

Submission: Mental health and human rights

by Child Rights International Network (CRIN)
(www.crin.org | info@crin.org) November 2016

Introduction

This submission represents the views of Child Rights International Network (CRIN). CRIN is a global research, policy and advocacy organisation and our work is grounded in the United Nations Convention on the Rights of the Child. Our goal is a world where children's rights are recognised, respected and enforced and where every rights violation has a remedy.

This submission will highlight areas of children's rights in relation to mental health which are not adequately covered by existing human rights mechanisms. These include issues which have specific age-related dimensions, issues that affect children uniquely because of their developmental status, and those that affect specific groups of children.

Prevalence

Childhood and the transition to early adulthood is a period of heightened vulnerability to mental illness. The high prevalence of children experiencing such illnesses is often attributed to the considerable physical, emotional and psychological changes taking place as they develop.¹ In many instances, children do not receive the early interventions they require and experience mental illnesses without being aware of their illness or receiving the necessary information, support and care to treat it. As a result, mental health related illnesses like depression have now become the leading cause of illness and disability among adolescents (10-19 year olds),² with suicide being the third leading cause of mortality among adolescents.³

International standards

International human rights standards provide clear guidance on the requirement for States to protect the mental health of children. The Convention on the Rights of the Child (CRC) primarily recognises these rights in articles 6 (survival and development) and 24 (health and health services). Articles 2 (non-discrimination), 3 (best interests of the child) and 12 (views of the child) are also relevant. The Committee on Economic, Social and Cultural Rights, in General Comment 14, notes that States are required to promote the mental health and emotional well-being of children, ensuring adequate mental health provisions and treatment, and that legislation is in place to guarantee the rights of children with mental health conditions.⁴ The need for these provisions has been raised most recently in target 3.4 of the Sustainable Development Goals, which requires States to have appropriate provisions for the treatment of children's mental health needs.⁵

1. Age discrimination

¹ A/HRC/32/32, p.14

² According to WHO definition, Access at:
<http://apps.who.int/adolescent/second-decade/section2/page1/recognizing-adolescence.html>

³ WHO, "Adolescents: health risks and solutions", factsheet No. 345

⁴ General Comment 14, CESCR, para.22

⁵ Available at: <https://sustainabledevelopment.un.org/sdg3>

A number of rights issues in the context of mental health affect both children and adults but have particular implications for children because of their age, relative immaturity and the range of situations in which adults have power over them. For instance, children with mental health conditions may be denied agency in decision-making around their own health-care, where adults are not, despite having the necessary capacity, with decisions made on their behalf by parents, guardians, or medical professionals. However, children should be entitled to be actively involved in their own mental healthcare from the earliest possible opportunity and not be discriminated against because of their age. Under article 12, the CRC recognises the value of a child's views and the need to give them weight in accordance with the age and maturity of the child. As stated in article 5, this must be in a manner consistent with the evolving capacities of the child. This approach rejects the setting of strict age requirements with regards to children's health-care rights and instead adopts a more flexible approach that takes account of individual characteristics of the child. However, where children are assessed as lacking capacity, adults should take a course of action in line with the child's best interests, influenced by the child's own views and with respect for their other rights.

Privacy

Children with mental illnesses are doubly vulnerable to breaches of their right to privacy and confidentiality because of their status as a child and because of their illness. However, CRC article 14, read in conjunction with article 2 on non-discrimination, protects this right for all children, stating that "no child shall be subjected to arbitrary or unlawful interference with his or her privacy ... or correspondence".⁶ A child's right to privacy in this context includes the right of the child to seek mental health advice confidentially, to access medical records and control who else can access those records. The right to confidential advice and counselling can extend to the right to withhold medical information from everyone except the medical professional involved, including parents, a requirement recognised by the Committee on the Rights of the Child's General Comment 12 on the child's right to be heard.⁷ This is particularly important where the child's safety may be at stake, where the right to confidential medical counselling and advice without parental consent should be applied irrespective of age. The issue of confidentiality is separate to that of decisions over the child's care. Where a child lacks the capacity to make a determination about his or her care, it may frequently become necessary for medical professionals to discuss a child's care with parents or carers, but this does not override the child's right to confidential advice and counselling.

Access to information and informed consent

Children should receive appropriate information in order to be able to give their informed consent to treatment and medication, yet are frequently denied this right. As stated in article 17 of the CRC, children have the right to access information, which includes a general obligation to ensure that the child has access to information from diverse sources, especially those aimed at promoting mental and physical health.⁸ CRC article 24 also requires that States take appropriate measures to ensure that children are informed about their health, including their mental health.⁹ As stated in its concluding observations to Costa Rica in 2011, the Committee on the Rights of the Child "[recommended] that the state party: [...] (d) ensure that all health services provided to children and adolescents with disabilities, including mental health services and, in particular, the administration of psychotropic

⁶ CRC, article 16

⁷ Available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

⁸ CRC, article 17

⁹ CRC, article 24 (2)(e)

substances, are based on the free and informed consent of the children concerned, according to their evolving capacities.”¹⁰

Access to justice

Children with mental health conditions face particular barriers to accessing justice because they may be denied legal standing both because of their age and mental health status.¹¹ All children, regardless of their mental health status, should have access to justice and effective complaints mechanisms. This should include the right to compensation for children who become victims of any medical intervention, or any form of harm that contributes to a mental illness. Children should know of the existence of those complaints mechanisms, how to use them, and receive the necessary support in using them. Mental health services should support children to access their rights.

Deprivation of liberty, compulsory detention and treatment

States have an obligation to provide the highest attainable standard of health and health facilities to children with mental health conditions, and this is particularly important for children detained by the State. Children with mental health needs in detention are particularly vulnerable as a result of the controls on their movement and communication - restrictions which can make it difficult to access medical advice and care. The Committee on the Rights of the Child has emphasised this need in requiring that all children deprived of their liberty “shall receive adequate medical care throughout [his or her] stay in the facility, which should be provided, where possible, by health facilities and services of the community”.¹² Prisons and other places of detention do not provide a therapeutic environment and should not replace community-based medical care.

Children with mental illnesses or disabilities should not be held in compulsory detention or treatment centres. The Convention on the Rights of Persons with Disabilities (CRPD) in setting out the right to liberty and security of a person explicitly prohibits the use of (mental) disability as ground for depriving them of liberty.¹³ The detention of an individual on the basis of mental health also constitutes discrimination under article 2 of CRC and article 26 of the International Covenant on Civil and Political Rights.¹⁴ However, where it is necessary to hold a child with a mental health condition or disability in a civil setting, it must be with the consent of the child or, where the child lacks capacity to decide on his or her treatment, and be in the best interests of the child.¹⁵ This must be in an appropriate, sanitary, non-punitive facility, never in a penal setting. Where a person with a mental illness is charged with or convicted of a criminal offence it may be justifiable to detain that person based on the individual’s circumstances, but detention would have to be justified in the same manner as any other criminal detention and in relation to children, would have to take account of the best interests of the child and limitations on detention of children in the criminal setting.¹⁶

Mental health screening

¹⁰ CRC/C/CRI/CO/4

¹¹ For more information see CRIN’s report on Access to Justice, Available at: <https://www.crin.org/en/library/publications/rights-remedies-and-representation-global-report-access-justice-child-en>

¹² UN Committee on the Rights of the Child, General Comment No. 10 (2007), para. 89

¹³ CRPD, articles 1 & 14(1)(b)

¹⁴ See Richardson, “Balancing autonomy and risk: A failure of nerve in England and Wales?” International Journal of Law and Psychiatry, 9 January 2005 for a discussion of discrimination and the justifications of non-consensual treatment in the mental health context.

¹⁵ For more on this issue, See: https://www.crin.org/sites/default/files/crin_comments_gc35_iccpr_article9.pdf, p.5

¹⁶ See CRIN, “Stop making children criminals” for further discussion of the legitimate grounds for the detention of children in the criminal justice system, Available at <http://www.crin.org/node/31378>

Children with mental health conditions often have very different needs to their adult counterparts. Though the prevention of mental illness should be an essential part of a State's national health system, specialist services which cater to the unique needs of children with mental health conditions remain rare.¹⁷ Many States do not provide an appropriate level of specialist services that focus solely on the needs of children. Consequently, children often fail to receive appropriate and accurate medical treatment and this can result in misdiagnosis or in oversubscribing medication, which can lead to further harm.

2. Vulnerability due to age and developmental state

Overmedication

Children with certain conditions, or perceived to have such conditions, are often overmedicated leading to significant long-term impact upon their future development and mental health.¹⁸ Children's right to the highest attainable standard of health not only includes access to medical care, but access to the appropriate kind of assistance, be it medical, psychological or otherwise. For example, in the case of treatment received by children affected by ADHD, interventions to-date have been riddled with controversy. Children and adolescents – and even infants – diagnosed with ADHD or other behavioural difficulties are often given powerful prescription drugs, sometimes in combination with others, often unnecessarily, and at an increasingly young age.¹⁹ Finding ever cheaper and easier ways to keep children “under control” all too often takes precedence over considering the long term effects of such treatment.

Toxics

Article 24 of the CRC explicitly requires States to take into account the risks of contaminated food and water as well as pollution in the realisation of the right to health.²⁰ Children are more vulnerable to toxic chemicals and pollution than adults because they have a more pronounced effect on their less developed bodies. As stated in the Committee on the Rights of the Child's General Comment 16 “Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children's rights, such as exposure to (...) unsafe products or environmental hazards may have lifelong, irreversible and even transgenerational consequences”.²¹ The health impacts linked to childhood exposure extend beyond physical illness to include mental disorders, such as developmental disorders and learning disabilities. Furthermore, children have no opportunity to participate in decisions about which hazardous substances enter their bodies. In cases when they are harmed, there are numerous barriers to securing the right to an effective remedy. The burden of proof is usually on the victims, yet they are often denied their right to information regarding the risks of exposure to a cocktail of toxic chemicals.

3. Issues that affect specific groups

Harmful therapeutic treatment for LGBT children

LGBT children experience a range of rights violations as a consequence of their sexual orientation. In some States LGBT children are seen as having a mental illness and are

¹⁷ A/HRC/32/32, p.5.

¹⁸ Available at:

<https://www.crin.org/en/library/publications/health-childrens-rights-and-overmedication-children-diagnosed-adhd>

¹⁹ Available at:

<https://www.washingtonpost.com/news/to-your-health/wp/2016/05/03/cdc-warns-that-americans-may-be-overmedicating-two-to-five-year-olds-with-adhd/>

²⁰ CRC, article 24

²¹ CRC/C/GC/16, p.2

required to undertake “conversion therapy” to try and change their sexual orientation. This process can often have a significant impact upon a child’s mental well-being and lead to illnesses like depression. These conversion therapies are common throughout the world, despite the advances made in LGBT rights and the lack of medical evidence to support their use.²² For example, a recent case in China was brought against a clinic which administered electric shock therapy to “cure” homosexual thoughts, despite the declassification of homosexuality as a mental illness in the country in 2001. In the US these “conversion” interventions for LGBT children are also common, being permitted in 48 US states.²³

Forced sterilisation

Around the world girls with mental disabilities are especially vulnerable to forced sterilisation. Forced sterilisation occurs when an individual refuses the procedure, or when it is carried out without their knowledge or with the use of incentives, misinformation, or intimidation.²⁴ It is often justified as being in the “best interests” of the girl. International standards provide clear guidance around this issue. The CRPD states that people with disabilities have a right to have a family and retain their fertility (article 23). It is also clear that people with disabilities must enjoy legal capacity (which includes access to any support needed to exercise legal capacity (article 12) and that healthcare should be provided on the basis of free and informed consent (article 25).²⁵ The Committee on the Rights of the Child has also identified forced sterilisation of girls with disabilities as a form of violence and in General Comment 13, highlighted that States should legislate against the forced sterilisation of children with disabilities.²⁶

Recommendations

- Children’s mental health prevention and screening services should be accessible and provided by the State, based on scientific, evidence-based interventions.
- Children should be able to seek confidential mental health advice, to access medical records and control who is able to access those records. This should include the right to withhold medical information from everyone except the medical professional involved, including parents.
- Children should receive appropriate information (from diverse sources) about mental illnesses, and in order to be able to give their informed consent to treatment and medication.
- Children should have access to justice, complaints mechanisms and compensation for any medical intervention that contributes to a mental illness. Complaints mechanisms should be accessible and children should receive the necessary support to use them.
- Children with a mental illness or disability should not be held in compulsory detention or treatment. Where it is necessary to hold a child with a mental health condition or disability, it must be with the consent of the child or, where the child lacks capacity to

²² <https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-38#E>

²³ <https://www.crin.org/en/home/what-we-do/crinmail/children-court-crinmail-27#Banson>

²⁴ HRW 2011, “Sterilization of women and girls with disabilities - A briefing paper”, Access at: <https://www.hrw.org/news/2011/11/10/sterilization-women-and-girls-disabilities>

²⁵ CRPD, articles 12, 23 and 25.

²⁶ Committee on the Rights of the Child, General Comment No.13

decide on his or her treatment, in their best interests. It must also take place in an appropriate, sanitary, non-punitive facility, and never in a penal setting.

- Medical services need to consider the long-term impact of medication to treat a child's mental illness, and consider holistic and alternative approaches which also involve education, health and social welfare professionals,²⁷ before prescribing a child with potentially harmful medication.
- Children need better protection from the impact of toxic waste and pollution, including to their mental health, through legislation and the enforcement of environmental regulations. States should follow Special Rapporteur Tuncak's recommendations about their obligations to prevent children from being exposed to toxics and pollution.²⁸ As part of their human rights due diligence, businesses should also identify, prevent and mitigate exposure of children to toxics through their activities, products or business relationships.
- States should prohibit any procedures aimed at modifying sexual orientation.
- Forcing or pressuring a child to undergo sterilisation should be prohibited in law.

²⁷ A/HRC/32/32 p.15

²⁸ A/HRC/33/41,

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/169/26/PDF/G1616926.pdf?OpenElement> p. 21