



HUMAN RIGHTS & HEALTH

PERSONS WITH MENTAL DISABILITIES

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 DEATH*

Victor staggered toward his mother. She had come to see him at the national mental hospital just two days after she had him admitted there for treatment. He collapsed in front of her, his hands tied behind his back, his body covered in his own urine and feces. His nose was bleeding, his head badly bruised, and his eyes were swollen shut.

Desperate to find help for her son, Victor's mother ran through the hallways calling for a doctor. When she finally found one, this mental health specialist dismissed her concern out of hand and snapped at her to stop crying. He never bothered to examine Victor, and prescribed medication without ever rising from his desk. He turned out to be the hospital's director.

She left her son lying naked on the floor of his room. When Victor's mother returned home from the hospital, she found a message saying that her son was dead.

The medical examiner's office issued an autopsy finding that ruled Victor's death as "due to indeterminate causes," despite obvious signs of inhumane and degrading treatment. Victor's relatives vowed to take his case to the highest tribunal available to seek retribution for wrongs done to him...

The Inter-American Commission and the Court of Human Rights have reviewed similar cases. Often, States have committed themselves to undertake several measures to redress the wrongs perpetrated against victims and their families. Among other things, States have agreed to establish an internal procedure to investigate and punish those responsible for the violations, to develop a training program for all staff dealing with mental health care and so help them understand how to treat persons with mental disabilities according to principles that conform to international standards, and to remunerate the victims' relatives to compensate for material and intangible damages.

* This account is based on a real incident that occurred in Latin America. Similar cases dealing with the human rights and fundamental freedoms of persons with mental disabilities have been reviewed by the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights, which are the human rights bodies of the Organization of American States (OAS).

WHO ARE THEY? WHAT IS THEIR PLIGHT?

The men, women, and children with mental disabilities may well be the most vulnerable persons in society. Deeply misunderstood and stigmatized, feared even, by many of their fellow citizens, they easily fall prey to physical, psychological, and sexual abuse and to gross and systematic violations of their basic human rights.

Throughout the Americas, persons with mental disabilities are regularly denied employment, education, and housing. Worse yet, they are often confined against their will and without due process, and may be left to languish for years, at times for their entire lives, in deplorable conditions. Some are forcibly institutionalized for years on end, with little hope of having their case reviewed. Some are held in isolation in remote mental health hospitals, far removed from any government scrutiny or regulation enforcement. Some lie in their own waste, are shackled to their beds, waste away in caged beds, or are tied outdoors with no protection from the elements. Some are deprived of food, medication, or warm clothing. Some are beaten. Some are raped.

The number of persons with mental disabilities in the Americas is expected to rise from the 114 million tallied in 1990 to a staggering 176 million by 2010. One in four children and adolescents suffer from disorders that require mental health intervention. One in four families has at least one member with a mental disorder.

Why is this abuse so widespread?

In order for a country to effectively promote and protect the human rights and fundamental freedoms of its citizens with mental disabilities, it shall, at a minimum, implement mental health instruments—policies, plans, laws, and programs, among others—that specifically protect the rights of such persons and that are

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consistent with international human rights conventions and standards.

These instruments should guarantee the personal freedom, due process, and periodic review of involuntary detention of those held in psychiatric institutions. The legal framework ranges from specific mental health laws, which afford the greatest protection, to general disability laws, public health laws, or national decrees, which grant less protection.

Unfortunately, at this writing only 16 countries in the Region have enacted national mental health laws, and only four have updated their legislation to bring it into line with international human rights law and mental health standards;¹ 19 others have general disability laws, general public health laws, or national decrees that do not guarantee all the above-mentioned rights.²



PROTECTION THROUGH INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

Both the United Nations (UN) and the inter-American human rights systems have a significant body of legal instruments that can be used to protect the rights and liberties of persons with mental disabilities. Because human rights instruments established by international law protect all persons without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status* (our emphasis), they are considered to also protect the rights and freedoms of persons with mental disabilities.

Some of these tools have emerged from **conventions** or **treaties**, and they are legally binding for States that have ratified them. Others—international human rights **declarations** or **“standards”**—although not legally binding, are considered to be authoritative interpretations of

¹ Antigua and Barbuda, Argentina, Bahamas, Barbados, Brazil, Canada, Dominica, Grenada, Guyana, Jamaica, Mexico, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and the United States.

² Belize, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

international convention requirements. It is important to note that these standards are enshrined in international law, and they represent a consensus of international opinion. In most cases, they are issued by the UN General Assembly or Council of Human Rights, and by the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), as well as by specialized UN and inter-American system agencies. They can be used to guide the formulation or review of policies, plans or programs; the enactment of pertinent legislation; and the restructure of health services to benefit persons with mental disabilities.

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Covenant establishes the UN Human Rights Committee as the treaty body for promoting and protecting the human rights enshrined in this instrument.

International Covenant on Economic, Social and Cultural Rights (1966). The Covenant requires State Parties to guarantee that the rights enshrined in this instrument will be exercised 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. Under **Article 12**, the States

Parties recognize that all persons have the right to the enjoyment of the highest attainable standard of physical and mental health. In order to achieve the full realization of this right, State Parties will, among other things, take steps to ensure the healthy development of children, the improvement of all aspects of environmental and industrial hygiene, and the prevention, treatment, and control of epidemic, occupational, and other diseases. In **Article 10**, States Parties recognize that they should take special protection and assistance measures on behalf of all children and young persons without any discrimination for reasons of parentage or *other conditions* (our emphasis). According to the Covenant, States Parties must take steps, individually and through international assistance and cooperation, to progressively achieve the full realization of the rights recognized in this Covenant, including by adopting legislative measures. The Covenant establishes the UN Committee on Economic, Social and Cultural Rights as the treaty body for promoting and protecting the human rights enshrined in the covenant.

These two covenants, along with the **Universal Declaration of Human Rights**, constitute what is known as the **International Bill of Rights**. All three provide protection against discrimination of persons with mental disabilities.

Convention on the Elimination of All Forms of Discrimination against Women (1979). **Article 11** safeguards women's right to protection of health and safety in working conditions. Under **article 12**, States Parties shall take all appropriate measures to eliminate

The United Nations System

Binding Instruments

International Covenant on Civil and Political Rights (1966). The States Parties undertake to take the necessary steps to adopt laws or other measures to give effect to the rights recognized in the Covenant. The Covenant states that every human being has an inherent right to life and that no one shall be arbitrarily deprived of his or her life and that each State Party to the Covenant will respect all individuals within its territory and subject to its jurisdiction without distinction of any sort, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With regard to equality, it recognizes that all persons are equal before the law and are entitled to equal protection of the law without any discrimination. With regard to the right to receive information, this instrument states that every person has the right to freedom of expression—the right to seek, receive, and impart information and ideas of all kind, regardless of frontiers, orally, in writing or in print, as art, or through any other media. **Article 7** protects every person from being subjected to torture or to cruel, inhuman, or degrading treatment or punishment—specifically, it states that no one shall be subjected to medical or scientific experimentation without his or her free consent. The States Parties to the Covenant recognize the right of all persons to participate in cultural life. The

discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. The Convention establishes the UN Committee on the Elimination of Discrimination against Women as the treaty body for promoting and protecting the human rights enshrined in the instrument.

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committed 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 important for the protection of mental and physical health in the context of public institutions. The Convention establishes the UN Committee against Torture as the treaty body for promoting and protecting the human rights enshrined in this instrument.

The **Convention on the Rights of the Child** (1989) contains human rights provisions in regard to children and adolescents. **Article 23** recognizes the right of children who suffer from physical or mental disabilities to receive special care. The article also establishes measures that States Parties should take to guarantee the development of the child as an individual and ensure his or her participation in the community. **Article 24** recognizes the right to the enjoyment of the highest attainable standard of health. **Article 25** recognizes the right to periodic review of treatment given to children placed in institutions for physical or mental health reasons. **Article 27** recognizes the right of children to be protected from performing any work likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral, or social development. The Convention establishes the UN Committee on the Rights of the Child as the treaty body for promoting and protecting the human rights enshrined in this instrument.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The provisions contained in this Convention protect persons with mental disabilities who are supposed to be under the protection of governmental officials. Under **article 2**, States Parties agree to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. **Article 4** requires States Parties to ensure that all acts of torture are offences under its criminal law. Moreover, this article binds State Parties to make these offenses punishable by appropriate penalties which reflect their grave nature. This instrument establishes that each State Party shall take steps to prevent in any territory under its jurisdiction acts of cruel, inhuman or degrading treatment or punishment when such acts are

Convention on the Rights of Persons with Disabilities (2006). This Convention and its Optional Protocol were adopted on 13 December 2006 at UN Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the first comprehensive human rights treaty of the 21st century. The Convention is intended as a human rights instrument with an explicit, social and economic development dimension. It reaffirms that all persons with all types of disabilities (including mental disabilities) must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of human rights and fundamental freedoms apply to persons with disabilities and identifies areas where adaptations have been made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced. The Optional Protocol provides specific mechanisms for enforcing the Convention.

Declarations, Principles, Standards and Technical Guidelines

Universal Declaration of Human Rights (1948). The Declaration states that all people are free and equal in rights and dignity. This all-encompassing provision implies that people with mental disabilities also are entitled to enjoy their basic human rights and entitles everyone to all rights and freedoms set forth in the Declaration, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (our emphasis). It also states that no distinction shall be made based on a person's political, jurisdictional, or international status or the country or territory to which

the person belongs, regardless of whether it is independent, trust, non-self-governing, or under any other sovereignty limitation. **Article 7** states that all persons are equal before the law and are entitled to equal protection of the law without any discrimination. **Article 19** safeguards the right to freedom of opinion and expression, including the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The Declaration recognized the right to work, to a free choice of employment, to just and favorable work conditions, to protection against unemployment and to medical care. **Article 5** protects every person from being subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Declaration on the Rights of Mentally Retarded Persons (1971). Although dated (even in its use of the term “mentally retarded” to refer to persons with intellectual disabilities), it establishes that persons with intellectual disabilities have “the same rights as other human beings,” and that these rights cannot be restricted without due process.

Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (known as “Mental Health Principles”) (1991). These principles are considered one of the most complete and detailed international standards for persons with mental disabilities. They provide guidelines for setting up or evaluating national mental health systems and they offer an interpretation of general human rights norms in the mental health context. They already have been used as a model for mental health legislation and as a guide for reviewing and recasting mental health policies and restructuring mental health services. They state that persons with mental disabilities enjoy all the rights and fundamental freedoms contemplated in general human rights conventions. Further, they state 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, the right to be cared for in the community, the

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right to provide informed consent before receiving any treatment, the right to privacy, the freedom of communication, the freedom of religion, the right to voluntary admission, and the right to judicial guarantees.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993). The Standard Rules set forth guidelines for implementing the basic rights and fundamental freedoms set forth in international instruments concerning persons with disabilities.

These Rules deal with the rights of people with mental disabilities—and of organizations of people with mental disabilities—to participate in drafting new legislation on issues affecting them. Governments are expected to facilitate this involvement, and to do so in a significant way. Rather than a purely symbolic participation of a handful of persons with mental disabilities buried in large committees of many professionals or government representatives, the Rules envision a degree of involvement that ensures that the voices of the persons with mental disabilities are fully heard in the process. According to the Rules, people with mental disabilities, their families, and community advocates should be included in the planning, design, implementation, and evaluation of services, support, and oversight programs.

General Comment 5 of the United Nations Committee on Economic, Social and Cultural Rights (1994). This comment analyzes the obligations of States with respect to equal rights for men and women with disabilities before the law; rights relating to work, social security, protection of the family, and mothers and children with disabilities; freedom of movement; the enjoyment of physical and mental health; education and participation in cultural life; and enjoyment of the benefits of scientific progress.

General Comment 14 of the United Nations Committee on Economic, Social and Cultural Rights (2000). In this Comment, the Committee analyzes the

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF BASIC HUMAN RIGHTS AND FREEDOMS OF PERSONS WITH MENTAL DISABILITIES

UNITED NATIONS HUMAN RIGHTS SYSTEM						
Protected Rights & Fundamental Freedoms	Universal Declaration of Human Rights	International Covenant on Civil and Political Rights	International Covenant on Economic, Social and Cultural Rights	Convention on the Rights of the Child	Convention on the Elimination of All Forms of Discrimination against Women	Convention against Torture and Other Inhuman or Degrading Treatment or Punishment
Life	Art. 3	Art. 6.1		Art. 6.1		
Humane Treatment	Art. 5	Art. 7		Art. 37.a		Arts. 1 & 16
Personal Liberty	Art. 3	Art. 9		Art. 37.b		
Fair Trial	Art. 8	Art. 14		Art. 40.2		Art.13
Privacy	Art. 12	Art. 17		Art. 16		
Freedom of Expression	Art. 19	Art. 19.2		Art. 13		
Name		Art. 24.2		Art. 7.1		
Movement	Art. 13	Art. 12		Art. 10.2	Art. 15.4	
Equal Protection	Art. 7	Art. 26		Art. 2	Arts. 3 & 15.1	
Judicial Protection	Art. 10	Art. 14		Art. 40.2	Art. 15.2	Art. 13
Work	Art. 23		Arts. 6 & 7	Art. 32	Art. 11	
Enjoyment of the Highest Attainable Standard of Physical and Mental Health	Art. 25.1		Art. 12	Arts. 17, 19.1 & 24	Art. 12	
Education	Art. 26		Art. 13	Art. 28	Art. 10	
Benefits of Culture and Scientific Progress	Art. 27		Art. 15	Art. 31.2	Art. 13.c	
Protection of Persons with Disabilities	Art. 25.1			Art. 23		
Protection of Children	Art. 25.2	Art. 24	Art. 10	All		
Protection of Women	Art. 25.2		Art. 12.2.a		All	
Protection of Older Persons	Art. 25.1					

COUNTRIES OF THE AMERICAS THAT ARE PARTY TO UNITED NATIONS HUMAN RIGHTS TREATIES:

Universal Declaration of Human Rights: Not subject to ratification.

International Covenant on Civil and Political Rights: Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela.

Convention on the Elimination of All Forms of Discrimination against Women: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Convention on the Rights of the Child: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay, Venezuela.

International Covenant on Economic, Social and Cultural Rights: Argentina, Barbados, Bolivia, 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, Venezuela.

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF BASIC HUMAN RIGHTS AND FREEDOMS OF PERSONS WITH MENTAL DISABILITIES

INTER-AMERICAN HUMAN RIGHTS SYSTEM						
Protected Rights & Fundamental Freedoms	American Declaration of the Rights and Duties of Man	American Convention on Human Rights	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women	Inter-American Convention to Prevent and Punish Torture
Life	Art. I	Art. 4			Art. 4.a	
Humane Treatment	Art. XXV	Art 5			Art. 4	Art. 6
Personal Liberty	Art. I	Art. 7			Art. 4.c	
Fair Trial	Art. XVIII	Art. 8			Art. 7.f	Art. 8
Privacy	Art. V	Art. 11				
Freedom of Expression	Art. IV	Art. 13				
Name		Art. 18				
Movement	Art. VIII	Art. 22				
Equal Protection	Art. II	Art. 24		Arts. II & III	Art. 4.f	Art. 8
Judicial Protection	Art. XXVI	Art. 25			Arts. 4.g & 7	
Work	Art. XIV		Arts. 6 & 7	Art. III.1.a		
Enjoyment of the Highest Attainable Standard of Physical and Mental Health	Art. XI		Art. 10	Arts. III.2.a & III.2.b	Art. 4.b	
Education	Art. XII		Art. 13	Arts. III.1.a & 2.b		
Benefits of Culture and Scientific Progress	Art. XIII		Art. 14	Arts. III.2 & IV.2		
Protection of Persons with Disabilities	Art. XVI		Art. 18	All	Art. 9	
Protection of Children	Art. VII	Art. 19	Art. 16			
Protection of Women	Art. VII				All	
Protection of Older Persons	Art. XVI		Art. 17		Art. 9	

PARTIES TO INTER-AMERICAN HUMAN RIGHTS TREATIES:

American Declaration of the Rights and Duties of Man: Not subject to ratification.

American Convention on Human Rights (Pact of San José): Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador): Argentina, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, Uruguay.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para): Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Inter-American Convention to Prevent and Punish Torture: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

content, scope, and obligations of Member States deriving from Article 12 of the International Covenant on Economic, Social, and Cultural Rights (the right to enjoyment of the highest attainable standard of health). The Committee establishes that the right to the highest attainable standard of health is closely related to and dependent on the exercise of other human rights, such as the rights to life; to non-discrimination; to equality; to freedom from inhumane or degrading treatment; to association, assembly, and movement; to food; to housing; to employment; and to education. It refers to persons with disabilities as a group whose vulnerability calls for special, relatively low-cost programs that offer access to health facilities, goods, and services without discrimination.

WHO Guidelines for the Promotion of Human Rights of Persons with Mental Disorders (1996). These guidelines are invaluable for evaluating national mental health programs. They include a questionnaire that can be used to determine whether the rights and fundamental freedoms of persons with mental disabilities are being respected in national psychiatric institutions.

WHO Resource Book on Mental Health, Human Rights and Legislation (2005). This publication contains the most important human rights instruments applicable to mental health and presents innumerable examples of various experiences and practices, as well as extracts of laws and other law-related documents from different countries. These examples do not represent recommendations or models to replicated; rather, they are designed to illustrate what different countries are doing in the area of mental health, human rights, and legislation.

The Inter-American System

Binding Instruments

American Convention on Human Rights (1969) and **The Rules of Procedure of the Inter-American Commission on Human Rights** (2000). These instruments cover a range of civil, political, economic, social, and cultural

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rights and set a binding protection and monitoring by the IACHR. They require States Parties to protect the rights and freedoms of all persons, “without discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988). Specifically covers the rights of persons with disabilities.

States Parties agree to establish programs designed to provide such persons with the necessary resources and environment to attain the greatest possible development of their personalities. State Parties also agree to provide training for families of persons with disabilities.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999). In **article II**, the Convention aims to prevent and eliminate all forms of discrimination against persons with mental or physical disabilities and promote their full integration into society. It is the first international convention that specifically deals with the rights of persons with mental disabilities.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. Article 3 of this Convention extends to every woman the right to be free from violence in public and in private spheres. **Article 4** states that all women have the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments. Among these rights are a woman’s right to have her life respected; to personal liberty and security; not to be subjected to torture; and to have her physical, mental, and moral integrity respected. All of these provisions clearly have implications for a woman’s involuntary confinement without consent, as well as for her treatment once admitted to a mental health institution.

Inter-American Convention to Prevent and Punish Torture.

Under **Article 6**, the State Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties. Perhaps more importantly, under **article 7**, the States Parties shall take measures so that, in the training of public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture. The State Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment. These provisions have a direct bearing on protecting the mental and physical health and other rights and fundamental freedoms of individuals, especially those who are deprived of their personal freedom in public institutions—including mental health hospitals.

Declarations, Principles Standards and Technical Guidelines

American Declaration of the Rights and Duties of Man (1948). The Declaration affords protection of civil, political, economic, social, and cultural rights and fundamental freedoms.

PAHO Declaration of Caracas (1990). The Declaration states that resources, care, and treatment for persons with mental disabilities must safeguard their dignity and human rights. It urges health authorities, mental health professionals, legislators, jurists, and organizations to advocate and develop programs that promote community-based and integrated mental health services. It also calls on these groups to monitor and defend the human rights of persons with mental disabilities in accordance with national legislation and international agreements. The Declaration called for extensive reforms based on raising awareness about the human rights of persons with mental disabilities. It states that exclusive reliance on inpatient treatment in a psychiatric hospital isolates patients from their environment, generating deeper disability. Further, the Declaration concludes that outmoded mental health services put patients' rights at risk.

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Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill, ("persons with mental disabilities" as established by current international human rights standards) (2001). In this instrument,

the Commission issues specific recommendations to the State, civil society, and persons with mental disabilities and their families to protect the basic rights and fundamental freedoms of these persons according to international law standards. It urges States to undertake judicial, administrative, educational, and any other needed steps to disseminate

international standards and human rights provisions that protect the civil, political, economic, social, and cultural rights and fundamental freedoms of persons with mental disabilities.

PAHO Resolution 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). Through this instrument, PAHO's Directing Council issues recommendations to Member States and to the Organization's Director about the promotion and protection of the human rights and fundamental freedoms of the disabled, particularly with regard to the right to the enjoyment of the highest attainable standard of physical and mental health. The text refers to specific measures that can be undertaken to improve the well being of persons with mental disabilities, such as the creation of community rehabilitation programs and the development of strategies with the participation of organizations of persons with mental disabilities; the delivery of appropriate timely and effective medical care for persons with mental disabilities and the amendment of the disability laws consistent with the applicable international human rights norms and standards. The resolution urges PAHO's Director to consolidate and strengthen the collaboration with human rights bodies such as the Committee of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, among others.

WHAT YOU CAN DO

The protections embodied in the UN and inter-American Human Rights Systems lie at the heart of any effort designed to increase the promotion and protection of mental health in the Americas. This endeavor must involve all segments of society—the State, the health sector, and civil society. All actors and stakeholders should come to know and understand the protections afforded by these instruments and then should use them to improve and refine national legislation, policies, plans, programs, and practices. They also should be used to design new or reform existing mental health services. In so doing, infringements of these rights would be reversed.

The Government

Every branch of government can—and should—participate actively in the effort to promote the rights of persons with mental disabilities, and then to safeguard those rights. Some governments have voluntarily signed and ratified international and regional human-rights conventions, and by so doing have accepted a range of obligations to persons with mental disabilities. Among other obligations, human rights law requires protection against infringements on individual freedom, personal integrity, freedom of movement and judicial protection, among others.

Legislators should gather information about the international human rights instruments to which their government is party to ensure that their country's legislation conforms with convention obligations and international human rights standards. If the domestic legal framework does not conform, it should be reviewed and revised to bring it in line. If needed, new legislation should be enacted, all of it conforming with international provisions.

Ministers of health, of education, and of labor—as well as civil servants at all levels in those ministries—and policy makers should be trained on the obligations from international human-rights conventions to which

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their government is party. If national policies, plans, and programs do not align with these obligations, efforts should be undertaken to revise them so as to make them consistent with those conventions and standards.

Judges, ombudspersons, the police, and officers of other relevant agencies in the criminal justice system should be aware about the international-treaty obligations that they may be called upon to enforce. Ombudsperson's offices can follow up citizen complaints and visit mental

health institutions and community based services to ensure compliance with national laws. They also should embrace the human rights of users of mental health services as part of their agendas.

Directors of mental health hospitals should ensure that regulations and standards governing their admission, treatment, holding, and handling of persons with mental disabilities conform to human rights protection standards and norms. They also should ensure that all staff in their facilities are aware of and clearly understand those norms. **Nurses and other health care workers in public mental health hospitals and clinics** should familiarize themselves with the rights of persons with mental disabilities and ensure that those rights are being upheld in every instance of contact with them. Health care workers must remember that they may be the last line of defense protecting the physical, psychological, and moral integrity of persons with mental disabilities, who may not be able to speak for themselves. If they witness any violation, they must act to stop it and bring it to the attention of responsible officials. **Admissions personnel and other staff** should ensure that in most cases they have the informed consent of persons being admitted to the facility consistent with international human rights norms and standards; they also should ensure that in most cases they have informed consent for treatment provided consistent with international standards.

Civil Society

Activists, users of mental health services, families of persons with mental disabilities, organizations of persons with mental disabilities and nongovernmental

organizations working on mental health or human rights issues should understand how international human rights legal instruments protect the basic rights and freedoms of persons with mental disabilities and how to use the mechanisms of protection provided by the human rights conventions.

The **media** can air any human rights violations to the public. It also could be very helpful in disseminating the sorts of protection afforded by international instruments.

Above all, **persons with mental disabilities** should know their rights as they are protected under national and international law. They also should understand how the domestic, regional, and international mechanisms available to promote and protect these fundamental rights and freedoms work. They should come together to actively participate in the development or review of mental health policies, plans, programs and laws, and in any evaluation of mental health services that aims to protect their human rights.

THE PAN AMERICAN HEALTH ORGANIZATION'S WORK

In 1990, the Pan American Health Organization (PAHO), in collaboration with the IACHR of the OAS, launched an initiative designed to restructure psychiatric care throughout the Americas. At the heart of the initiative was the promotion and protection of the human rights of people with mental disabilities.

Since then, PAHO has issued guidelines for reforming mental health systems based on internationally accepted human rights norms and standards. It also has conducted many workshops with WHO and the IACHR to train community leaders, mental health service users, advocacy group members, medical professionals, and government workers and decision-makers, among others, about international human rights standards and their application in hospitals, mental health facilities, and in the community.

PAHO, as the UN and OAS specialized agency for health in the Americas, has a central role to play in promoting and protecting the right to the enjoyment of the highest attainable standard of health and linking this right to other human rights. PAHO will:

- Disseminate and promote the international human rights instruments that protect the life, personal integrity, health, and other rights of persons with mental disabilities. As of this writing, 780 persons have been trained on the application of human rights instruments in the public health context—300 of them work in psychiatric hospitals.
- Advise Member States on policies, programs, and legislation related to mental health that are necessary to fulfill human rights obligations and, especially, make recommendations to States and international human rights bodies on the admission and retention of persons with mental disabilities in mental health facilities in accordance with international human rights treaties and standards.
- Collaborate with international and domestic human rights bodies, such as the IACHR,¹ special rapporteurs, and national ombudspersons' offices by providing technical opinions, participating in hearings, conducting site visits to assess the protection of human rights of persons with mental disabilities.
- Provide training and technical expertise to governments and civil society to raise awareness of human rights of persons with disabilities and of the mechanisms to exercise those rights. For example, PAHO's joint work with the Government of Paraguay, Mental Disability Rights International (an NGO working in the country), and the IACHR led to a friendly settlement on the fate of 400 patients who were being improperly held in the national psychiatric hospital. The State agreed to increase the mental health budget to create community-based services, reduce the number of patients held in the institution, and formulate national mental health legislation in compliance with international human rights law.
- Publish and disseminate technical documents outlining the human rights framework applicable to persons with mental disabilities.
- Work closely with the Center for Law and the Public's Health (Georgetown University Law Center and Johns Hopkins School of Public Health), which is the PAHO/WHO Collaborating Center on Human Rights Law.

¹ For example, some of the functions of the Inter-American Commission on Human Rights are to review and grant decisions regarding petitions concerning alleged violations of human rights recognized in the American Convention on Human Rights and other Inter-American instruments, visit OAS Member States and review their compliance with Regional human rights treaties, request that States adopt precautionary measures to prevent irreparable harm to persons and conduct general and specific hearings on human rights issues or individual cases. For further information see <http://www.iachr.org>



This brochure was written by Javier Vasquez, PAHO Human Rights Advisor, and the editors of the Publications Area. It was reviewed by Jorge Rodríguez, Chief of the Mental Health, Substance Abuse and Rehabilitation Unit. Any errors or omissions are the responsibility of the authors.

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