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Mental health legislation in Lebanon: Nonconformity to international standards and clinical dilemmas in psychiatric practice

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ABSTRACT

Mental health legislation represents an important mean of protecting the rights of persons with mental disabilities by preventing human rights violations and discrimination and by legally reinforcing the objectives of a mental health policy. The last decade has seen significant changes in the laws relating to psychiatric practice all over the world, especially with the implementation of the Convention for the Rights of People with Disabilities (CRPD). In this paper, we review the existing legislation in Lebanon concerning the following areas in mental health: treatment and legal protection of persons with mental disabilities, criminal laws in relation to offenders with mental disorders, and laws regulating incapacity. We will discuss these texts in comparison with international recommendations and standards on the rights of persons with disabilities, showing the recurrent contradiction between them. Throughout our article, we will address the clinical dilemmas that Lebanese psychiatrists encounter in practice, in the absence of a clear legislation that can orient their decisions and protect their patients from abuse.

1. Introduction

Mental health legislation represents an important means of protecting the rights of persons with mental disabilities by preventing human rights violations and discrimination, promoting autonomy and liberty of the person, as well as access to mental health care and community integration (Rosenthal & Sundram, 2004). It also legally reinforces the objectives of a mental health policy, which is essential for integration of mental health into general health care settings and development of community based mental health services (Rosenthal & Sundram, 2004).

Mental health and human rights interact in many ways. Mental health policies and laws involve the exercise of government power and can thus promote or violate rights: autonomy, physical integrity, privacy, self-determination, legal capacity, liberty and security of the person. On the other hand, human rights violations affect mental health. Stigma, discrimination (alienation, marginalization, loss of dignity and self-worth) as well as restrictions on civil rights have detrimental effects on mental health. Although awareness and education have contributed to a better understanding of mental health and illness, mental illness still carries a huge burden of stigma in most parts of the world, with common social representations including the fact that people with mental disabilities are assumed to be lazy, weak, considered violent and invoke fear (World Health Organization WHO, 2003).

A mental health legislation in line with the international guideline will contribute to a better protection of the human rights of persons with mental disorders. However in some countries, mental health legislation contains provisions that lead to the violation of human rights (WHO, 2003). In addition 25% of countries with nearly 31% of the world's population do not have national mental health legislation (WHO, 2003).

It is thus important for a country to have a mental health legislation that incorporates international human right standards, like the CRPD (Convention on the Rights of persons with disabilities). The CRPD is a legally binding UN document for nations that have ratified it. It was adopted by the United Nations General Assembly in 2006 (United Nations (UN) General Assembly, 2007). It supersedes the Principles for Protection of Persons with Mental illness (MI principles) (UN General Asembly, 1991) and the Declaration of Madrid by the World Psychiatric Association (WPA, 1996) both of which remain the reference as international recommendations that specifically address all aspects of the treatment of mental disabilities.

The purpose of the CRPD is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity". Persons with disabilities include those who have long-term mental impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (UN general assembly, 2007).

The health system in Lebanon is one of the few Arab countries that do not have to date a mental health policy (Okasha, Karam, & Okasha,

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2012). It benefits from acts and legislation in different areas of mental health, but these isolated acts are not integrated in a national mental health policy which would organize, plan and provide the wide access to community based mental health care services. These acts are the following:

1) Lebanese Legislative Decree no 72-9/9/1983 Welfare Act and Protection and Treatment of Mentally Ill Patients
2) Lebanese Act no 220-29/5/2000 Rights of Mentally Handicapped in Lebanon
3) Lebanese Act no 574-11/2/2004 Patients Rights and Informed Consent
4) Lebanese Act no 673-16/3/1998 Narcotic Drugs and Psychotropic Substances and Precursors.

In a study analyzing the Lebanese legislative system Saghieh and Saghieh (2012) had shown that it does not promote general mental health, especially in children and youth, and it highlighted the non-conformity of the legislative decree 72/1983 with the MI principles (Saghieh & Saghieh, 2009). In the present paper, we additionally describe how the Lebanese legislations deal with different aspects of "mental illness", with a special emphasis on the treatment of mental disorders, as well as criminal laws in relation to offenders with mental disorders, and laws regulating incapacity. We will discuss to what extent do these laws incorporate international human rights standards, including international human rights law (WHO, 1996), the MI principles, and the CRPD. It is noteworthy to mention that Lebanon has signed the CRPD in 2007 but without formal ratification or confirmation yet.

Moreover, we will discuss what happens in practice and the clinical dilemmas to which Lebanese mental health professionals are confronted to, like decisions for involuntary admissions and treatment of patients with mental disorders, in the absence of a clear law that protects the patient. We will also address many aspects of mental health care in practice that seem to us in contradiction with international standards.

2. Laws regulating the treatment of patients with mental disorders

The legislative decree 72/1983 aimed to regulate the legal protection and treatment of patients with mental disorders and it is the only legal text that addresses specifically this issue. As we will see later, many points in this decree are in contradiction with international standards or remain without any application device, which makes it not often referred to in clinical practice by psychiatrists.

2.1. Definition of the "mentally ill"

The legislative decree 72/1983 mentioned above defines the "mentally ill" as "every person suffering from partial or complete disturbances in cognitive, emotional and behavioral functions, making him unable to be conscious and responsible for his actions". This definition is quite ambiguous and does not specify that the determination of a mental illness should be made according to internationally accepted medical standards. A definition of mental disorders according to international classification such as the ICD-10 can be useful in this situation since the law is purely "care and treatment" legislation (Rosenthal & Sundram, 2004).

For example, controversy exists about involuntary admission or treatment for personality disorders even when no other effective treatment is available. Another example is substance and alcohol use disorder, as clinical experience indicates involuntary admissions are not effective in these cases. However, in Lebanon, some mental health professionals apply involuntary admissions to people with substance use disorders or personality disorders, as no clear definitions of conditions where involuntary treatment is possible are available.

Furthermore, this ambiguous definition gives the possibility for misuse of the law. There is no specification that a "determination of mental illness should never be made on the basis of professional or family conflict, or non conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community" (UN General Assembly, 1991). This means that if one does not adhere to the norms or values of the society he or she lives in, it does not mean that he or she has a mental illness.

2.2. Legal protection and place of treatment

In the legislative decree mentioned above, it is emphasized that the "mentally ill" should be given a legal protection that covers him in the private and public health institutions. It implicitly implies that the protection of the "mentally ill" is based upon his isolation in institutions, as it states that his "liberation" from the hospital must be done under the condition of a previous agreement with an association or a civil society organization to take the person in charge, in case his family is unable to do so. This is in clear contradiction with international standards, that advocate for the protection of persons and their treatment without isolation and that promote community care and de-institutionalization. Thus, the treatment should be as close as possible to the community and not in confined institutions (UN General Assembly, 2007). This would imply increasing availability of services that are of adequate quality and improving access to health care. To this purpose, legislation should address financing mental health, and above all integration of mental health into general health care with access to psychosocial interventions and access to health insurance and to medications.

Furthermore, the government did not create the associations or the primary health care settings that are cited in the legislative decree. Based on the WHO report on mental health services in Lebanon (2010), these services are not organized in terms of catchment/service areas, and there is lack of primary health care settings and clearly inadequate mental health services (WHO, 2010). This means that the only possibility for full coverage available is hospitalization in psychiatric hospitals, which results in practice toward the institutionalization of psychiatric patients rather then their inclusion in the community.

2.3. Involuntary admission and treatment

A fundamental principle of medical care is that treatment of a patient should be with their consent. In the majority of cases doctors should treat their patients according to this principle and it applies for all medical specialties, including mental health disorders. For consent to be valid the patient must have capacity to make medical treatment decisions, the consent must be informed and must be freely given (UN General Assembly, 1982).

Mental disorders can sometimes affect person's decision-making capacities and they may not always seek or accept treatment for their problems. Rarely, persons with mental disorders may pose a risk to themselves and others because of impaired decision-making abilities. However, mental health legislation should always encourage voluntary admission and treatment and allow involuntary admission only in exceptional circumstances that are constrained by appropriate procedures to protect the rights of persons with mental disorders who are being treated involuntarily (UN General Assembly, 2007; WHO, 2003). The circumstances in which involuntary admissions occur must be outlined and clearly specified. Examples of conditions that could justify involuntary admission and treatment are an acute psychotic episode during schizophrenia, or a manic episode, or a major depressive episode with psychotic features. It is also internationally recommended to obtain certification from two accredited professionals, with the second opinion being from outside the institution and independent from the first opinion, and the legislation should give patients who are admitted involuntarily the right of appeal against their admission to a review body. In case of emergency situations where there is an immediate and imminent danger, a mental health law should set out the procedure for these situations, with immediate involuntary admission, and clear