice for the claimant in discrimination litigation (22).

**Inter-American System of Human Rights**

The Inter-American System of Human Rights is composed of two bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) (23).

The IACHR comprises seven independent members and focuses on three main areas of work: (a) the system of petitions and cases (through which complaints related to specific cases are brought to the IACHR); b) monitoring the human rights situation in OAS member states, for example, through country visits and published reports with recommendations, and c) work in priority thematic areas, including monitoring and technical cooperation by the rapporteurships and working groups (24), among them the Rapporteurship on the Rights of Persons with Disabilities.4

The Inter-American Court of Human Rights, composed of seven judges, is an autonomous institution with contentious and advisory functions, whose main purpose is to interpret and apply the American Convention on Human Rights. Under its contentious function, the Court may determine whether a State has incurred international responsibility for the violation of a right enshrined in the Convention or other human rights treaties of the Inter-American System. The Court also performs an advisory function, under which it can answer questions from OAS Member States or other OAS bodies regarding the interpretation of the American Convention and other treaties, or the compatibility of national laws with the Convention (23).

**Legally binding international instruments**5

**American Convention on Human Rights (Pact of San José, 1969)**

This treaty is the Region’s main human rights instrument because of the number of rights it recognizes and its central role in the human rights obligations of States Parties. It recognizes the right to life, physical integrity, and personal liberty, among others. These provisions are critical in terms of the frequent institutionalization of persons with disabilities. This instrument also establishes the obligation of States Parties to protect the rights and freedoms of all persons without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. The Convention further recognizes that all people, including persons with disabilities, have the right, without discrimination, to equal protection of the law (25).

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5 The use of the words “covenant,” “convention,” “protocol,” or similar terms does not change the binding nature of these instruments. These are treaties within the meaning of the Vienna Convention on the Law of Treaties (1969), which provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its internal law to justify noncompliance with a treaty.
Inter-American Convention to Prevent and Punish Torture (1985)

Under the provisions of this Convention, States Parties shall take effective measures to prevent and punish torture and other forms of cruel, inhuman, and degrading treatment or punishment within their jurisdiction. This treaty also states that the States Parties shall ensure that all acts of torture and attempts to commit torture are considered offenses under their criminal laws and shall make such acts punishable by severe penalties. In addition, the States Parties must take measures to ensure that, in training police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis is put on the prohibition of the use of torture. Emphasis should also be put on other fundamental rights and freedoms of people, especially those deprived of their personal liberty in public institutions, including psychiatric or other hospitals (26).


Under this international instrument, the States Parties undertake to guarantee the exercise of the economic, social, and cultural rights set forth therein, without discrimination of any kind as to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition. The Protocol stipulates that every human being should enjoy the right to health, and affirms that States Parties agree to recognize health as a public good, to prevent further abuses, and to promote education on health issues. It specifically covers the rights of persons with mental health conditions by obligating States Parties to establish programs to provide such persons with the resources and environment to achieve the greatest possible development of their personhood. The States Parties further agree to provide special training to families of persons with disabilities (27).

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará, 1994)

This instrument is founded on the conviction that the elimination of violence against women is essential for their individual and social development. The Convention establishes that all women, including women with mental health conditions, are entitled to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments. This includes the right to respect for their life and their physical, mental, and moral integrity (28). This instrument is highly useful in eradicating physical, sexual, and psychological violence against women with mental health conditions that frequently occurs in the family, the community, and medical and psychiatric facilities.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999)

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with mental or physical disabilities, and to promote their full integration into society (29). It is the first international convention to specifically address the rights of persons with mental health conditions.

Inter-American Convention against All Forms of Discrimination and Intolerance (2013)

This Convention states that discrimination is “any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in international instruments applicable to the States Parties” (30). It further states that discrimination may be based on various grounds such as disability, among many others, which in certain cases may overlap. It also states that “indirect discrim-
In any realm of public and private life, when a seemingly neutral provision, criterion, or practice has the capacity to entail a particular disadvantage for persons belonging to a specific group, or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law” (30). These provisions are central to formulating, implementing, and evaluating public policies relating to persons with mental health conditions.


This Convention recognizes the specific rights of older persons, including those with mental health conditions, such as the right to independence and autonomy, the right to long-term care, the right to free and informed consent on health and safety matters, a life free of violence, the prevention of torture and other cruel treatments, as well as economic, social, cultural, and environmental rights.

Regarding the right to health, this treaty is also very advanced in terms of its distinct provisions, as it establishes that older persons have the inalienable right to express their free and informed consent on health matters; as well as the right to a comprehensive system of care that protects and promotes their health; provides social services, food and nutrition security, water, clothing, and housing; and promotes the ability of older persons to stay in their own home and maintain their independence and autonomy (31).

Regional declarations, principles, recommendations, standards, and technical guidelines

American Declaration on the Rights and Duties of Man (1948)

This Declaration seeks to protect civil, political, economic, social, and cultural rights and fundamental freedoms (32), and is part of what is known as the regional corpus iuris [body of law] in the area of human rights. Although it is not an international treaty that States must ratify, it is understood under customary international law that this Declaration is binding on the countries of the Americas.

Caracas Declaration (1990)

This PAHO Declaration states that the resources, care, and treatment provided to people with mental health conditions must safeguard their personal dignity and human and civil rights. It calls upon health authorities, mental health professionals, legislators, jurists, and civil society organizations to advocate for and develop programs that promote integrated and community-based health services. It also invites these groups to monitor and defend the human rights of persons with mental health conditions in accordance with national legislation and international agreements. The Declaration calls for legislative reforms based on increasing awareness of the human rights of persons with mental disabilities. It establishes that mental hospitals, when they are the only mode of psychiatric care provided, isolate patients, thus generating greater disability that can jeopardize the right to health and other rights (33).

Panama Consensus (2010)

Twenty years after the Caracas Declaration, PAHO organized the Regional Conference on Mental Health, where public sector mental health workers, national health authorities, representatives of human rights organizations, nongovernmental organizations, academic institutions, PAHO/WHO collaborating centers, and persons who use mental health services and their family members called upon the countries of the Americas to promote the implementation of the Strategy and Plan of Action on Mental Health through a process in line with the particular conditions of each country. The Consensus aimed to guarantee appropriate responses to current and future mental health needs; strengthen the community mental health care model in every country in the Region to ensure eradication of the insane asylum system in the
coming decade; recognize the protection of the human rights of persons who use mental health services as a basic objective, especially their right to live independently and be part of the community; identify current and emerging challenges in national situations that demand an appropriate response by the mental health services, especially for psychosocial problems in children, adolescents, women, and population groups in special and vulnerable situations; increase the allocation of resources to mental health programs and services and ensure appropriate, equitable distribution of these resources, so that they are adequate to address the growing burden of mental health and substance use conditions, with the understanding that investing in mental health contributes to overall health and well-being, and to the social and economic development of the countries (34).

**PAHO CD47.R1: Disability: prevention and rehabilitation in the context of the right to the enjoyment of the highest attainable standard of physical and mental health and other related rights (2006)**

In this resolution, the 47th Directing Council of PAHO makes recommendations to Member States and to the Director on the promotion and protection of human rights and fundamental freedoms, especially regarding the right to the physical and mental health of persons with disabilities. The resolution refers to specific measures that may improve the well-being of persons with disabilities, such as creating community rehabilitation strategies and programs with the help of organizations of persons with disabilities; delivering appropriate, timely, and effective medical care for persons with disabilities; and amending disability laws in accordance with relevant international human rights rules and standards. The resolution urges the Director of PAHO to consolidate and strengthen cooperation with human rights organizations such as the Committee of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, among others (35).

**Strategy and Plan of Action on Epilepsy (2011)**

The purpose of this strategy is to strengthen the integrated response of the health sector through appropriate lifelong treatment programs for people with epilepsy, including prevention, treatment, and rehabilitation activities. This document also recognizes that the exercise of human rights is fundamental for people with epilepsy, especially those with some degree of disability. The barriers may be related to access to health services, restrictions on personal freedom, lack of job opportunities, exclusion from educational systems, legal constraints to exercising particular rights, and inadequate living conditions in certain psychiatric institutions. Human rights violations range from the most obvious to the most subtle—for example, not being able to obtain a driver’s license or restrictions on the ability to choose where to work. At times it is not a matter of having the legal instruments, but of enforcing them (36).

**Brasilia Consensus (2013)**

The objective of the First Regional Meeting of Users of Mental Health Services and their Families, convened by PAHO and others was to: (a) promote the sharing of personal and institutional experiences on the autonomy and empowerment of users of mental health services and their families in the Region of the Americas, to support their social organization and participation in decisions related to mental health policies; (b) promote discussion and reflection on mental health public policies in the Region; and (c) empower family members and service users to assess the quality of mental health services and their respect for human rights (37).

**Plan of Action on Mental Health (2014)**

The PAHO Plan of Action on Mental Health, agreed upon by the Member States, aims to promote mental well-being, prevent mental and substance-related disorders, offer care, enhance rehabilitation, emphasize recovery, and promote the human rights of persons
with mental and substance-related disorders, to reduce morbidity, disability, and mortality." The Plan consists of the following strategic lines of action to guide Member States, taking into account their national contexts and priorities: (a) develop and implement policies, plans, and laws in the field of mental health and mental health promotion, to achieve appropriate and effective governance; b) improve the response capacity of systems and services for mental health and for the care of psychoactive substance-related disorders, to provide comprehensive, quality care in community-based settings; c) devise and implement promotion and prevention programs for mental health systems and services and for the care of alcohol- and substance-related disorders, with particular attention to the life course; and d) strengthen information systems, scientific evidence, and research (38).

IACHR Resolution 1/2020: “Pandemic and Human Rights in the Americas” (2020)

On 10 April 2020, the IACHR adopted Resolution 1/2020, entitled “Pandemic and Human Rights in the Americas,” in light of the unprecedented global health emergency facing the Americas and the world, caused by the rapid global spread of COVID-19. The document recognizes that the pandemic and its consequences, including containment measures taken by the States, have severe impacts on mental health, which is part of the right to health, particularly in specific high-risk individuals and groups.

The section on recommendations specifically calls upon States to "ensure that measures taken to address the pandemic and its consequences include, on a priority basis, the human right to health and its basic social determinants" (39).

The Resolution also urges the States to "improve the availability and quality of mental health services and non-discriminatory access to them in light of the effects of pandemic and its consequences, including fair
distribution of such goods and services in the community, particularly to groups that are more exposed or at greater risk of being affected, such as health care professionals, older people, and people with medical conditions who require specific mental health care" (39).

How these standards should be applied and how international and regional human rights systems can be used strategically

The instruments and mechanisms of the United Nations and the Inter-American System of Human Rights provide a solid basis for the adoption of measures to promote and protect the rights of persons with mental health conditions in the Region of the Americas. These measures should involve all segments of society: the various branches of government, civil society, academia, the media, and society as a whole. All stakeholders and interest groups should be familiar with the human rights and protections guaranteed by these instruments, and should use them to review and improve national laws, policies, plans, programs, and practices. In addition, all sectors of society must respect the dignity and personal integrity of persons with mental health conditions, and promote the protection of their fundamental rights and freedoms.

The organs of the United Nations human rights system and the Inter-American System of Human Rights are essential tools to complement and support the work done by States at the national level. They can serve both as monitoring and complaint bodies and as bodies that cooperate with the States and provide technical assistance in the promotion and protection of the human rights of persons with mental health conditions.

Ministries of health, education, and labor and other relevant agencies. These authorities have an obligation to know, enforce, and disseminate the international instruments voluntarily ratified by their nations, which recognize and protect human rights. These legal instruments create a range of obligations in terms of public
policies, legislation, budgets, and practices related to mental health.

Governments have an obligation to progressively align their programs, plans, policies, and practices with the human rights standards set forth in international instruments. The recommendations of the various bodies of the United Nations system and the Inter-American system are very useful, as they offer guidance and guidelines to States on the types of measures to adopt and how to do so from a human rights perspective.

States have not only the obligation to not violate the rights of these groups, but also the responsibility to ensure that third parties are prevented from doing so. This is particularly relevant when establishing regulations, for example, on public and private health systems, which must guarantee that the treatment and hospitalization of persons with mental health conditions is approached from a human rights perspective. Human rights education is also a key tool for the promotion and protection of the rights of these populations, in order to prevent the countless situations of stigmatization and prejudice that they experience. In this regard, States must also ensure that they provide State agents with extensive education and training on the protection of the human rights of persons with mental health conditions.

**Mental health center management teams.** The management teams of these facilities must ensure that the admission, accommodations, and care of people using the mental health system are at all times in line with human rights standards. They also need to ensure that all staff are aware of, understand, and apply these standards.

**Nursing and other staff involved in medical care in hospitals and other mental health facilities** must be aware of and implement the rights of persons who use mental health systems, and ensure that those rights are respected and protected in every instance of contact with them. Health care staff should bear in mind that they may be the last line of defense in protecting the physical, psychological, and moral integrity of users of this system, and are required to report the violation of any of the rights of these people to the appropriate authorities.

**Admissions staff.** Admissions staff must always obtain the informed consent of persons who are admitted to a medical facility, in compliance with international human rights standards. All other staff in these institutions must ensure that in all cases they obtain informed consent for any treatment and care provided.

**Legislators and lawmakers** must be thoroughly familiar with international human rights law, and are responsible for ensuring that all national laws comply with obligations under international human rights conventions and instruments. If these laws are not in compliance, they must be reviewed and amended to align them with international standards.

**Justice system officials** must apply the framework for international and regional human rights in all decisions, and promote respect for human rights and fundamental freedoms without discrimination. The role of the judiciary is crucial to the observance of international human rights law that promotes and protects the rights of persons with mental health conditions. To this end, members of the judiciary should receive human rights training to ensure that human rights standards and principles are incorporated in all their decisions and rulings.

**Members of the security forces** should fully understand the importance of international human rights law in protecting the rights and freedoms of individuals and groups within society. They must ensure respect for and protection of these rights and freedoms for all persons with mental health conditions. To this end, governments have an obligation to provide human rights training to all security forces personnel.
National human rights institutions or Office of the Ombudsman should follow up on citizen complaints and visit people with mental health conditions in health facilities to ensure that their human rights are being respected in accordance with international and national laws. They must also prioritize the human rights of people with mental health conditions, as they play a key role in publicizing and promoting the human rights of this population.

Families. Families play a key role in protecting the rights of persons with mental health conditions, since they can use their relationships to promote cultural transformation in the perception of this population and prevent instances of discrimination, stigmatization, and mistreatment prevalent throughout society.

Nongovernmental organizations working with persons with mental health conditions or for the promotion and protection of their rights. These organizations play a pivotal role in the ongoing demand that States ensure the full realization of rights. They should work to raise public awareness of human rights and utilize regional and international mechanisms that protect these rights, invoking them when rights are violated at the local level within countries. Networks and partnerships among nongovernmental organizations are highly effective in joining forces and making optimal use of available resources.

The media plays a fundamental role in cultural transformation with respect to people with mental health conditions and the promotion of their human rights. The media should ensure that communication about this population is always free of stereotypes, stigmatization, and discrimination, and should promote images or videos that show people with mental health conditions as independent, able to care for themselves, and able to contribute in different ways to the development of society and their families. The media should also responsibly cover issues related to the abuse, neglect, and failure to respect the human rights of persons with mental health conditions, as well as the violence they experience.

People with psychosocial disabilities should know their rights, which are protected by national and international law. They should also understand how existing national, regional, and international mechanisms promote and protect those fundamental rights and freedoms. They should come together to actively participate in the development and review of mental health policies, plans, programs, and laws, and in the evaluation of any mental health service intended to protect their human rights, thereby reflecting the slogan “Nothing about us without us.”
References


2. MENTAL HEALTH


## Annexes

### Annex 1. United Nations Human Rights System

Table A.1.1 shows seven international instruments of the United Nations human rights system that protect the fundamental rights and freedoms indicated. Table A.1.2 lists the countries that are parties to these instruments.

### Table A.1.1. Select International Instruments of the United Nations Human Rights System that Protect the Listed Fundamental Rights and Freedoms

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Table A.1.2. Countries in the Region of the Americas that are Parties to Selected International Instruments of the United Nations Human Rights System

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<td>International Covenant on Economic, Social and Cultural Rights</td>
<td>Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)</td>
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<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>Convention on the Rights of the Child</td>
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### Annex 2. Inter-American System of Human Rights

Table A.2.1 shows eight international instruments of the Inter-American System of Human Rights that protect the fundamental rights and freedoms indicated. Table A.2.2 lists the countries that are parties to these instruments.

#### Table A.2.1. Select International Instruments of the Inter-American System of Human Rights that Protect the Listed Fundamental Rights and Freedoms

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<td>Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women</td>
<td>Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of)</td>
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<td>Inter-American Convention to Prevent and Punish Torture</td>
<td>Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela (Bolivarian Republic of)</td>
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