

A Critical Examination of the Realisation of the Right to Mental Health for Children with Mental Disabilities in Zimbabwe

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Abstract

Mental health has fallen down the importance list in Zimbabwe as; cancer, COVID 19 and the AIDS menace have taken precedence and higher consideration. This is despite the fact the Ministry of Health and Child Care had launched a Mental Health strategy to cover the period 2019- 2023. With the advent of the United Nations Convention on the Rights of Persons with Disabilities in 2006, the space of disabilities has expanded to embrace persons with mental or intellectual impairments. Despite the widespread ratification of the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD); the rights of children with disabilities all over the world are constantly threatened with challenges that compromise the realisation of fundamental human rights. This article evaluated Zimbabwe's current legal frameworks that are in place for the realisation of the right to mental health for children living with mental disabilities. This article also interrogated the international and regional instruments that promote the right to mental health. A doctrinal research approach was carried out on the international, regional and national legal instruments on the right to mental health for children living with mental disabilities. A comparative analysis of Zimbabwe and South Africa's legal frameworks on mental health was also examined. The international and regional human rights instruments advocated a move away from an illness model towards a disability model targeted at understanding the consequences of mental illnesses. It was noted that national mental health legislative framework should provide a legal framework to address

appropriate issues such as the integration of persons with mental disorders in communities and the improvement of access to mental health care services for persons with disabilities to avoid discrimination. It was noted that there was need for a substantial increase in funding for mental health care services to enhance accessibility and quality service in the realization of the right to mental health for children with disabilities.

Key words: mental health, human rights, rehabilitation, health care centres, legal instruments, Mental Health Act

Introduction

The right to health is one of the essential rights that are protected in international and regional human rights instruments.¹The dictum “there can be no health without mental health” has been widely used as a tag in issues related to mental health.²Persons with mental health disabilities are exposed to a wide-ranging range of human rights violations, which could occur inside institutions and through inadequate care and treatment. Mental health, though misunderstood as a medical issue, is a matter of human rights.³ Human rights violations in mental health care have been repeatedly identified as a global emergency.⁴Mental health is one of the most neglected areas of health policy and programming in the world.⁵Mental health is a priority on paper but not in practice.⁶As of 2020, close to 1 billion people were living with mental disorders.⁷ Globally, an estimated 10 to 20% of children are affected by mental health problems.⁸The interdependence of human rights and mental health and the vulnerability and marginalization of persons with mental

¹Durojaye, E ‘An analysis of the contribution of the African human rights system to the understanding of the right to health’ (2021) 21*African Human Rights Law Journal* p751

² Sanskriti, S & Jaswal, R, T Of Promises and Discontents: Mapping India’s Response to Guaranteeing the Right to Mental Health during the Covid-19 Pandemic (2022) *Asian Journal of International Law* Vol 12 p131

³ Note 2 p121

⁴ McTavish, J.R etal, Child Maltreatment and Intimate Partner Violence in Mental Health Settings. *International Journal Environment. Research and Public Health*2022, 19,15672.<https://doi.org/10.3390/ijerph192315672>(Date accessed 6 May 2023)

⁵ Yamin AE, Rosenthal E (2005) Out of the shadows: Using human rights approaches to secure dignity and well-being for people with mental disabilities. *PLoS Med* Vol 2 e71 p0296

⁶Mahomed, F & Michael Ashley Stein, M, A, *De-stigmatising Psychosocial Disability in South Africa* (2017), *African Disability Rights Year Book*, Pretoria University Law Press p72

⁷ Note 2 p121

⁸ Crystal Amiel Estrada, C, A etal Current situation and challenges for mental health focused on treatment and care in Japan and the Philippines - highlights of the training program by the National Center for Global Health and Medicine (2020) *BMC Proceedings* Vol 14 p2

disabilities has been emphasized by the Special Rapporteurs of “the Right to Health from 2003”.⁹ The Sustainable Development Goals (SDGs), adopted by the United Nations General Assembly in 2015, included the promotion of mental health on the global development agenda.¹⁰ This has culminated in the better recognition and appreciation of mental health related issues. Mental health is coming out from the obscurities and global reports have identified mental health as a global priority.¹¹

While mental health has become a national health priority in some countries, it is still an ignored issue in most African countries.¹² In fact, 64 per cent of African countries do not have any mental health legislation or fail to adequately promote the rights of persons with mental illnesses.¹³ Misconceptions about mental health conditions, including the misunderstanding that they are caused by evil or supernatural forces, often prompt parents or relatives to take persons with mental health issues to religious or other healing places other than hospitals.¹⁴ Mental health has a symbiotic relationship with the protection and promotion of human rights. It can be validly submitted that human rights and mental health are closely connected to each other. People with mental health challenges suffer from severe personal distress, stigmatisation and marginalisation.¹⁵

In Zimbabwe, mental health remains a public health concern that has been exacerbated by the prevailing socioeconomic challenges bedeviling the country.¹⁶ Notwithstanding the efforts Zimbabwe has made to promote its goals for mental health programs, the system faces limited

⁹ Note 2 p126

¹⁰ Brown, S & Macnaughton, G & Sprague, C A Right-to-Health Lens on Perinatal Mental Health Care in South Africa (2020) *Health and Human Rights Journal Vol 22 p126*

¹¹ Artin A. et al (2023) Human rights in mental healthcare; A review of current global situation, *International Review of Psychiatry*, 35:2, 150-162, DOI: 10.1080/09540261.2022.2027348 (Date accessed 7 May 2023)

¹² Genga, S & du Plessis, M, A. Critical Analysis of the Duty to Provide Reasonable Accommodation for Employees with Psychosocial Conditions as an Employment Anti-Discrimination obligation: A Case Study of Kenya’s Legal Framework (2022), *African Disability Rights Year Book*, Pretoria University Law Press p18

¹³ Ibid

¹⁴ Uzoma, P. O & Chuma-Umeh, N, Imperatives of Securing equitable access to healthcare services for persons with disabilities (2022), *African Disability Rights Year Book*, Pretoria University Law Press p57

¹⁵ Swanepoel, M Human Rights that influence the Mentally ill patient in South African Medical Law: A Discussion of sections 9; 27; 30 and 31 of the Constitution (2011) PER / PELJ Vol 14 p1

¹⁶ Mlambo, T et al Mental Health Services in Zimbabwe – A case of Zimbabwe National Association of Mental Health (2014) *WFOT Bulletin Vol 70 p18*

material and human resources, lack of collaboration in service provision and compromised rehabilitation services.¹⁷ In Zimbabwe, as in many other countries, there is limited understanding of mental health.¹⁸ Mental health equity for children is the foundation for the future.¹⁹ The importance of mental health in children is highlighted by recent increases in children with disruptive behaviour being excluded from schools and suicides and incidences of self-harm among children.²⁰ This paper examined the international and regional instruments on mental health. The paper also explored Zimbabwe and South Africa's national legislation on mental health. Challenges of mental health and rehabilitation were also discussed in this paper. Recommendations on law reform and best practice for rehabilitation of persons with mental disabilities were proffered.

International Instruments Regulating Mental Health

World Health Organisation (WHO)

WHO has defined mental health as the state of physical, mental and social well-being and not merely the absence of disease or infirmity.²¹ Mental health or psychological wellbeing makes up an essential part of an individual's capacity to lead a fulfilling and worthwhile life.²² Mental health is also defined as the absence of mental illness or a mental state which contributes to an individual's ability to function in their environment by taking into consideration emotional, psychological, and social well-being.²³ It is also noted that there is no health without mental

¹⁷ Ibid

¹⁸ Chinoda S et al (2020) Effectiveness of a peer-led adolescent mental health intervention on HIV Virological Suppression and mental health in Zimbabwe: protocol of a cluster-randomised trial. *Global Mental Health* 7, e23, 1–7. <https://doi.org/10.1017/gmh.2020.14> (Date accessed 9 May 2023)

¹⁹ Bonati, M et al Inequalities in the Universal Right to Health. *International Journal of Environmental Research and Public Health* 2021, 18, 2844. <https://doi.org/10.3390/ijerph18062844> (Date accessed 7 May 2023)

²⁰ Mary Atkinson and Garry Hornby *Mental Health Handbook for Schools* (2005) Routledge Falmer New York p3

²¹ Oduwole, J and Akintayo, A 'The rights to life, health and development: The Ebola virus and Nigeria' (2017) 17 *African Human Rights Law Journal* 201 <http://dx.doi.org/10.17159/1996-2096/2017/v17n1a9> (Date accessed 9 May 2023)

²² Chitereka, C and Takaza, S (2020) Promoting Psychosocial Support for Women Living with Mental Illness in Zimbabwe: The Role of Social Work *Afro Asian Journal of Social Sciences Vol p3*

²³ Benjamin, Fatiema, B "Parental Understanding of Mental Health in Early Childhood Development: A Human Capabilities Approach," (2022) *Journal of Family Strengths: Vol. 21* [phttps://digitalcommons.library.tmc.edu/jfs/vol21/iss2/6](https://digitalcommons.library.tmc.edu/jfs/vol21/iss2/6) (Date accessed 7 May 2023)

health.²⁴ This suggests that mental health is a critical component in the well-being of an individual yet it is neglected by many countries. Mental health is paramount in the overall health status of an individual. It is difficult to mention health without mental health. One in five people at the workplace experience a mental health condition or mental illness worldwide.²⁵ There has been a high prevalence of mental illness across the globe and yet mental health is not given a priority in many countries worldwide. WHO launched a Special Initiative to advance mental health policies, advocacy, and human rights and to scale up access to quality and affordable care for people living with mental health conditions.²⁶ This demonstrates WHO's commitment on the protection and promotion of mental health. Mental health forms the key to WHO's day to day activities.

Universal Declaration of Human Rights (UDHR)

The prominence of mental health as a human rights concern has been growing steadily in international fora.²⁷ The Universal Declaration of Human Rights (UDHR) provided a foundation for the human rights movement.²⁸ Though the UDHR makes no express reference to mental health, Article 25, recognizes "the right to a standard of living adequate for health and well-being."²⁹ The approach of the Universal Declaration suggests that the right to health is a composite that includes food, clothing, housing and medical care and necessary social services.³⁰ The gradual acknowledgement of mental health as a human rights concern has led to the formal recognition of the applicability of the "respect-protect-fulfil" framework to persons with mental

²⁴ Yao *et al.* Population mental health matters child health disparity: a national level analysis (2022) *BMC Public Health* (2022) 22:2372 <https://doi.org/10.1186/s12889-022-14530-w> (Date accessed 9 May 2023)

²⁵ Note 13 p18

²⁶ Kemp C, G, et al. (2022) Baseline situational analysis in Bangladesh, Jordan, Paraguay, the Philippines, Ukraine, and Zimbabwe for the WHO Special Initiative for Mental Health: Universal Health Coverage for Mental Health. *PLoS ONE* Vol 17(3): e0265570. <https://doi.org/10.1371/journal.pone.0265570> (Date accessed 9 May 2023)

²⁷ Note 3 p123

²⁸ Twinomugisha, B, K 'Using the right to health framework to tackle non-communicable diseases in the era of neo-liberalism in Uganda' (2020) 20 *African Human Rights Law Journal* p153 <http://dx.doi.org/10.17159/1996-2096/2020/v20n1a6> (Date accessed 9 May 2023)

²⁹ Article 25 of UDHR

³⁰ Nyane, H 'The interface between the right to life and the right to health in Lesotho: Can the right to health be enforced through the right to life?' (2022) 22 *African Human Rights Law Journal* 278 <http://dx.doi.org/10.17159/1996-2096/2022/v22n1a11> (Date accessed 9 May 2023)

health conditions.³¹ The UDHR therefore informs other international legal frameworks on the importance of mental health in the well-being of a person.

International Covenant of Economic, Social and Cultural Rights

Article 12 (1) of the Covenant of Economic, Social and Cultural Rights (ICESCR) enshrines the right of all people including children to the enjoyment of the highest attainable standard of physical and mental health.³² ICESCR provides for state parties to take steps, to maximise available resources so as -to progressively realize the right to health.³³ ICESCR emphasises the progressive realisation of the right to health inclusive of the right to mental health. According to General Comment 5, provisions of article 12 of the ICESCR were interpreted as being applicable to people with mental and physical disabilities.³⁴ Article 12 of ICESCR provides for the universal right of everyone to the enjoyment of the highest attainable standard of physical and mental health.³⁵ General Comment 14 of ICESCR states that the right to health is an inclusive right to timely and appropriate health care and the underlying determinants of health.³⁶ Whereas mental health is specifically referenced as a human right in the ICESCR, the specificities of mental healthcare are absent.³⁷

United Nations Convention on the Rights of the Child

The rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC) apply to all children, regardless of their status, and that they must be protected from discrimination.³⁸ Article 24 of the UNCRC stipulates the child's right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health.³⁹ Article 6 (2) of the UNCRC provides that States Parties shall ensure to the maximum

³¹ Ibid

³² Article 12(1) of International Covenant of Economic, Social and Cultural Rights

³³ Note 11 p127

³⁴ General Comment 5, provisions of article 12 of the ICESCR

³⁵ Olumese, O 'Duty without liability: The impact of article 12 of the International Covenant, on Economic, Social and Cultural Rights on the right to health care in Nigeria ' (2021) 21 *African Human Rights Law Journal* p1118 <http://dx.doi.org/10.17159/1996-2096/2021/v21n2a44> (Date accessed 9 May 2023)

³⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, UN Doc. E/C.12/2000/4 (2000). Para 11

³⁷ Note 28 p438

³⁸ Article 2 of the UNCRC

³⁹ Art 24 of the UNCRC

extent possible the survival and development of the child.⁴⁰ The right to survival and development encompasses the right to mental health. Article 25 of the UNCRC stipulates that States Parties must recognise the right to mental health for a child who has been placed by the competent authorities for the purposes of care, protection or treatment.⁴¹ Article 27(1) of UNCRC articulates the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.⁴² It is noted that Article 39 of UNCRC specifically stipulates that parties shall take all appropriate measures to promote physical and psychological recovery of a child and such recovery shall take place in an environment which fosters the health and dignity of the child.⁴³ The UNCRC provides for the right to mental health for children.

Convention on the Rights of Persons with Disabilities (CRPD)

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) defines people with disabilities as inclusive of those who have long-term physical, mental, intellectual or sensory impairments which may hinder their full and effective participation in society on an equal basis with others.⁴⁴ The UNCRPD, by comparison, starts from the premise that people with disabilities, including those with mental disabilities, have the same human rights as everyone else in society.⁴⁵ Persons with disabilities have the same protection and are equal before the law with their counterparts. Article 25 of the UNCRPD, on the right to health, reaffirms the right of all persons with disabilities, including children, to the enjoyment of the highest attainable standard of health without discrimination.⁴⁶ UNCRPD creates a new paradigm for mental health law, moving from a focus on institutional care to a focus on community-based services and

⁴⁰ Art 6(2) of the UNCRC

⁴¹ Art 25 of the UNCRC

⁴² Art 27(1) of the UNCRC

⁴³ Art 39 provides that:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”

⁴⁴ Article 1 of UNCRPD

⁴⁵ Bartlett et al. Mental health law in the community: thinking about Africa (2011) International Journal of Mental Health Systems 2011, Vol 5 p4 <http://www.ijmhs.com/content/5/1/21>

⁴⁶ Article 25 of the CRPD

treatment.⁴⁷ This is a milestone in the promotion of the right to mental health for children with disabilities. Article 9 of the UNCRPD, provides for appropriate measures to be taken to ensure that PWDs have equal access to the physical environment, transportation, information, communication technologies and other services accessible to the public.⁴⁸

The Committee has also developed a General Comment on article 12 on equal recognition before the law, which has significant implications for mental health care.⁴⁹ The General Comment states that ‘forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law’,⁵⁰ Mental health laws that permit forced treatment are identified as falling under substitute decision-making regimes.⁵¹ Mental health detention, which by definition is premised on apparent psychosocial disability or a psychiatric diagnosis, can never be disability-neutral and, therefore, always violates article 14(1) of CRPD.⁵² It is therefore prudent to note that the UNCRPD propounds for the deinstitutionalisation of centres which treat persons with mental disabilities and advocates for the establishment of community based services.

Regional Instruments

The African Charter on Human and Peoples’ Rights (African Charter)

Article 16 of the African Charter recognises the right to the highest attainable state of physical and mental health.⁵³ The African Charter recognises the right to health as the right of every individual ‘to enjoy the best attainable state of physical and mental health.’⁵⁴ Article 16 of the

⁴⁷ Ibid

⁴⁸ Article 9 of CRPD

⁴⁹ CRPD Committee General Comment 1: Article 12: Equal recognition before the law para 41&42

⁵⁰ Kamundia, E The right to the Highest attainable standard of mental health in selected African Countries: A Commentary on how selected mental health Law fare against article 25 of the Convention on the Rights of Persons with Disabilities (2017), *African Disability Rights Year Book*, Pretoria University Law Press p185

⁵¹ Ibid

⁵² Combrinck, H Rather Bad than Mad? A reconsidered of criminal in capacity and psychosocial disability in South African Law in Light of the Convention on the rights of Persons with Disabilities (2018), *African Disability Rights Year Book*, Pretoria University Law Press p14

⁵³ Article 16 of the African Charter on Human and Peoples’ Rights

⁵⁴ Kruger, P & Karim, S, A ‘Responsiveness of the African Continental Free Trade

Agreement to diet-related non-communicable diseases: A human rights analysis’ (2022) 22

African Human Rights Law Journal p35 <http://dx.doi.org/10.17159/1996-2096/2022/v22n1a2> (Date accessed 9 May 2023)

African Charter, which guarantees ‘the right to enjoy the best attainable state of physical and mental health,⁵⁵ is often reduced to a mere dream by many African countries.⁵⁶UN Special Rapporteur on the Right to Health seems to have resonated the position of the African Commission in *Purohit* by noting that states should pay attention to mental health as a human rights imperative.⁵⁷The Commission acknowledged that the right to appeal involuntary detention was important for the protection of the dignity of persons with psychosocial disabilities.⁵⁸Gambia was urged to repeal- the Lunatics Detention Act with new mental health legislation that aligns with the African Charter and that are; provided for the medical and material wellbeing of institutionalised Gambians.⁵⁹ The African Commission in *Purohit v The Gambia* case ⁶⁰not only recognised the torture and inhuman treatment but also highlighted the extent to which mental health need were generally neglected.⁶¹ States are obliged to make full use of their available resources, towards the full realization of the right to health ⁶² with the inclusion of mental health. A number of states in Africa, inclusive of Zimbabwe are still dragging behind the promotion of the realisation of the right to mental health for children with mental disabilities. The right to mental health by children with mental disabilities in many African countries, Zimbabwe included fully promotes the realisation of this right. It therefore seems that the right to mental health is a paper tiger, where the right is on paper and is absent in the actualisation of the right to mental health for children with mental disabilities.

Legislation Zimbabwe

Mental illness remains one of the main public health concerns and dreams for the attainment of an environment that protects and promote- the mental well-being of- persons with disabilities in

⁵⁵ Article 16 of the African Charter

⁵⁶Balogun, V & Durojaye, EThe African Commission on Human and Peoples’ Rights and the promotion and protection of sexual and reproductive rights (2011) *African Human Rights Law Journal* Vol 11 p380

⁵⁷Note 2 p776

⁵⁸*Purohit and Another v Gambia*, (2003) AHRLR 96 (ACHPR 2003).

⁵⁹Okoloise, C ‘Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples’ Rights’ (2018) 18 *African Human Rights Law Journal* 45 <http://dx.doi.org/10.17159/1996-2096/2018/v18n1a2>(Date accessed 12 May 2023)

⁶⁰*Purohit v The Gambia* (2003) AHRLR 96 (ACHPR 2003).

⁶¹Juma, P, O & O’rao, BTo what extent is global and regional jurisprudence on the right to health for person with disabilities reflected in Kenyan Courts (2021) *African Disability Year Book*, Pretoria University Law Press p81

⁶² Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, para. 31.

Zimbabwe.⁶³ There is a mounting mental health apprehension among secondary school students in Zimbabwe.⁶⁴ One in four Zimbabweans suffers from a common mental disorder.⁶⁵ These figures show that mental health related issues are prevalent in Zimbabwean children with mental disabilities. The treatment gap in mental health is generally large and even larger in low-income countries like Zimbabwe.⁶⁶ Zimbabwe as a developing country is therefore faced with enormous challenges in the treatment of children with mental disabilities. The government of Zimbabwe promulgated the Mental Health Act of 1996 and its Regulations of 1999 to promote and protect the right to mental health for its citizens inclusive of children with mental disabilities. Despite Zimbabwe having these pieces of legislation for protection of the right to mental health, there are still huge gaps in the implementation of the law. This results in the impediment of the process of realisation of mental health for children with mental disabilities in Zimbabwe. In Zimbabwe, mental health services have been dominated by a reductionist medical model centred around pharmacological management and less emphasis on rehabilitation.⁶⁷ The medical model in the treatment of children with mental disabilities has resulted in the impairment of the rehabilitation mechanism process. Failure by government to domesticate or implement provisions of the Convention on the Rights of People with Disability (CRPD), the Disability Act and Mental Health Act is one of the biggest challenges faced by children with intellectual disabilities in Zimbabwe.⁶⁸ Zimbabwe has failed to align its legislation with the international legal framework and this has adversely impacted the realisation of the right to mental health by children with mental disabilities.

Constitution of Zimbabwe

⁶³ Clement Nhunzvi & Edwin Mavindize Occupational Therapy Rehabilitation in a Developing Country: Promoting Best Practice in Mental Health, (2016) *Zimbabwe Imperial Journal of Interdisciplinary Research (IJIR)* Vol-2 p68, <http://www.onlinejournal.in> (Date accessed 12 May 2023)

⁶⁴ Khombo S et al (2023) Knowledge, attitudes and uptake of mental health services by secondary schools in Gweru, Zimbabwe, *Front Psychosocial* <https://www.frontiersin.org/articles/10.3389/fpsyg.2023.1002948/full> (Date accessed 12 May 2023)

⁶⁵ Mental Health in Zimbabwe: The Friendship Bench Project <https://www.borgenmagazine.com/mental-health-in-zimbabwe-the-friendship-bench-project/> (Date accessed 12 May 2023)

⁶⁶ Wallén, A et al (2021) The Experiences of Counsellors Offering Problem-Solving Therapy for Common Mental Health Issues at the Youth Friendship Bench in Zimbabwe, *Issues in Mental Health Nursing*, 42:9, 808-817, DOI: 10.1080/01612840.2021.1879977 (Date accessed 19 May 2023)

⁶⁷ Note 63

⁶⁸ Mapuranga, B et al The impact of Inclusive Education (I.E) on the Rights of Children with Intellectual Disabilities (IDs) in Chegutu (2015) *Journal of Education and Practice* Vol 6 p220

The Constitution of Zimbabwe embraces some improvements with regard to the realisation of the rights of PWDs. For example, it recognises the inherent dignity⁶⁹ and equal worth of each human being under the founding values and principles of the provisions of the constitution.⁷⁰The recognition of the inherent dignity of all human beings is critically important for persons with mental disabilities who are normally treated without dignity.⁷¹Section 22 of the Constitution provides that all institutions and agencies of the government at every level must recognise the rights of persons with physical or mental disabilities, particularly their right to be treated with respect and dignity.⁷²Section 83 of the Constitution further speaks to the main challenges of PWDs; who often face widespread discrimination, exploitation, violence, maltreatment, limited access to health.⁷³ The inclusion of section 83 largely embodies a constitutional commitment to articles 16, 24 and 25 of the CRPD, which address PWDs' access to health facilities and empowers them to be self-reliant so as to escape exploitation and abuse. ⁷⁴Section 83 shows a constitutional commitment to address some of the major barriers to the equality of PWDs such as access to health facilities.⁷⁵

The Mental Health Act

The Mental Health Act provides for the amalgamation and modification of the law relating to the care, detention and care of persons with mental disabilities.⁷⁶ The government of Zimbabwe promulgated the Mental Health Act of 1996 and Regulations of 1999. These laws have not been revised since 1996 and 1999, respectively. ⁷⁷The National Mental Health Policy provides a comprehensive, coordinated, quality mental health service that is integrated into the general

⁶⁹ Section 51 of the Constitution of Zimbabwe

⁷⁰ Section 3 of the Constitution of Zimbabwe

⁷¹Mandipa, E A Critical Analysis of the Frameworks for the Realisation of the Rights of Persons with Disabilities in Zimbabwe, (2013) *African Disability Rights Year Book*, Pretoria University Law Press p77

⁷² Section 22 of the Constitution of Zimbabwe

⁷³ Section 83 of the constitution of Zimbabwe

⁷⁴ Dziva, C., Shoko, M. & Zvobgo, E.F., 2018, 'Implementation of the 2006 Convention on the Rights of Persons with Disabilities in Zimbabwe: A review', *African Journal of Disability* 7(0), a389. [https:// doi.org/10.4102/ajod. v7i0.389](https://doi.org/10.4102/ajod.v7i0.389) (Date accessed 12 May 2023)

⁷⁵Note 106 p79

⁷⁶ Mental Health Act [Chapter 15:12], Act 15 of 1996.

⁷⁷ World Health Organisation, (2020) Zimbabwe, WHO's Special Initiative for Mental Health Report, Situational Analysis, [who.int/docs/default-source/mental-health/special-initiative/who-special-initiative-country-report---zimbabwe---2020.pdf?sfvrsn=2bb0ac14_4](https://www.who.int/docs/default-source/mental-health/special-initiative/who-special-initiative-country-report---zimbabwe---2020.pdf?sfvrsn=2bb0ac14_4) (Date accessed 15 November 2023)

medical health system with the aim of improving the mental health of the nation.⁷⁸The Zimbabwe Strategic Plan (2019-2023) underscores the significance of primary and community mental health care, decentralized services and a review of mental health legislation.⁷⁹The National Community Health Strategy (2020–2025) outlines ways in which community care will be instrumental in working towards and achieving universal health coverage. The Mental Hospital Board is tasked with the treatment, rehabilitation and general welfare of ‘mental patients.’⁸⁰ Rehabilitation as defined- by the Act is to permit persons with mental disabilities to accomplish and maintain maximum independence through social and vocational ability.⁸¹The Act provides for involuntary treatment of persons with mental and intellectual disabilities as it does not contain provisions for consent to treatment.⁸² By making provisions for the detention of persons with mental disabilities in special institutions separated from the mainstream healthcare facilities, the Act is discriminatory.⁸³ The involuntary treatment of children with mental disabilities is against the notion that promotes the community based treated of person with mental disabilities. The discriminatory practices are inconsistent with the Constitution of Zimbabwe which promotes equal protection and benefit of the law. In Zimbabwe mental illness is a critical medical condition with substantial public health impressions as it is surrounded by stigma and discrimination linked to religious and cultural beliefs.⁸⁴

Disabled Persons Act (DPA)

The DPA is the key law that speaks to disability in Zimbabwe.⁸⁵The DPA tracks the archaic medical model of disability in all its provisions when compared to the community-based model. The DPA should therefore be repealed and substituted by an entirely new Act that is aligned to the provisions of the CRPD.⁸⁶ The Constitution makes use of the term ‘persons with disabilities.

⁷⁸ World Health Organisation, (2022) Prevention and Management of Mental Health Conditions in Zimbabwe A of Investment case <https://www.afro.who.int/sites/default/files/2023-04/1.-zimbabwe-mental-health-investment-case-report-2022-%20%281%29> (Date accessed 15 November 2023)

⁷⁹ Ibid

⁸⁰ Secs 68(1) Mental Health Act [Chapter 15:12], Act 15 of 1996.

⁸¹ Part II of the Act Mental Health Act [Chapter 15:12], Act 15 of 1996.

⁸² Note 106 p85

⁸³ Ibid

⁸⁴ Note 23 p2

⁸⁵ Disabled Persons Act of 1992 [Chapter 17:01]

⁸⁶ Note 106 p80

It is therefore submitted that the DPA has to be in line with the Constitution.⁸⁷The DPA is an act which has huge gaps when compared to international legal frameworks. It is increasingly difficult for the DPA to promote and protect the realisation of the right to mental health for children with mental disabilities as it out-dated.

Children with mental health problems

The significance of psychological well-being in children, for their emotional, social, physical and cognitive health is well-recognized.⁸⁸Mental health is one of the most essential contributors to the global load of disease in children.⁸⁹ Adult mental health services are preferred to services for children leading to less available or appropriate care for children.⁹⁰

Comprehensive mental health in childhood is imperative to good mental health in adulthood,⁹¹ as children are the pillars of a nation. As the majority of lifetime mental disorders arise before adulthood, the rights of children to treatment and prevention of mental disorders is particularly essential.⁹²Every child has the right to live happily,⁹³ hence it is critically important for children with mental disabilities to have their right to mental health protected. Children are generally susceptible, and the expression of mental illness obscures the situation more.⁹⁴ In reaction to the growing incidences of mental health problems and inequalities among children, it is noted that changing mental health provision for children is authoritative.⁹⁵Despite the policies developed to

⁸⁷*ibid*

⁸⁸P. C. Shastri, P, C Promotion and prevention in child mental health (2009)*Indian J Psychiatry* 51(2) p88

⁸⁹Nurminen, M (2022) Association of mental health and behavioral disorders with health care and service utilization in children before and after diagnosis. *PLoS ONE* 17(11): e0278198. <https://doi.org/10.1371/journal.pone.0278198> (Date accessed 20 May 2023)

⁹⁰ World Health Organisation, 2022,World Health Report, Transforming Mental Health For All <https://iris.who.int/bitstream/handle/10665/356119/9789240049338-eng.pdf?sequence=1> (Date accessed 15 November 2023)

⁹¹ Munir, Fouzia. 2021. Mitigating COVID: Impact of COVID-19 Lockdown and School Closure on Children's Well-Being.*Social Sciences* 10: 387. <https://doi.org/10.3390/socsci10100387> (Date accessed 7 May 2023)

⁹² Bhugra D, etal. The right to mental health and parity (2015). *Indian J Psychiatry* Vol ;57 p118

⁹³Sucharitha, S etal PG Child Rights: An Assessment of Awareness Regarding Right to Health among Medical Students (2019) *International Journal of Caring Sciences Volume 12 p1646*

⁹⁴ Machailo, R.M etal, M. Towards an Understanding of Successes of the Psychiatric Nurses in Caring forChildren with Mental Health Problems: An Appreciative Inquiry. (2023) *International. Journal Environment Research and Public Health*, 20, 1725. <https://doi.org/10.3390/ijerph20031725> (Date accessed 6 May 2023)

⁹⁵ Griffin *et al.* An analysis of English national policy approaches to health inequalities: 'transforming

signify the importance of mental health in children, children living in disadvantaged and rural areas are not receiving the social welfare services required.⁹⁶ It is amazing to note that in mental health, children's rights are still neglected.⁹⁷ There is a need for a culture of supported decision-making for children's disability rights.⁹⁸ A child with mental disabilities should be vigorously involved in deciding work and pleasure activities so that a sense of duty is maintained.⁹⁹ It is unclear whether the legal framework in Zimbabwe on mental health promotes participation by children with mental disabilities. Children with disabilities should be given the chance to enjoy a satisfying and decent life and to participate within their community.¹⁰⁰

South Africa

Legal Framework of South Africa on Mental Health

Section 9 of the Constitution of the Republic of South Africa, 1996 encompasses a strong provision for equality and non-discrimination.¹⁰¹ Section 27(1)(a) of the South African Constitution provides that everyone has the right to have access to health care services.¹⁰² Section 24 of the Constitution provides that everyone has the right to an environment that is not harmful to their health or wellbeing.¹⁰³ It is noted that the right to health or well-being has a constitutional protection. The Mental Health Care Act integrates mental health care into the general health services.¹⁰⁴ Section 10(1) of the Mental Health Care Act prohibits discrimination against a mental health care user on the grounds of his or her mental health status.¹⁰⁵ The Act further states that 'every mental health care user must receive care, treatment and rehabilitation services

children and young people's mental health provision' and its consultation process *BMC Public Health* (2022) 22:1084 <https://doi.org/10.1186/s12889-022-13473-6> (Date accessed 7 May 2023)

⁹⁶ Note 24

⁹⁷ Bonati, M etal, Inequalities in the Universal Right to Health. *International Journal of Environmental Research and Public Health* 2021, 18, p5 2844. <https://doi.org/10.3390/ijerph18062844> (Date accessed 9 May 2023)

⁹⁸ Sandland, R A Clash of Conventions? Participation, Power and the Rights of Disabled Children (2015) *Social Inclusion Vol 5 p101*

⁹⁹ Smith, P Mental Health Care in Settings Where Mental Health Resources Are Limited (2014) Archway Publishing, Bloomington, p104

¹⁰⁰ Ibid

¹⁰¹ Section 9 of the Constitution of South Africa

¹⁰² Section 27(1)(a) of the Constitution of South Africa

¹⁰³ Section 24 of the Constitution of South Africa

¹⁰⁴ Section 17 of 2002 of the Mental Health Act

¹⁰⁵ Section 10(1) of the Mental Health Act

according to standards equivalent to those applicable to any other health care user'.¹⁰⁶ Both the Constitution of South Africa and the Mental Health Care Act buttress the notion of equal protection and benefit of the law.

In South African jurisprudence, the Constitutional Court favours a reasonableness test to assess whether the state is meeting its commitments in respect of economic, social and cultural rights. *Minister of Health v Treatment Action Campaign* case- was helpful to this study as it was appropriate to have regard to the content of a minimum core obligation to determine whether the measures taken by the state were reasonable.¹⁰⁷In the *Soobramoney v Minister of Health Kwazulu-Natal* case, it was held that obligations imposed on the state were dependent upon the resources available for such purposes.¹⁰⁸The core obligation to realise the minimum important levels of a right extends to the right to the highest attainable standard of health, and as much to mental health as to physical health.¹⁰⁹

Challenges of Mental Health in Zimbabwe

Shortage of Staff

There is a serious shortage of mental health professionals in Zimbabwe.¹¹⁰ There is a lack of funding for medication, human resources, and mental health promotion in both psychiatric hospitals and community-based care.¹¹¹Mental health professional are difficult to come by in Zimbabwe. Government has frozen the appointment of mental health problems and this further complicates availability of mental health professionals in Zimbabwe. A shortage of child psychiatrists affects all countries.¹¹²Task shifting may possibly be effective in lessening this

¹⁰⁶ Section 10(2) of the Mental Health Act

¹⁰⁷*Minister of Health v Treatment Action Campaign*

¹⁰⁸*Soobramoney v Minister of Health (Kwazulu-Natal)* 1998 1 SA 765 (CC).

¹⁰⁹ Sanskriti S & Jaswal, R,T Of Promises and Discontents: Mapping India's Response to Guaranteeing the Right to Mental Health during the Covid-19 Pandemic (2022) *Asian Journal of International Law Vol 12 p132*

¹¹⁰ Marimbe, B. D. et al 'Perceived burden of care, and reported coping strategies and needs for family caregivers of people with mental disorders in Zimbabwe', (2016) *African Journal of Disability* 5(1), a209. <http://dx.doi.org/10.4102/ajod.v5i1.209> (Date accessed 20 May 2023)

¹¹¹ World Health Organisation, supra note 78

¹¹² Skokauskas *et al.* Shaping the future of child and adolescent Psychiatry (2019) *Child and Adolescent Psychiatry and Mental Health Vol 13:19 p* <https://doi.org/10.1186/s13034-019-0279-y> (Date accessed 9 May 2023)

critical shortage of human resources in mental health.¹¹³The use of lay community workers and provision of adequate training and supervision of these non-specialists is essential to effectively support mental health services.¹¹⁴ The lack of access to, mental health services increases social inequalities in children's mental health.¹¹⁵ Mental health should comprise a significant proportion of the health budget, and the failure to do so constitutes discrimination against those affected by psychosocial disability.¹¹⁶ Zimbabwe has a critical shortage of personnel for mental health, with an estimated 18 psychiatrists is approximately 0.1 per 100,000 people.¹¹⁷ There are 917 psychiatric nurses (6.5 per 100,000) and 6 psychologists (0.04 per 100,000) is approximately 6.5 per 100 000 and 0.04 per 100 000 respectively.¹¹⁸ These figures demonstrate how severe shortage of health professionals in Zimbabwe is. The shortage of mental health professionals is compounded by the freezing of government posts.¹¹⁹ Even though it seems that there is a relatively large number of psychiatric nurses in Zimbabwe, a number have diverted to HIV-related care g services where there is funding, primarily from international donors. ¹²⁰The shortage of human resources for mental health in Zimbabwe has been due to emigration of locally trained professionals as a result of economic instability.¹²¹

Funding of mental health services

Funding of mental health services must be geared towards maximizing quality.¹²²Mental health is still significantly underfunded.¹²³ Mental health resources for children are scarce, inadequate,

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Note 133

¹¹⁶Note 179 p73

¹¹⁷ World Health Organisation, supra note 78

¹¹⁸ Ibid

¹¹⁹ Nkoma E, (2019) Psychologists in Zimbabwean School Psychological Services: Support roles and practices in the implementation of inclusive education Thesis submitted for the degree *Doctor Philosophy* in Educational Psychology https://repository.nwu.ac.za/bitstream/handle/10394/33852/Nkoma_E.pdf?isAllowed=y&sequence=1 (Date accessed 15 November 2023)

¹²⁰ Ibid

¹²¹ Ibid

¹²² Funk, M Improving the quality of mental health care (2009) *International Journal for Quality in Health Care* Vol 21 p417

¹²³ Kigozi et al. An overview of Uganda's mental health care system: results from an assessment using the world health organization's assessment instrument for mental health systems (WHOAIMS) (2010) *International Journal of Mental Health Systems* 2010, 4:1 <http://www.ijmhs.com/content/4/1/1> (Date accessed 9 May 2023)

unequally distributed, and inefficiently used, with effective and culturally relevant treatment rarely available.¹²⁴ Despite commitments made by the international community, there has been a serious lack of investment and capacity to provide quality, rights-based, culturally appropriate mental health care globally, even though mental health is consistently identified by children themselves as a major concern.¹²⁵

Stigma and associated discrimination

Stigma and associated discrimination against persons with psychosocial disabilities constitute a considerable barrier to the realisation of the highest attainable standard of health in Africa.¹²⁶ The public's attitude toward persons with mental illness has a negative impact on their work and may devalue them.¹²⁷ Stigma also hinders progress toward developing laws and policies relating to mental health in African countries.¹²⁸ Discrimination against persons with mental disabilities is a violation of section 56 of the Constitution of Zimbabwe and stigmatisation is a violation of section 51 1 of the Constitution of Zimbabwe.

Accessibility

More than 70% of people in need of mental healthcare do not have access to good-quality services.¹²⁹ Right to health includes universal access to effective treatment for an illness which should include mental disorder.¹³⁰ Health facilities, goods and services have to be accessible to

¹²⁴ Salamanca-Buentello F, et al (2020) The ethical, social, and cultural dimensions of screening for mental health in children and adolescents of the developing world. *PLoS ONE* 15(8) p: e0237853. <https://doi.org/10.1371/journal.pone.0237853> (Date accessed 9 May 2023)

¹²⁵ Maalla, N & M Hidden, M scars: the impact of violence and the COVID-19 pandemic on children's mental health (2020) *Child and Adolescent Psychiatry and Mental Health* Vol 14:33 p2 <https://doi.org/10.1186/s13034-020-00340-8> (Date accessed 9 May 2023)

¹²⁶ Note 7 p64

¹²⁷ Lin, Y.-et al Effects of Rehabilitation Models on Self-Stigma among Persons with Mental Illness. *Healthcare* 2022, 10, 213. <https://doi.org/10.3390/healthcare10020213> (Date accessed 21 May 2023)

¹²⁸ Note 144 p67

¹²⁹ Moro et al (2022) Quality of care and respect of human rights in mental health services in four West African countries: collaboration between the mental health leadership and advocacy programme and the World Health Organization Quality Rights initiative Cambridge University Press <https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution,

¹³⁰ Bhugra D, Campion J, Ventriglio A, Bailey S. The right to mental health and parity (2015). *Indian J Psychiatry* Vol ;57 p118

everyone without discrimination within the jurisdiction of the state party.¹³¹ The Committee encourages the state party to explore ways of providing children with timely access to mental health.¹³² The State should not be heard to argue that they do not have resources to ensure access to mental health services by persons with mental disabilities when the rest of its population can easily access other health services.¹³³ Mental health facilities should be accessible but in the Zimbabwe context it is increasingly difficult to state that mental health care services are accessible as there are few mental health centres.

Rehabilitation

Rehabilitation refers broadly to restoration of functionality and is used widely in the field of health. Psychosocial rehabilitation refers more specifically to restoration of psychological and social functioning and is most frequently used in the context of mental illness.¹³⁴ Rehabilitation has emerged as a comprehensive approach to addressing intellectually-disabled peoples' skills deficits, improving competencies and facilitating optimal functioning in order to provide the greatest possible measure of social and economic participation, self-reliance and independence.¹³⁵ Non-specialist health workers are increasingly regarded as the cornerstone of equitable access to mental health care in low and middle-income countries.¹³⁶ There is increasing evidence of the effectiveness; acceptability and feasibility of mental health interventions.¹³⁷ Moreover, there is an urgent need for poorer countries to take seriously the concept of rehabilitation of the severely mentally ill and implement such programmes in their mental health services.¹³⁸

¹³¹Ramcharm, B, G Judicial Protection of Economic, Social and Cultural Rights Cases and Materials (205) Martinus Nijhoff Publishers, Boston p128

¹³² Rachel Hodgkin & Peter Newell, Implementation Handbook for the Convention on the rights of the Child (2007) United Nations Children's Fund p370

¹³³Note 82 p81

¹³⁴Robert King et al Handbook of Psychosocial Rehabilitation (2007) Blackwell Publishing p1

¹³⁵ Sechoaro, E.J., Scrooby, B. & Koen, D.P, 2014, 'The effects of rehabilitation on intellectually-disabled people – a systematic review', *Health SA Gesondheid* 19(1), Art. #693, 9 pages. <http://dx.doi.org/10.4102/hsag.v19i1.693> (Date accessed 19 May 2023)

¹³⁶ Asher L, et al. (2021) "Like a doctor, like a brother": Achieving competence amongst lay health workers delivering community-based rehabilitation for people with schizophrenia in Ethiopia. *PLoS ONE* 16(2): e0246158. Date accessed 9 May 2023)

¹³⁷ Ibid

¹³⁸AL Pillay & AL Kramers-Olen Psychosocial rehabilitation in a chronic care hospital in South Africa: views of clinical staff (2013) *African Journal on Psychiatry* p277

Psychosocial rehabilitation interventions have also received increasing attention in line with policies of de-institutionalization and community based care models, with a greater focus on self-sufficiency and long term recovery.¹³⁹Psychosocial rehabilitation encompasses a group of practices, including skills development, social skills training, family education, self-management, peer support, coping skills, self-monitoring training, vocational rehabilitation, education, and social and recreational development.¹⁴⁰Determining the perception of patients under rehabilitation is imperative to understanding the effect of this therapy.¹⁴¹Psychiatric rehabilitation is an important component in mental health services.¹⁴²Psychosocial rehabilitation is a therapeutic approach that encourages a mentally ill person to develop his or her fullest capacities through learning and environmental support.¹⁴³The rehabilitation program should start right from the first time the patient has come into contact with a mental health professional.¹⁴⁴The philosophy behind rehabilitation is that rehabilitation concentrates more on prevention or reduction of impairment of handicap than on treatment of diseases.¹⁴⁵The *Rehabilitation Act* of 1973 of the United States of America (USA) prioritised the mandatory provision of rehabilitation services for people with disabilities.¹⁴⁶The rehabilitation of intellectually-disabled people should be applied in practice in order to enhance their functional skills and to improve their quality of life.¹⁴⁷ Effective rehabilitation of mentally ill patients is instrumental in the realisation of the right to mental health by children with mental disabilities.

Attempts to address mental health and rehabilitation issues

Legal Reform

¹³⁹Ibid

¹⁴⁰Note 149 p11

¹⁴¹Shan-Shan. Z etal "Why I stay in community psychiatric rehabilitation": a semi-structured survey in persons with schizophrenia (2022) *BMC Psychology* <https://doi.org/10.1186/s40359-022-00919-0> (Date accessed 19 May 2023)

¹⁴²Desai, G etal A Study on First Intake Assessments of In-patient Referrals to Psychiatric Rehabilitation Services (2014)*Indian Journal of Psychological Medicine Vol 36 p236*

¹⁴³Chandrashekar, H etal Psychiatric rehabilitation (2010) *Indian J Psychiatry* p 278

¹⁴⁴Ibid

¹⁴⁵ Sechoaro, E.J., Scrooby, B. & Koen, D.P, 2014, 'The effects of rehabilitation on intellectually-disabled people – a systematic review', *Health SA Gesondheid* 19(1), Art. #693, 9 pages. <http://dx.doi.org/10.4102/hsag.v19i1.693> (Date accessed 19 May 2023)

¹⁴⁶ Ibid

¹⁴⁷ Ibid

Once mental health is construed in terms of human rights, all states are required, at a very minimum, to establish a normative framework consistent with international law.¹⁴⁸ Non-discrimination is the most fundamental tenet in human rights.¹⁴⁹ To promote best practice in Zimbabwe, the occupational therapist should consider the policies and legislations which govern practice.¹⁵⁰ Equally important, laws, strategies and policies must be rooted in and operationalized based on international human rights standards.¹⁵¹ The national laws of Zimbabwe on mental health must not be discriminatory and must be consistent with international law on mental health and the Constitution of Zimbabwe. It is submitted that the Disabled Persons Act is not consistent with the provisions in the Constitution hence it must be aligned to the Constitution.

Community Integration and Participation

Treating mentally ill people as full human beings implies that they have rights to participate in their communities and societies.¹⁵² To date, community-based mental rehabilitation is an important step for integration of these home-treated patients into both the family and society.¹⁵³ Because there are wide variations in the capacity and readiness of priority health care programs within countries, adequate assessment and customization is essential for planning the integration of mental health care.¹⁵⁴ A successful Zimbabwean example, the Friendship Bench, already exists for mental health. In this model, lay community members are trained to deliver basic cognitive behavioural therapy on a bench outside district clinics in Zimbabwe.¹⁵⁵ The project, which uses materials from previous cross-cultural research in the country was started by a local psychiatrist (DC) in 2006 in response to a request from stakeholders in the local district community for a ‘no-

¹⁴⁸ Ibid

¹⁴⁹ Yamin AE, Rosenthal E (2005) Out of the shadows: Using human rights approaches to secure dignity and well being for people with mental disabilities. *PLoS Med* Vol 2 e71 p0297

¹⁵⁰ Nhunzvi, C & Mavindidze, E Occupational Therapy Rehabilitation in a Developing Country: Promoting Best Practice in Mental Health, Zimbabwe (2016) *Imperial Journal of Interdisciplinary Research* Vol 2 p687

¹⁵¹ Kemp CG, et al. (2022) Baseline situational analysis in Bangladesh, Jordan, Paraguay, the Philippines, Ukraine, and Zimbabwe for the WHO Special Initiative for Mental Health: Universal Health Coverage for Mental Health. *PLoS ONE* Vol 17(3): e0265570. <https://doi.org/10.1371/journal.pone.0265570> (Date accessed 9 May 2023)

¹⁵² Ibid

¹⁵³ Note 133

¹⁵⁴ Patel V, et al. (2013) Grand Challenges: Integrating Mental Health Services into Priority Health Care Platforms. *PLoS Med* 10(5): e1001448. doi:10.1371/journal.pmed.1001448 (Date accessed 9 May 2023)

¹⁵⁵ Khameer K. Kidia The future of health in Zimbabwe (2018) *Global Health Action*, Vol. 11, 1496888 <https://doi.org/10.1080/16549716.2018.1496888> (Date accessed 9 May 2023)

cost' community mental health intervention.¹⁵⁶This type of innovation, around low intensity, community-based care, should become the cornerstone of healthcare reform in Zimbabwe.¹⁵⁷ Multi-level collaboration is needed for vocational rehabilitation to be sustainable, this collaboration has the client as the centre of focus and functions at mental health, vocational services and mainstream community levels.¹⁵⁸Psychiatric social work practice includes, inter alia, the need to sensitise communities, continuation of home visits, and the need for psychiatric social workers to continually monitor their own mental well-being.¹⁵⁹

Underscoring mental health in policy and budgeting

Formulation of policies that subsequently remain unimplemented represents another form of de-prioritisation.¹⁶⁰State parties are obliged to 'take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick'¹⁶¹State parties are called upon to take appropriate measures to ensure children access to both preventive and curative health services.¹⁶² The right to health is a classical socio-economic right in that it is not programmatic in its nature, meaning that states are required to enact laws and devise policies that create the conditions necessary for its realisation.¹⁶³Each state is required to achieve this through taking 'steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant.'¹⁶⁴Mental health practitioners could be trained to impart hope in caregivers, as well as teaching caregivers appropriate coping

¹⁵⁶ Abas, B *et al.* 'Opening up the mind': problem-solving therapy delivered by female lay health workers to improve access to evidence-based care for depression and other common mental disorders through the Friendship Bench Project in Zimbabwe *Int J Ment Health Syst* (2016) 10:39
DOI 10.1186/s13033-016-0071-9 (Date accessed 9 May 2023)

¹⁵⁷ Note 176

¹⁵⁸ Note 142 p689

¹⁵⁹ Kurevakwesu, W COVID-19 and mental health services delivery at Ingutsheni Central Hospital in Zimbabwe: Lessons for psychiatric social work practice (2021) *International Social Work* 2021, Vol. 64(5) p712 Article reuse guidelines: sagepub.com/journals-permissions DOI: 10.1177/00208728211031973 (Date accessed 19 May 2023)

¹⁶⁰ Note 7 p74

¹⁶¹ BK Twinomugisha, B, K 'Using the right to health framework to tackle non-communicable diseases in the era of neo-liberalism in Uganda' (2020) 20 *African Human Rights Law Journal* p157
<http://dx.doi.org/10.17159/1996-2096/2020/v20n1a6> (Date accessed 19 May 2023)

¹⁶² *Ibid*

¹⁶³ Muranda, T & Mugo K & Antonites, C HIV is not for me: A study of African women who have sex with women's perceptions of HIV/AIDS and sexual health (2014) *African Human Rights Journal* Vol 2 p762

¹⁶⁴ Yousuf A Vawda & Brook K Baker (2013) Achieving social justice in the human rights/intellectual property debate: Realising the goal of access to medicines) *African Human Rights Journal* Vol 1 p58

skills as routine care.¹⁶⁵ Child psychiatry is in a unique position to respond to the growing public health challenges associated with the large number of mental disorders arising early in life, but some changes may be necessary to meet these challenges.¹⁶⁶ One of the major challenges being faced in Zimbabwe is poor rehabilitation services for abuse of alcohol and other substances,¹⁶⁷ Zimbabwe has only 16 psychiatrists of which one is specialised in children.¹⁶⁸ It can be submitted that there are very few mental health care centres for children in Zimbabwe. The researcher is sceptical how the right to mental health of children with disabilities is realised in Zimbabwe.

Recovery

The recovery approach focuses on a non-linear process of continual growth that builds the resilience of people with mental illness¹⁶⁹ Recovery can be viewed as an overarching philosophy that encompasses notions of self-determination, self-management, empowerment, and choice.¹⁷⁰ It is about enabling and supporting individuals with mental illness to take control over their own lives.¹⁷¹ Personal recovery has been defined as ‘a profound personal and unique process for the individual to change their attitudes, values, feelings, goals, abilities and roles in order to achieve a satisfactory, hopeful and productive way of life, with the possible limitations of the illness’.¹⁷² In addition, whilst all modern mental health services should operate with a recovery orientation, this approach has been specifically identified as a driver of successful progress

¹⁶⁵ Marimbe, B. D. et al. ‘Perceived burden of care, and reported coping strategies and needs for family caregivers of people with mental disorders in Zimbabwe’, (2016) *African Journal of Disability* 5(1), a209. <http://dx.doi.org/10.4102/ajod.v5i1.209> (Date accessed 20 May 2023)

¹⁶⁶ Note 167

¹⁶⁷ Linda Mujuru Demands expose weakness of mental health system <https://globalpressjournal.com/africa/zimbabwe/rising-demand-exposes-weakness-mental-health-care-system/> (Date accessed 5 May 2023)

¹⁶⁸ Anders Wallén, Sophia Eberhard & Kajsa Landgren (2021) The Experiences of Counsellors Offering Problem-Solving Therapy for Common Mental Health Issues at the Youth Friendship Bench in Zimbabwe, *Issues in Mental Health Nursing*, 42:9, 808-817, DOI: 10.1080/01612840.2021.1879977 (Date accessed 5 May 2023)

¹⁶⁹ Taina Valkeapää et al Interaction, Ideology, and Practice in Mental Health Rehabilitation *Journal Psychosocial Rehabilitation of Mental Health* <https://doi.org/10.1007/s40737-018-0131-3> (Date accessed 19 May 2023)

¹⁷⁰ Ibid

¹⁷¹ Ibid

¹⁷² Ballesteros-Urpi A, et al. Conceptual framework for personal recovery in mental health among children and adolescents: a systematic review and narrative synthesis protocol. *BMJ Open* 2019;9:e029300. doi:10.1136/bmjopen-2019-029300 (Date accessed 19 May 2023)

through the rehabilitation pathway.¹⁷³ Mental health professionals similarly consider rehabilitation to be multidimensional and often claim that rehabilitation services are also provided within a ‘recovery’ framework, perhaps in order to maintain congruence with the now widely accepted service user perspectives on recovery.¹⁷⁴

Deinstitutionalization

The mental health sector has undergone two fundamental transformations in the last half century, namely Deinstitutionalization and Recovery.¹⁷⁵ Mental health practice is largely focused on institutions and very limited community based services.¹⁷⁶ Deinstitutionalization has shifted persons with mental illness from hospitals to the Community.¹⁷⁷ Driven by the deinstitutionalization policy, the social adaptation of persons with mental illness is an important issue because, even if treatment is successful, the patient’s progress may be affected by returning to a hostile community¹⁷⁸ where the majority of mental health laws still bear the mark of colonialism and continue to legislate involuntary treatment and institutionalisation of persons with psychosocial disabilities.¹⁷⁹ It is paramount to deinstitutionalise rehabilitation of mentally ill patients as a way to incorporate the community in the rehabilitation process.

Conclusions

¹⁷³ Killaspy, H (2019). Contemporary mental health rehabilitation. *Epidemiology and Psychiatric Sciences* 28, 1–3. <https://doi.org/10.1017/S2045796018000318> (Date accessed 19 May 2023)

¹⁷⁴ Lloyd, C & Waghorn, G & Williams, P, E Conceptualising Recovery in Mental Health Rehabilitation (2008) *British Journal of Occupational Therapy* p32

¹⁷⁵ Eiroa-Orosa, F, J & Limiñana-Bravo, L An Instrument to Measure Mental Health Professionals’ Beliefs and Attitudes towards Service Users’ Rights *Int. J. Environ. Res. Public Health* 2019, 16, 244; doi:10.3390/ijerph16020244 (Date accessed 9 May 2023)

¹⁷⁶ Mlambo, T et al Mental Health Services in Zimbabwe – A case of Zimbabwe National Association of Mental Health (2014) *WFOT Bulletin Vol 70* p19

¹⁷⁷ Lin, Y.-etal. Effects of Rehabilitation Models on Self-Stigma among Persons with Mental Illness. *Healthcare* 2022, 10, 213. <https://doi.org/10.3390/healthcare10020213> (Date accessed 21 May 2023)

¹⁷⁸ Ibid

¹⁷⁹ Juma, P, OBook Review Miachael Ashley Stein, Faraaz Mahomed, Vikram Patel & Charlene Sunkel Mental Health, Legal Capacity and Human Rights To what extent is global and regional jurisprudence on the right to health for person with disabilities reflected in Kenyan Courts (2021) *African Disability Year Book*, Pretoria University Law Press p295

The international and regional human rights instruments discussed in this paper castigated a move away from an illness model towards a disability model targeted at understanding the consequences of mental illnesses. Domestic legislation on mental health and rehabilitation for Zimbabwe and South Africa was also examined. It was noted that national mental health legislations should provide a legal framework to address pertinent issues such as community integration of persons with mental disorders, and the improvement of access to mental health care services to avoid discrimination. If the right to mental health is to be realised, international institutions, governments and civil society must implement and promote mental health in children, who are faced with a double tragedy of being children and having mental disabilities as well. The development of a human rights structure is important to achieve national objectives for persons with mental illnesses. However there still remains a gap in hard law and its application, and subsequently a gap in mental health protections.¹⁸⁰ It is imperative that the government of Zimbabwe continues to increase funding substantial towards mental health care services to enhance accessibility and quality service. Public interest litigation can also be carried so as to compel the government to fulfil its obligation towards realisation of the right to mental health for children in Zimbabwe as most of the mental ill patients face discrimination and violation of their inherent dignity through labelling and stigmatisation. Global legal change in mental health law could be accomplished by either developing new hard law such as an Additional Protocol to the UNCRPD focusing specifically on mental health.¹⁸¹ The government of Zimbabwe must domesticate and implement provisions of the Convention on the Rights of People with Disability in the Disabled Persons Act and Mental Health Act to address the

¹⁸⁰ Note 28 p438

¹⁸⁰ Ibid

¹⁸¹ Note 28 p446

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challenges faced by children with mental illness. The Constitution makes use of the term 'persons with disabilities' while the Disabled Person Act talks about disabled persons. The DPA has to be in line with the Constitution by amending the title of the Act. It is recommended that law reform on the right to mental health for children with mental disabilities in Zimbabwe be taken into consideration and for more research to be undertaken in this area of study.