Review Article

A Comparative Analysis of Zambia's Mental Health Legislation and the World Health Organisation's Resource Book on Mental Health, Human Rights and Legislation

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ABSTRACT

Background: Mental Health Legislation plays an important role in the promotion and protection of the rights of persons living with mental illness and mental disability. Many countries are making attempts to bring these legislations in line with the major international guidelines like the World Health Organization Resource Book on Mental Health, Human rights and Legislation (WHO-RB). Zambia's Mental Health Legislation challenges the community, caregivers, mental health practitioners and policy makers to rethink the 'Medical Model' of mental illness and existing services.

Objective: The objective of this study was to analyse and compare Zambia's Mental Health Legislation and the WHO-RB.

Method: This study was a comparative analysis of Zambia's Mental Health Legislation and the WHO-RB, which contains a checklist of human rights specifications that are expected to be met at national level when drafting mental health legislation. This study scrutinized each component on the checklist and established the pertinent areas in Zambia's Mental Health Legislation that relate to each component of WHO-RB.

Results: Zambia's Mental Health Legislation is very comprehensive, with inclusion of critical legislative issues from the WHO-RB checklist. Analysis of the 27 checklist items showed that 93% (25/27) were adequately covered, with many of the legislative items included in The Mental Health Act No.6 of 2019 and others captured in other related legislations like The Disability Act and many others. On the other hand 7% (2/27) of the WHO-RB checklist items were not covered at all in Zambia's Mental Health Legislation and these related to involuntary treatment in the community setting and housing for patients based on contextual reasons. ***Conclusion:*** Zambia's mental health legislation aligns with recommendations of the WHO-RB on mental health and human rights, and makes an important contribution to mental health legislation in Zambia by bringing about the promotion, protection, respect of the rights and dignity of persons with mental illness.

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INTRODUCTION

Global Mental Health Legislation

Mental disability and mental health care are surprisingly neglected within the global conversation on health equality, and mental health has always appeared to be a side issue in both the public and academic health debates[1]. There appears to be social antipathy for affairs belonging to mental health and disability. An important exception was the 1991 UN resolution 46/119, which gave rise to principles for the protection of persons with mental illness and the improvement of mental health care[2]. Fundamental freedoms and rights encapsulated in this resolution include access to the best available mental health care and to be treated with humanity and respect for the inherent dignity of the human person. All persons suffering from mental illness have the right to work, live and receive appropriate treatment in the community, as far as possible. The decision on whether a person has a mental disorder or not should be made in accordance with internationally recognized medical standards. Mental health facilities shall be properly resourced and an impartial review body shall, in consultation with mental health practitioners, examine the cases of involuntary patients[2].

Another milestone in global mental health legislation was the adoption of the United Nations Convention on Rights of Persons with Disabilities(UNCRPD) on December 13, 2006 at the UN Headquarters in New York, which was opened for signatures on 30 March 2007[3]. To date, there have been 181 ratifications (with 163 signatories) to the Convention and 96 ratifications (with 94 signatories) to the Optional Protocol. The convention is a human rights instrument with an explicit social development dimension. It serves as a "*transformation*" in "*mind-set*"……. from viewing persons with disabilities as "*objects*" of charity, medical treatment and social protection towards viewing them as "*subjects*" with rights, who are capable of claiming those rights and making decisions for themselves or about their lives based on their free and informed consent as well as being active members of society[3].

The convention is inclusive in the definition of disability, stating that "*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*[3]." Thus, the convention makes a vital universal pledge to a human rights structure, centred on matters of attaining substantive equality and the full and free rights of persons with disabilities.

The WHO, as the directing and coordinating authority for health care within the UN System made an important commitment to human rights and mental health care by publishing the '*ten basic principles'* of mental health law in 1996, largely influenced by a comparative analysis of national mental health laws in a selection of 45 countries worldwide conducted by the WHO in earlier years, together with the United Nations principles[4]. The WHO's 'ten basic principles' stipulate that everyone should benefit from the best possible measures to promote their mental well-being and to prevent mental disorders, and have access to basic mental health care. Mental health assessments should be conducted in accordance with internationally accepted principles like the World Health Organisation's Classification of Mental and Behavioural Disorders - Clinical Descriptions and Diagnostic Guidelines (ICD-10). Mental health professionals should provide care in a least restrictive fashion, and consent should be obtained before any type of interference with a person can occur. These principles were further underscored by the 2005 WHO-RB, which displays a comprehensive account of human rights affairs which, according to the WHO, needs to be translated to the legislation at the national level[5]. More categorically, the Resource Book comprises an exhaustive 'Checklist on Mental Health Legislation' established, in large part, on preceding UN and WHO publications, and intending to aid countries in

investigating current legislation and drafting new laws[5].

Mental Health Legislation in Zambia

Until 2019 Mental health issues in Zambia had been governed by the Mental Disorders Act 1951, a piece of legislation from colonial era, which designated persons with mental illness as "*mentally disordered*" or "*defective persons*", neglecting their views about how they desired to handle their life[6]. This law used derogatory terms like, *"mentally infirm*", "*idiot*", "*feeble- minded person* ", "*imbecile*" and "*moral imbecile*", all of whom could be lawfully confined based on their own and society's best interests[7]. International human rights instruments like the United Nations Convention on Rights of Persons with Disabilities (UNCRPD), which the Zambian government representatives took part in developing, had in principle declared the Mental Disorders Act 1951 as outdated. This meant that there was urgent need for a new Mental Health Act meant to repeal the Mental Disorders Act of 1951.

On 24th July, 2012, The Persons with Disabilities Act no.6 of 2012 was enacted by the Parliament of Zambia[8]. This act continued the existence of ZAPD, defines its functions and powers, promote the participation of persons with disabilities with equal opportunities in civil, political, economic, social and cultural spheres, continue the existence of National Trust Fund for Persons with Disabilities, provide for the domestication of the UNCRPD in Zambia in order to promote, protect and ensure the full enjoyment of human rights by persons with disabilities[8].

On 11th April 2019, '*The Mental Health Act, No.6 of 2019' was* enacted by the Parliament of Zambia, an action very significant to the history of mental health and human rights in Zambia[9]. The Mental Health Act's preamble provides for the promotion and protection of the rights of persons with mental illness, mental disorder, mental impairment or mental disability. It sets out a community-based approach to mental health care, constitutes rights and responsibilities of patients, assures that mental health services shall be available in correctional facilities, and creates a National Mental Health Council[9]. The provisions of the act applies to both government and private facilities, and individuals including traditional healers, carers, health providers, mental health users and the community. The provisions of the act gives effect to certain provisions of the UNCRPD, principles for the protection of persons with mental illness and the improvement of mental health care General Assembly Resolution 46/119 of 17th December, 1991 and other international human rights instruments to which Zambia is a State Party[9].

The present study sought to analyse and compare Zambia's Mental Health Legislation (Mental Health Act No.6 of 2019 and other supplementary legislation) with the WHO-RB, outlining the areas adequately covered, those covered to some extent and single out the areas not covered at all in Zambia's Mental Health Legislation.

The objective of this study was to analyse and compare Zambia's Mental Health Legislation (Mental Health Act No.6 of 2019 and other supplementary legislations) with the WHO-RB.

METHODS

This study was a comparative review of Zambia's mental health legislation (Mental Health Act No.6 of 2019 and other supplementary legislation) and the WHO-RB, demonstrating areas covered and singling out those not included in Zambia's mental health legislation as per guidance from the WHO-RB, which has a checklist of human rights specifications that are expected to be met at national level. This study scrutinized each component on the WHO-RB checklist and established the pertinent areas in Zambia's mental health legislation that relate to each. The documents were obtained from online resources like the World Health Organisation website and the National Assembly of Zambia website.

RESULTS

Zambia's Mental Health Legislation attempted to include many legislative issues from the WHO-RB. Table 1 highlights the extent to which the legislative issues from the WHO-RB checklist are covered in Zambia's Mental Health Legislation. Analysis of the 27 checklist items showed that 93 % (25/27) were adequately covered, with many of the legislative items included in The Mental Health Act No.6 of 2019 and others captured in other related legislations like The Disability Act, The Education Act, The Termination of Pregnancy Act, The National Health Act and The Health Professionals Council of Zambia Practitioners Act ,The Home Affairs Related Acts the National Social Protection Policy and the National Health Insurance Act No. 2 of 2018, The National Social Protection Policy and The National Health Insurance Act No. 2 of 2018. On the other hand, 7% (2/27) of the WHO checklists were not covered at all in Zambia's Mental Health Legislation and these related to involuntary treatment in the community setting and housing for patients based on contextual reasons. For example, Zambia offers hospital based mental health services which makes the item of involuntary treatment in the community setting impractical.

Table 1: Extent to which the legislative issues from the WHO-RB checklist [5] are covered in Zambia's Mental Health Legislation.

	Legislative issue	**Extent of coverage**	**Observation**

Number of Legislative Item	Legislative issue from the WHO-RB Checklist	Extent to which it is covered in Zambia's Mental Health Act No.6 of 2019? (Choose one)
		a. Adequately covered
		b. Covered to some extent
		c. Not covered at all
			If (a) indicate satisfactory
			If (b) indicate unsatisfactory
			If (b) explain what is missing or problematic about the existing provision

1.	**Preamble**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
2.	**Definitions**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
3.	**Access to mental health care**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
4.	**Rights of users of mental health services**	Adequately Covered in The Mental Health Act No.6 of 2019[9] and appropriate Education Act[11] /Disability Act No.6 of 2012[8].	Satisfactory
5.	**Rights of families or other carers**	Adequately covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
6.	**Competence, Capacity and Guardianship**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
7.	**Voluntary admission and treatment**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
8.	**Non-protesting patients**	Adequately Covered in the Mental Health Act No.6 of 2019[9] under Voluntary Admission.	Satisfactory

9.	**Involuntary admission (when separate from treatment) and involuntary treatment (where admission and treatment are combined)**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
10.	**Involuntary treatment (when separate from involuntary admission)**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
11.	**Proxy consent for treatment**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
12.	**Involuntary treatment in the community setting**	Not covered at all	Not practical in Zambia, therefore not part of the regulations or Law in Zambia. Mental health care in Zambia is predominantly hospital based.
13.	**Emergency situation**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory
14.	**Determination of mental disorder**	Adequately Covered in the Mental Health Act No.6 of 2019[9].	Satisfactory

DISCUSSION

The findings of the present study revealed that 93 % (25/27) of the WHO-RB checklist items were adequately covered in Zambia's mental health legislation. This demonstrates a commitment to take a patient-centred approach to mental health care putting much consideration to the protection of individuals from maltreatment, exploitation and discrimination. Zambia's Mental Health Act No.6 of 2019 lays out an aim central to its interpretation and implementation, which includes**,** to promote and protect the rights of persons with mental illness, mental disorder, mental impairment or mental disability[9]. This is in line with the opening statement of WHO-RB: "*The fundamental aim of mental health legislation is to protect, promote and improve the lives and mental well-being of citizens*[5]." Considering that people with mental disorders are, or can be, particularly vulnerable to abuse and violation of rights, it is imperative that legislation that protects vulnerable citizens (including people with mental disorders) be made available[5]. This legislation can be an effective tool for improving access to mental health services and achieving the protection of rights and responsibilities of persons with mental illness. The Mental Health Act No.6 of 2019 marks a complete shift from the Mental Disorders Act of 1951, which used derogatory terms to describe persons with mental illness and viewed persons with mental disabilities as persons requiring institutionalization, rather than persons with autonomy, respect of their rights, responsibilities and legal capacity[7,9].

The current mental health legislation makes extensive efforts to build on the conventions, international laws and WHO-RB guidelines in place at the time of composition. WHO-RB advises countries to discourage the use of restraints and seclusion in mental health facilities through development of their mental health infrastructure, outlining exceptional circumstances when these procedures are permitted and allowing only accredited mental health practitioner to prescribe seclusion and restraint[5]. It further recommends that

restraints and seclusion be used as procedures of last resort when all other methods of preventing harm to self or others have failed and specifically advises that the use of seclusion and restraint as a form of punishment be banned. This guideline is in accordance with Article 7 of the ICCPR, which prohibits the subjection of any human being to torture or to cruel, inhuman or degrading treatment or punishment[15]. Zambia's mental health legislation has addressed these aspects through section nine under subsection number two of The Mental Health Act No.6 of 2019 titled, 'special treatment' where it is stated that seclusion and restraint shall be provided under the authorisation and supervision of a consultant psychiatrist, seclusion and restraint shall not exceed seventy-two hours unless an application is made to the Mental Health Board within that period for the seclusion or restraint for a longer period and that seclusion and restraint shall be undertaken with intermittent reviews[9] . A psychiatrist shall, after the period of seclusion and restraint referred to under subsection (2) (b) of The Mental Health Act No.6 of 2019 prepare a report to the Board on the mental health status of the mental patient and may recommend release from, or extension of, the seclusion or restraint[9] . However, the limited number of consultant psychiatrists in the country may affect the implementation of these aspects of Zambia's mental health legislation.

While we have accepted conditions HIV, we have not yet accepted mental illness considering the harsh treatment of loss of employment meted out on employees who suffer conditions like brief psychotic disorder by their employers. This mainly occurs because the employers do not understand the differences between brief psychotic disorder and schizophrenia. It is therefore interesting to note that among the functions of the council in The Mental Health Act No.6 of 2019 under section three sub-section 10(d), there is a provision for the national mental health council to facilitate and promote communication about mental health issues, including the elimination of stigma and discrimination against a patient with mental illness[9].

Furthermore, The Persons with Disabilities Act No.6 of 2012 under section two sub-section 6(1) prohibits discrimination against a person on the basis of their disability[8] .These legislative items are meant to respect and uphold the rights and dignity of individuals with mental disorders and set out provisions for sensitization of employers on the difference between short-term mental illnesses like brief psychotic disorders and chronic mental illnesses like schizophrenia. Therefore, legislative items addressing mental health awareness raising while at the same time fighting the discrimination commonly associated with mental disorders thereby promoting social inclusion of individuals affected by mental health issues should be emphasized in the practice of mental health care in Zambia.

These provisions resonate well with the recommendation from the WHO-RB should provide for the need to prevent discrimination against persons with mental disorders[5]. The policies that increase or ignore the stigma and discrimination associated with mental disorders may worsen the discrimination. Discrimination may impact on a person's access to adequate treatment and care as well as other areas of life, including employment, education and shelter. The inability to integrate properly into society as a consequence of these limitations can increase the isolation experienced by an individual, which can, in turn, aggravate the mental disorder.

Despite the very high score of coverage of the WHO-RB in Zambia's Mental Health Legislation, two areas in the checklist, namely community housing for persons with mental illness and involuntary treatment in the community setting are yet to be included. The reasons for not covering these legislative items are largely contextual. It is therefore, worth noting that mental health law varies from country to country. For example, some countries may choose to spell out only the key principles in a mental health act, and use regulations to specify the procedural details for translating legislative intent into action; others may include the

procedural aspects within the main body of the mental health law[5].

WHO-RB recommends that in addition to adequate treatment and services, persons with mental disorders be given priority in state housing schemes and subsidized housing schemes[5], a provision that may not be possible in low resource settings like Zambia. However, a good compromise would be for the legislation to provide for a range of housing facilities such as halfway homes and long-stay supported homes. These housing facilities would help enhance the implementation of deinstitutionalization of mental health services from facilities like Chainama Hills College Hospital to the community-based approach in mental health service provision as provided for under section twelve sub-section 2 (g) of The Mental Health Act No.6 of 2019[9].

The WHO mental health legislation guidance package recommends community-based involuntary treatment (community treatment orders) and community supervision orders as an alternative option to involuntary admission in a mental health facility, rather than as an alternative to voluntary community care[5]. The community-based supervision and treatment legislation should be introduced only in the context of accessible, quality community-based mental health services that emphasize voluntary care and treatment as the preferred option. In light of the foregoing, this legislation is impractical in Zambia where the provision of mental health services is hospital-based and centralised[6].

CONCLUSION

The WHO-RB checklist areas adequately covered in Zambia's Mental Health Legislation demonstrates that the law governing the practice of mental health in Zambia is comprehensive and has the potential to transform the practice of mental health by bringing about the promotion, protection, and respect of the rights and dignity of persons with mental illness in line with international human rights instruments like the UNCRPD and the WHO-RB. However, some efforts need to be made to strengthen the implementation of the mental health legislation so that the benefits enshrined in these documents can be made a reality to mental health care in Zambia.

RECOMMENDATIONS

We recommend the following:

- A Board of the National Mental Health Council be constituted to facilitate implementation of The Mental Health Act No.6 of 2019.
- The Mental Health Act be followed up with a new mental health policy and action plan to enhance implementation, and evaluation of The Mental Health Act No.6 of 2019.
- The Zambia Medical Association, The Zambia Psychiatric Association and Ministry of Health should conduct education programs about The Mental Health Act No.6 of 2019 and other related legislative instruments.

ABBREVIATIONS/ACRONYMS

WHO- World Health Organization.
HIV-Human Immunodeficiency Virus
ICD-10- International Classification of Disease 10th Edition.
UN- United Nations.
ZAPD- Zambia Agency for Persons with Disabilities.
UNCRPD- United Nations Convention on Rights of Persons with Disabilities.
WHO-RB- World Health Organization Resource Book on Mental Health, Human rights & Legislation.
ICCPR- International *Covenant on Civil and Political Rights*

DECLARATIONS

Competing Interest

Authors have no conflict of interest to declare.

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Authors Contributions

All authors contributed to the development, revision and approval of the final manuscript

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