

## UPDATES

# Mental Health and Migration: Interim Report of the United Nations Special Rapporteur, Dainius Pūras, 27 July 2018

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*At the seventy-third session of the General Assembly, held on 27 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. This report formed item 74(b) of the provisional agenda covering issues relating to the promotion and protection of all human rights, human rights questions, and alternative approaches to the effective enjoyment of human rights and fundamental freedoms.*

## Thematic areas

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This interim report addresses five thematic areas: the right to mental health and migration; terminology and the scope of the report; opportunities and obstacles in the global context; the right-to-mental-health framework; and people on the move.

## The right to mental health and migration

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In dealing with the right to health, the Special Rapporteur notes that earlier reports identified

discrimination, intolerance and a selective approach to human rights as key indicators in the fight against full and effective realisation of the right to physical and mental health. The present report examines the link between migration and the right to mental health, with a focus on contemporary political, humanitarian and public health responses.

The Special Rapporteur proposes that grave violations of the rights of migrants and refugees require that the right to mental health be grounded within the context of a sustainable development agenda that seeks to realise that right for all people. As such, there is need for increased attention to the realisation of this right and the removal of barriers that impede this.

## Terminology and scope of the report

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Drawing insights from the Hague Process on Refugees and Migrants and the United Nations Educational, Scientific and Cultural Organization, the report defines a ‘person on the move’ as an individual who is moving across or has crossed an international border, or has moved from his or her habitual place of residence – a definition that applies regardless of legal status, whether the movement is voluntary or involuntary, the causes for the movement, or the length of the stay (UNESCO 2008).

Given this definition, the report emphasises that that being a person on the move should not be equated with a mental health issue in itself. Nevertheless, while migration is informed by political reasons, it also has implications for the mental health of an individual.

It is recognised that since biological, social and psychological factors affect mental health, a nuanced approach to the broader perspective of a person’s political, social, cultural and economic life is useful in aiding State Parties’ obligation to respect, protect and fulfil the right to mental health.

## Global context: Opportunities and obstacles

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The various global efforts to strengthen mental health systems represent an opportunity to consider how those systems advance the equal realisation of the right to mental health for all people, including people on the move (UN Human Rights Council 2018). The Special Rapporteur urges State Parties to learn from how other organs, such as the World Health Organization, deal with emergencies as opportunities for improving the enjoyment of the right to mental health of affected persons (UN Human Rights Council 2018).



## Unequal power relations in socio-political, health-care and even humanitarian settings have implications for the right to health

States Parties are encouraged to recognise the economic benefits that people on the move offer to their host economies in terms of their contribution to the labour workforce and their self-sufficiency in being self-employed in their own businesses.

Unequal power relations in socio-political, health-care and even humanitarian settings have implications for the right to health. These inequalities are made worse by conflict, violence and social economic disparities, resulting in discriminatory treatment of people on the move and the subsequent violation of their right to mental health.

## People on the move and the right-to-mental-health framework

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The normative framework of the International Covenant on Economic, Social and Cultural Rights is complemented by other international laws such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, the Convention Relating to the Status of Refugees, and the Convention on the Rights of the Child.

These obligate states to respect, protect and fulfil the right to physical and mental health in their national laws, policies, budgetary measures, programmes and other initiatives. There is a corresponding obligation on states to prohibit discrimination of any grounds of national origin, birth or legal status; there should be increased participation by, and access to information for, all persons, as this heightens the accountability of State Parties (UN Human Rights Council 2018).

Other matters the Special Rapporteur highlights are the social determinants of health, care and support in terms of their availability, accessibility, acceptability and quality.

## Issues in focus

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Special attention needs to be paid to the right to mental health of children and families on the move, given that migrant detention is a default strategy used globally to regulate mobility. It is recognised that, as a central focus of human development and immigration policies, the family is a foundation for children's mental health and well-being – this is something people recognise universally despite their ideological, geographic and cultural differences (UN Human Rights Council 2018).

The principle of the best interests of the child should apply to all children and adolescents on the move. This would affect issues such as education, social protection, health, safety and security, access to justice, freedom from torture, cruel, inhuman and degrading treatment, and non-discrimination. State Parties are called upon to harmonise their laws, policies and regulations with the Convention on the Rights of the Child (UN Human Rights Council 2018).

Furthermore, the Special Rapporteur notes that the arbitrary detention of persons with intellectual, cognitive and psychosocial disabilities also occurs in the context of migration and displacement. This practice violates the rights to personal liberty and to security, and may amount to a violation of the right to live free from torture and ill-treatment (UN Human Rights Council 2018).



## The Special Rapporteur recommends that people in positions of power avoid xenophobic words and actions, which have a negative impact on the right to mental health.

The Working Group on Arbitrary Detention is applauded for supporting the gradual abolition of immigration detention. It is recommended that States Parties establish a legal presumption against immigration detention and bring all forms of it to an end. States are urged to prioritise the implementation of non-custodial, community-based alternatives to detention.

## Conclusion and recommendations

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The Special Rapporteur recommends that people in positions of power avoid xenophobic words and actions, which have a negative impact on the right to mental health. This would tone down the hostile emotional and psychosocial environments that arise due to mistrust, disrespect and intolerance.

States and stakeholders should strive to develop strong communities founded on good-quality human relations. It is noted that when enabling environments are not created or supported for the realisation of everybody's rights, the realisation of the right to mental health is an uphill battle.



## **State Parties are encouraged to ... prohibit the detention of children and other practices that are not in their best interests**

State Parties are encouraged to take legislative and policy steps that include the following:

- Repeal laws and policies that criminalise irregular migration based on immigration status, or impede the ability of people on the move to participate in or develop meaningful relationships in their host communities, work, obtain an education or have access to services, including mental health care and support.
- Prohibit the detention of children and other practices that are not in their best interests, including the detention of families, family separation, and frustration of family reunification. These prohibitions should extend to the detention of migrants with psychosocial, cognitive or intellectual disabilities. The prohibitions would ensure that decisions relating to the entry, stay, naturalisation and expulsion of people on the move cannot be made solely on the basis of health status, including mental health status.
- Work progressively to end all forms of immigration detention, except where exceptional circumstances exist. There should be procedural safeguards that are implemented, with monitoring by independent mechanisms to prevent torture, ill-treatment and violence. The prevention should extend to other interference that affects the realisation of the right to physical and mental health.

- Provide human rights education for service providers, mental health practitioners, and other stakeholders on how to deal with instances that may lead to the violation of the right to health. State Parties should ensure that detained migrants are held in conditions that satisfy health standards and where they can access essential health-care services, including mental health care and support services.



## **State Parties should ensure that detained migrants are held in conditions that satisfy health standards**

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### **References**

Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in relation to mental health and migration. UN Doc A/73/216. 27 July 2018