

UN Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is the “gold standard” for mental health legislation. The CRPD was adopted by the UN on 13 December 2006, opened for signature and ratification on 30 March 2007, and came into force on 3 May 2008. So far, 177 countries have ratified the CRPD. Has your country signed the CRPD? To find out, go to: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-15&chapter=4&clang=en

The WHO report that few countries have a legal framework that adequately protects the rights of people with mental disabilities, and that policy and practice needs to be based on a sound legal framework.

The CRPD is a legally binding international treaty. Countries which have ratified the CRPD are required to “*adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the CRPD*” and to “*take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities*”. For a copy of the CRPD go to: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

The CRPD is rights based. It marks a paradigm shift where persons with disabilities are no longer viewed as objects of charity but as active members of society, in control of their own lives, with legal capacity, capable of giving free and informed consent, and with the same rights to participation, engagement and inclusion on an equal basis to every other person.

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

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.

The general principles of the Convention are:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- g. Equality between men and women;
- h. Respect for the evolving capacities of children with disabilities.

Other articles cover:

- Equality and non-discrimination (Article 5);
- Women with disabilities (Article 6); and children with disabilities (Article 7);
- Accessibility (Article 9);
- Right to life (Article 10);
- Equal recognition before the law (Article 12);
- Access to justice (Article 13);
- Liberty and security of person (Article 14);
- Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15);
- Freedom from exploitation, violence and abuse (Article 16);
- Liberty of movement and nationality (Article 18);
- Living independently and being included in the community (Article 19);
- Freedom of expression and opinion, and access to information (Article 21);
- Respect for privacy (Article 22);
- Respect for home and the family (Article 23);
- Education (Article 24); Health (Article 25);
- Work and employment (Article 27);
- Adequate standard of living and social protection (Article 28);
- Participation in political and public life (Article 29);
- Participation in cultural life, recreation, leisure and sport (Article 30).

The CNMF mental health legislation project assesses a country’s mental health legislation against the CRPD and makes recommendations for reform if required. Mental health legislation when formulated according to human rights principles, can address access to care; rehabilitation; integration into the community, the promotion of mental health; and the prevention of stigma, discrimination and marginalisation.

New mental health legislation for the Seychelles and Botswana

The World Health Organisation estimate that 20% of the world's adults, adolescents and children, regardless of culture, will experience mental health issues in their lifetime and report that human rights violations of people with mental disability are routinely reported in most countries.

In 2013, the Indian Law Society Centre for Mental Health Law and Policy conducted a study of mental health legislation in Commonwealth countries. The study found that mental health legislation in 20 per cent of Commonwealth countries was enacted prior to 1960 before modern medical treatments for mental disability became available and before many of the international human rights instruments came into force.

The study report concluded that mental health legislation in most Commonwealth countries did not fulfil the country's international human rights obligations toward persons with mental disability; was not compliant with the UN Convention on the Rights of Persons with Disabilities; was based on an outdated understanding of mental disability; ignored advances in the care and treatment of mental disability; and denied the capacity of persons with mental disability to manage their lives.

The CNMF mental health legislation project, funded by the Commonwealth Foundation, involved working with two Commonwealth countries, the Seychelles and Botswana, to assess their existing mental health legislation against the UN Convention on the Rights of Persons with Disabilities and make recommendations for reform, if indicated. The Indian Law Society Centre for Mental Health Law and Policy were partners in the project, providing expert advice.

Project methodology included the establishment of a National Mental Health Advisory Committee to oversee the project in-country; the development of a communication strategy; and comprehensive stakeholder consultations.

The project in both countries resulted in a recommendation, which was accepted by Government, to write new legislation as the existing legislation was considered unsuitable for amendment.



Seychelles National Mental Health Advisory Committee
October 2017

In the Seychelles, after comprehensive consultation with stakeholders and review by the National Mental Health Advisory Committee, new mental health legislation has been submitted to the Minister for Health and to Parliament.



Seychelles National Mental Health Advisory Committee meeting with the Seychelles Minister for Health

In Botswana, a series of stakeholder meetings with mental health personnel, members of the judiciary, and civil society organisations, finalised drafting instructions for a new Bill. These drafting instructions have now been submitted to the Ministry of Health and forwarded to the Attorney General's Office for new legislation to be drafted. It is anticipated the new legislation will be submitted to Parliament early 2019.



Members of the Botswana National Mental Health Advisory Committee meeting with the Botswana Minister for Health.