Mental Health Reform
Promoting Improved Mental Health Services

Submission to the Council of Europe Committee on Bioethics on the Additional Protocol to the Convention on Human Rights and Biomedicine concerning the Protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment

November 2015

Mental Health Reform is the national mental health coalition in Ireland. It is made up of 54 member organisations working to promote improved mental health services and social inclusion of people with mental health conditions. A key objective of Mental Health Reform is to advocate for mental health law that protects the individual's human right to autonomy and promotes their individual recovery. As part of this objective, Mental Health Reform is currently campaigning on the revision of Ireland's Mental Health legislation to ensure that people engaged in inpatient mental health services (both voluntary and involuntary) are adequately protected under Irish legislation.

In March 2015, the report of the Expert Group on the Review of the Mental Health Act, 2001 was published setting out recommendations for reform of the Act.

The recommendations made by Mental Health Reform in this submission are based on MHR's analysis of Ireland's Mental Health legislation, including its analysis of the recommendations set out in the Expert Group report.

Further information, including MHR's submission on the Mental Health Act can be found at the following link https://www.mentalhealthreform.ie/.

Mental Health Reform recommends that the following comments are included in the Protocol under the relevant provisions, as set out below.

Article 1 – Object (lines 46-48)

The protocol should include the guiding principle of 'autonomy' in order to adequately protect individuals who are involuntarily admitted and detained in mental health inpatient settings.

The Expert Group (as mentioned above) recommended that guiding principles of mental health legislation should reflect the importance of the person's right to autonomy. The principles the Expert Group recommended include:

- Primary importance of autonomy and the right to make one's own choices
- Elimination of 'best interests' to be replaced by 'dignity'
- Interpretation of 'dignity' in line with the concepts of 'will and preferences' and supported decision-making in the Convention on the Rights of Persons with Disabilities
- Inclusion of the principles of 'bodily integrity', 'least restrictive' and 'highest attainable standard of mental health'

Mental Health Reform believes that the primary importance of the principle of autonomy should be specified in the protocol.

Article 2 – Scope and definitions (line 64)

The protocol should extend the definition of 'treatment' to take account of the following:

- Treatment should include ancillary tests required for the purposes of safeguarding life, ameliorating the condition, restoring health or relieving suffering
- State parties should develop clinical guidelines for the administration of various forms of treatment
- Treatment includes a range of psychological and other remedies and where treatment is referred to in the protocol, it should be interpreted in its wider sense and not viewed simply as the administration of medication
- The provision of safety and/or a safe environment alone does not constitute treatment.

The word 'on' in line 64 should be changed to read 'with' in order to reflect a partnership approach to treatment that in turn reflects the 'recovery' ethos

Line 68 should be replaced by: "therapeutic purpose' entails short-term or ongoing support towards recovery from a mental disorder".

Article 4 - Necessity and Proportionality (lines 85-89)

The Protocol should set out that State parties should prohibit the use of seclusion or restraint except in life saving/emergency situations. The use of restraint should also give rise to an assessment of the person's status as a voluntary patient.

Article 5 - Alternative measures

This section of the protocol should provide for advance health care directives to be legally binding in state parties for individuals detained in inpatient mental health facilities.

Advance decisions by people with a mental health condition to refuse and consent to treatment has the potential to reduce the incidence of involuntary detention and re-admissions. This legal framework must be binding on clinicians to the same extent as a person's wishes would be if he/she had capacity at the time. A valid advance directive should only be departed from where treatment is necessary on a life-saving emergency basis, or in exceptional circumstances to be defined by law. Such a provision should also require that any treatment given in contravention of an advance healthcare directive must be of established benefit to the recipient.

Article 5 should also require States to report annually on the extent to which involuntary admission has been used due to the lack of availability of alternatives to involuntary placement and involuntary treatment.

Article 6 – Persons of trust

Article 6 should be amended to include an obligation on States Parties to provide for the right of individuals who are involuntarily detained to have the presence of their 'person of trust' present in any statutory-based proceedings such as review hearings about detention or treatment and at meetings to determine the individual's treatment plan.

Article 7 - Legal assistance (lines 97-98)

This section of the protocol should include a protection for individuals involuntarily detained that where he/she appeals the grounds for his/her detention the onus of proof as to the existence or otherwise of a mental illness that meets all the criteria for detention falls on the detaining authority rather than on the individual subject to involuntary detention.

Article 10 - Criteria for Involuntary Placement (lines 111-112)

The protocol should state that involuntary admission or detention is only justified on the basis of an individual having a 'mental health disorder' where the person's underlying condition is amenable to or is likely to benefit from treatment.

This should also be reflected in Article 3 (lines 81 - 83) and Chapter 3

The Expert Group recommended that an individual should be detained only where "the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit the condition of that person to a material extent". (Section 2.4, p. 22)

The protocol should narrow the criteria for detention by inserting 'and imminent' before risk', to read 'serious and imminent risk of harm'.

In light of the evolving understanding on the implications of the UN Convention on the Rights of Persons with Disabilities (CRPD), Mental Health Reform is concerned that allowing detention on the basis of 'risk to health' treats people with mental health difficulties differently from those with physical illness and therefore potentially contravenes the CRPD.

The protocol should provide for a minimum of three mental health professionals to be involved in the assessment of an individual's 'serious and imminent risk to health'.

The protocol should place an obligation on state parties to report where the person has been detained due to a lack of adequate community services being available, e.g. lack of a home-based treatment team, lack of a crisis house, etc.

Reporting should also be required in relation to individuals who are refused access to inpatient services due to shortages in beds.

Article 11 - Criteria for Involuntary Treatment

The protocol should state that all individuals who are involuntarily detained must give their consent to treatment.

Treatment provisions should apply equally to voluntary and involuntary patients. Individuals should also be advised about the support available to them to make informed decisions regarding their treatment. 'Consent' should be defined to acknowledge that consent can also include consent given by a person with the support of a family member, friend or an appointed 'carer', 'advocate' or appointed support decision maker (Section 2.3, p. 18).

The protocol should also acknowledge that where a person has capacity, they should be entitled to refuse treatment and if they refuse all treatment options, must be discharged.

As set out in the protocol's criteria for detention, the detention must have a 'therapeutic purpose''. Therefore, where the individual is not engaging in treatment, the criteria for detention is not being met and the individual should be discharged.

Chapter 5 - Article 12 - Standard Procedures for taking decisions on involuntary placement and treatment

The protocol should include a requirement that admission of a person to an inpatient unit is based on consultation between the consultant psychiatrist and at least one other mental health professional of a different discipline.

The protocol should state that in the administration of medication the free and informed consent of a patient is required in all circumstances before treatment can be administered unless the patient lacks capacity and either

- The treatment is necessary in an emergency to save the life of the patient. Where treatment is administered in an emergency, this should be for a short period of time and only where compliance with procedures would cause such delay as would lead to harm to the person; or
- The application for treatment has been reviewed independently

About Mental Health Reform

Mental Health Reform is the national coalition working to promote improved mental health services and the implementation of the mental health policy *A Vision for Change*.

Mental Health Reform is available to discuss the above recommendations. Please contact Kate Mitchell, Policy and Research Officer at 01 874 9468 or via email at kmitchell@mentalhealthreform.ie for further information.