



## Policy Brief

### *Developing Effective Mental Health Laws in Africa*

#### EMERGING ISSUES FOR MENTAL HEALTH LAW REFORM

In the African region, 64% of countries lack mental health legislation or have legislation that is outdated and fails to adequately promote the rights of people with mental disabilities.

A review of the mental health laws of four African countries was undertaken as part of the *Mental Health and Poverty Project (MHaPP)*, a project to identify the steps required to strengthen mental health systems of poor countries. Using the WHO Checklist on Mental Health Legislation, the laws of Ghana, South Africa, Uganda and Zambia were analysed in order to generate recommendations for other low and middle-income countries undertaking law reform.

The analysis revealed that the recently adopted Mental Health Care Act of South Africa of 2002 encompasses current international best practice and human rights standards, while the three older laws fail to do so. It also highlighted a number of issues that are critical to consider in the formulation of modern mental health legislation.

*This law was noted to be outdated and not in line with contemporary issues in mental health care..... amendment of the mental health law has stalled because the need for a new law is not well appreciated. (Uganda MHaPP Country Report, 2008)*

*The current law regulating mental health services criminalises being mentally ill. It protects society from the patient with no mention of treatment and rehabilitation. (Zambia MHaPP Country Report, 2008)*

#### ISSUES AND RECOMMENDATIONS

***Competence, Capacity and Consent:*** The older laws focused mainly on issues related to incapacity and involuntary treatment and failed to adequately promote voluntary treatment on the basis of free and informed consent. Contrary to international human rights standards, the older laws reflect a presumption that people with mental disabilities lack capacity and this often extends beyond the issue of mental health treatment, to questions of general legal competence to make a range of decisions and to exercise one's human rights.

- ▶ ***Recommendation:*** Laws must be reformed to reflect a shift in paradigm away from the involuntary treatment and towards the promotion of voluntary treatment and care. In accordance with international human rights standards including the newly adopted UN Convention on the Rights of Persons with Disabilities, people with mental disabilities must be assumed to have capacity to make treatment decisions and must be provided with access to support when their capacity is impaired. Furthermore, free and informed consent should form the basis of mental health treatment and care.

**Promoting Care in Communities:** The only form of care available in many countries is through psychiatric institutions, which are often associated with human rights violations including poor quality of care. The three older laws perpetuate this model of care, focusing almost entirely on treatment in psychiatric institutions and thus neglecting critical need to promote community based care.

- ▶ ***Recommendation:*** Mental health laws can play an important role in promoting access to good quality care by encouraging the development of community based mental health services and the integration of mental health into primary care and general hospitals, so that people are able to get the treatment that they require close to where they live, in line with international human rights standards including the right to health and the right to live independently and be included in the community.

South Africa's 2002 Act states that 'persons providing care, treatment and rehabilitation services must provide such services in a manner that facilitates community care of mental health care users.'

**The Role of the Family:** Caregivers and family members are an important part of mental health. The laws of Uganda, Ghana and Zambia allow families to make important decisions about admission and treatment, but do not contain sufficient safeguards to protect the rights of the family member with the mental disability. The role of the family is neither clearly stipulated nor regulated, and there is little to stop individuals from being forcibly admitted by their families for psychiatric treatment.

- ▶ ***Recommendation:*** Clear statements on patients' and caregivers rights are needed which place the patient at the centre of the mental health system while giving caregivers the rights necessary to enhance patient care and health.

**Rights of People with Mental Disabilities:** Rights are often inadequately protected or overlooked in the laws of Ghana, Uganda and Zambia. The laws fail to promote the dignity, respect, autonomy and non-discrimination of people with mental disabilities or to incorporate safeguards against abuses related to involuntary admission and treatment. Critical issues related to free and informed consent are overlooked and essential safeguards to prevent abuse of seclusion and restraints, special treatments or clinical and experimental research are lacking.

Poor quality of care and human rights abuses in both government facilities and traditional and faith healing facilities remain officially unchecked, and few attempts are made to protect the rights of those with mental illness. (Ghana MHaPP Country Report, 2008)

- ▶ ***Recommendation:*** Law can play an essential role in limiting the potential for abuse. National and international human rights frameworks must inform law in order ensure that people with mental disabilities are able to exercise their rights on an equal basis with others.

***What can be achieved with a new mental health law?***

South Africa's Mental Health Care Act, passed in 2002, illustrates how the language and content of the law can be changed to reflect international human rights and best practice standards. The law was developed through wide consultation, promotes an integrated approach to mental health, and has driven service reform at the provincial and district level. It codifies a number of rights for people with mental disabilities and promotes voluntary treatment and free and informed consent. It includes oversight mechanisms such as the Mental Health Review Board, to protect against violations.

The Act nevertheless faces a number of challenges in implementation. For example, structures set out in the Act such as the Review Boards need to attract the funding required to function consistently across the provinces. The MHaPP has recommended that provincial mental health plans be developed that ensure adequate financial provision for the implementation of the Act. (Challenges of implementing mental health policy and legislation in South Africa, Policy Brief 4, MHaPP, 2008)

## REFERENCES

- Ghana: Mental Health Decree 1972
- South Africa: Mental Health Care Act 2002
- Uganda: Mental Treatment Act 1954
- Zambia: Mental Disorders Act 1951

## ADDITIONAL RESOURCES

- Mental Health and Poverty Project (MHaPP)  
<http://www.psychiatry.uct.ac.za/mhapp/>
- WHO MIND - Mental Health, Poverty and Development  
[http://www.who.int/mental\\_health/policy/development/en/index.html](http://www.who.int/mental_health/policy/development/en/index.html)
- WHO Resource Book on Mental Health, Human Rights & Legislation  
[http://www.who.int/mental\\_health/policy/essentialpackage2/en/index.html](http://www.who.int/mental_health/policy/essentialpackage2/en/index.html)
- WHO Checklist on Mental Health Legislation  
[http://www.who.int/mental\\_health/policy/essentialpackage2/en/index.html](http://www.who.int/mental_health/policy/essentialpackage2/en/index.html)

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