

## Mental health and due process in the Americas: protecting the human rights of persons involuntarily admitted to and detained in psychiatric institutions

Lance Gable,<sup>1</sup> Javier Vásquez,<sup>2</sup>  
Lawrence O. Gostin,<sup>1</sup>  
and Heidi V. Jiménez<sup>2</sup>

**Key words:** mental health; hospitals, psychiatric; human rights; institutionalization.

<sup>1</sup> Center for Law and the Public's Health, Georgetown University Law Center, Washington, DC, United States of America. Send correspondence and reprint requests to Lance Gable, Senior Fellow, Center for Law and the Public's Health, Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001, United States of America; telephone: (202) 662 9281; e-mail: gable1@law.georgetown.edu

<sup>2</sup> Pan American Health Organization, Washington, DC, United States.

Throughout history, persons with mental disabilities have suffered repeatedly some of the worst indignities of any group. Feared and misunderstood, they often have been excluded from meaningful participation in civil society and denied the opportunities—taken for granted by most—to live freely and make decisions for themselves. Like many vulnerable groups, they have endured inequality, discrimination, and serious social stigma. They have also been subjected to involuntary admission and detention in psychiatric facilities and other institutions. Involuntary confinement is a drastic deprivation of liberty that can only be justified under narrow circumstances; yet, in many countries in the Americas, persons with mental disabilities can be involuntarily confined for indefinite periods with hardly any justification and little or no oversight. Such circumstances clearly violate the human rights principles found in international and regional legal instruments.

The development of human rights protections for persons with mental disabilities is one of the great and continuing achievements of the latter part of the twentieth century. These achievements emerged from the collective efforts of two of the great international social movements of the last sixty years: the human rights movement and the disability rights movement. The human rights movement has elucidated the foundational principles for protection of the rights and freedoms of people around the world. Human rights inure to all individuals regardless of nationality, location, disability status, or any other distinction. The disability rights movement has championed the rights of persons with disabilities through many national and international settings, often using the language and moral grounding of human rights.

Nevertheless, the struggle to protect the human rights of persons with mental disabilities persists. In many parts of the world, persons with mental disabilities continue to face mistreatment, stigma, ostracization, and worse. Persons with mental disabilities are often isolated in psychiatric institutions under deplorable conditions that threaten their health and in some cases even their lives. Furthermore, many national legal and mental health systems fail to provide the most basic due process protections for persons with mental disabilities, including those subjected to involuntary admission and detention in psychiatric hospitals.

In general, countries in the Americas have not developed mental health laws that comport with human rights principles and guidelines. Therefore, human rights norms and standards have not been incorporated into mental health policies and plans, much less into national legal frameworks.<sup>3</sup> However, the oversight and monitoring mechanisms of international and regional human rights systems constitute an effective legal tool that can be used to promote and protect the human rights and fundamental freedoms of persons with mental disabilities by supplementing existing national laws or serving as a method of regulation in places where national laws are not available.

Indeed, the use of norms and structures outlined by the international and regional human rights treaties has been effective in protecting human rights in the European Human Rights System. The European Court of Human Rights (ECHR) has been extremely successful in interpreting and enforcing rights found in the European Convention on Human Rights to protect the interests of persons with mental disabilities. Beginning in the 1970s, the ECHR systematically invalidated national mental health laws and policies that failed to protect and promote the human rights of persons with mental disabilities. The decisions of the ECHR have acted as precedents for courts throughout the Council of Europe and have prompted many countries to revise their national mental health laws to comply with these precedents.

The Inter-American Human Rights System, which is comprised of all of the countries in the Americas and the Caribbean, is now poised to take the same journey that the European System began in the 1970s. In this article, we argue that the current situation faced by many persons who have been involuntarily admitted and subsequently retained in mental health hospitals in the Americas frequently violates human rights standards found in applicable international and regional human rights instruments. National mental health laws in the Americas have not adequately protected the rights to personal freedom, due process, and periodic review of involuntary detention required by these human rights instruments. The Inter-American Commission on Human Rights should review basic human rights such as personal freedom and due process of law in the context of mental health services and in accordance with international human rights standards.

<sup>3</sup> These findings are based on information that has been collected in site visits, PAHO's internal travel reports and the Preliminary Progress Report 2003 and Plan of Action 2004, Mental Health and Specialized Programs Unit, Washington, D.C., November 2003, PAHO (internal document, not for publication).

## INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

Human rights are codified and developed through international agreements (treaties, declarations, and conventions), standards (recommendations, declarations, and guidelines), and judicial interpretations (1). These sources originate from both international (United Nations) and regional (Europe, Americas, Africa) human rights frameworks (1). Since most countries in the Americas are State parties to agreements from both the United Nations system and the Inter-American Human Rights System, human rights principles found in both systems apply to persons living in the Americas (1).

The United Nations and Inter-American human rights systems provide significant protection for the rights of persons with mental disabilities through a number of treaties, declarations, and conventions (2–8).<sup>4</sup> Some of these international instruments contain general human rights protections that indirectly impact the rights of persons with mental disabilities, while other instruments take a more direct approach. For example, Article 1 of the American Convention on Human Rights (the American Convention), the foundation of the regional human rights system in the Americas, adopts the general rights approach (8). The American Convention requires States to protect the rights and freedoms of all persons, “without any 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*” (italics added). Mental health status is a social condition that can clearly fit within this expansive statement of nondiscrimination protection. By comparison, the human rights of persons with mental disabilities are explicitly recognized in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the Protocol of San Salvador) (7), and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (the Inter-American Convention on Disability) (9). The Protocol of San Salvador states that “[e]veryone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality”<sup>5</sup> (7). Consequently, the foundational

<sup>4</sup> The American Convention on Human Rights has been ratified by Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

<sup>5</sup> The protection of persons with disabilities under the Protocol of San Salvador is facilitated, in part, through periodic reports which are submitted by the States Parties on the progressive measures they have taken to ensure due respect for the rights set forth in the Protocol.

documents of the Inter-American Human Rights System entitle persons with mental disabilities to all of the civil, political, economic, social, and cultural rights and fundamental freedoms recognized under the Inter-American System.

International and regional standards have been formulated to protect the human rights and freedoms of persons with mental disabilities due to their particular situation of powerlessness. These standards are an intrinsic part of international human rights law. The standards are largely found in recommendations, declarations, and guidelines approved by international and regional bodies or specialized agencies including the United Nations General Assembly, the Inter-American Commission on Human Rights (IACHR), the World Health Organization (WHO), and the Pan American Health Organization (PAHO). The internationally accepted standards found in the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care (the MI Principles) (10), General Comment 14 on the Right to the Highest Attainable Standard of Health (General Comment 14) (11), the Declaration of Caracas<sup>6</sup> (12), and the Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill (the IACHR's Recommendation) (13) are among the most relevant to protecting the human rights of persons with mental disabilities. Courts and legislators often draw upon these standards when applying human rights to situations involving persons with mental disabilities.

Adjudicative and oversight bodies within the Inter-American and European human rights systems have similarly recognized the importance of applying human rights protections to persons with mental disabilities due to their inherent vulnerability. The IACHR has stated that it is "... pertinent to apply special standards to the determination of whether the provisions of [the American Convention] have been complied with in cases involving persons suffering from mental illnesses" (14). The ECHR "considers that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether [the European Convention] has been complied with" (15). Despite this recognition, only the ECHR has extensively applied human rights to ensure that persons with mental disabilities receive appropriate due process protections when involuntarily admitted to and detained in psychiatric facilities.

<sup>6</sup> In 1990, PAHO convened different mental health organizations, associations and professionals and jurists to the Regional Conference on Restructuring Psychiatric Care in Latin America (1990), held in Caracas, Venezuela. The Declaration of Caracas was adopted in the framework of the Conference.

## NATIONAL HUMAN RIGHTS LAW IN THE AMERICAS

Human rights standards require specific legal procedures to be established at the national level to guarantee due process to those detained in psychiatric institutions. Due process protections can be authorized through specific mental health laws, general disability laws, or constitutional provisions. However, only a few countries in the Americas possess updated national mental health laws. Furthermore, relevant constitutional provisions typically have not been applied to protect due process in this context. This legal situation has serious repercussions with regard to the rights of persons with mental disabilities to personal liberty, security, and due process.

Most of the countries in Latin America and the Caribbean have not enacted national mental health laws that specifically establish the pertinent legal procedures for admitting individuals into psychiatric institutions and reviewing their subsequent detention. Of the 35 states in the Region of the Americas, only sixteen currently possess a mental health legal framework. Eleven of these 16 national laws (enacted in countries in the Eastern Caribbean) are outdated and currently under review to bring them into accordance with international human rights law and mental health standards<sup>7</sup> (16).

A somewhat lesser degree of protection is afforded in a second group of countries, by way of general disability laws, public health laws, or national decrees<sup>8</sup> (17). Most of these general disability laws do not define, promote, or protect all of the human rights and fundamental freedoms of persons with mental disabilities and their immediate families in accordance with international human rights law. Instead, these laws only protect economic, social, and cultural rights such as social security, rehabilitation, education, benefits of culture, and work, with no reference to admission or due process of law procedures (17–19). Similarly, general legal provisions (e.g., civil, criminal, or family codes) do not address admission or due process, but may refer to legal issues such as legal capacity, competence, guardianship, criminal imputability, responsibility, fitness to stand trial with a mental

<sup>7</sup> PAHO's internal research and travel reports indicate that in the Americas, the following countries possess a national mental health law: 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.

<sup>8</sup> PAHO's internal research and travel reports indicate that in the Americas, the following countries have a general disability law, a general public health law or a national decree, yet do not possess a national mental health law: Belize, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

disorder, and protection of the family and children with disabilities<sup>9</sup> (20).

The constitutions of Latin American and Caribbean countries do provide more explicit protection for the human rights (e.g., the right to life, humane treatment, personal liberty, fair trial, privacy, equal protection of the law, judicial guarantees, work, social security, a healthy environment, education, enjoyment of culture and family life) and fundamental freedoms (e.g., the freedom of movement and residence, thought and expression, religion and association) of persons with disabilities, due to their inherent condition as human beings. Indeed, many countries guarantee these rights and freedoms under constitutional law to all citizens without any discrimination, including those individuals with mental disabilities (21). In addition, most of these constitutions establish domestic remedies to protect personal liberty and other constitutional rights and freedoms of persons with mental disabilities, such as the writs of *habeas corpus* and *amparo*<sup>10</sup> (21). These legal mechanisms—though often underutilized—can help to protect the rights of persons with mental disabilities at the national level.

### DUE PROCESS OF LAW IN LATIN AMERICAN AND CARIBBEAN MENTAL HEALTH SERVICES

The majority of countries in the Americas permit the involuntary admission and detention of persons with mental disabilities in psychiatric institutions. In most of these countries, the law does not require the application of basic due process protections to ensure that a person is not admitted and detained arbitrarily, that the person's mental disability is sufficiently serious to warrant involuntary confinement, or that the decision to admit and detain the person is reviewed expediently and periodically by an independent court. The following section demonstrates that due process protections—in addition to providing strong safeguards against unfair deprivations of liberty, autonomy, and dignity—are clearly established in human rights law governing the Americas and should be interpreted as such by the IACHR.

The IACHR and national courts in the Americas have not yet applied human rights principles to issues of involuntary admission and detention of persons with mental disabilities in psychiatric fac-

ilities. These issues have been explored, however, through the decisions of the ECHR and in the United Nation's Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care (MI Principles) (10). The precedents set by the MI Principles and the ECHR are relevant to the Americas because: 1) the American Convention contains human rights provisions similar to those found in the MI Principles and interpreted in ECHR jurisprudence, and 2) the IACHR has been willing to consider the analysis of both the MI Principles and ECHR decisions in interpreting human rights in the Inter-American System.

### Involuntary admission

Involuntary admission to a psychiatric facility involves a serious deprivation of a person's liberty and is therefore a potentially grave violation of human rights. National laws must ensure that persons subject to involuntary admission receive substantive and procedural due process. Substantive due process requires a determination that involuntary admission is necessary based on accepted psychiatric criteria (e.g., existence of a recognized mental illness, threat of imminent harm or deterioration, or necessity of institutional treatment). Procedural due process requires that legal procedures for involuntary admission are followed, decisions are made by qualified professionals, and decisions are not made arbitrarily.

The MI Principles and ECHR jurisprudence both address the human rights implications of involuntary admission. The MI Principles clearly set out standards that must be met to justify an involuntary admission. Principle 16 states that a person may be admitted involuntarily to a mental health facility only if a mental health practitioner finds that due to a person's mental illness: 1) there is a serious likelihood of imminent harm to that person or to other individuals, or 2) the failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility (10).

The European Court interpreted Article 5(1) of the European Convention in *Winterwerp v. the Netherlands* Article 5(1) guarantees that "[n]o one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law."<sup>11</sup> In *Winterwerp*, the ECHR found that in order to civilly commit persons with mental disabilities, mental health professionals must follow both procedural (the decision to involuntarily admit a person cannot be arbitrary and must follow a "procedure transcribed by law") and substantive due process

<sup>9</sup> These findings are based on PAHO's internal documents on human rights and mental health described in footnote 3.

<sup>10</sup> In the majority of Civil and Common Law countries personal liberty is protected by means of the recourse of *habeas corpus*, or personal appearance, though the procedures for utilizing this recourse vary considerably. Some Civil Law countries have adopted the writ of *amparo* to allow for presentation to the courts of claims of unconstitutionality by private citizens.

<sup>11</sup> *Winterwerp v. the Netherlands*, Eur Ct HR (ser A). 1979; 33.

(the person must have a recognized mental illness and require confinement to treat the illness).

In the Inter-American Human Rights System, the American Convention recognizes a right to personal liberty in Article 7. Specifically, Article 7.2 states that “[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto” (8). Further, Article 7.3 prohibits “arbitrary arrest or imprisonment.” These provisions create a liberty right which is similar to that found in Article 5(1) of the European Convention on Human Rights interpreted by the ECHR in *Winterwerp* (5). However, neither the IACHR nor national courts in the Americas have interpreted Article 7 in the context of mental health or applied these provisions to the involuntary admission of persons with mental disabilities into psychiatric facilities. The IACHR should carefully consider the precedents set by the MI Principles and the ECHR when they do have the opportunity to analyze this issue.

Most Latin American and Caribbean countries have not enacted a national mental health legal framework that specifically refers to the pertinent legal procedures to admit individuals into psychiatric institutions or to review the validity of these detentions. National laws in the Americas generally have not established substantive and procedural provisions with regard to involuntary admissions. Thus, if national laws in the Americas do not establish specific procedures, conditions, exceptions, and requirements for voluntary and involuntary admission, persons with mental disabilities in these countries might be subject to an unwarranted deprivation of liberty or an arbitrary detention in violation of their rights under Article 7 of the American Convention.

### Review of detention

Human rights standards demand that persons with mental disabilities who are involuntarily admitted to a psychiatric facility must have the right to a fair and timely review of their detention by an impartial and independent tribunal. Further, the continuing necessity of a person’s detention must be reviewed at periodic intervals by an independent tribunal. These human rights protections provide a procedural check on the admissions process and ensure that no one is forced to remain in a psychiatric facility if they no longer meet the criteria for involuntary detention. Regional and international human rights standards agree that an independent “mental health review body” should make these determinations in order to guarantee impartiality.

The MI Principles and ECHR jurisprudence have each addressed the right to a prompt, fair, and

periodic review of involuntary detention. Principle 17 recommends that a judicial or other independent and impartial body review the initial decision to admit or retain a person as an involuntary patient in a psychiatric hospital. This review must take place as soon as possible after that decision and in accordance “with procedures as specified by domestic law” (10). The Principle also requires an ongoing, periodic review of the cases of persons admitted involuntarily to a psychiatric facility “at reasonable intervals” or upon receiving an involuntary patient’s petition for release or voluntary status (10).

The ECHR dealt with these issues in the seminal case, *X v. United Kingdom*. The case involved a patient who had been involuntarily confined under the existing mental health act in the UK. The ECHR found that this law did not provide for periodic legal review with the essential elements of due process for all involuntarily admitted patients. The Court demanded 1) a review of the detention on its merits, 2) by a competent, independent tribunal, 3) with the power to order a discharge if involuntary admission is no longer warranted.<sup>12</sup>

The Inter-American Human Rights System contains analogous principles in Articles 7.6, 8, and 25 of the American Convention. Article 7.6 of the American Convention establishes that “[a]nyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful” (8). The legal remedies (“recourse to a competent court”) and procedures (the review “without delay” of the “lawfulness of the arrest or detention”) established by article 7.6 are consistent with guidelines established by the international mental health standards in MI Principle 17 and the analysis of the ECHR in *X v. United Kingdom*.

Despite these precedents, the IACHR and national courts in the Americas have not yet applied Article 7.6 to persons involuntarily admitted in psychiatric hospitals. The IACHR has, however, stated that in a particular country of the Region “[t]here were no legal or other entities that were trained, independent and impartial; nor were there any effective procedures for reviewing the involuntary admission of patients or determining whether the conditions or circumstances for their involuntary admission still existed. . .” (22). The IACHR’s Recommendation does not outline guidelines for procedural review of the lawfulness of detentions in psychiatric facilities; nevertheless, the Commission refers to the “right to appeal the legality of a psychiatric hospital detention to an independent and impartial court” as one of the

<sup>12</sup> *X v. United Kingdom*, Eur Ct HR (ser A). 1981; 46.

human rights and fundamental freedoms most often violated in psychiatric hospitals (13).

Article 8 of the American Convention states that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law . . . for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. . .” (8). This Article may be interpreted in light of MI Principle 17 as guaranteeing, to persons whose liberty is deprived in psychiatric hospitals, access to a “competent, independent and impartial tribunal” (such as a review body) established by domestic law “within a reasonable time” of their admission to the facility. This tribunal should have the authority to make decisions with regard to their right to personal liberty (for example, discharge or retention in the hospital) and other civil, political, economic, social and cultural rights. The review body could also guarantee judicial protection to involuntarily admitted persons through a “simple and prompt recourse” as established by Article 25 of the American Convention (8).

National laws and policies in the Americas have not granted persons with mental disabilities periodic review of detention by a competent, impartial, and independent tribunal as required by Articles 7.6, 8, and 25 of the American Convention<sup>13</sup> (21). National laws in the Americas should therefore establish review bodies to guarantee that persons involuntarily admitted in psychiatric institutions have a legal recourse (as established by the American Convention) to review and determine “at reasonable intervals”: 1) the lawfulness of their detention, 2) the right to appeal to a higher court against a decision regarding admission or retention in a mental health facility, and 3) the right to be protected against acts that violate their basic human rights and freedoms.

## CONCLUSIONS

The countries of the Americas have not yet satisfied their obligations to protect, respect, and fulfill the human rights of persons with disabilities, despite human rights instruments recognizing these obligations. As a consequence, a more vigorous application of international human rights standards by the Inter-American Human Rights System is necessary to hold States accountable for their treatment of persons with mental disabilities, especially in the context of involuntary admission and detention in psychiatric institutions.

<sup>13</sup> The review of the detention by an independent court is also recognized and protected by the majority of National Constitutions (Civil and Common Law Countries).

The IACHR has not yet interpreted the sections of the American Convention that apply to persons with mental disabilities subject to involuntary admission and detention in psychiatric facilities. The comparison above suggests, however, that the IACHR should apply the human rights principles in Sections 7 and 8 of the American Convention in a way that approximates the analysis found in MI Principles 16 and 17 as well as ECHR cases such as *Winterwerp* and *X v. United Kingdom*.

The IACHR has demonstrated its willingness to apply the precedents of the ECHR and the guidance of the MI Principles to jurisprudence related to persons with mental disabilities in other contexts. In *Victor Rosario Congo v. Ecuador*, the IACHR utilized the MI Principles to interpret the standards of the American Convention that provide for the right to physical integrity, the right to life, and the right to judicial protection. In that report the IACHR also cited precedents in ECHR opinions addressing these same issues (14). The *Congo* report heralded a new era in IACHR jurisprudence, recognizing for the first time that the regional human rights conventions applied to persons with mental disabilities in the Americas, and simultaneously using precedents from the MI Principles and ECHR to interpret these rights.

The IACHR should also strengthen the human rights framework by compelling States to modernize their mental health laws to incorporate these human rights norms and principles. The IACHR has already urged Organization of American States (OAS) Member States to “[t]ake legislative, judicial, administrative, educational, and other steps to disseminate [. . .] the international standards and provisions of human rights conventions that protect the mentally ill. . .” (13).

The strengthening of the human rights framework that supports mental health will fortify other human rights and fundamental freedoms as well. The movement to reduce involuntary admissions (through de-institutionalization and the implementation of community-based services) demands national laws that establish alternatives such as outpatient treatment, medical care in general hospitals, partial hospitalizations, halfway houses, or supportive apartments, among others (23). Further, this trend can facilitate the reform of mental health services, as is already happening in some countries of the Region<sup>14</sup> (13, 24–25).

<sup>14</sup> International and regional human rights bodies can consider petitions and issue reports regarding alleged violations of the human rights enshrined in human rights conventions or protocols to these conventions which, in most cases, are subject to ratification by Member States. In addition, according to Article 25 of the Rules of Procedure of the IACHR, in serious and urgent cases the Commission on its own initiative or at the request of a petitioner can adopt precautionary measures to prevent irreparable harm to persons. The IACHR recently issued precautionary measures to protect the life and personal integrity of the 458 persons detained in the National Psychiatric Hospital of Paraguay in accordance with Paraguay’s obligations under the American Convention.

Finally, the IACHR, national governments, and others should collaborate with PAHO to increase the awareness and understanding of the interconnectedness of public health and human rights. In collaboration with the IACHR and other international and national agencies, PAHO is developing a project to promote and protect the human rights of persons with mental disabilities through initiatives such as national training workshops for the government and civil society, mental health policy and law reform, empowerment of consumers, and technical collaboration with human rights bodies on the preparation of country reports and technical opinions.

In conclusion, it is essential that countries in the Americas recognize the human rights principles that apply to involuntary admission procedures and review procedures for psychiatric institutions. It is imperative that national laws be amended or mental health laws enacted that incorporate the human rights principles and fundamental freedoms described above. The IACHR can greatly advance this effort. It is time for the countries of the Americas to give persons with mental disabilities in psychiatric institutions the respect and human rights protection they deserve.

---

#### SINOPSIS

### La salud mental y los procedimientos reglamentarios en las Américas: la protección de los derechos humanos de las personas reclusas y retenidas en hospitales psiquiátricos contra su voluntad

*En muchos países de la región de las Américas, las personas con discapacidades mentales pueden ser reclusas en centros*

*psiquiátricos contra su voluntad, indefinidamente, sin apenas justificación, y con poca supervisión o ninguna. Estas circunstancias son una clara violación de derechos humanos, tales como el derecho a la libertad, y del derecho al procedimiento reglamentario con todas las garantías judiciales, tal como establecen los tratados de derechos humanos con fuerza vinculante en los niveles internacional y regional. Además, muchos países de América Latina y el Caribe no han adoptado leyes específicas en materia de salud mental ni han interpretado los dictámenes constitucionales en el contexto de la salud mental de una manera acorde con los principios y recomendaciones que rigen actualmente en materia de derechos humanos.*

*Los mecanismos de vigilancia y monitoreo del Sistema Interamericano de Derechos Humanos pueden constituir un instrumento jurídico eficaz y de utilidad para promover y proteger los derechos humanos y las libertades fundamentales de las personas con discapacidades mentales; en este sentido pueden complementar las leyes nacionales o servir como fuente de regulación en aquellos lugares donde no existen leyes nacionales. Los países deben promulgar leyes nacionales que confieren una protección básica, de acuerdo con las garantías legales, a aquellas personas que hayan sido reclusas en centros de salud mental en contra de su voluntad. Esto ayudaría a garantizar que las personas no sean internadas y retenidas de forma arbitraria, que la discapacidad mental sea lo bastante grave como para justificar su internamiento involuntario, y que la decisión de internar y retener a la persona sea revisada periódicamente, de manera eficiente, por un tribunal independiente e imparcial. Consideramos necesaria una aplicación más rigurosa de las normas de los derechos humanos por parte del Sistema Interamericano de Derechos Humanos, a fin de lograr que los estados se responsabilicen de la manera como tratan a las personas con discapacidades mentales y que promulguen leyes para proteger los derechos de aquellas que hayan sido reclusas en centros psiquiátricos contra su voluntad.*

**Palabras clave:** salud mental, hospitales psiquiátricos, derechos humanos, institucionalización.

---

#### REFERENCES

- Gostin LO, Gable L. The human rights of persons with mental disabilities: a global perspective on the application of human rights principles to mental health. *Maryland L Rev.* 2004;63:20–121.
- Universal Declaration of Human Rights. GA Res 217 A. 1948 (UN Doc A/311).
- Inter-American Commission on Human Rights, American Declaration of the Rights and Duties of Man. 1948. Available from <http://www.cidh.oas.org/Basicos/basic2.htm>. Accessed 15 June 2005.
- International Covenant on Civil and Political Rights. Dec. 19, 1966 (999 UNTS 171) (entered into force Mar 23, 1976).
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No 11. Nov. 1, 1998. Available from <http://www.echr.coe.int/Convention/WebCovenENG.pdf>. Accessed 22 September 2004.
- International Covenant on Economic, Social and Cultural Rights. Dec. 16, 1966 (993 UNTS 3) (entered into force Jan 3, 1976).
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted Nov. 17, 1998. Available from <http://www.cidh.oas.org/Basicos/basic5.htm>. Accessed 15 June 2005.
- American Convention on Human Rights, opened for signature Nov. 22, 1969 (9 ILM 673) (entered into force July 18, 1978).
- Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons With Disabilities, adopted June 7, 1999 (entered into force

- September 14, 2001). Available from <http://www.cidh.oas.org/basicos/disability.htm>. Accessed 15 June 2005.
10. Principles for the Protection of Persons with mental Illness and the Improvement of Mental Health Care. G.A. Res. 119. 1991 (UN GAOR, 46th Sess, 3rd Comm, 75th plen Mtg).
  11. United Nations Committee on Economic, Social and Cultural Rights. The right to the highest attainable standard of health, CESCR general comment 14. 2000 (UN Doc E/C12/2000/4).
  12. Levav I, Restrepo H, Guerra de Macedo C. The restructuring of psychiatric care in Latin America: a new policy for mental health services. *J Public Health Policy*. 1994;15:71.
  13. American Commission on Human Rights. Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill, Annual Report of the Inter-American Commission on Human Rights 2000. 2001 (OAS/Ser/L/V/II.111/doc.20 rev.). Available from <http://www.cidh.org/annualrep/2000sp/cap.6d.htm>. Accessed 15 June 2005.
  14. Victor Rosario Congo v. Ecuador. Case 11.427. 1999 (Inter-Am CHR 63/99). Available from <http://www.cidh.oas.org/annualrep/98eng/Merits/Ecuador%2011427.htm>. Accessed 15 June 2005.
  15. Herczegfalvy v. Austria. *Eur Ct HR (ser A)*. 1992; 244: 25–26.
  16. Pan American Health Organization/World Health Organization (PAHO/WHO). Public Policy & Health Program, Psychiatric Care and Mental Health Legislation in the English-speaking Caribbean Countries. Technical Report Series No. 71. Washington, D.C.: PAHO; 1999.
  17. Pan American Health Organization/World Health Organization (PAHO/WHO). División de Desarrollo de Sistemas y Servicios de Salud, Acerca de la discapacidad y sus instrumentos jurídicos: una perspectiva sanitaria [Disability and its legal instruments: a public health perspective]. Washington, D.C.: PAHO; 1997.
  18. Mental Disability Rights International (MDRI), Human Rights and Mental Health in Uruguay. Washington, D.C.: MDRI; 1995. Available from <http://www.mdri.org/publications/index.htm>. Accessed 15 June 2005.
  19. Mental Disability Rights International (MDRI)/Asociación Pro Derechos Humanos, Human Rights and Mental Health in Peru. Washington, D.C.: MDRI; 2004. Available from <http://www.mdri.org/publications/index.htm>. Accessed 15 June 2005.
  20. Levav I, González Uzcátegui R. Rights of persons with mental illness in Central America. *Acta Psychiatr Scand*. 2000; 101: 83–6.
  21. Pan American Health Organization. The right to health in the Americas. Washington, D.C.: PAHO; 1989.
  22. Inter-American Commission on Human Rights (OAS). Press release No. 10/01. 2001. Available from <http://www.cidh.oas.org/Comunicados/English/2001/Press10-01.htm>. Accessed 15 June 2005.
  23. World Health Organization. Guidelines for the promotion of human rights of persons with mental disorders. Geneva: WHO; 1996. (WHO/NMH/MND/95.4/).
  24. Mental Disability Rights International. OAS human rights commission orders Paraguay to end horrendous abuses in national psychiatric facility. December 18, 2003. Available from [www.mdri.org/projects/americans/paraguay/pressrelease.htm](http://www.mdri.org/projects/americans/paraguay/pressrelease.htm). Accessed 15 June 2005.
  25. Damião Ximenes Lopes v. Brazil. Admissibility petition 12.237. 2002 (Inter-Am CHR 38/02). Available from <http://www.cidh.org/annualrep/2002eng/Brazil.12237.htm>. Accessed 15 June 2005.

“...clinicians’ increasing liability for the violent actions of their patients has forced evaluators to err on the side of commitment...”

*Robert D. Miller, M.D., Ph.D., Professor of Psychiatry,  
Colorado Health Sciences Center, Denver, Colorado*