

MENTAL HEALTH

A legislative framework to empower, protect and care

The theme for the 2013 Commonwealth Health Ministers' meeting in Geneva in May 2013 was mental health. In preparation for the meeting, the Commonwealth Health Professions Alliance, of which the CNF is a founding member and secretary, commissioned research into mental health legislation across the Commonwealth from a human rights perspective.

Dr Soumitra Pathare from the Centre for Mental Health Law and Policy, Indian Law Society, was the principal researcher.

The results of the research are very disturbing. Health systems must no longer abrogate their responsibilities for the mental health of their populations and health professionals must be actively engaged in the reform process.



A review of mental health legislation in Commonwealth member states -

Mental Health: a legislative framework to empower, protect and care

(Pathare S and Sagade J 2013).

Available from:

<http://www.chpa.co>.

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EXECUTIVE SUMMARY

MENTAL HEALTH: a legislative framework to empower, protect and care

Introduction

Mental health and human rights are linked in three important ways. First, mental health affects human rights; second, human rights violations affect mental health; and third, positive promotion of mental health and human rights is mutually reinforcing, as they are complementary approaches to advancing the wellbeing of persons worldwide (Gostin and Gable 2009).

One way to prevent human rights violations from occurring is by reforming mental health laws to be more in line with the promotion of the human rights of persons with psychosocial disabilities.

Internationally, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which came into force in 2008 serves as a comprehensive and legally binding framework for promoting and protecting the rights of persons with mental disorders (Drew et al 2011). Globally the CRPD has been celebrated as being the universal standard for the human rights of persons with disabilities (Drew et al 2011).

At the country level, law and policy reform has been identified as a key strategy to promote the human rights of persons with mental disorders. It is necessary to have a well formulated mental health law in place for the protection of the human rights of persons with mental disorders (Drew et al 2011). We reviewed mental health legislation in Commonwealth member states to obtain an insight as to how mental health legislation in the Commonwealth complies with the CRPD and adopts a rights based approach. We conclude by putting forward several recommendations resulting from the findings of this report.

Methodology

We used the provisions of the United Nations Convention on Rights of Persons with Disabilities (CRPD) to enable systematic comparison of legislation from different countries. We restricted analysis to dedicated mental health legislation. Most countries do not have 'consolidated' legislation covering all areas relevant to persons with mental disorders, but use a 'dispersed' style of legislation. Thus, provisions related to issues such as employment, housing, and social security, for example, are usually not covered in mental health legislation but may be covered in other relevant legislation on these topics. These 'dispersed' provisions are not analysed in this report as the focus of this research was an analysis of dedicated mental health legislation.

We searched for mental health legislation in 53 of the 54 countries of the commonwealth, leaving out Fiji which is currently suspended from the Commonwealth. We were unable to obtain mental health legislation from three countries (St Lucia; St Kitts and Nevis; and St Vincent's and the Grenadines) and an official English translation for the mental health laws of Cyprus. Therefore these four countries are not included in the analysis. An extensive online search and correspondence with the Commonwealth Health Professions Alliance (CHPA) partners suggests there is no dedicated mental health legislation in four countries namely Cameroon, Maldives, Mozambique and Rwanda. Thus we obtained mental health legislation from 45 countries and these are included in the analysis.

Summary of Findings

1. 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.
2. 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.
3. Mental health legislation in only 9 per cent of Commonwealth member states promotes voluntary admission and treatment as the preferred alternative for treatment of mental disorders.
4. Mental health legislation in only 29 per cent of Commonwealth member states gives persons with mental disorders the right to be informed of their rights when receiving mental health care or treatment.
5. While laws in 24 per cent of member states have some provisions promoting community care; no legislation met all the criteria to be rated as promoting community care and deinstitutionalisation.
6. Mental health legislation in only four Commonwealth member states had provisions for supported decision making including the provision of Advance Directives in their mental health legislation.
7. Mental health laws in all Commonwealth member states allow involuntary admission to a mental health facility. Only half (51 per cent) of country mental health laws require the person to be discharged as soon as they do not meet the criteria for involuntary admission. Eighty per cent of mental health legislation in Commonwealth countries does not apply the principle of least restrictive alternative to involuntary admission.
8. More than two thirds of the mental health laws do not have a judicial/quasi-judicial body to review involuntary admissions and treatment.
9. Provisions for protection from cruel, inhuman and degrading treatment are included in the legislation in only 23 countries (51 per cent).
10. 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 countries (11 per cent).
11. Mental health laws in only 9 countries (20 per cent) include a provision on the protection of confidentiality and only 8 countries (18 per cent) include a provision on privacy for persons with mental disorders.
12. Legislation in only three countries (7 per cent) specifically outlaws forced or inadequately remunerated labour within mental health facilities.
13. Very few laws have specific provisions for the involvement of families and care givers. Legislation in 12 countries (27 per cent) provides for information to be given to families and care givers; in 10 countries (22 per cent) families and care givers are encouraged to participate in the formulation of treatment plans.
14. Mental health laws in most commonwealth countries provide very little protection to minors and children. Laws in only 2 countries (4 per cent) restrict involuntary admission of minors with mental health problems; and laws in only 3 countries (7 per cent) ban any irreversible treatments on children with mental health problems.
15. 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 the laws in 21 countries (47 per cent) use one of the above terms.
16. The law in only one Commonwealth country mandates that users of mental health services are involved in mental health policy, legislation development and service planning.

Conclusions

1. Mental health legislation in many Commonwealth member states is out-dated and does not fulfil member states' international human rights obligations toward persons with mental disorders.

2. Mental health legislation in many Commonwealth member states is not compliant with the United Nations Convention on the Rights of Persons with Disabilities. Substantive and procedural provisions related to guardianship in mental health laws are particularly problematic in this regard.
3. Many mental health laws reviewed in this report 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.
4. Mental health legislation in many countries is based on an out-dated 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.
5. Provisions in and the language of mental health laws in many instances adds to negative perceptions and further stigmatisation of persons with mental disorders.
6. 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.
7. Many mental health laws in Commonwealth countries do not address the issue of (lack of) access to mental health care, in particular making care and treatment easily available; provided in a manner which enhances the capacities of individuals and protects and promotes their rights; and enables the to live and participate in their communities.
8. There is little participation of persons with mental disorders and their families and care givers in the development and implementation of legislation.
3. The Commonwealth should consider providing financial and technical support to low and middle income member states to undertake mental health law reform.
4. Commonwealth member states need to thoroughly review all legislation to comprehensively address all civil, political, economic, social and cultural rights of persons with mental disorders.
5. Commonwealth member states should introduce provision to promote supported decision making in mental health legislation.
6. Commonwealth member states must involve persons with mental disorders and care givers apart from other stakeholders in the mental health law reform process.

Recommendations

1. Commonwealth member states should urgently undertake reform of mental health legislation.
2. Member states should ensure that the legislation meets their obligations under international human rights treaties, in particular the United Nations Convention on the Rights of Persons with Disabilities.

References

Drew N, Funk M, Tang S, Lamichhane J, Chávez E, Katontoka S, Pathare S, Lewis O, Gostin L and Saraceno B. 2011. *Human rights violations of people with mental and psychosocial disabilities: an unresolved global crisis*. The Lancet 378 (9803): 1664-1675

Gostin L and Gable L. 2009. *The human rights of persons with mental disabilities: a global perspective on the application of human rights principles to mental health*. Georgetown Law Faculty Publications, January 2010:63 Md.L.Rev. 20-121

MOVING FORWARD

The CNF strongly urges all members to read the research. The WHO considers that mental health legislation is equally as important as mental health policy. Legislation, they say, provides the legal framework for protecting individuals against human rights violations and also for providing mental health services that promote access to care. Mental health legislation is essential because of the unique vulnerabilities of people with mental disorders who face stigma, discrimination, and marginalization in most societies with a heightened probability of human rights violations.

The researcher, Dr Soumitra Pathare, has agreed to work with the CNF to individually examine mental health legislation in selected countries against the provisions of the United Nations Convention on the Rights of Persons with Disabilities and to make recommendations for reform. Countries who are interested in participating should contact the CNF (cnf@commonwealthnurses.org).