

KEY FINDINGS

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.

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

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.

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.

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Mental health legislation in many Commonwealth member states is outdated and does not fulfil member states' international human rights obligations toward persons with mental disorders.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

Mental health legislation in many countries is based on an outdated understanding of mental disorders; ignores advances in the care and treatment of mental disorders and denies the capacity of persons with mental disorders to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

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 them to live and participate in their communities.

There is little participation of persons with mental disorders and their families and care-givers in the development and implementation of legislation.

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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 Convention on Rights of Persons with Disabilities.
3. The Commonwealth should consider providing financial and technical support to low and middle income member states to undertake mental health law reform.

RECOMMENDATIONS

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 provisions 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.