

Do we need a Commonwealth convention on mental health?

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To date, there has not been a legally binding multilateral convention specifically concerned with mental health. International action on mental health has been diffuse and largely linked to broader human rights considerations. Several human rights conventions, developed under the auspices of the United Nations (UN), are applicable to mental health, with their stipulations that people should not be discriminated against on any grounds. The protection of human rights has also been served by several Commonwealth declarations. The UN High Commissioner for Human Rights has promulgated a set of standards for the protection of persons with mental illness and the improvement of mental health care (Office of the UN High Commissioner for Human Rights 1991). Although this document, as in the case of declarations, is not binding under international law, it comprehensively sets out the basis for the recognition of the needs and rights of people with mental illnesses.

Mental health is of considerable importance to the Commonwealth, as is evidenced by the agenda of the 25th Commonwealth Health Ministers Meeting, 2013. Yet not all members have embraced existing conventions on human rights. It is therefore timely for the organisation to consider the need for a specific statement of its commitment to caring for people with mental illness and to sharing its expertise on this often neglected aspect of health. We further maintain that such action on the part of one of the largest international organisations, representing approximately one-third of the world's population, can act as a catalyst for global action beyond the confines of the Commonwealth. Such a role would be in keeping with the Charter of the Commonwealth, by which all member states agreed that 'the Commonwealth is uniquely placed to serve as a model and as a catalyst for new forms of friendship and co-operation in the spirit of the Charter of the United Nations' and aspired 'to a Commonwealth that is a strong and respected voice in the world, speaking out on major issues'.

It should be further recognised that the Commonwealth is unique in its range of affiliated professional health, social welfare, human rights and legal organisations. These include the Commonwealth Association for Health and Disability, as well as bodies representing medical practitioners, nurses and pharmacists. These organisations have an umbrella body, the Commonwealth Health Professions Alliance, which seeks to support Commonwealth action on health. Other examples of bodies with potential significance for mental health include the Commonwealth Association of Law Reform Agencies, the Commonwealth Human Rights Initiative and the Commonwealth Association for Social Work. The organisation is therefore well placed to mobilise civil society groups for action on mental health. For example, the Commonwealth Youth Forum has issued a final communiqué calling on member states to 'take

leadership in the promotion of healthy lifestyles to increase positive mental and physical health'.

The function of declarations and conventions

Declarations are concerned with moral persuasion: promoting principles that should be followed and standards that should be upheld. However, such statements are not binding under international law, as is the case with treaties (often called 'conventions'). The Commonwealth has made a number of declarations, mainly dealing with human rights and racism. Most recently, the Commonwealth Charter reiterated the body's commitment to human rights and also affirmed 'the importance of promoting health and well-being in combating communicable and non-communicable diseases'.

Conventions may be developed from declarations, as was the case with the Conventions on the Rights of Persons with Disabilities. Such multilateral treaties can be problematic, since they are binding under international law and invite close legal scrutiny. Furthermore, they must often progress through lengthy national approval processes and absorb substantial human resources in their development, some of which might be difficult for smaller, economically poorer states to provide.

Several functions can be identified for declarations and conventions:

- raising consciousness about specific issues;
- asserting values and establishing rights;
- engaging states into new ways of thinking;
- establishing rules and standards;
- mobilising action;
- seeking to establish solidarity and commitments to assistance; and
- opening participants to scrutiny.

Current involvement of Commonwealth members in UN action on disabilities

In addition to the UN of Human Rights, the UN system has initiated a number of declarations and conventions directly or indirectly concerned with the rights of people with disabilities. Although these instruments are generic in nature, they also relate to many problems faced by people with mental illness. Collectively, these instruments establish that people with a disability, including mental illness, do not lose their fundamental rights due to their condition,

have rights of access to education, accommodation and work, should not be unfairly discriminated against, and should be protected against exploitation.

Protection against discrimination also applies to health systems, where mental health services should not be inferior to those concerned with other areas of ill health. As Gostin and Gable have argued, international human rights law ‘provides a powerful, but often neglected, tool to advance the rights and freedoms of persons with mental disabilities’, and ‘the promulgation of new human rights instruments and institutions related to disability rights could provide yet another venue for the expansion of an affirmative right to mental health’ (Gostin and Gable, 2004: 20, 119). The four treaties discussed here are commonly regarded as among the most significant with regards to the rights of people with mental health.

- **The Convention on the Rights of Persons with Disabilities** enjoins respect for people with disabilities and the need to support them in leading a dignified life free from discrimination.

- **Convention 111**, also known as The Discrimination (Employment and Occupation) Convention 1958, was drawn up by the International Labour Organization (ILO) to protect workers from unfair discrimination on the grounds of disability. Although the Convention does not specify health conditions, its provisions are sufficiently broad to apply to people affected by mental illness.
- **The International Covenant on Civil and Political Rights** includes freedom from discrimination, and equal treatment in legal systems for all individuals without distinction of any kind. The Convention upholds the right to freedom from degrading treatment, to be treated with respect and dignity if denied of liberty, to be recognised as a person before the law, and to freedom from arbitrary interference with privacy or family life.
- **The International Covenant on Economic, Social and Cultural Rights** identifies rights to employment, housing, education and health care.

Table 1 Still some way to go: Commonwealth ratifications of the key rights instruments

	<i>Convention on the Rights of Persons with Disabilities</i>	<i>ILO Convention 111</i>	<i>International Covenant on Civil and Political Rights</i>	<i>International Covenant on Economic, Social and Cultural Rights</i>
Antigua and Barbuda	●		▲	▲
Bahamas	▲			
Belize				●
Botswana	▲			▲
Brunei Darussalam	●	▲	▲	▲
Cameroon	●			
Fiji *	●		▲	▲
The Gambia	▲			
Guyana	●			
Kiribati	▲		▲	▲
Mozambique				▲
Nauru		▲	●	▲
Papua New Guinea	●			
St Kitts and Nevis	▲		▲	▲
St Lucia			●	▲
Samoa	▲			▲
Singapore	●	▲	▲	▲
South Africa				●
Sri Lanka	●			
Tonga	●	▲	▲	▲
Tuvalu	▲	▲	▲	▲
Vanuatu				▲

● Signed but not ratified ▲ Neither signed, nor ratified

* *Suspended from the Commonwealth 1 September 2009*

Sources: *Convention on the Rights of Persons with Disabilities*: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-15&chapter=4&lang=en

ILO Convention 111: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256

International Covenant on Civil and Political Rights: http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en

International Covenant on Economic, Social and Cultural Rights: http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-3&chapter=4&lang=en

Most Commonwealth states have ratified these four instruments. However, as Table 1 shows, several have yet to do so (although some have signed particular treaties indicating an intention to ratify or at least to consider such action). It is clear, therefore, that the Commonwealth is not uniform in its commitment to actioning global human rights conventions. People with mental illness in countries that have not ratified these conventions do not enjoy their moral or legal protection. A clear commitment on the part of Commonwealth states to a declaration on mental health, and a subsequent convention, would serve to remedy such gaps. Such a move would also separate mental health from the broader and sometimes more controversial issues associated with legal and political rights.

The need for effective mental health legislation

A vital element in protecting the interests of people with mental illness is the legal provisions underwriting their rights and setting standards for their treatment. These should be informed by existing covenants on human rights and disabilities. The World Health Organization (WHO) has taken leadership in advocating that its members review and reform mental health legislation. WHO has produced a mental health policy and guidance package that offers various modules to assist nations to develop their mental health services and legislation. The module, entitled *Mental Health Legislation and Human Rights*, includes opportunities for studying international conventions and standards (WHO, 2003).

Most members of the Commonwealth share a common legal heritage from British law, and the organisation takes a close interest in judicial issues, as well as having several accredited civil society legal bodies. However, mental health legislation in the Commonwealth shows considerable variation in quality and compliance with human rights standards (Fistein et al., 2009). This suggests that building a consensus on relevant legal reforms, along the lines advocated by WHO, is an area where Commonwealth jurisdictions could support one another.

Towards a Commonwealth declaration and convention on mental health

Perhaps the most feasible approach to the ultimate realisation of a Commonwealth initiative on mental health is to adapt the existing UN principles on mental health as the foundation for a declaration and eventual commitment to a binding convention. These could form the basis for deliberations by Commonwealth ministers and leaders and for engagement with accredited civil society organisations. These deliberations would allow cultural, linguistic and other barriers to furthering mental health to be identified and discussed within the Commonwealth's diverse context. There is also scope for African and the Caribbean Commonwealth members to approach mental health from a regional perspective.

Table 2 details some of the essential principles for the protection of persons with mental illness and the improvement of mental health care promulgated by the Office of the United Nations High Commissioner for Human Rights. While some of these principles

Table 2 Some social protection principles in mental health

<p>The right to the best available mental health care, which shall be part of the health and social care system.</p> <p>The right to be treated with humanity and respect for the inherent dignity of the human person.</p> <p>The right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.</p> <p>There shall be no discrimination on the grounds of mental illness.</p> <p>The right to exercise all civil, political, economic, social and cultural rights.</p> <p>The right to live and work, as far as possible, in the community.</p> <p>A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.</p> <p>Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.</p> <p>Every patient shall have the right to treatment suited to his or her cultural background.</p> <p>Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.</p> <p>Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive</p>	<p>treatment appropriate to the patient's health needs and the need to protect the physical safety of others.</p> <p>Medication shall meet the best health needs of the patient, and shall be given to a patient only for therapeutic or diagnostic purposes.</p> <p>Sterilisation shall never be carried out as a treatment for mental illness.</p> <p>Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient.</p> <p>A mental health facility shall have access to the same level of resources as any other health establishment.</p> <p>Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.</p> <p>Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time.</p> <p>Every patient and former patient shall have the right to make a complaint.</p> <p><i>Source: Adapted from Office of the United Nations High Commissioner for Human Rights, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, adopted by General Assembly resolution 46/119 of 17 December 1991</i></p>
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relate to the medical, pharmaceutical and institutional dimensions of mental health, it is vital to recognise the wider scope of this essential element of human health. The interests of persons with mental health problems must also be recognised within geographic, cultural and religious communities, families and workplaces.

Conclusion

Commonwealth member states share a common concern with mental health. This is an element of broader health policy often neglected or relegated to a lower priority in the face of the threats to health security of new and recurring communicable diseases. Member states are also in markedly diverse stages of policy development, adoption of prevention and treatment approaches, and legal frameworks in the field of mental health. There is a need to counter stigmatisation and the denial of the human rights of persons with mental illness, and to ensure that archaic and inappropriate laws are reformed.

Wealthier and better-resourced members must share their expertise and experience with such innovations as deinstitutionalisation, legal reforms and newly developed medications. Additionally, they should be mindful of the Commonwealth Code of Conduct on the International Recruitment of Health Workers so that they avoid impoverishing the mental health workforce of developing states.

The Commonwealth, encompassing the experiences of both developed and developing countries and able to mobilise diverse resources from civil society, can act as a catalyst for global action on health. This was demonstrated by its promulgation of a Code of Conduct on the International Recruitment of Health Workers which, in turn, informed further action on the part of WHO. The organisation has also been influential in raising the profile of non-communicable diseases on the global agenda. The same can and should be done in the globally neglected area of mental health.

References

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