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Commentary

M.K. Funk[1] and N.J. Drew[1]

[1]Mental Health Policy and Service Development, Mental Health and Substance Abuse, World Health Organization, Geneva, Switzerland (Correspondence to M. Funk: funkm@who.int).

Why legislate for mental health?

Mental health legislation provides a framework and standards for the protection/promotion of the rights of people with mental health conditions and to codify the principles, values, aims and objectives of mental health policies and plans.

It is crucial that mental health legislation promotes integrated, community-based care and support and acts to improve the quality of services and promote the rights of people with mental health conditions. It is also essential that it ensures informed consent, confidentiality and the involvement of users and their families in decision-making.

National mental health legislation should be developed/updated in line with international human rights covenants and instruments. Governments and legislating bodies need to adopt rules, regulations and codes of practice for implementing the legislation [see WHO checklist on mental health legislation (1) (Annex 1)]. It is also imperative to establish operational structures and mechanisms to support the implementation of such legislation.

The case for mental health legislation (1,2)

In many countries no legal framework exists to protect and promote the rights of people with

mental health conditions, rendering them vulnerable to human rights violations both in the treatment that they receive and in their day-to-day lives within the community. Legislation provides a legal framework to ensure that critical issues affecting their lives, both in mental health facilities and in the broader community context, are addressed. It enables the codification and consolidation of the fundamental principles, values, aims and objectives of mental health policies and plans [see (3)].

Modernising legislation is essential in order to establish and enforce the basic requirements for human rights protection, quality of care and service development, which in turn can lead to changes in ingrained attitudes and beliefs surrounding mental health. Conversely outdated legislation or laws can serve to reinforce stigma as well as discrimination and other human rights violations.

There are a number of approaches to enacting mental health-related legislation:

Integrated: mental health legislation is included in other relevant legislation (for example general health, disability, discrimination, social welfare, education, employment, housing or judicial legislation), with no separate mental health laws.

Stand-alone: a single, consolidated mental health law into which all issues of relevance to mental health are incorporated.

Combined: integrated components as well as a specific mental health law. In some countries, for example, a separate mental health law exists to cover all those mental health issues that have not been addressed in general health legislation.

Achieving the optimum level of human rights protection and promotion for people with mental health conditions should be the chief consideration, regardless of which approach is used.

Key components of mental health legislation (1,2)

Laws must be reformed to reflect the shift away from involuntary treatment and towards the promotion of voluntary treatment and care. It must be assumed that people with mental health

conditions have the capacity to make treatment decisions; and when their capacity is impaired, they must be provided with access to support. Free and informed consent should form the basis of mental health treatment and care. Various approaches have been adopted to promote autonomy in decision-making, including the personal ombudspersons systems (for example in Sweden), the open dialogue approach (for example in Finland) and the use of advance directives. There is emerging evidence for the effectiveness of these approaches although more research is needed in this area (4–7).

Mental health-related legislation plays an important role in promoting health equity and access to good quality care by encouraging the development of integrated, community-based mental health care; promoting autonomy and liberty; and preventing marginalization. This consistently shows better outcomes for adherence to treatment, clinical symptoms, quality of life, housing stability, and vocational rehabilitation (8–11) [see (12)].

Clear statements are needed on the rights of mental health service users and caregivers placing the service user at the centre of the mental health system while giving caregivers the support necessary to enhance both care and health for the service user. Legislation can also promote the effective participation of people with mental health conditions in national decision-making processes and service design and development.

Legislation can play an essential role in limiting the potential for violations and in providing opportunities for redress in cases of abuse on an equal basis with others. This includes provisions to safeguard against abuses related to involuntary admission and treatment, the use of seclusion and restraints, and clinical and experimental research. The law can establish independent mechanisms, such as visiting committees, to monitor conditions in mental health facilities and to ensure that these are acceptable, that care is appropriate, and that human rights are being respected (13).

Dealing with offences and penalties will vary from country to country. Nonetheless, in many countries, unless specific guidance is given in law regarding the level and extent of penalties to be imposed for particular offences, the courts may be unable to act effectively when the law is transgressed. Without specific provision in this area, the law’s potential for promoting mental health and the rights of people with mental health conditions may not be fully realized (1).

Formulation and adoption of mental health legislation (1,2)

The national government/legislating body needs to establish a multidisciplinary drafting

committee to review existing legislation affecting people with mental health conditions and to draft new laws. Such a committee should include sufficient collective expertise and understanding of mental health, human rights and legal issues, and might include, among others, persons with mental health conditions, family representatives, lawyers, health and mental health professionals, civil society organizations and people involved in defending human rights. Involving people with mental health conditions in the drafting process is paramount to ensuring that the law adequately reflects their interests and protects their rights.

An analysis of existing mental health-related laws needs to be carried out as legislation that impacts and affects mental health is often not contained in a single law. It is essential, therefore, that, prior to drafting any new laws, all relevant legislation is examined to see how well it promotes the rights of persons with mental health conditions, and to determine which laws need to be revised to ensure they are in line with the new law. Laws that may require examination include those covering general health, social welfare, disability, anti-discrimination, human rights, housing, employment, criminal justice, etc.

In formulating or amending legislation it is important to identify which United Nations (UN) and regional human rights treaties have been ratified by the country. It is essential to have a comprehensive understanding of what legal obligations these treaties place on the government and to ensure that these are reflected in the new law. Other UN and regional human rights standards not ratified by the country can also offer important guidance on what should go into a law, and a thorough review of all key international instruments is imperative (see Table 1). The UN “Convention on the rights of persons with disabilities” in particular should be studied and its principles and rights reflected in the law (14).

Governments and legislating bodies should undertake broad consultation, taking into consideration differing areas of expertise and viewpoints to ensure that the new or amended legislation is thorough and comprehensive and balances the priorities and opinions of the various stakeholders. This step is essential in building consensus and ensuring all stakeholders are behind the legislation. The consultation phase represents another key opportunity to engage with people with mental health conditions and/or their organizations, and to ensure that their views are being captured and reflected in the formulation of the law.

After the key principles of the legislation have been agreed through the consultation and negotiation process, the draft legislation needs to be prepared for submission to the law-making body. It is also important to ensure that appropriate costing for the implementation of the law has been prepared and submitted.

After submission and prior to adoption, it may be necessary to conduct lobbying and advocacy for the law. This may involve, for example, the joining of forces of different advocates for the reform to create a single, unified and strong coalition force; the dissemination of information about the law through pamphlets and flyers, newspaper articles, radio and television broadcasts; organizing meetings with and sending letters and documents to key parliamentarians and other influential decision-makers; and so on. It is useful to identify and engage persons of influence who may serve as “champions” for the reform. This may include senior officials within the Ministry of Health, parliamentarians, journalists or well-known national personalities.

At an early stage in the reform process, as well as identifying facilitating factors and strategies, it would be useful to identify any potential obstacles so as to overcome these and promote the implementation of the new law.

Implementation of mental health legislation (1,2)

It is important that governments and legislating bodies establish a body with a focused mandate to oversee implementation of the law and to provide overall governance to the process. Once the legislation has been accepted formally, this body will be responsible for drafting and adopting regulations and codes of practice through a consultative process. Regulations provide detailed guidelines for how the legislation should be implemented. Codes of practice can also be developed to benchmark the standards of good practice in the application of the law.

People who are directly affected need to be trained on the new legislation so that they are able to give effect to the spirit and the letter of the law. This includes persons with mental health conditions and their families, as well as health, mental health and social workers; lawyers; civil society organizations (including disabled persons organizations); magistrates; and other relevant stakeholders.

The law reform process is an important opportunity to foster understanding within the general population about the rights of persons with mental health conditions. Running awareness-raising campaigns can be a useful means towards changing attitudes and reducing stigma and discrimination in the community.

National governments need to identify or mobilize resources, both human and financial, to

support the implementation of the new legislation. In some cases, before passing a law, the legislature will ensure that adequate resources are made available to implement it. Where this does not occur, resources will need to be identified. The implementation process needs to be monitored and any problems identified should be fully addressed.

Key recommendations for ministries of health: how to proceed

Develop/update national mental health legislation in line with international human rights covenants and instruments.

Draft and adopt rules/regulations/codes of practice for implementing the national mental health legislation.

Establish operational structures/mechanisms to support the implementation of mental health legislation.

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