

China's Mental Health Law: Analysis of Core Concepts of Human Rights and Inclusion of Vulnerable Groups

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ABSTRACT

Purpose: *The aim of this research is to assess China's first Mental Health Law in terms of Core Concepts of Human Rights and equitable coverage of Vulnerable Groups.*

Methods: *The EquiFrame analytical tool provided the framework for evaluation of the inclusion of Core Concepts of Human Rights as well as Vulnerable Groups in the Law.*

Results: *China's Mental Health Law scored 83% for Core Concept coverage, with a Core Concept Quality score of 76%. The Law had a 42% score for Vulnerable Groups coverage. This gave the Law an overall score of "Moderate" in terms of Human Rights coverage.*

Conclusions: *China's Mental Health Law is a landmark document providing the country's first ever legal framework for mental health. While the Law scores high on level commitment in Core Concepts of Human Rights, the potential for equitable protection would be enhanced by increased inclusion of Vulnerable Groups.*

Limitations: *Further analyses of health and social policies in the People's Republic of China from a Human Rights perspective would provide a deeper understanding of the Law in context.*

Key words: *Mental health, China, human rights, policy, equiframe*

INTRODUCTION

The lack of services and attention paid to the human rights of persons with mental health conditions and disabilities is so dire that it has been called an "emergency"

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(World Health Organisation, 2015). This is also the case in China which has about one-fifth of the world's population. China's economic reforms and growth have resulted in increased material wellbeing for this population. Subsequently, awareness and emphasis on mental health and wellbeing has increased (Xiang et al, 2012a). An epidemiological study estimated that around 173 million people in China have mental disorders, and 158 million of these have never received any treatment (Phillips et al, 2009). The same report noted that seven mental disorders (major depressive disorder, alcohol use disorders, schizophrenia, anxiety disorders, bipolar disorder, dysthymia, and drug use disorders) were among the top 20 causes of years lived with disability in China (Yang et al, 2010).

Some Chinese authors have further pointed out that one longstanding challenge has been, until recently, the lack of a legal or policy framework for mental health (Xiang et al, 2012a). China is not the only country to face this challenge; 40% of countries lack a dedicated mental health policy (World Health Organisation, 2011).

In 2011, the first draft of China's new Mental Health Law was introduced. This was a long anticipated step forward, as the first committee tasked with drafting China's National Mental Health Law was formed in 1985 (Xiang et al, 2012a). The final draft of the Law was finally introduced on October 26th, 2012 and came into effect on May 1st, 2013 (Standing Committee of the National People's Congress, 2012). The new Law has been lauded for its importance to psychiatry in China and for overall global mental health, as it demonstrates increased political will to prioritise this issue (Xiang et al, 2012b; Phillips et al, 2013).

China has also signed and ratified the United Nations Convention on the Rights of Persons with Disabilities, an international treaty, which promotes the equal rights of persons with disabilities to dignity, respect, and social inclusion (UNCRPD, 2007). Persons with mental health conditions may be included under the CRPD, depending on the level of "impairment" or "long-term" nature of their case (Szmukler et al, 2014). This new Mental Health Law is a step towards bringing Chinese domestic law into compliance with its international human rights commitments.

The degree to which the law is inclusive and rights-based will have great implications for its ability to serve as a legal basis for effective mental health services (Mannan et al, 2013). The aim of this research is to assess China's new Mental Health Law in terms of Core Concepts of Human Rights and equitable coverage of Vulnerable Groups.

METHOD

The EquiFrame analytical tool provided the framework for evaluation. EquiFrame is a standardised measurement tool for policy development and analysis within a framework of human rights (Amin et al, 2011; Mannan et al, 2011; MacLachlan et al, 2012). While other tools exist for analysis of policy formation processes, EquiFrame was developed to specifically consider the content of policies “on the books” in regard to their inclusion of vulnerable groups and their observation of human rights (Amin et al, 2011; Mannan et al, 2012). The standardisation of the tool makes it possible to conduct cross-country comparisons (MacLachlan et al, 2012; Eide et al, 2013). The tool has previously been used to review health policies and laws relevant to mental health (McVeigh et al, 2012; Amadhila et al, 2013; Mannan et al, 2013; Ivanova et al, 2015).

The EquiFrame defines 21 Core Concepts of Human Rights and 12 Vulnerable Groups. For more detailed information, see the EquiFrame Manual (Mannan et al, 2011).

Vulnerable Group Coverage: The Law was scored by the lead author on the basis of the mention or omission of the 12 Vulnerable Groups identified in EquiFrame. The second author then verified these scores, and there was no disagreement about either the Core Concept or the level of commitment. Each Vulnerable Group mentioned received a score of 1, and the total out of 12 was calculated and expressed as a percentage. One of the Vulnerable Groups, “Disabled”, explicitly includes persons with mental health conditions (Amin et al, 2011; Mannan et al, 2011). Although this analyses a Mental Health Law, all Vulnerable Groups were included in recognition of the fact that mental illness can affect multiple groups and has been found to disproportionately affect vulnerable groups (Mannan et al, 2013).

Core Concept Coverage: The Law is also examined on the basis of the mention of 21 Core Concepts found in EquiFrame, with the number identified as a percentage. Core Concepts within EquiFrame are central or foundational principles of human rights that are grounded in international and domestic legal instruments, Constitutional and ethical principles (Alderey and Turnbull, 2011; Mannan et al, 2012; Shogren and Turnbull, 2014; Shogren and Wehmeyer, 2014). Qualitative information, in the form of direct language from the Law, was extracted to explain the Core Concepts found in the document and provide evidence for scoring choices. A Core Concept that is included is scored on a scale

of 1- 4, based on the following criteria:

- 1 Concept only mentioned;
- 2 Concept mentioned and explained;
- 3 Specific policy actions identified to address the concept;
- 4 Intention to monitor concept was expressed.

Table 1: EquiFrame Core Concepts of Human Rights: Key Questions and Language (Mannan et al, 2011)

No.	Core Concept	Key Question	Key Language	Example Language	Score
1	Non-discrimination	Does the policy support the rights of vulnerable groups with equal opportunity in receiving healthcare?	Vulnerable groups are not discriminated against on the basis of their distinguishing characteristics	Article 5. Individuals and organisations shall respect, accept, and show concern for persons with mental disorders and shall not stigmatise, humiliate or abuse them.	3
2	Individualised Services	Does the policy support the rights of vulnerable groups with individually tailored services to meet their needs and choices?	Vulnerable groups receive appropriate, effective and understandable services	Not included	0
3	Entitlement	Does the policy indicate how vulnerable groups may qualify for	People with limited resources are entitled to some services	Article 69. Persons with severe mental disorders who are living below	3

		specific benefits relevant to them?	free of charge or persons with disabilities may be entitled to respite grant	the urban or rural poverty line shall be enrolled in the Subsistence Allowance System.	
4	Capability-based Services	Does the policy recognise the capabilities existing within vulnerable groups?	For instance, peer to peer support among women- headed households or shared cultural values among ethnic minorities	Not included	0
5	Participation	Does the policy support the right of vulnerable groups to participate in the decisions that affect their lives and enhance their empowerment?	Vulnerable groups can exercise choices and influence decisions affecting their lives. Such consultation may include planning, development, implementation, and evaluation	Article 50: Opinions from persons with mental disorders and their families are solicited when facilities are inspected.	1
6	Coordination of Services	Does the policy support assistance of vulnerable groups in accessing services from within a single provider system (inter-agency) or more than one provider system (intra-	Vulnerable groups know how services should interact where inter-agency, intra-agency, and inter-sectoral collaboration is required	Article 60. Administrative departments for health from the county- level up formulate, coordinate, and implement mental health work plans that are in keeping with the requirements of the National	3

		agency) or more than one sector (inter-sectoral)?		Economic and Social Development Plan.	
7	Protection from Harm	Are vulnerable groups protected from harm during their interaction with Health and related systems?	Vulnerable groups are protected from harm during their interaction with Health and related systems	Article 38. Medical Facilities have the facilities and equipment to ensure safety and prevent injury in persons with mental disorders who seek care or receive inpatient treatment; and they shall provide those who receive inpatient treatment with a living environment that is as close to normal as possible.	3
8	Liberty	Does the policy support the right of vulnerable groups to be free from unwarranted physical or other confinement?	Vulnerable groups are protected from unwarranted physical or other confinement while in the custody of the service system/provider	Article 44. Persons with mental disorders voluntarily admitted to hospital may request discharge at any time and medical facilities shall comply.	3
9	Autonomy	Does the policy support the right of vulnerable groups to	Vulnerable groups can express "independence" or "self-	Article 30. Inpatient treatment shall be generally voluntary.	3

		consent, refuse to consent, withdraw consent, or otherwise control or exercise choice or control over what happens to him or her?	determination". For instance, a person with an intellectual disability will have recourse to an independent third party regarding issues of consent and choice		
10	Privacy	Does the policy address the need for information regarding vulnerable groups to be kept private and confidential?	Information regarding vulnerable groups need not be shared among others	Article 4. Except when disclosure is necessary to perform legally sanctioned responsibilities, relevant institutions and individuals shall keep confidential the name, pictures, address, place of work, medical information, or other information that could expose the identity of persons with mental disorders.	3
11	Integration	Does the policy promote the use of mainstream services by vulnerable groups?	Vulnerable groups are not barred from participation in services that are provided for the general population	Article 70. School-age children and adolescents with mental disorders shall receive required universal education.	3

12	Contribution	Does the policy recognise that vulnerable groups can be productive contributors to society?	Vulnerable groups make a meaningful contribution to society	Not included	1
13	Family Resource			Article 21. Family members should help persons with mental disorders to get care, have their daily needs provided for, and take responsibility for their management.	4
14	Family Support	Does the policy recognise that individual members of vulnerable groups may have an impact on the family members requiring additional support from health services?	Persons with chronic illness may have mental health effects on other family members, such that these family members themselves require support	Article 49. Urban neighbourhood and rural village committees should provide guidance to guardians.	4
15	Cultural Responsiveness	Does the policy ensure that services respond to the beliefs, values, gender, interpersonal styles, attitudes, and cultural,	i) Vulnerable groups are consulted on the acceptability of the service provided ii) Health facilities, goods and services must	Article 11. Inclusion of Chinese medicine and ethnic medicine.	3

		ethnic, or linguistic aspects of the person?	be respectful of ethical principles and culturally appropriate, i.e., respectful of the culture of vulnerable groups		
16	Accountability	Does the policy specify to whom, and for what services, providers are accountable?	Vulnerable groups have access to internal and independent professional evaluation or procedural safeguards	Chapter VI – Legal Responsibility.	3
17	Prevention	Does the policy support vulnerable groups in seeking primary, secondary, and tertiary prevention of health conditions?		Article 3. Prevention is the guiding principle of mental health work.	4
18	Capacity Building	Does the policy support the capacity-building of health workers and of the system that they work in addressing health needs of vulnerable groups?		Article 65. Departments of health should upgrade capacity for mental health services, and general hospitals increase capacity for outpatient mental health services.	3

19	Access	Does the policy support vulnerable groups – physical, economic, and information access to health services?	Vulnerable groups have accessible health facilities (i.e., transportation; physical structure of the facilities; affordability and understandable information in appropriate format)	Article 68. Free basic public health services should be arranged for persons with severe mental disorders.	3
20	Quality	Does the policy support quality services to vulnerable groups through highlighting the need for evidence-based and professionally-skilled practice?	Vulnerable groups are assured of the quality of the clinically appropriate services	Article 25. A comprehensive management system and quality monitoring system to regulate the diagnosis and treatment of mental disorders.	4
21	Efficiency	Does the policy support efficiency by providing a structured way of matching health system resources with service demands in addressing health needs of vulnerable groups?		Article 62. Funding for mental health work will be increased at all levels of the government and it should be included in the budgets of all levels of the government.	3

Table 2 : EquiFrame Vulnerable Group's Attributes (Mannan et al, 2011)

No.	Vulnerable Group	Attributes	Coverage
1	Limited Resources	Referring to poor people or people living in poverty	Mentioned
2	Increased relative risk for Mortality	Referring to people with one of the top 10 illnesses, identified by WHO, as occurring within the relevant country	Not mentioned
3	Mother- child Mortality	Referring to factors affecting maternal and child health (0–5 years)	Not mentioned
4	Women-headed Household	Referring to households headed by a woman	Not mentioned
5	Children with Special Needs	Referring to children marginalised by special contexts, such as orphans or street children	Not mentioned
6	Aged	Referring to older age	Not mentioned
7	Youth	Referring to younger age without identifying gender	Mentioned
8	Ethnic Minorities	Referring to non-majority groups in terms of culture, race, or ethnic identity	Not mentioned
9	Displaced Populations	Referring to people who, because of civil unrest or unsustainable livelihoods, have been displaced from their previous residence	Not mentioned
10	Living away from Services	Referring to people living far away from health services, either in time or distance	Not mentioned
11	Suffering from Chronic Illness	Referring to people who have an illness which requires continuing need for care	Mentioned
12	Disabled	Referring to persons with disabilities, including physical, sensory, intellectual or mental health conditions, and including synonyms of disability	Mentioned

Core Concept Quality: The Law was examined with respect to the number of Core Concepts found in it that received a 3 or 4 rating out of the 21 Core Concepts identified. This ratio was expressed as a percentage. When there were multiple mentions of the concept, the highest rating score was used as the overall quality score for that concept.

Finally, the Law was given an Overall Summary Ranking of “High”, “Moderate” or “Low”. A score of “High” indicated that the policy achieved more than 50% on all three of the scores mentioned above. A “Moderate” score was given if the policy achieved over 50% on two of the three scores. A policy scored “Low” if it scored less than 50% on two of the three areas.

A translation of China’s Mental Health Law, produced by a team of translators from the Shanghai Mental Health Centre at Shanghai Jiaotong University School of Medicine, which includes explanatory footnotes, was used (Chen et al, 2012). The first author is also fluent in Chinese and read the original text to cross-check terminology regarding the Core Concepts and Vulnerable Groups.

RESULTS

Vulnerable Group Coverage: The policy was found to cover 42% of vulnerable groups that were included in the framework. Children with special needs, the aged, living away from services, ethnic minorities, mother-child mortality, increased risk of morbidity, women- headed households, and displaced populations were not explicitly mentioned. The vulnerable group “Disabled”, specifically for persons with mental health conditions, was mentioned most often (Table 1).

Core Concept Coverage: The Law had a core coverage rating of 86%, with 18 out of 21 Core Concepts being mentioned. “Family resource” was mentioned most often, appearing 17 times throughout the Law. The core concept of “Prevention” was the second most commonly mentioned concept, appearing 13 times (Table 2).

Core Concept Quality: The Law was given a quality rating of 76%, with 16 out of 21 Core Concepts receiving scores of 3 or 4. Of the core concepts mentioned in the Law, only “Participation” and “Cultural Responsiveness” received scores of 1 (Table 2).

Overall Rating: Overall, the policy received a “Moderate” ranking. Both “Core Concept Coverage” and “Core Concept Quality” scored above 50%.

DISCUSSION

Vulnerable Groups

The moderate strength of the Mental Health Law of the PRC is due to its low coverage of Vulnerable Groups.

The vulnerable group “Disabled” was most often mentioned in the Law. This is to be expected as it specifically targets the needs of persons with mental health conditions. It is notable that in the Chinese version of the Law, the word for “disability” (zhangai) is explicitly used when referring to mental or psychiatric disorders. Other vulnerable groups explicitly addressed by the Law were “Limited resources” and “Persons with chronic illness”. However, the non-inclusion of many vulnerable groups has major implications for the possible effectiveness of the Law in ensuring that mental health services are inclusive and equitable. Mental health difficulties are often exacerbated by inequalities within society, and may be more prevalent or less treated among other vulnerable groups (WHO, 2010).

“Increased risk of morbidity”, “Mother-child mortality” and “Women-headed households” were not specifically mentioned in the Law. This is consistent with findings of other mental health policies. One study across the mental health policies of three African countries found that none had explicitly mentioned “Mother-child mortality” (Mannan et al, 2013). However, these groups are also at risk for mental health difficulties, such as postpartum depression (Miranda and Patel, 2005; WHO and UNFP, 2009).

“Children with special needs” were not discussed in the Law. In China, preliminary studies have found that members of this vulnerable group are at greater risk for mental health problems, particularly emotional and behavioural difficulties. These include children who are orphans, living in institutions, or “left behind” when their parents leave to find work in the city (Fan et al, 2010). Furthermore, there is no mention of children trafficked into begging in China, who constitute both a vulnerable and under-studied group (Shen et al, 2013).

The vulnerable group “Displaced populations” was also not included. This group could be interpreted to include the large migrant worker population in China, of about 200 million people pushed by economic circumstances to leave farms in the inland provinces and seek employment in the East coast metropolises (Zhang and Song, 2003; Gong et al, 2012). Some studies suggest that the loss of community and the stress of economic migration to an urban setting can place this group at special risk for mental health difficulties (Wong, 2006; Wong et al, 2008). Moreover, they are not eligible for the community mental health services where they are working due to China’s hukou household registration system (Wong, 2006; Xiang et al, 2012b).

No explicit mention of “older people” was made, although a term (shanyang) used in reference to family, can imply caring for the older generation (Chen et al, 2012). Chinese culture has a great respect for elders, though elder care has traditionally been within the realm of the family and is considered a private matter. The ageing population in China will give rise to an increase in age-related mental illnesses such as dementia. These mental conditions bring special challenges, especially around mental capacity and decision making, which require legal safeguards and protections. Older people in China have also been found to be at a high risk for depression and have a suicide rate that is four to five times higher than that of the general Chinese population (Li et al, 2009; Phillips et al, 2009; Van Orden et al, 2014). With this growing population of older people and their particular vulnerabilities and needs in the realm of mental health, it is important that they be explicitly mentioned in the Law.

“Persons living away from services” were not explicitly mentioned in the Law, although rural populations were discussed. The Law mentions several actions that need to be taken by rural township health clinics and rural village health centres. However, the establishment of these facilities and programmes, and capacity building within them, will take time. This also raises the issue of human resources and their distribution. There is a shortage of psychiatrists in China, with estimates of only 1.24/100,000 people (WHO, 2005). Since this Law stipulates that psychiatrists are the only ones who may diagnose mental disorders, persons living away from services have the burden of travelling in order to even obtain a diagnosis.

Finally, there was no mention of “Ethnic minorities” in the Law. Although the majority of Chinese people are Han, China has 55 distinct ethnic groups (Sixth National Population Census, 2010). Many of these groups live in the less economically prosperous inland provinces (Gustafsson and Li, 2003). This leaves them multiply disadvantaged because they may have had less quality education, less access to specialised health services, and may face communication difficulties from speaking a minority language (Li et al, 2008; Ouyang and Pinstrup-Andersen, 2012).

Core Concept Coverage and Quality

The Law scored high for Core Concept Coverage.

The most frequently mentioned core concept was “Family resource” (17 times). This is encouraging, as evidence suggests that family-supported therapy can be

very effective for mental health (Gerhart, 2012). It also differs from analysis of mental health policies in other contexts. Mannan et al (2013) found that there was no mention of “Family resource” in the mental health policies of Namibia and Malawi. Family members have traditionally been responsible for the care of persons with mental health conditions in China, with an estimated 80% of persons with mental health conditions being looked after by family members at home (Ran et al, 2005). However, there are no clear procedures and policies surrounding “guardianship”. The Law includes no guidelines for the assessment of mental capacity to see if guardianship is necessary and for the selection of a guardian. No mention is made of supported decision-making, an emerging alternative to guardianship, and measures needed to balance both the client’s right to autonomy and liberty and the role of family members (Gooding, 2013). The Law should outline what actions could be taken if these concepts should be in conflict.

However, despite the many mentions of “Family resource”, a major weakness is that “Family support” receives few mentions. Since provisions in the Law seem to want to move away from the largely involuntary inpatient treatment of mental disorders, this will increase the burden on families who need to help clients seeking outpatient services.

Without substantial support mechanisms in place, this could have the perverse effect of increasing mental health strain on family members and other caregivers.

The second most often mentioned core concept in the Law was “Prevention” (13 times), which received a top score of 4 due to the expressed intention to monitor it. Many of the provisions in the Law focus on the promotion of overall population mental health and wellbeing. As some have pointed out, there are limited evidence-based interventions to prevent the occurrence of mental health disorders, which questions their “quality” (Phillips, 2013). The emphasis placed in this Law could serve to catalyse further research in this area.

The core concepts of “Coordination of services”, “Quality” and “Efficiency” were mentioned 7 and 8 times respectively. “Quality” received the highest rating of four, based on the expressed intention to monitor it. The articles in Chapter V (“Measures necessary to implement the Law”) outline steps to establish facilities to diagnose and treat mental disorders as well as community-based rehabilitation programmes. While the political will and resources to implement programmes and quality assurance mechanisms exist at the central government level, doubts

have been raised as to whether the same is true at the local and county government level (Phillips, 2013). Mental health still only receives 4% of the National Health Budget funding, while it is 20% of health expenditure (Wang and Yin, 2011). The unequal distribution of this funding in favour of hospitals over community services must also be rectified to implement the Law (Liu et al, 2011). However, China's mental health initiative from 2004, the 686 Project, has been a step in the right direction in starting to build a community mental health infrastructure (Ma, 2012; Tse et al 2014).

The core concepts "Protection from harm" and "Accountability" were also covered in the Law with specific policy actions, parties responsible, and expressions of the legal consequences for those found to be in violation. However, there was no indication about how the concept would be monitored. The efficacy of these provisions is incumbent on adequate monitoring and continuous improvement in the rule of law as a source of protection for Chinese citizens (Perlin, 2011). This may prove a challenge in a system that does not have an independent judiciary.

The Law includes specific measures related to the core concept of "Access", including the enrolment of persons with mental disorders in various social security and public insurance schemes for those living in poverty. However, implementation of these basic insurance schemes is uneven, with many clients seeking healthcare having to make high payments out of pocket (Hu et al, 2008).

The core concept of "Cultural responsiveness" was found to be lacking in the Law. There is a passing mention of "Chinese and ethnic medicine" within an article referring to the need for more mental health research. There is not a long history of Western-style psychiatry in China, and many individuals and families continue to seek out medical care from Chinese medicine doctors or traditional healers (Xu and Yang, 2009). Mention of exactly how traditional Chinese medicine and other folk medicine will be incorporated into or dealt with in this mental health system would strengthen the Law's relevance to a large segment of the population.

"Participation" was another key concept that only received a passing mention in the Law. This is a major contradiction to the concept of "nothing about us without us" which has been the cornerstone of many disability rights movements and the formulation of the CRPD (Waterstone et al, 2010). "Participation" was also found to be one of the strongest core concepts in the mental health policies of three African countries (Mannan et al, 2013). Although opinions of persons

with mental health conditions and their family members will be solicited under the Law, there is no indication of the extent to which these have influenced the formulation of this Law or will play in its future implementation. This was also found to be one of the key areas of the WHO Comprehensive Mental Health Action Plan that China's Mental Health Law does not address, because it does not empower persons with mental disorders to participate in service planning (Phillips, 2013).

No mentions of "Individualised services" or "Capability-based services" were made. The Law would benefit from incorporating a more person-centred approach to mental health.

Limitations

This analysis only included the Mental Health Law of the People's Republic of China. Further analysis of Chinese health and social welfare laws and public policies would provide context and insight into how provisions for mental health fit within the overall system.

While EquiFrame provides a methodology and guidance for policy content analysis on equity and human rights, it should be acknowledged that the Vulnerable Groups list could well include other groups who may be particularly vulnerable to mental health conditions and in need of treatment and unable to access services. These include sex workers, men who have sex with men, transgender people, drug users and prisoners, among others. It should be noted that one of these groups, prisoners, was explicitly mentioned twice in the Mental Health Law. Future use of EquiFrame could make alterations to the Vulnerable Groups based on context (O'Dowd et al, 2013).

CONCLUSION

China's Mental Health Law is undoubtedly a landmark piece of legislation. It has created the first legislative framework to guide the creation and improvement of mental health services in China. It is also a milestone for the "Global Mental Health" movement to have the world's largest developing country pass such a law. It includes many core concepts of human rights in its approach to mental health. However, effective mental health policy also requires that the outcomes be equitably distributed and inclusive of vulnerable groups within society. As China continues on its course of development, it should note that improved

mental health is associated with a number of indicators that can lead to economic growth (McDaid et al, 2008). Equitable Mental Health services that are based on human rights and inclusive of vulnerable groups are not only a moral and legal obligation for China, but are also a way to secure a more prosperous and harmonious future for all its citizens.

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