

Dr M. Funk
Coordinator
Mental Health Policy and Service Development (MPS)
Department of Mental Health and Substance Dependence (MSD)

As a board member of the World Network of Users and Survivors of Psychiatry I am happy to have the opportunity to comment the Draft WHO Manual on Mental Health Legislation. On behalf of WNUSP I want to give you the following comments on the draft document:

Although we appreciate some positive elements in the draft document our overall evaluation is that it is damaging to human rights. In the draft document the WHO creates a rationale to justify the extraordinary declaration that incarceration and forced intervention in the name of treatment are not human rights violations. This comes at a time when the international community is beginning debate on an International Convention on Disability, which leading disability activists believe must be thoroughly based on human rights, and must include the right to not be incarcerated or endure forced treatment based on a disability. It is impossible to say, based on a non-binding UN declaration which was vehemently objected to by the disability community when it was adopted (the "MI principles"), a regional document that has not recognized all the human rights (European Convention for Protection of Human Rights & Fundamental Freedoms), and an ethics guideline by the profession which has committed the human rights violations (WPA Declaration of Hawaii), that our human rights as we define them do not exist. That is like saying that we as human beings do not exist.

Furthermore:

1) WHO is no legitimate authority on the human rights of people subjected to psychiatric assault. WHO is a health agency, not a human rights agency. The public policy approach adopted by WHO in its draft legislative manual subordinates human rights to the dictates of public health as WHO defines it.

In the draft manual WHO obscures and justifies human rights violations such as forced interventions and incarceration by labelling them as treatment. This perpetuates the outdated medical model approach to disability that the UN has rejected as a matter of policy. Why is WHO continuing to use this model?

It would be more honest for WHO to ask people who have the most interest - i.e. those incarcerated & tortured & ill-treated by psychiatry - to evaluate the impact of mental health systems on our human rights, and take that as a point of departure for recommending systemic change in the mental health systems.

2) In the draft manual WHO starts out with the unexamined and self-serving assumption that mental illness causes people to reject treatment. This circular reasoning leaves no way out for the person who has a profound moral or spiritual belief that psychiatry's assault on the human spirit is wrong, or who rejects psychiatry for any other reason. The assumption is based on a medical model in that it asserts that people are defined solely in terms of an illness or a disability rather than understanding human beings as complex and our experience as fully

human.

Not surprisingly, the discussion of human rights instruments in the draft document is weak when it comes to analysis of the ICCPR (which contains rights such as freedom from torture, liberty and security of the person, freedom from arbitrary detention, freedom of movement and freedom of thought). Instead, WHO in the draft manual concentrates on Article 12 of the ICESCR (right to highest attainable standard of physical and mental health) which, in the absence of a non-discriminatory application of the ICCPR rights, can easily be interpreted to allow coercive interventions in the name of enabling an individual to achieve a high standard of health. Not surprisingly, WHO also devotes much attention to the UN's discriminatory "Declaration of Principles on Protection of Persons with Mental Illness and the Improvement of Mental Health Care," (UN Res. 46/119) which has been rejected repeatedly by the disability community for reasons similar to our criticisms of the WHO Manual (see the enclosed: WNUSP POSITION PAPER ON THE PRINCIPLES FOR THE PROTECTION OF PERSONS WITH MENTAL ILLNESS...) Both documents endorse incarceration and forced interventions in the name of treatment, and WHO relies on the UN's earlier document to justify its attempt to place an upper limit on the evolution of international recognition of our human rights, which must be understood as the same human rights that any human being has, without discrimination.

3) In the draft manual WHO purports to act in the name of health but instead perpetuates medical-model stereotype and prejudice by isolating the individual as being, not having, a potential health problem. This is a pretextual use of the concept of health to justify extra-judicial social control.

Witness this statement:

"Legislation should attempt to achieve an adequate balance between individuals' rights to liberty and society's need for protection, as well as a balance between individuals' rights to make decisions regarding their own health and society's interests in preserving the health of the whole population."

WHO should seek out education by disability advocates including people who have experienced psychiatric assault, to develop health policy that has human rights at its centre, not as a peripheral adjustment.

4) In the draft manual WHO ignores the studies it funded in the 1990s by Norman Sartorius et al., which found that people diagnosed with schizophrenia in countries without highly-developed mental health systems are much more likely to recover and go on to lead ordinary lives, than in countries like the U.S. This research has important implications that militate against the expansion of western-style psychiatry that is the source of so many human rights violations. Interested observers will ask why WHO has rejected its own former work, and what influences have been brought to bear on that decision.

Although WNUSP is against forced interventions in the name of treatment we appreciate that the draft manual tightens up the criteria for involuntary treatment, compared with the criteria as defined in the MI-principles, when including lack of capacity as one of three necessary

conditions to be met.

We recommend the WHO to go at least one step further in a direction of recognising the human rights of people labelled with psychiatric disabilities. In a manual about mental health legislation you should include recommendations and explanations about the instrument developed amongst users and survivors of psychiatry to defend ourselves against human rights violations when detained in a psychiatric facility: A Psychiatric Will or Advanced Directive giving clear instructions about which treatment you will/will not accept and who can speak on your behalf if you are judged to lack the capacity to make decisions about treatment, etc. Since a Psychiatric Will or Advanced Directive is written when you are fully competent it should be given full legal recognition. WNUSP gladly would help the WHO to get more insight in how such a legal instrument can be developed and implemented.

Also WNUSP appreciates the critical approach in the draft manual towards legislation that introduce forced treatment and compulsory supervision in the community. Forced treatment in the community is a serious human rights violation and massively creates social exclusion; it should be totally denounced in a manual on mental health legislation.

**Best wishes
on behalf of WNUSP**

**Karl Bach Jensen
Langelinie 7
DK 6000 Kolding
Tlf: +45 7550 2696
e-mail: karl@lap.dk**

P.S.: Neither the WNUSP nor I want to be acknowledged or mentioned as having been consulted in a final WHO manual on mental health legislation without being given the opportunity to read a final version before it is printed and distributed. Depending on the final drafting of the manual we reserve us the right not to be mentioned at all.