Human Rights in the Mental Health Sector

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The World Health Organisation (WHO) defines health as:
"... a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

In Factsheet 352 (reviewed December 2014) on Disability and Health, published on the WHO website (http://www.who.int/mediacentre/factsheets/fs352/en/) states that:

The International Classification of Functioning, Disability and Health (ICF) defines disability as an umbrella term for impairments, activity limitations and participation restrictions. Disability is the interaction between individuals with a health condition (e.g. cerebral palsy, Down syndrome and depression) and personal and environmental factors (e.g. negative attitudes, inaccessible transportation and public buildings, and limited social supports).

Over a billion people are estimated to live with some form of disability. This corresponds to about 15% of the world's population. Between 110 million (2.2%) and 190 million (3.8%) people 15 years and older have significant difficulties in functioning. Furthermore, the rates of disability are increasing in part due to ageing populations and an increase in chronic health conditions.

Disability is extremely diverse. While some health conditions associated with disability result in poor health and extensive health care needs, others do not. However all people with disabilities have the same general health care needs as everyone else, and therefore need access to mainstream health care services. Article 25 of the UN Convention on the Rights of Persons with Disabilities (CRPD) reinforces the right of persons with disabilities to attain the highest standard of health care, without discrimination.

Psychosocial and intellectual disabilities form part of the overall disability sector and are also protected under all the relevant policies and legislation which make provisions for persons with disabilities.

Psychosocial disability is also referred to as mental illness, and includes conditions such as schizophrenia, bipolar mood disorder, major depressive disorder and anxiety disorders.

Intellectual disability is related to developmental aspects that impact on a person’s intellectual capacity, such as learning, reasoning, and problem solving abilities - these disabling effects are categorised in levels of severity, namely mild, moderate, severe or profound.

Both psychosocial and intellectual disabilities are considered “invisible” disabilities. The term invisible disability refers to any disability that is not immediately apparent or visible to an outside observer, unlike a physical disability.
On the 10th of December 1948, the Universal Declaration of Human Rights was adopted by the UN General Assembly, signifying a global move towards the preservation of human rights. Since then, the safeguarding of human rights has become a fundamental cornerstone of the lives of people and organisations across the globe. On the 30th of March 2007, South Africa became a signatory of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), thereby formalising the country’s commitment towards the upholding of human rights, specifically in terms of persons with disabilities (including those with psychosocial and intellectual disabilities). Through this, the South African Government purposefully committed itself to the notion that persons with disabilities had rights, and were capable of claiming those rights and making informed decisions about their lives as active members of society. Article 5 of the UNCRPD, which deals with equality and non-discrimination, states that all signatories shall “Prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all ground”. However, within the South African context, human rights violations persist, despite the availability of a number of reporting avenues.

Within a human rights context, terms such as stigma and discrimination are widely used. However, it is important to understand the concept of stigma fully to enable us to grasp the true extent of its impact. Kassam et al (2007) state that stigma is an overarching concept that encapsulates three distinct elements, namely problems of knowledge (ignorance), attitudes (prejudice) and behaviour (discrimination). Furthermore, it states that stigma is a “mark” or “sign” of disgrace, which elicits negative responses towards the person bearing this mark or sign.[1]

Within the context of psychosocial disability or mental illness, stigma often leads to active and overt discrimination. The Canadian Mental Health Association [2] states that stigma is very real for people with mental illnesses, and that these individuals often identify the ways in which others judge them as one of the greatest barriers to leading complete and satisfying lives. Arguments are even being made that the effects of stigma are just as severe (or even worse) than the actual symptoms of the mental illnesses people suffer from. In many cases, misperceptions and fears that lead to mental illness stigma give rise to behaviour such as bullying, where negative perceptions are used as justifications for purposeful, destructive behaviours, which violate the basic human rights of affected persons. A clear link therefore exists between stigma on the one hand and the perpetration and / or perpetuation of human rights violations on the other.

It can thus be said that stigma is a key factor that contributes to the increased and compounded suffering of affected individuals. This is of great relevance to the South African context, as defined by Minister of Health, Aaron Motsoaledi, at the 2012 National Mental Health Summit in Ekurhuleni, Gauteng, where he stated that it was an offence against human rights to neglect the worst-off in society, and stressed that resources, infrastructure, social mobilisation plans and employment targets had to take mental health into consideration.
Stigma and Discrimination

Minister Motsoaledi further noted there was a need for an increased focus on mental health promotion, prevention programmes, public awareness and stigma and discrimination in South Africa. In 2013, the National Department of Health formalised its commitment towards mental health through the launch of its official Mental Health Policy Framework and Strategic Plan for 2013-2020, in which it pledged to ensure that mental health was transformed through key, catalytic activities, aimed at ensuring that quality mental health services were available and accessible and were integrated into all levels of health care, in line with World Health Organisation recommendations. Within the aforementioned Strategic Plan, objective 8 (Advocacy, mental health promotion and prevention of mental illness) pays specific reference to the need to address stigma and discrimination against persons with mental illness.

The Mental Health Care Act 17 of 2002, provides for care and rehabilitation services for persons with intellectual disabilities and the Department of Health is responsible for the provision of appropriate developmental health care for those with severe to profound intellectual disabilities. The vocational needs of persons with mild to moderate intellectual disability is the responsibility of the Department of Education and later on, the Department of Labour. [3]

However, despite these important developments in South African mental health policy and legislation, there unfortunately remains widespread inequality between provinces in the resources available for mental health care, a striking absence of reliable, routinely collected data that can be used to plan services, a continued dominance of Psychiatric Hospitals as a preferred mode of service provision, and evidence of a substantial unmet need for mental health care. Furthermore, there remains widespread ignorance and a lack of awareness about critical pieces of legislation, such as the UNCRPD, which are aimed at preserving the rights of persons with disabilities, and person with mental disabilities continue to be violated, isolated and stigmatized. [4]

In summary, it can be said that the widespread gap that continues to exist between the burden of mental illness and disability and the widespread lack of mental health resources in South Africa is at its core a human rights issue. Whilst this problem is by no means isolated to South Africa, it persists despite the country publically committing itself to the upholding of human rights of all persons with disabilities.
Laws Relevant to Persons with Psychosocial and Intellectual Disabilities

It is important to understand the kinds of legal instruments that are in place, and how they define accountability and the implementation of their content.

... POLICY:
The basic principles by which a government is guided and the declared objectives that a government or party seeks to achieve and preserve in the interest of national community

... LEGISLATION:
The process through which statutes are enacted by a legislative body that is established and empowered to do so

... CHARTER:
Formal document (instrument) that creates a legal entity, exemption, immunity, privilege, or right

... CONVENTION:
A formal agreement between governments of different countries about how they should behave towards each other or towards the people in their country

Some of the laws that protect your RIGHTS ...

... POLICY:
National Mental Health Policy Framework 2013-2020
National Disability Rights Policy

... LEGISLATION:
Constitution of RSA, Bill of Rights
Mental Health Care Act 17 of 2002
National Health Act 61 of 2003
Employment Equity Act 55 of 1998

... CHARTER:
Disability Rights Charter
National Patients' Rights Charter

... CONVENTION:
United Nation's Convention on the Rights of Persons with Disabilities
Dignity in Mental Health means ...

People should accept me as I am.

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Preambles of Legislation

The preambles of legislation gives a description of the purpose of an Act or piece of legislation and what it aims to achieve. The preambles are noted here to indicate what specific legal instruments are relevant to person with psychosocial and intellectual disabilities.

The South African Constitution and Bill of Rights

We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -

• Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
• Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
• Improve the quality of life of all citizens and free the potential of each person; and
• Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

Mental Health Care Act 17 of 2002

RECOGNISING that health is a state of physical, mental and social well-being and that mental health services should be provided as part of primary, secondary and tertiary health services;

RECOGNISING that the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), prohibits against unfair discrimination of people with mental or other disabilities;

RECOGNISING that the person and property of a person with mental disorders or mental disabilities, may at times require protection and that members of the public and their properties may similarly require protection from people with mental disorders or mental disabilities; and

RECOGNISING further that there is a need to promote the provision of mental health care services in a manner which promotes the maximum mental well-being of users of mental health care services and communities in which they reside.
Dignity in Mental Health means ...

I am a human being.

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Preambles of Legislation

National Health Act 61 of 2003

RECOGNISING - the socio-economic injustices, imbalances and inequities of health services of the past; the need to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights; the need to improve the quality of life of all citizens and to free the potential of each person;

BEARING IN MIND THAT - the State must, in compliance with section 7(2) of the Constitution, respect, protect, promote and fulfil the rights enshrined in the Bill of Rights, which is a cornerstone of democracy in South Africa; in terms of section 27(2) of the Constitution the State must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right of the people of South Africa to have access to health care services, including reproductive health care; section 27(3) of the Constitution provides that no one may be refused emergency medical treatment; in terms of section 28(1)(c) of the Constitution every child has the right to basic health care services; in terms of section 24(a) of the Constitution everyone has the right to an environment that is not harmful to their health or well-being;

AND IN ORDER TO - unite the various elements of the national health system in a common goal to actively promote and improve the national health system in South Africa; provide for a system of co-operative governance and management of health services, within national guidelines, norms and standards, in which each province, municipality and health district must address questions of health policy and delivery of quality health care services; establish a health system based on decentralised management, principles of equity, efficiency, sound governance, internationally recognised standards of research and a spirit of enquiry and advocacy which encourages participation; promote a spirit of co-operation and shared responsibility among public and private health professionals and providers and other relevant sectors within the context of national, provincial and district health plans.

Employment Equity Act 55 of 1998

Recognising-- that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws. Therefore, in order to-- promote the constitutional right of equality and the exercise of true democracy; eliminate unfair discrimination in employment; ensure the implementation of employment equity to redress the effects of discrimination; achieve a diverse workforce broadly representative of our people; promote economic development and efficiency in the workforce; and give effect to the obligations of the Republic as a member of the International Labour Organisation.

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Dignity in Mental Health means ...

Doing something good for others.
Be accepted.

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Promotion Of Equality And Prevention Of Unfair Discrimination Act 4 Of 2000

The consolidation of democracy in our country requires the eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people;

Although significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy;

The basis for progressively redressing these conditions lies in the Constitution which, amongst others, upholds the values of human dignity, equality, freedom and social justice in a united, non-racial and non-sexist society where all may flourish;

South Africa also has international obligations under binding treaties and customary international law in the field of human rights which promote equality and prohibit unfair discrimination. Among these obligations are those specified in the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Elimination of All Forms of Racial Discrimination;

Section 9 of the Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality;

This implies the advancement, by special legal and other measures, of historically disadvantaged individuals, communities and social groups who were dispossessed of their land and resources, deprived of their human dignity and who continue to endure the consequences;

This Act endeavours to facilitate the transition to a democratic society, united in its diversity, marked by human relations that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.
Dignity In Mental Health means ...

Dignity in Mental Health means ...

Be yourself all the time. Love, respect and learn from others.

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UN Convention on the Rights of Persons with Disabilities

The States Parties to the present Convention,

(a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,
(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) Recognizing further the diversity of persons with disabilities,

(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,
(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries.
A human rights violation can be defined as any infringement of rights as stipulated in the Constitution of South Africa's Bill of Rights. All laws must be in line with the Bill of Rights. However, in reality, human rights violations can happen in any environment or situation, for example:

**In the workplace ...**

You may be unfairly dismissed due to your mental disability or unfairly discriminated against. You may also experience harassment at work which may include:
- bullying, spreading of malicious rumours, or insults, particularly on the grounds of gender, race or disability
- ridiculing or degrading someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment, for example based on race, gender, sexual orientation, pregnancy, age, disability, religion, HIV status, etc
- overbearing supervision or other misuses of power or position
- unwelcome sexual advances – touching, standing too close and displaying of offensive material
- making threats/comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities. [11]

**In education ...**

An educational institute may for example deny you reasonable accommodation whilst being informed about your disability. Reasonable accommodation in an educational setting and specific to mental disability could include extended time to complete exam papers (due to concentration problems) or writing exams in a separate room where there are no distractions.

**In the health care system ...**

As in other settings abuse (verbal and physical), may also occur within the health care system. The Mental Health Care Act 17 of 2002 makes clear provision for intervention in such cases, and places an obligation on witnesses or victims of such abuses to report it directly to a Mental Health Review Board by completing the MHCA02 form - the SA Federation for Mental Health or any Department of Health can provide these forms and the contact details of the relevant Mental Health Review Boards.

**In the community ...**

Community members may abuse or exploit you because of your mental disability - ill treatment of persons with mental disability is often a result of stigma.
Self-advocacy is:

An individual's ability to effectively communicate, convey, negotiate or assert his or her own interests, desires, needs, and rights. It involves making informed decisions and taking responsibility for those decisions. [12]

To be able to self-advocate, you need to:

- understand your disability
- know your rights
- be clear on what your needs and challenges are
- know how to assertively voice your needs and preferences
- know what reasonable accommodation you require and why
- how to communicate your reasonable accommodation needs
- know who the key stakeholders are and how to contact them
- remain informed about the latest updates of relevant policies and legislation

Empowerment happens through:

- accessing information
- eradicating stigma and discrimination
- influencing policies and legislation
- claiming ones human rights
- claiming independence, equality, dignity and the right to life

Who are partners in Mental Health?

Mental health care users or persons who have a diagnosis of a mental health disorder or intellectual disability, their families, mental health advocacy groups, mental health Non-Governmental Organisations (NGOs), Government Departments, policymakers, professionals in the field of mental health (psychiatrists, psychologists, psychiatric nursing professionals, social workers, care workers) and disability, traditional healers, religious leaders, and the media are all partners in advancing mental health in any given setting.

It is paramount that mental health care users or persons with mental disability, at all times, be a key partner with all the stakeholders and at all times be involved in decision-making or supported decision-making (where required). As far as possible, the service user must make their own decisions, unless they require assistance from e.g. a caregiver or support person to explain the content and consequences (positive and negative) in order for an informed decision to be made. In instances where a person is unable to participate in making a decision, a caregiver or support person will need to respond on behalf of the person. Decision-making extend to all aspects of a person’s life, whatever issues affect them directly or indirectly. The disability sector’s slogan “Nothing about us without us” always must be applied.
References

[10] UN Convention on the Rights of People with Disabilities and Optional Protocol

Visible person.

Acceptance.
South African Mental Health Advocacy Movement (SAMHAM)

SAMHAM invites all persons with psychosocial and intellectual disabilities to become members (at no cost), which entitles members to receive the quarterly eNewsletter, have access to information related to mental health and advocacy, have access to legal support and advice in accordance with the SAFMH’s Legal Support Programme, and most of all, become part of a Movement that stands to promote human rights, address human rights violations and correct inequities.

**Become a member** - send us your details to: info@safmh.org and use “SAMHAM Member” as the subject matter. Remember to send: your name, surname, physical or postal address, contact numbers, email address, and state your disability (psychosocial or intellectual disability).

Remember, we are on Facebook and Twitter - so join and follow us!

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The Mental Health Watch - Human Rights Reporting System

Should any of your rights be violated, you now have the opportunity to use any of the below means of communication to report it to us.

- **EMAIL** humanrights@safmh.org
- **TELEPHONE** 011 781 1852
- **SMS / WHATSAPP** 076 0788 722
- **ONLINE** www.safmh.org
- **POST** P/Bag X3053, Randburg 2125

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