Mental Health

A legislative framework to empower, protect and care

1 out of every

FOUR

REPORT
OF THE

Commonwealth Partners' Forum

Sunday, 19 May 2013

13.30-16.30 : Starling Hotel Geneva

Hosted by

CHPA
Commonwealth Health Professions Alliance

Commonwealth Foundation

McKinsey&Company

REPORT OF THE COMMONWEALTH PARTNERS' FORUM
Mental Health - a legislative framework to empower, protect and care
19 May 2013

1. INTRODUCTION

On 19th May 2013, the annual Commonwealth Health Ministers meeting was held in Geneva Switzerland. The theme for the Commonwealth Health Ministers' meeting was mental health. The theme was particularly important in relation to the presentation for endorsement at the 66th World Health Assembly (WHA), held in Geneva Switzerland 20-25 May, of a comprehensive Mental Health Action Plan 2013-2020[1].

The WHA Mental Health Action Plan defines mental health as: *a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.* In relation to mental health legislation, the WHA Mental Health Action Plan notes that: *mental health law, whether an independent legislative document or integrated into other health and capacity-related laws, should codify the key principles, values and objectives of policy for mental health, for example by establishing legal and oversight mechanisms to promote human rights and the development of accessible health and social services in the community (p.8).*

The Mental Health Action Plan 2013-2020 proposes that member states: *develop, strengthen, keep up to date and implement national policies, strategies, programmes, laws and regulations relating to mental health within all relevant sectors, including codes of practice and mechanisms to monitor protection of human rights and implementation of legislation, in line with evidence, best practice, the Convention on the Rights of Persons with Disabilities and other international and regional human rights conventions (p.8).*

According to the World Health Organisation (WHO), human rights violations of psychiatric patients are routinely reported in most countries. These include physical restraint, seclusion and denial of basic needs and privacy. The WHO reports that few countries have a legal framework that adequately protects the rights of people with mental disorders and that only 59% of member states have dedicated mental health legislation.[2]

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[1] World Health Organisation 2013 *Draft comprehensive mental health action plan 2013-2020* Available from: http://apps.who.int/gb/ebwha/pdf_files/EB132/B132_8-en.pdf
[2] World Health Organisation 2011 *Mental Health Atlas 2011* Available from: http://www.who.int/mental_health/publications/mental_health_atlas_2011/en/index.html p.11

The WHO states 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.[3]

Mental health legislation, when formulated according to human rights principles, provides a legal framework to address important mental health issues such as access to care, rehabilitation, integration of people with mental disorders into the community, the prevention of discrimination, upholding the full human rights of people with mental disorders, and the promotion of mental health in different sectors of society.[4]

Mental ill health is the third leading cause of disease burden in the world, predicted to be the leading disease burden by 2030. Mental ill health affects one in four people worldwide at some time in their life. In 2010, the global economic impact of mental ill health was approximately US$ 2.5 trillion and this cost is estimated to increase to US$ 6 trillion by 2030. While mental ill health is typically left off the list of top NCDs, it alone accounts for over US$ 16 trillion or one third of the overall US$ 47 trillion anticipated spend on NCDs over the next 20 years.[5]

The World Health Organisation report that:

* About half of mental disorders begin before the age of 14. Around 20% of the world's children and adolescents, regardless of culture, are estimated to have mental disorders or problems. Regions of the world with the highest percentage of population under the age of 19 have the poorest level of mental health resources.
* On average about 800,000 people commit suicide every year, 86% of them in low and middle income countries. Mental disorders are one of the most prominent and treatable causes of suicide.
* War and other major disasters have a large impact on mental health and psychosocial wellbeing. Rates of mental disorder tend to double after emergencies.
* Mental health issues are commonly co-morbidities of NCDs, infectious diseases and extreme poverty. They are frequently hidden, ignored or stigmatised. Mental disorders are a major risk factor for communicable and non-communicable disease. They can also contribute to unintentional and intentional injury.
* There is huge inequity in the distribution of skilled human resources for mental health across the world. Shortages of psychiatrists, psychiatric nurses, psychologists and social workers are one of the main barriers to providing treatment and care in low and middle income countries. Low income countries have 0.05 psychiatrists and 0.42 nurses per 100,000 people. The rate of psychiatrists in high income countries is 170 times greater and for nurses is 70 times greater.
* Stigma about mental disorders and discrimination against patients and families prevent people from seeking mental health care.
* Human rights violations of psychiatric patients are routinely reported in most countries. These include physical restraint, seclusion and denial of basic needs and privacy.
* Few countries have a legal framework that adequately protects the rights of people with mental disorders.[6]

[3] World Health Organisation 2009 *Improving health systems and services for mental health* Available from: http://whqlibdoc.who.int/publications/2009/9789241598774_eng.pdf
[4] World Health Organisation 2009 *Improving health systems and services for mental health* Available from: http://whqlibdoc.who.int/publications/2009/9789241598774_eng.pdf
[5] World Economic Forum 2011 *The Global Economic Burden of Non-communicable Diseases* Available from: http://www3.weforum.org/docs/WEF_Harvard_HE_GlobalEconomicBurdenNonCommunicableDiseases_2011.pdf
[6]World Health Organisation 2013 *Ten Facts on Mental Health* Available from: http://www.who.int/features/factfiles/mental_health/mental_health_facts/en/index9.html

2. COMMONWEALTH PARTNERS' FORUM

2.1   Introduction

In preparation for the 2013 Commonwealth Health Ministers' meeting and consideration of the WHA Mental Health Action Plan, the Commonwealth Health Professions Alliance (CHPA), an Alliance of Commonwealth accredited health organisations representing doctors, nurses, pharmacists, dentists and community health workers, commissioned research on mental health legislation across the Commonwealth from a human rights perspective with a focus on best practice and highlighting where improvements need to be made. The research was conducted by a team from the Centre for Mental Health Law and Policy, Indian Law Society, Pune, India led by Dr Soumitra Pathare (MD, DPM, MRCPsych) who is the Coordinator of the Centre. The research was funded by the Commonwealth Foundation.

The results of the research into mental health legislation across the Commonwealth was released at the Commonwealth Partners' Forum, sponsored by the Commonwealth Health Professions Alliance, the Commonwealth Foundation, and McKinsey and Company, and held in conjunction with the 2013 Commonwealth Health Ministers' meeting. The Forum, titled: *Mental Health - a legislative framework to empower, protect and care*.

The Forum consisted of a 'sit-down' lunch hosted by McKinsey and Company; two key note presentations, the first from Dr Soumitra Pathare, Coordinator of the Centre for Mental Health Law and Policy, Pune, India and lead researcher, and the second from Dr Michelle Funk, Coordinator, Mental Health Policy and Service Development, Department of Mental Health and Substance Abuse, World Health Organsation; followed by a discussion between speakers and participants moderated by a director of McKinsey and Company, Dr Nicolaus Henke.

| Mr Vijay Krishnarayan | Dr Soumitra Pathare | Dr Michelle Funk | Dr Nicolaus Henke |

2.2   Objectives of the Forum

(a) To present the results of comprehensive and credible research on the status of mental health legislation in Commonwealth countries from a human rights perspective with a focus on best practice and highlighting areas where improvements need to be made.

(b) To present a set of recommendations in relation to mental health legislative reform in Commonwealth countries.

(c) To disseminate the report and recommendations of the research to Commonwealth Health Ministers and their delegations for their consideration and action.

(d) To provide ongoing support and encouragement at a national and regional level, through CHPA members, to empower mental health advocate organisations and individuals to lobby their governments to undertake mental health legislative and policy reform.

2.3   Anticipated outcomes from the Forum

(a) Commonwealth Health Ministers will be influenced through senior officials who attend the Forum by the outcomes of the research and the recommendations to reform mental health legislation in their country.
(b) The research and recommendations will assist Commonwealth member states of the WHO in developing their responses to the WHO Comprehensive Mental Health Action Plan 2013-2020.
(c) Commonwealth Health Ministers and their delegations attending the Commonwealth Partners' Forum will have the opportunity to interact with the speakers and network with other participants through a moderated discussion.
(d) The research and recommendations will provide an effective tool for mental health advocate organisations and individuals in lobbying their governments for legislative reform in the area of mental health.
(e) The report and recommendations about mental health legislation reform promoting best practice will be readily available and easily accessible in hard copy and electronically including on a range of websites.

2.4   Presentation: Mr Vijay Krishnarayan

The Forum was officially opened by Mr Vijay Krishnarayan, Director of the Commonwealth Foundation, who acknowledged that mental health was a pressing global concern, with one in four people present likely to experience some form of mental ill health at some stage during their life. Mr Krishnarayan said that health systems across the Commonwealth, regardless of whether they were high, middle or low income countries, were struggling to provide appropriate care for people with mental health problems. Commonwealth Health Ministers at their meeting highlighted the need to move from institutional care to community care for people with mental health issues however while the need was acknowledged, the process to achieve that goal was not clear. Ministers also mentioned the stigma and discrimination that people with mental health issues face and discussed the need for public education programs to change attitudes. Mr Krishnarayan said that it is in this area particularly that civil society organisations could play a major role and that positive change was more likely to occur when the engagement between civil society and government was robust and respectful. Mr Krishnarayan referred to the research into mental health legislation across the Commonwealth conducted on behalf of the Commonwealth Health Professional Alliance by Dr Soumitra Pathare from the Centre for Mental Health Law and Policy, Indian Law Society and how important it was to have a legislative framework to empower and protect people with mental health problems. Mr Krishnarayan reinforced the potential for civil society to play a major role in changing attitudes toward mental ill health and in ensuring that the care provided met the United Nations Convention on the Rights of People with Disabilities. He reminded delegates that civil society organisations played a major role in challenging stigma, discrimination and misinformation and in changing attitudes toward people with HIV and AIDS and that the same could be achieved for people with mental health problems.

2.5   Presentation: Dr Soumitra Pathare

2.5.1   Introduction

Dr Pathare shared with participants the methodology for the research into mental health legislation across the Commonwealth commissioned by the Commonwealth Health Professions Alliance and funded by the Commonwealth Foundation. Mental health legislation in Commonwealth member states was reviewed to obtain an insight as to how mental health legislation in the Commonwealth complies with the United Nations Convention on Rights of Persons with Disabilities (CRPD) and adopts a rights-based approach. The provisions of the United Nations Convention on the Rights of People with Disabilities (CRPD), was used to enable systematic comparison of legislation from different countries. Analysis was restricted to dedicated mental health legislation. Mental health legislation was sought from 53 of the 54 countries of the Commonwealth, leaving out Fiji which is currently suspended from the Commonwealth.

Dr Pathare explained that few countries across the Commonwealth had ratified or signed the United National Convention on the Rights of Persons with Disabilities (CRPD) which is the measure which was used to assess mental health legislation across the Commonwealth.

Table 1: CRPD status

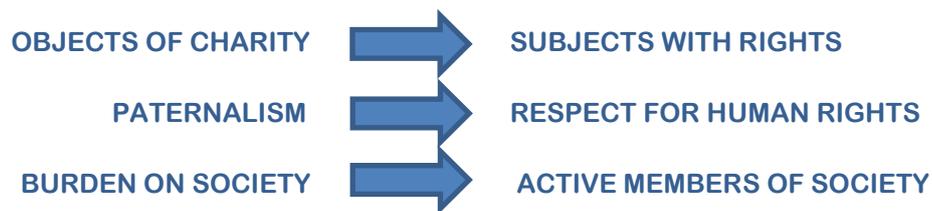|	Low	Low to middle	Upper middle	High	Total
Ratified	5	11	6	6	28
Signed	0	5	2	3	10
Neither	2	2	2	1	7

Mental health legislation was unable to be obtained from three countries (St Lucia, St Kitts and Nevis, and St Vincents and the Grenadines) and an official English translation for the mental health law of Cyprus was also not available. Therefore these four countries were not included in the analysis. An extensive online search and correspondence with Commonwealth Health Professions Alliance (CHPA) partners suggested there was no dedicated mental health legislation in four countries namely Cameroon, Maldives, Mozambique and Rwanda. Thus mental health legislation was obtained from 45 countries and these are included in the analysis.

2.5.2   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 had 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. 80 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 (51 per cent) countries.
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 five (11 per cent) countries.
11. Mental health laws in only nine (20 per cent) countries include a provision on the protection of confidentiality and only eight (18 per cent) countries include a provision on privacy for persons with mental disorders.
12. Legislation in only three (7 per cent) countries 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 (27 per cent) countries provides for information to be given to families and caregivers; in 10 (22 per cent) countries 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 two (4 per cent) countries restrict involuntary admission of minors with mental health problems, and laws in only three (7 per cent) countries 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; two mental health laws use the term "imbecile"; and two mental health laws use the term "mentally defective". Overall 21 (47 per cent) laws 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.

Dr Pathare told participants that what was needed for people with mental health problems was a paradigm shift from:

OBJECTS OF CHARITY	➡	SUBJECTS WITH RIGHTS
PATERNALISM	➡	RESPECT FOR HUMAN RIGHTS
BURDEN ON SOCIETY	➡	ACTIVE MEMBERS OF SOCIETY

2.5.3   Conclusions

* 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.

* Mental health legislation in many Commonwealth member states is not compliant with the Convention on Rights of Persons with Disabilities. Substantive and procedural provisions related to guardianship in mental health laws are particularly problematic in this regard.

* 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 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.

* 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.

Dr Pathare highlighted some of the areas where legislation fell short of the standard outlined in the CRPD.

Table 2: Mental health care on an equal basis with physical health care

	Low	Low to middle	Upper middle	High	Total
YES	0	2	1	2	5
NO	7	16	9	8	40

Table 3: Provision of information on rights

	Low	Low to middle	Upper middle	High	Total
YES	0	3	5	5	13
NO	7	14	4	5	32

Table 4: Promoting community care and deinstitutionalisation

	Low	Low to middle	Upper middle	High	Total
YES	0	0	0	0	0
Possibly or Partially	0	3	2	6	11
NO	7	15	8	4	34

The following recommendations were made as a result of the research:

2.5.4   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.

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.

The research report: *Mental health – a legislative framework to empower, protect and care* can be downloaded from the Commonwealth Health Professions Alliance website: http://www.chpa.co. Additional resources available on the CHPA website are the Executive Summary and a power point presentation of Key Findings.

2.5   Presentation: Dr Michelle Funk

Dr Funk shared with delegates the range of resources that were available to assist countries with providing appropriate mental health care to people with mental health problems. The World Health Organisation (WHO) mental health program is titled: MIND (Mental Health in Development) and has four core themes:

Mental health policy, planning and service development
Mental health policy and action plans are essential because they coordinate, through a common vision, all programmes and services related to mental health.
http://www.who.int/mental_health/policy/services/en/index.html

Mental health human rights and legislation
Too many people with mental disability are exposed to a wide range of human rights violations both within psychiatric institutions and in the community.
http://www.who.int/mental_health/policy/legislation/en/index.html

Mental health, poverty and development
People with mental and psychosocial disabilities are not only missed by development programmes, but can be actively excluded from these programmes
http://www.who.int/mental_health/policy/development/en/index.html
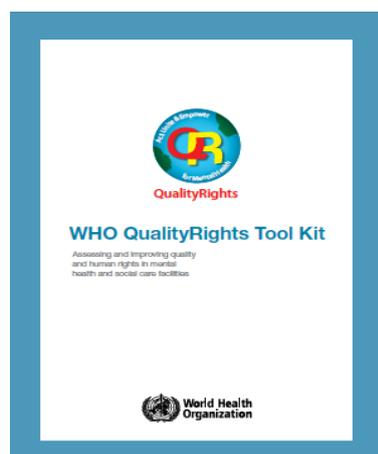

Action in countries
Supporting countries to improve the lives of people with mental disorders.
http://www.who.int/mental_health/policy/country/en/index.html

Among the specific mental health resources are:

The WHO Quality Rights tool kit provides countries with practical information, tools and guidance for assessing and improving quality and human rights standards that should be respected, protected and fulfilled in both inpatient and outpatient mental health and social care facilities. The Toolkit is based on the United Nations Convention on the Rights of Persons with Disabilities. The tool kit can be used when preparing for and conducting a comprehensive assessment of facilities and reporting findings and making appropriate recommendations on the basis of the assessment. The tool kit can be used by many different stakeholders, including dedicated assessment committees, non-government organisations, national human rights institutions, national health or mental health commissions, health service accreditation bodies. The tool kit is available from:
http://apps.who.int/iris/bitstream/10665/70927/3/9789241548410_eng.pdf
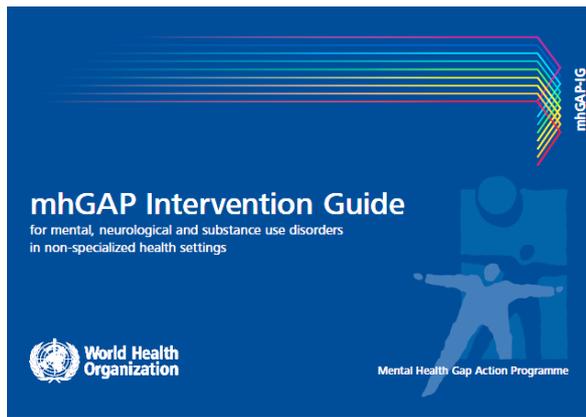
The WHO Mental Health Gap Action Programme (mhGAP) which aims to scale up services for mental, neurological and substance use disorders for countries. The programme asserts that with proper care, psychosocial assistance and medication, tens of millions could be treated for depression, schizophrenia, and epilepsy, prevented from suicide and begin to lead normal lives - even where resources are scarce. The Guide is available from: http://whqlibdoc.who.int/publications/2010/9789241548069_eng.pdf
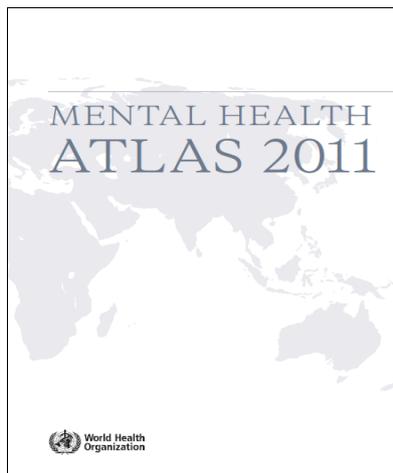
The WHO Mental Health Atlas Project maps mental health resources in the world. The 2011 version represents the latest global picture of resources available for mental health. These data are needed at the country level to assess the current situation and to assist in developing plans and at the regional and global levels. Resources that are mapped include policies, programmes, financing, services, professionals, treatment and medicines, information systems and related organisations. The data is organised into country profiles which can be accessed on the website or downloaded in hard copy.
http://www.who.int/mental_health/evidence/atlas/en/

Dr Funk shared with participants other resources which are available on the WHO website:
http://www.who.int/topics/mental_health/en/

∗ *Dementia: a public health priority*
   http://www.who.int/mental_health/evidence/atlas/en/
∗ *WHO Guidelines on mental health and substance abuse*
   http://www.who.int/publications/guidelines/mental_health/en/index.html
∗ *Mental health and psychosocial support in emergencies*
   http://www.who.int/mental_health/emergencies/en/index.html
∗ *Public health action for the prevention of suicide*
   http://www.who.int/mental_health/publications/prevention_suicide_2012/en/index.html

In closing, Dr Funk informed participants about a new programme being developed titled: WHO MINDbank. WHO MINDbank is a new online platform for sharing international and national level resources in mental health, health, human rights, disability and development. It will provide easy access to a range of national level and international resources for mental health, disability, development and general health from across the globe including:
∗ National health policies and legislations
∗ National mental health policies and laws
∗ Disability related policies and laws
∗ National poverty reduction and development strategies
∗ Health and mental health service standards
∗ International and regional human rights conventions and treaties
∗ Key World Health Organization and UN reports

∗   UN and WHO resolutions

WHO MINDbank is designed to be a comprehensive search tool will enable users to quickly identify by resource type, country or key word. Dr Funk said there are enormous benefits to be gained from the development of this new online platform:

∗   It will be the only single point globally to access all comprehensive information related to health, mental health, disability and development
∗   It will allow the sharing of key policy, strategy and technical documents, and best practices across countries, to advance national level efforts to improve mental health as an integral component of health and development
∗   It will reduce fragmentation and duplication of information and efforts
∗   It will promote a more holistic approach to health, bringing in key mental health, human rights and disability concerns, and thereby moving away from a vertical approach to these key issues
∗   It will facilitate advocacy and research to develop integrated approaches to health

WHO MINDbank will be useful for a wide range of audiences, including:
∗   Health and mental health policy makers and planners
∗   Legislators and parliamentarians
∗   Health, mental health, human rights and disability advocates and NGOs
∗   Academic centres and researchers
∗   Health and mental health clinicians

Dr Funk invited any participant who wanted further information to contact her direct at funkm@who.int.

2.6   Evaluation of the Forum

Positive aspects:

1.   The Forum was well attended with 136 participants from delegations attending the Commonwealth Health Ministers' meeting. Some Commonwealth Health Ministers were also present.

2.   The keynote speakers were high profile with excellent presentations and imparted important information about mental health care across the Commonwealth.

3.   The moderated discussion generated thoughtful and considered discussion and raised issues of importance to Commonwealth member states.

4.   The report from the research and the resources available through the World Health Organisation are valuable tools for Commonwealth member states in undertaking mental health reform and developing their national mental health action plans.

Negative aspects:

1.   The Commonwealth Health Ministers' meeting finished one hour later than scheduled which impacted on the format of the Forum. The Forum was designed as a 'sit-down' lunch followed by the keynote speakers and discussion however, in order for the Forum to conclude on time, the Forum had to commence during the 'sit-down' lunch which meant that people attending were distracted by eating their meal and the speakers had to compete with the noise of meals being served and consumed.

2.   A large proportion of the people attending the Forum appeared to be attracted by the 'sit-down' meal rather than the content of the Forum; did ot pay attention to the speakers; did not pick up a copy of the report; and left during the speaker's presentations once their meal had been consumed.

3.   The room was very dark making it difficult to see the speakers.

3. SUMMARY

The research on mental health legislation across the Commonwealth is the first of its kind conducted. It is comprehensive and concise with an excellent summary of findings, conclusions and recommendations. The research will be a valuable resource to Commonwealth countries in the preparation of their national mental health action plans and in reforming their mental health care. The research and recommendations will also be a valuable resource to individuals and organisations advocating for mental health reform

The mental health resources developed by the World Health Organisaiton are important tools for Commonwealth countries to assist them to assess their current provision of mental health care, to make improvements in line with the United Nations Convention on the Rights of Persons with Disabilities, and to learn from developments in other countries.

The future format of Commonwealth Partners' Forums needs to be considered in light of the experience and learning from this Forum.

Forum partners, particularly the Commonwealth Health Professions Alliance, now need to disseminate the report and recommendations widely to Commonwealth countries, individuals and mental health advocate organisations, and work actively with their members in Commonwealth countries to review their mental health legislation using the resources available by the World Health Organisation.

A next step may be Commonwealth support for the development of model mental health legislation to be used as a guide for legislative reform underpinning the reform of policy and practice.

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