REFORMING MENTAL HEALTH LEGISLATION
An essential framework to empower, protect and care

Professor Kathleen McCourt
President Elect Commonwealth Nurses and Midwives Federation
WHO report that globally, there are 450 million people with mental disorders:

- 150 million with depression
- 24 million with schizophrenia
- 50 million with epilepsy
- 90 million with alcohol or drug use disorder
- Over 800,000 commit suicide every year
Mental ill health affects one in four people in their lifetime.
Human rights violations of people with mental ill health are routinely reported in most countries including physical restraint, seclusion and denial of basic needs and rights.

20% of the world's children and adolescents, regardless of culture, are estimated to have mental ill health.
Mental ill health is the third highest cause of disease burden in the world, predicted to be the leading disease burden by 2030. One third of the anticipated spend on NCDs over the next 20 years is on mental ill health which is a common co-morbidity of NCDs, infectious diseases and poverty.
The United Nations Convention in Rights of Persons with Disability
Adopted 13 December 2006 Came into force 3 May 2008 (Ratified by 149 countries)

- The right to an adequate standard of living and social protection (Article 28 of the CRPD).
- The right to enjoyment of the highest attainable standard of physical and mental health (Article 25 of the CRPD).
- The right to exercise legal capacity and the right to personal liberty and the security of person (Articles 12 and 14 of the CRPD).
- Freedom from torture or cruel, inhuman or degrading treatment or punishment and from exploitation, violence and abuse (Articles 15 and 16 of the CRPD).
- The right to live independently and be included in the community (Article 19 of the CRPD).
In preparation for the 2013 CHMM, the Commonwealth Health Professions Alliance commissioned research on mental health legislation across the Commonwealth.

- Searched 53 countries legislation
- Unable to find legislation for 4 countries
- No dedicated legislation in 4 countries
- Analysed 45 countries legislation
- Used World Bank classification by income
- Only dedicated mental health legislation examined

http://www.chpa.co
FINDINGS

Research by the Indian Centre for Mental Health Law and Policy found mental health legislation in Commonwealth countries failed the standard of the UN Convention on Rights of Persons with Disability.

Mental health legislation in 20 per cent of Commonwealth member states was enacted prior to 1960 before modern medical treatments became available and before many of the international human rights instruments came into force.
Mental health legislation in only 11 per cent of Commonwealth member states specifically include provisions that state mental health care should be provided on an equal basis with physical health care.

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FINDINGS

Provisions for protection from cruel, inhuman and degrading treatment are included in the legislation in only 23 (51 per cent) countries.
FINDINGS

The informed consent of persons with mental disorders for participating in clinical and experimental research is specifically mandated in mental health legislation in only 5 (11 per cent) countries.

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Laws in only 2 (4 per cent) countries restrict involuntary admission of minors with mental health problems, and laws in only 3 (7 per cent) countries ban any irreversible treatments on children with mental health problems.
FINDINGS

The word “Lunatic” is used in the mental health laws of 12 countries; the term “Insane” is used in the mental health laws in 11 countries; the term “Idiot” is used in the mental health laws in 10 countries; 2 mental health laws use the term “Imbecile”; and 2 mental health laws use the term “Mentally defective”. Overall 21 (47 per cent) laws use 1 of the above terms.
CONCLUSIONS

Mental health legislation in many Commonwealth member states is outdated and does not fulfil member states’ international human rights obligations toward persons with mental disorders.

Mental health legislation in many Commonwealth member states is not compliant with the Convention on Rights of Persons with Disabilities.

Many mental health laws treat persons with mental disorders as needing protection rather than as subjects with rights. As a result, mental health legislation, instead of protecting the rights of persons with mental disorders, is likely to lead to violation of rights.
CONCLUSIONS

Mental health legislation in many countries is based on an outdated understanding of mental disorders; ignores advances in the care and treatment of mental disorders and denies the capacity of persons with mental disorders to manage their lives.

Provisions in and the language of mental health laws in many instances adds to negative perceptions and further stigmatisation of persons with mental disorders.

Most mental health laws pay little attention to protecting the rights of vulnerable groups with mental health problems such as minors, women, and minorities and the special needs of such vulnerable groups.
66th World Health Assembly 20-25 May 2013

Global Mental Health Action Plan 2013-2020

The Mental Health Action Plan 2013-2020 proposes that member states:

*develop, strengthen, keep up to date and implement national policies, strategies, programmes, laws and regulations relating to mental health within all relevant sectors, including codes of practice and mechanisms to monitor protection of human rights and implementation of legislation, in line with evidence, best practice, the Convention on the Rights of Persons with Disabilities and other international and regional human rights conventions (p.8).*
CNMF PROJECT

Reforming mental health legislation across the Commonwealth

The WHO advocate reform of legislation as an essential foundation and pre-requisite for reform of policy, practice and service provision.

Policy and practice needs to be based on a sound legal framework to protect people in need of care and practitioners who provide care. Mental health legislation, when based on human rights principles, provides a legal framework to address access to care, rehabilitation, integration into the community, prevention of discrimination, and promotion of mental health and wellbeing.
PROJECT METHODOLOGY

- Establishment of a National Mental Health Advisory Committee.
- Government commitment to the project and project plan
- Assessment of mental health and other relevant legislation
- Education (public, persons with mental health, their carers, health professionals)
- Development of drafting instructions, if indicated, for a new Bill
- Submission of Bill to government
- Lobbying and advocacy for passage of Bill through Parliament
Commonwealth Nurses and Midwives Federation

National Mental Health Advisory Committee Seychelles
Commonwealth Nurses and Midwives Federation

National Mental Health Advisory Committee Botswana
National Mental Health Advisory Committee (NMHAC) established. Committee includes a user of mental health services and a carer of a person with mental illness.

Government commitment to the project and provision of support to the NMHAC.

Contract signed with research institution: the Indian Centre for Mental Health Law and Policy and principal investigator, Dr Soumitra Pathare.

NMHAC developed project plan and communication strategy.

Mental health and other relevant legislation submitted for analysis.
PROJECT PROGRESS -

- Submission by researcher of assessment of the mental health and related legislation for both countries against the UN Convention on the Rights of Persons with Disability.

- In both countries, amending the existing legislation was not possible to bring it in line with the UN Convention on the Rights of Persons with Disability.

- NMHAC and Ministry of Health endorsement of the researcher’s recommendations.

- Government (Cabinet) endorsement of the development of a new Mental Health Act.
PROJECT PROGRESS -

- Development of drafting instructions for a new Bill
- Wide stakeholder consultation on the proposed content on the new Bill.
- NMHAC work with Attorney General’s Office to expedite a new Bill.
- A new Bill has been submitted to Government in the Seychelles. A new Bill will be submitted to Government in Botswana in November.
NEXT STEPS -

The NMHAC is developing a lobbying strategy to support the development of the draft bill by the Attorney General’s Department and its presentation to, and passage through Parliament.

Commencement of policy development based on the proposed clauses in the new Bill.

The ultimate outcome for the project is a new mental health act which reflects the principles of UN Convention on the Rights of Persons with Disability.
Legislation which treats people with mental health issues as subjects with rights; legislation which empowers, protects, and cares.