UPDATES

Deprivation of Liberty and the Right to Health: Report of the United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras (10 April 2018)

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At the 38th session of the Human Rights Council, held on 18 June to 6 July 2018, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Special Rapporteur) addressed the General Assembly. His report formed part of the Agenda as item 3, which covered issues on the promotion and protection of all civil, political, economic, social and cultural rights, including the right to development.

The purpose of this update is to offer a summary of the Special Rapporteur's report with regard to five thematic areas. These areas included the right to health in the context of confinement and deprivation of liberty; the relationship between mental health and forced confinement and deprivation of liberty; children deprived of liberty; women's right to health and issues of confinement, and need to end public confinements through an engagement with the community.

The right to health in the context of confinement and deprivation of liberty

This thematic area was examined on two grounds: the intrinsic links and systemic omissions that affect the right to health when an individual's liberty is curtailed on one part, and an overview of the right-to-health framework on the second part.

The intrinsic link to the right to health was informed by the need to uphold the dignity of an individual through the protection of the right to health in prison. According to the Special Rapporteur, the enjoyment of the right to health in prison requires the enjoyment of other guarantees such as the non-deprivation of liberty; the right to a fair trial; the prohibition of arbitrary detention, torture and cruel, inhuman or degrading treatment; and the right to life.

He highlighted five systemic omissions that come to light in the deprivation of liberty and subsequently affect the right to health. First, the failure to have a comprehensive system of health

care from childhood leads to inequalities, poverty and discrimination, which continues into adulthood. Consequently, the lack of health care in prisons and areas of incarceration is due to the lack of a comprehensive policy that addresses all the stages of development from childhood to adulthood. This is evident in research findings which show that most of the affected people in closed settings come from marginalised and low-income communities.

Secondly, the existence of punitive legal frameworks and public policies makes incarceration a likelier alternative than the realisation of the right to health. This occurs where governments make laws that criminalise behaviours based on one's identity or status (including sexual orientation or HIV status) or selectively enforce laws against loitering, public disorder or vagabondage.

Thirdly, the use of detention and confinement as a response to public safety monopolises resources and creates a predisposition towards increased numbers of incarcerations. The situation would be different if resources were redistributed to support the development of robust health-care systems, safe and supportive schools, programmes to support healthy relationships, access to development opportunities, and an environment free from violence.

Fourthly, a person who is incarcerated finds it challenging to enjoy the right to health because detention in prison informs the continuing violation of the right to health. As a result, poor health, due to poor conditions of detention, poor or no provision of health care, and lack of access to health care, is exacerbated by the psychosocial pain and hopelessness that follow the deprivation of one's liberty, sometimes with dire consequences such as suicides and premature deaths in custody.

The last link between the right to health and deprivation of liberty is the devastating impact of the continued detention of the breadwinners and primary caregivers in young and low-income families. In addition to the impact that the detention has on the social and economic standing of such a family, once the breadwinners or caregivers are released, they are not provided with support to reintegrate into society. Usually these ex-convicts have a criminal record and are subjected to post-release surveillance and commitment orders.

Once breadwinners are released, they are not provided with support to reintegrate into society

In view of the intrinsic links to the right to health above, the Special Rapporteur reiterated the need for states to engage a proper right–to-health framework that seeks to improve the enjoyment of the right to health in places of detention. He reminded states of their obligations to respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health under international law, and to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.

These two obligations, he noted, are instructive for ensuring care for persons detained in prisons according to the Minimum Standards for the treatment of prisoners (UN General Assembly, 2015). He noted that the fulfilment of these responsibilities and obligations supported the progressive realisation of the right to health in closed settings such as detention centres (UN Human Rights Council, 2018).

The Special Rapporteur recognises that the right to informed consent requires a voluntary and sufficiently informed decision that promote a person's autonomy, self-determination, bodily integrity and well-being. It is recommended that this right is respected, protected and fulfilled in cases of isolation and confinement. The risk to the right to consent is the continued subjection of vulnerable persons to harmful, coercive treatment such as compulsory drug testing and research trials.

He also highlighted how the discriminatory apprehension of incarcerated persons by the administrative staff of places of detention leads to discrimination and inequitable provision of services. This was evident in the denial of health care, such

as anti-retroviral therapy or contraceptives, because of the incarceration of an individual. He called for staff training on alternative approaches.

Other issues covered in the report include the need for international cooperation and assistance, the underlying determinants of health, the state of heath care in detention centres, and the need for participation and accountability in respect to the right to health.

The relationship between mental health and forced confinement

Deprivation of liberty has effects on mental health that can amount to a violation of human rights. A case in point is solitary, protracted or indefinite detainment in prisons or other closed settings, which negatively affect the mental health and well-being of an individual. The deprivation of liberty leads to the potential exposure to inhumane, conditions, and abuse.

Children deprived of liberty

The Special Rapporteur called for an investment in the use of community-based services as an alternative to child prisons and large care institutions. This would avert the magnitude of children's suffering in detention. In view of neuroscience research that shows that the brains of adolescents continue developing in many critical ways, there was a need to question the justifiability of the States' use of punitive methods of control on children.

Women, the right to health, and confinement

The Special Rapporteur noted that the violation of the right to health is significantly greater in women than in men due to power and authority in places of detention. This is due to historical, patriarchal, and hyper-masculinist constructions of punishment and control. The problem is more dire where the women who are incarcerated have disabilities, are expectant mothers or have left children at home who struggle to cope. Other conditions such as overcrowding, discrimination and unsanitary conditions present serious health-care problems. States have to provide special accommodation for both prenatal and postnatal care and treatment in prisons.

From confinement to community: Ending public-health detention

At times confinement is used as a tool to control the spread of infectious diseases and viruses, or out of medical necessity. However, punitive measures such as confinement lead to the spread of further disease. States Parties should thus adopt community-based care practices that decrease the spread of infectious diseases.

Conclusion and recommendations

Deprivation of liberty and confinement lead to a violation of the right to health. Sustainable Development Goal 3 cannot be achieved if the dangers of detention to public health are not dealt with. International and domestic laws that promote non-incarceration and community-based alternatives should be embraced.

References

Report of the Special Rapporteur on Extreme Poverty and Human Rights on the International Monetary Fund (IMF) and Its Impact on Social Protection. UN Doc A/HRC/38/33 (8 May 2018). Available at https://bit.ly/2ydlCDm