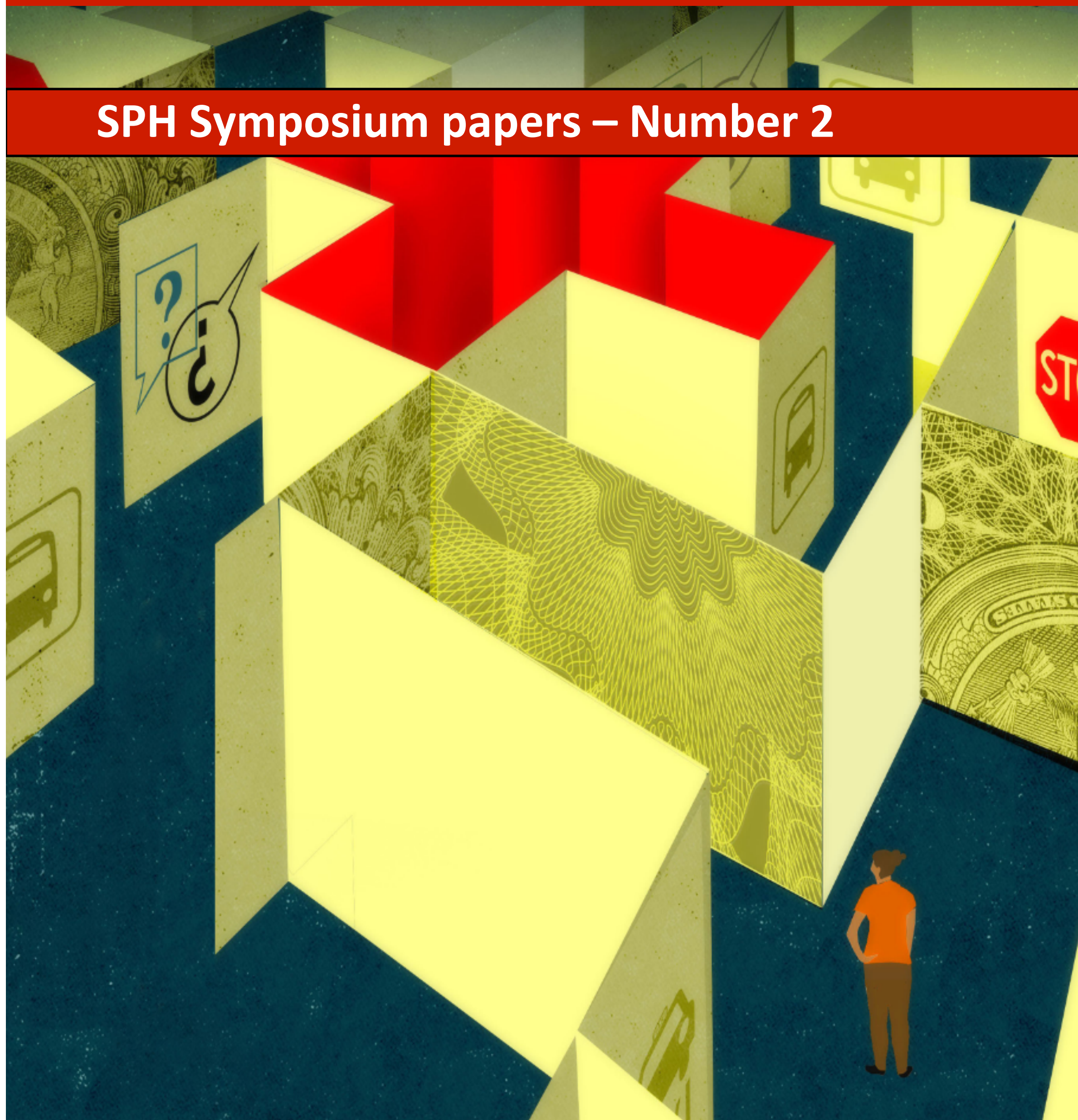
(PUBLIC) HEALTH AND HUMAN RIGHTS

April 6, 2016

Boston University School of Public Health

SPH Symposium papers – Number 2



BU School of Public Health

Boston University School of Public Health
Dean's Symposia

This is part of a series of reports issued by the Boston University School of Public Health (BUSPH), emerging from symposia and other convenings of experts exploring contemporary public health issues. The goal of these meetings is to engage difficult issues, to generate discussion among our school community and global thought leaders, and to generate collaborations across sectors that can lead to solutions that improve the health of populations. This series was launched on the occasion of the school 40th anniversary in 2016.

Summary written by Courtney Perdios.

(Public) Health and Human Rights

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INTRODUCTION/OVERVIEW

The second in the symposia series, *Public Health and Human Rights*, explored the relationship between public health and human rights with a focus specifically on the Right to Health and the Right to be Free of Torture. Dean Galea opened the symposium stating his long-held belief that human rights should be at the core of any public health agenda and should animate what a school of public health does. He referenced several of the more recent violations of human rights – the passage of a new law in Mississippi allowing businesses to deny services based on sexual orientation, and the vast majority of Syrian refugees in Middle Eastern countries living below the poverty line – and highlighted the need for this timely discussion. With presentations from two expert UN Special Rapporteurs and panel discussions that delved further into the issues, the day-long conversation explored the importance of respecting and upholding human rights, and how public health and human rights are interrelated and mutually reinforce each other in pursuit of their common aim: human flourishing.

Professor George Annas began the day's conversation with a brief history of the evolution of human rights. In 1941, President Roosevelt paved the way for universal human rights in his Four Freedoms speech and, after his death his wife, Eleanor, chaired the UN Committee that drafted the most important human rights documents in history, the Universal Declaration of Human Rights (UDHR). The UDHR was supplemented by subsequent human rights treaties, including the Geneva Conventions, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention Against Torture, and the Convention of the Elimination of all forms of Discrimination Against Women. Together, these efforts create the universal human rights framework. The theme of the conference was the interrelationship of human rights with public health; the UN Special Rapporteur on the Right to Health, Dainius Pūras began this exploration by emphasizing their mutual relationship. Dr. Pūras referenced the multitude of "perfect documents" that have been written on human rights. He was careful to note, however, that sometimes during implementation, something happens – corruption, wrong incentives, lack of monitoring and accountability – that marks a departure from the good ideas that inspired those documents, leaving empty promises in their wake. In short, declarations and treaties are only a beginning; making human rights real in the lives of real people is the ongoing challenge. UN Special Rapporteur on Torture, Juan Mendez, agreed saying that despite being absolutely and clearly prohibited by international law, torture continues in many parts of the world. Condemning and prosecuting torturers remains a challenge.

RIGHT TO HEALTH

Dr. Pūras led the morning discussion, speaking about his role as the new UN Special Rapporteur on the Right to Health. Likening his position to being a spy in the health care system, he is charged with travelling to countries around the world and reporting on their performance in terms of how countries respect, protect, and fulfill their obligations regarding the right to health

His interpretation of his right to health mandate is guided by Jonathan Mann's conclusion that a human rights-based approach is often, as it was in responding to HIV/AIDS, more useful than a biomedical approach in responding to contemporary public health challenges. The right to health refers to the right of every human being to the enjoyment of the highest attainable standard of physical and mental health. As a physician with a background with a specialty in mental health and early childcare, he approaches his mandate differently than his two predecessors who were both lawyers. He views the right to health as more than just the basics of survival (access to food/nutrition, housing, safe/potable water, sanitation, and safe/healthy working conditions). He emphasized that a more holistic view – one that includes spiritual, moral, social, emotional, and cultural elements – is equally as important. Dr. Michael Grodin agreed, noting that health is a primary good, needed by everyone to live a fulfilling life, and to increase one's range of opportunities.

Mental Health

Dr. Pūras focused much of his attention on mental health conditions and challenges. Mental health has long been marginalized and even ignored, but there is no health without mental health. Further, he stated that good mental health is not simply the absence of a diagnosed disorder – it involves a person's emotional wellbeing. Dr. Pūras noted the lack of mental health care both in and out of the institutional setting, noting that mental hospitals around the world have appalling conditions and often fail to honor the human rights of their patients by using force and violence in their treatment.

Dr. Pūras observed that the monopoly of power that drug companies have achieved in the treatment realm has led to a crisis in modern psychiatry. He cited the struggle in Europe between (over)medicating patients in Eastern Europe and mechanically restraining them in caged beds in Western and Central Europe. Dr. Pūras believes we need new paradigms in psychiatry and mental health to replace those that currently rely only on the assertion that what a doctor says is best. In the new paradigm, patients with mental disease must be treated like persons with human rights, forced treatment and restraints eliminated, and humane care with consent made the rule.

Selective Approach and Hierarchy of Human Rights

It is not uncommon for countries to use a selective approach to human rights, adhering to some human rights, while ignoring others. Some countries rank human rights, letting some take precedence over others. An example of this in our modern world are countries that have achieved universal health care and, on the surface, seem to be doing well in terms of the right to health, but simultaneously impede democracy and limit the ability of its citizens to voice concerns without fear of retribution. Dr. Pūras and Prof. Wendy Mariner both argued against a hierarchy,

noting that all human rights are interrelated and interdependent. Dr. Daniel Tartantola, on the other hand, expressed his belief that there will always be competition among human rights.

Violence

Although there is less violence in the world, especially to women and children, than there was 50-100 years ago, violence continues to be a serious challenge to the right to health and a problem for public health. Dr. Pūras has seen violence in a variety of forms and in many settings – within families, against women, and in healthcare and mental health settings. He strongly calls for zero tolerance for violence with no exceptions. He argued that behaviors associated with modern "traditional family values" often violate the rights of women and children. Research has shown an unhealthy response to prolonged toxic stress of children in violent situations. Further research reveals the quality of a child's brain development depends on the quality of the relationship between the child and the primary caregiver in the first years of life. Dr. Pūras emphasized the importance of educating parents on how to be parents and giving them the tools that can help them raise a child who is healthy in every sense of the word.

Dr. Pūras referenced 10-year old girl in Paraguay who was not allowed to terminate her pregnancy due to restrictive anti-abortion laws. Her doctors were telling her that nothing was wrong with her situation. Her forced motherhood is a grave violation of the right to health, and points to the country's lack of reproductive rights, including the right to sex education. It also shows how a government can infiltrate the medical field and trap doctors in dilemmas, thus undermining the doctor/patient relationship.

TORTURE

UN Special Rapporteur Juan Mendez is tasked with the responsibility of reporting on the conditions surrounding violence, ill treatment, and torture occurring in countries around the world. He began his remarks by passionately reminding us that the crime of torture is clearly and absolutely prohibited in international law. On par with slavery and genocide, torture violates rights so fundamental to the international community that its prohibition is binding on all nations irrespective of a country's consent to be bound. The Convention against Torture obligates governments to refrain from torturing anyone – even the worst criminal or suspected terrorist. Torture includes, but is not limited to, techniques like intentional deprivation of food and water, sleep deprivation, prolonged isolation, and, of course, beatings, waterboarding, and other physical assaults. Since these techniques are often implemented without witnesses or without much documentation, it is difficult to assess if the degree to which they are used constitutes torture. However, Prof. Mendez says that when these techniques are used in combination or coupled with arbitrary arrest, secret detention, and the restriction of due process, many cases clearly cross the threshold of torture. Even acts that are not considered torture, but still inflict pain are also prohibited under international law, which not only prohibits torture, but also "cruel and inhuman treatment."

Prof. Mendez admits that there have been disturbing worldwide setbacks on the universal fight against torture in the wake of the 9/11 terrorist attacks. The partial release of the Summary and Conclusions of the Senate Select Committee on Intelligence report states that between 2002 and 2007 more than 100 people were forcibly disappeared, detained, interrogated, and subjected to torture and ill treatment by the CIA. It details the torture techniques that were used, including waterboarding, sleep deprivation, forced nudity, dietary manipulation, and violent abuse. It goes on to show that breaches in the prohibition of torture were approved and coordinated by high level government officials and carried out by state actors. The CIA's use of "Black Sites," the violations of human rights that have occurred at Guantanamo Bay, the undermining of the strict prohibition of torture, and the lack of accountability the US has taken thus far have made it easier for other countries to use torture themselves, and to argue that it is necessitated by terrorism. Prof. Mendez characterized the partial release of this report is a step in the direction of truth, but continues to call for its full release, saying "lasting security is based on truth, not secrecy."

Indefinite Detention

Prof. Mendez also urged the US government to end the practice of indefinite detention – to either release detainees at Guantanamo Bay immediately or provide for their prosecution by due process and international law. He reminded us that the goal of prisons is to rehabilitate offenders and strive to reintegrate them into society. When that goal is lost or undermined, the system breaks down. Guantanamo expert Dr. Sondra Crosby has made an internal estimate that since the War on Terror began, between 80,000-100,000 people have been detained and interrogated by US officials. The US, she believes, has a moral obligation to provide rehabilitation treatment to those prisoners it has tortured, and to all prisoners it releases who have not been found guilty of committing any criminal act.

Two specific cases at Guantanamo, both detainees facing indefinite detention, were discussed in detail during the panel discussion that followed Prof. Mendez's remarks. Both illustrate how prolonged indefinite detention can lead to other violations to the convention against torture.

Dr. Crosby detailed the case of Abu Aw'el Dhiab, who went on a hunger strike to protest his indefinite detention. He was subjected to forced cell extractions and forced nasogastric feeding strapped to a chair twice a day. He brought his complaint to federal court, where Judge Gladys Kessler, although not ruling in his favor, did illuminate and condemn the shameful way Mr. Dhiab was treated at Guantanamo. The Dhiab case highlights another subject of deep concern – the central role medical professionals play in the treatment and punishment of prisoners. Due to the painful, severe, and humiliating nature in which force feeding is carried out, it is viewed as a violation of human rights and may be considered torture, or at least cruel and inhuman treatment. After examining the ethics of force feeding and consulting medical professionals, Prof. Mendez ultimately publically denounced the practice of force feeding, saying he is "confident the autonomy of the prisoner needs to be paramount." He suggested an alternative method of dealing with hunger strikers would be to have good faith conversations in which prisoners are allowed to air their grievances and subsequently negotiate acceptable solutions. Acting more as jailers than physicians, Mr. Dhiab's doctors took away things like his wheelchair, crutches, underwear, and

socks to punish him for being on a hunger strike. Dr. Crosby noted that, by assuming the role of punisher instead of healer, they completely lost their therapeutic relationship with their patient.

The second case discussed in detail, that of Adnan Latif, was described by Dr. David Annas. Mr. Latif was a troubled Guantanamo detainee who had a history of acting out, inflicting self-harm, and hoarding medicine. He was found dead after hoarding medicine and overdosing. A long chain of accidental or deliberate breaches in protocol, coupled with the apparent lack of acknowledging the prisoner's history, paved the way for this outcome. His case illustrates two important issues facing human rights in detention facilities – first the oversight of the right to health of detainees, and secondly, the use and effects of solitary confinement.

The right to health of detainees is no different than of those not detained although, because of the restriction on a prisoner's movement, the state is entirely responsible for the prisoner's health. The principle of non-discrimination applies – there must be equal access for all persons, including prisoners, to the highest standard of physical and mental health care. Medical care in prisons is a state responsibility and delivering on it is not optional. Prof. Mendez referenced the 1950s Standard Minimum Rules for Treatment of Prisoners (which has since been revised and renamed the Mandela Rules), which gives inmates the right to the same standard of care as is available in the community. But he says, in reality, this is seldom the case – he has seen chronic illnesses go untreated, emergencies ignored, and those with serious mental illness fail to receive the necessary care. Dr. Annas went further, saying that prisons should actually provide better care than can be found in the community because there is unlimited access to monitor prisoners and conditions that might go undiagnosed in the community should be caught and treated by prison medical personnel. Prof. Mendez believes poor medical care in prison can turn a minor prison sentence into a death sentence, especially considering that rates of communicable disease, drug abuse, and mental illness are significantly higher in prisons. Prisoners must be evaluated upon admission and monitored periodically during their detention. They must have an adequate regime of activities, access to quality medical care and dentistry, and if they require more advanced care (surgery, etc.) that the facility cannot meet, they must be transferred to a hospital. Prof. Mendez urged that the goal of prisons has to be the rehabilitation of the offender and the desire to reintegrate them into society. When that goal is lost the system breaks down and health suffers.

Solitary Confinement

The effects of solitary confinement in Mr. Latif's case, and its use in general, was a main focus of the day's discussion. Prof. Mendez opened the conversation on the subject by saying that solitary confinement is a practice that is global in nature and subject to widespread abuse. It is used in prisons, administrative facilities, juvenile detention center, mental health facilities, and immigration facilities. It is used most often as a disciplinary tool for crimes or violence committed during incarceration, but it is also used in a protective way to segregate prisoners from the general population (new inmates, LGBTI, juveniles). It may also be called be other names, but anything that constitutes an absence of significant social contact with the outside world and other detainees for 22-24 hours a day is considered solitary confinement. Although Prof. Mendez allows that short-term solitary confinement or isolation is an important tool of

prison discipline and can be justified with adequate safeguards in place, it needs to be applied on a case-by-case basis. He has strongly advocated against using it being used for a period longer than 15 days. Research has shown that periods of isolation longer than 15 days can lead to physical and psychiatric harm, some of the effects of which are irreversible. Prof. Mendez and the panel of experts were in agreement that solitary confinement should be used only in exceptional circumstances and as a last resort. In addition, they concur that it should be used for as short of a period as possible. That period needs to be clearly stated to the prisoner and the prisoner must be allowed an opportunity to appeal or challenge the decision. Medical care continues to be a human rights requirement for every prisoner, even those in solitary confinement.

The Road Ahead

Many modern challenges to health and human rights were addressed during the symposium, and attention was also paid to the road ahead. Where do we go from here?

Streamlining public health and human rights messaging was suggested as a way to make further strides in public health and human rights initiatives. Oftentimes documents and guidelines are overwhelming in length and very dense in language, making it difficult for governments to make rational decisions. Dr. Tarantola and Prof. Sofia Gruskin believe that using succinct and plain language to convey key messages to governments is necessary to progress. Prof. Gruskin notes, however, that policy implementation should not be subject to streamlining and should provide as much guidance as necessary to ensure good ideas become reality.

Prof. Mendez expressed his frustration that even if you link harsh polices and ill treatment to violating human rights, it is still easier to get elected if a candidate is "hard on crime." He will continue to advocate that torture is immoral, and that is why it is illegal. Additionally, he reminds us that the costs of torturing someone always far outweigh the benefits, both to those who construct the torture regime and to society as a whole.

Some important advances in terms of solitary confinement have been made recently. Prof. Mendez praised President Obama's work on solitary confinement, and noted how important Obama's acknowledgement of the problem, which had previously been ignored, has been on reform efforts. Additionally, the Mandela Rules have updated solitary confinement policies – now prohibiting its use for indefinite periods of time, and completely prohibits its use for children, those with mental disorders, those with disabilities, and women who are pregnant or breastfeeding. Dr. Brandon Reynolds reminded us that although there is some federal oversight (guidance from Supreme Court decisions, etc.), solitary confinement policies are implemented on a state by state level, so they vary across the country. Dr. Reynolds mentioned a recent settlement between Governor Cuomo and the ACLU/NYCLU that has further modified down typical solitary confinement sentences in NY. The new modifications, to be implemented soon, will not allow solitary confinement for first time or low-level drug offenders (possession and use), and will prohibit its use for minors. California, one of the biggest offenders of arbitrary

solitary confinement, will be returning 90% of its solitary confinement prisoners back to general population.

Dr. Pūras feels moderately optimistic about the direction of the right to health. He has found that governments are taking the topic very seriously and he is encouraged by the conversations he has had. Despite the alarming decline in human rights defenders worldwide, Dr. Pūras will continue to advocate that the best path forward is one that combines human rights and public health. He acknowledged that this goal, in addition to his call for zero tolerance to violence and no hierarchy in human rights, "may all sound like dreams, but we know dreams come true with committed people who have goals and a good plan to reach them."

Both Dr. Pūras and Prof. Mendez acknowledged that the nature of their positions, appointed by the UN but not employed by the UN, mean their recommendations are not binding and could merely be taken as suggestions. However, they believe that in most cases their views have been relevant and influential, and that other organizations, especially NGOs, can help publicize and put pressure on governments to honor the right to health, especially in the arena of public health – a natural concern of governments. In this way, the rapporteurs' influence over policy is magnified. There was consensus that public health and human rights are natural allies, and they can learn from each other and reinforce the influence of each other for the betterment of human flourishing.