

AMNESTY INTERNATIONAL



Accountability in Mental Health Services: The Significance of the Indecon Review

“...good governance is essential to the effective implementation of all human rights, including the realisation of the right to health.”¹

Introduction and rationale for the review of mental health expenditure

Amnesty International Ireland (AI) has a long-term campaign goal of ensuring that the right of all people in Ireland to the highest attainable standard of mental health is fully realised.² Over the next two years we will be campaigning for changes in law, policy and practice to bring this about. One of our objectives in this two-year campaign is that people directly affected by human rights in relation to mental health can hold Government to account for its obligations under international human rights law.

Currently there are limited mechanisms in Ireland for tracking mental health expenditure or its effectiveness. Yet accountability is a fundamental principle of human rights. Individuals need to be able to determine whether their Government is fulfilling its commitments under international human rights laws. In order to enable people with experience of mental health difficulties and NGOs to hold Government to account, AI is seeking improved reporting on mental health services. Over the next two years, AI aims to ensure that the Department of Health and Children and the HSE publish more transparent information that accounts for implementation of Government’s mental health policy *A Vision for Change*. As a first step towards achieving this objective, AI commissioned the consultants Indecon to review expenditure on mental health since 2006 as well as to analyse progress on the policy in terms of allocation of human resources to multi-disciplinary community mental health teams.

¹ General Comment 14 of the UN Committee on Economic, Social and Cultural Rights General (2000) ‘The right to the highest attainable standard of health: UN Doc E/C.12/2000/4 (11 August 2000).

² The right to the highest attainable standard of physical and mental health is set out in Article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Ireland in 1989, and reiterated in a number of other international human rights treaties including the Convention on the Rights of the Child (article 24) and the newly adopted Convention on the Rights of Persons with Disabilities (article 25), which Ireland has not yet ratified.

**Introduction by Amnesty International Ireland's Experts
by Experience Advisory Group***

"We are delighted to have been invited to steer, advise and be a part of Amnesty International Ireland's (AI) current campaign which views mental health as a human right's issue. We have a vision of a society that respects our differences and where we can be proud to be ourselves, not feel rejected, silenced or stigmatised just because sometimes we might be vulnerable to mental health problems.

This campaign aims to put the person at the centre of the mental health system and we welcome this. Involvement in this campaign means striving towards a society where everyone can participate fully in all decisions that affect them, whether they are currently mentally well, temporarily experiencing difficulties or on the road to recovery.

We are not asking for anything more than for the human rights of people experiencing mental health problems to be respected. We want them to be treated with dignity and respect. To be truly given a choice in relation to treatment. We want a system that supports everyone's right to housing, employment and education – all essential to recovery and well-being."

*Participation is a core component of human rights. AI invited a group of people who had experience of mental health difficulties, the Experts by Experience Advisory Group, to jointly devise its campaign strategy.

Accountability and the right to the highest attainable standard of mental health

Realisation of the right to the highest attainable standard of mental health would mean that any person in Ireland:

- would have access to appropriate mental health services when they need and want them;
- would be treated with dignity and respect when they are using mental health services; and
- Government policy in health and other areas such as education and employment would not negatively impact on their ability to enjoy good mental health.

Under the right to the highest attainable standard of mental health, mental health services should be available, accessible, acceptable and appropriate in quality. **Availability** refers to the fact that there must be enough mental health-related facilities and services as well as sufficient trained medical and other professionals. **Accessibility** refers to how appropriate facilities, goods and services must be affordable, geographically accessible and available without discrimination. It also requires that information about services must be available and accessible. **Acceptability** refers to how facilities, goods and services must respect different cultures and medical ethics. **Quality** refers to how facilities, goods and services must meet medical and scientific standards of quality. In Ireland, the National Economic and Social Forum has recommended that standards for public services be set with reference to criteria such as adequacy, acceptability, affordability and accessibility.³ These principles are integral to the meaning of the economic and social rights in international human rights law.

As well as an entitlement to a system of mental health care, the realisation of the right to the highest attainable standard of mental health is dependent on the realisation of other rights, such as housing, employment and education - the so-called underlying determinants of health. Human rights law requires that the underlying determinants of health also be available, accessible, acceptable and of good quality. The right to the highest attainable standard of mental health is also closely linked to a number of other rights and freedoms such as the rights to liberty and privacy and freedom from discrimination. The Indecon review focuses on those aspects of the right to the highest attainable standard of mental health that pertain to services.

The right to the highest attainable standard of mental health is subject to progressive realisation and resource constraints. States are required to take steps to the maximum of their available resources with a view to realising the right over time. Simply put, this means Ireland must be doing better today than it was five years ago. While the principle of progressive realisation acknowledges the constraints due to the limits of available resources, this should not be misinterpreted as depriving the obligation of all meaningful content; it also imposes obligations which have immediate effect. One of these is the requirement to guarantee that the right to the highest attainable standard of mental health can be exercised without discrimination. The other is the obligation 'to take steps'. Ireland must take steps to the maximum of its available resources in order to move as expeditiously and effectively as possible towards realising the right to the highest attainable standard of mental health. Such steps must be deliberate, concrete and targeted as clearly as possible towards making this right a reality. Ireland also has a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to the highest attainable standard of mental health.

³ National Economic and Social Forum (2008) *Fifth Periodic Report on the Work of the NESF*. Dublin: NESF, para. 8.48.

As stated by the former UN Special Rapporteur on the Right to Health,⁴ Paul Hunt: “Accountability is one of the central features of human rights. Without accountability, human rights can become no more than window-dressing.”⁵ According to the UN Committee on Economic, Social and Cultural Rights, a health strategy should be based on the principles of accountability and transparency. In human rights terms, accountability goes beyond ensuring that funds are spent as intended; effective systems of accountability go some way towards providing benchmarks and indicators against which to assess whether health systems are improving and the right to health is being progressively realised over time.⁶

Ireland’s current economic circumstances throw into sharper focus the need for adequate accountability for Government expenditure. It also provides a useful opportunity to implement progressive realisation which aims to make best use of available resources and improve their effectiveness. AI welcomes the acknowledgement in the Report of the Special Group on Public Service Numbers and Expenditure Programmes that there is a “general deficiency of information regarding the public service impacts associated with particular items of expenditure.”⁷ The Special Group remarked that “[t]his is symptomatic of a public service culture that is insufficiently focused on how public resources are allocated, how efficiently they are spent, and what results are being achieved.”⁸ The report further acknowledges that the HSE is not currently able to account for its expenditure by functional programme. This comment is particularly pertinent in the area of mental health service expenditure where implementation of Government policy has been hindered by failures in accountability, so much so that the Department of Health and Children withheld development funding to the HSE in 2008 due to lack of adequate information on expenditure.

The Expert Group that drafted Ireland’s mental health policy *A Vision for Change* set out recommendations for how the policy should be funded and monitored. The Expert Group asserted that it would be “crucial” to effective implementation that the policy was seen as a set of inter-related and interdependent recommendations. They stated that: “A piecemeal approach to implementation will undermine the potential for real and complete change in our mental health services.”⁹

Approaches to accountability

What does effective accountability look like? The National Economic and Social Council (NESC) has produced advice on implementation of national policy in its two reports, *The Developmental Welfare State* and *NESC Strategy 2006: People, Productivity and Purpose*. It recommended a new

⁴ The role of the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health was set out in Human Rights Commission Resolution 2002/31.

⁵ (2008) *The Right to Health: Report to the UN General Assembly*, UN Doc A/63/263, p.4.

⁶ *Ibid.*, p.5.

⁷ Department of Finance (2009) *Report of the Special Group on Public Service Numbers and Expenditure Programmes*, p.22.

⁸ *Ibid.*, p.23

⁹ Mental Health Expert Group (2006) *A Vision for Change*. Dublin: Stationery Office, p.216.

approach to governance that adopts an "accountable autonomy" framework in which "those delivering services are given more autonomy in return for information and a willingness to embrace continuous improvement."¹⁰ The NESC described this framework in the following way:

In these approaches to public administration, local actors are given freedom to set goals for improvement and the means to achieve them. In return, they must propose measures for assessing their progress and provide rich information on their own performance. The centre pools the information and ranks local actors by reference to periodically revised performance measures.¹¹

According to the NESC, this approach increases innovation and local transparency. In its view, the central Government body's role (in this case the Office for Disability and Mental Health) is to support the capacity of local actors to act autonomously and to hold them accountable through monitoring, sanctioning and intervening.¹² However, it is self-evident that for such 'accountable autonomy' to work as an effective way of delivering Government policy, there must be adequate financial and performance management systems in place to enable monitoring.

The NESC's recommendations must be read in combination with those of the NESF in its report *Improving the Delivery of Quality Public Services*. There, the NESF proposed a 'public value approach' that involves:

- providing quality, cost-effective services for users
- ensuring equity and fairness in service provision
- improving service outcomes and use of resources
- building up trust/legitimacy in the value of public services¹³

The NESF stated that: "Overarching principles of equality, fairness, transparency, cost-effectiveness, accountability and evaluation must form the ethos and way of working for all public service providers," and highlighted the need for consistent performance indicators to measure the impact of public spending on meeting policy objectives.¹⁴ Taken together, these two reports reflect a consensus around the need to improve accountability for public expenditure and develop systems to transparently monitor the effectiveness of public services.

¹⁰ National Economic and Social Council (2005) *NESC Strategy 2006: People, Productivity and Purpose. Report No.114*. Dublin: NESC, p.300.

¹¹ National Economic and Social Council (2005) *The Developmental Welfare State*. Report No.113. Dublin: NESC, p.167.

¹² Ibid.

¹³ National Economic and Social Forum (2007) *Improving the Delivery of Quality Public Services*. Report No.34. Dublin: NESF.

¹⁴ Ibid.

Similarly, the Council of Europe's Commissioner for Human Rights, Thomas Hammerberg, has said that redressing the gap between human rights treaties and States' actual practice requires a systematic approach including effective collection of relevant data.¹⁵ The former UN Special Rapporteur on the Right to Health, Paul Hunt, said that enhancing monitoring and accountability in mental health services was an urgent task at the national level.¹⁶ There is a need, then, to develop appropriate performance indicators that can be used to measure how well Government is fulfilling the right to the highest attainable standard of mental health over time.

The Irish Mental Health Coalition (IMHC), of which AI is a member, called for greater transparency and accountability in its pre-budget submission for 2009. The IMHC sought:

“robust measures to ensure that oversight is exercised in how allocated budgets are expended, linked with the requirements of effectiveness, transparency and accountability. Funds expended on mental health services must be tracked and reported by the HSE and the Department of Health and Children and this information made available to civil society.”¹⁷

They called for line items for specialised mental health services to be established in Budget 2009 and to have those budgets safeguarded.

Government and agency failures in accountability to date

As mentioned above, since publication of *A Vision for Change*, both the HSE and the Department of Health and Children have failed to provide adequate accountability for mental health expenditure. The Independent Monitoring Group (IMG) set up to monitor implementation has commented on the lack of a systematic approach, while there has also been a lack of clarity on responsibility for implementation within the HSE. The IMG has also repeatedly criticised the HSE for failing to produce an adequate implementation plan. In its most recent monitoring report, the IMG expressed concern about the lack of detail within the HSE's second draft implementation plan, commenting, “almost three years following the publication of *A Vision for Change*, the Group expected to see a plan of more substance.”¹⁸ The IMG has also had difficulty in determining whether mental health expenditure is being effectively spent. With regard to the additional investment of €51.2 million made in 2006 and 2007, it added, “It is not apparent to the Monitoring Group that improvements in services to patients are commensurate with this level of investment.”¹⁹

¹⁵ Council of Europe: Commissioner for Human Rights, *Serious implementation of human rights standards requires that benchmarking indicators are defined*, 17 August 2009, available at http://www.coe.int/t/commissioner/Viewpoints/default_en.asp

¹⁶ Hunt, Op. Cit., p.5

¹⁷ Irish Mental Health Coalition (2008) ‘Transparency & Accountability in Budget 2009: A Call to Government on World Mental Health Day’, Dublin: Irish Mental Health Coalition.

¹⁸ Independent Monitoring Group (2009) ‘Third Annual Report on implementation 2008’ available at www.dohc.ie, p.8.

¹⁹ IMG, Op. Cit., p.19.

The failure of accountability to date is also evidenced in other ways. From 2006 to 2007, Government invested an additional €51.2 million of development funding that was intended to support implementation of *A Vision for Change*. Yet in January of 2008, the IMHC discovered that almost half of this money had been diverted to meet deficits in other areas of health spending. It was ostensibly for this reason that the Minister for Health in September 2008 stated, "Before any additional funding is provided it is essential that the HSE is in a position to demonstrate that money allocated for mental health services is efficiently used and that the substantial changes in the organisation and delivery of mental health services envisaged in *A Vision for Change* are progressed."²⁰

Furthermore, there has been evidence of large inequity in expenditure in the mental health services. The Mental Health Expert Group found that there is a ten-fold variation in per capita funding for mental health across different services around the country,²¹ and a 2003 study by the Irish Psychiatric Association found that areas of greatest socio-economic deprivation receive fewest resources.²² Funding allocations for different regions in the country are based on historical factors (such as the location of mental hospitals) and not on the current needs of the regions. In 2005, the Irish Psychiatric Association published an analysis of information on regional demography, clinical services and the mental health budget reported in successive reports of the Inspector of Mental Hospitals from 1998 to 2003. It found a 13-fold disparity in funding (ranging from €495.47 *per capita* in St Brendan's Hospital service, Dublin 7 to €37.97 in Kildare, based on 2003 statistics), and vast regional variations in the numbers of nursing, medical and administrative staff, and in acute bed availability.²³

The Indecon review of mental health expenditure and progress towards *A Vision for Change*

It is these wide-ranging failures of accountability to date that prompted AI to commission a review of mental health expenditure. Unfortunately, the report prepared by Indecon has found continued failures in accountability. Indecon was commissioned to review the expenditure in mental health services since *A Vision for Change* was published as well as to assess progress made towards implementation of that policy. The authors reviewed available information from the HSE including its Implementation Plan 2009-13 and National Service Plans, Annual Output Statements from the Department of Health and Children and published information from the Mental Health Commission.

²⁰ Response from the then Minister for Health to the Irish Mental Health Coalition, quoted in IMHC (10, October 2008) 'Transparency & Accountability in Budget 2009: A Call to Government on World Mental Health Day', available at http://www.imhc.ie/docs/2009_prebudgetsubmission.doc

²¹ Mental Health Expert Group (2006) *A Vision for Change*. Dublin: Stationery Office, p.179.

²² *The Stark Facts*.

²³ *The Black Hole: The funding allocated to adult mental health service: where is it actually going?*

In summary, Indecon found a lack of information that could provide a robust basis for ongoing monitoring of funding, expenditure and human resource allocation across Ireland's mental health services, both at national and sub-national levels. AI is aware of the development of the WISDOM patient information database that is currently in its pilot phase in Donegal and which will, if and when rolled out nationally in future years, provide information on patient utilisation of services. Nevertheless, the current lack of information on funding, expenditure and human resource allocation prevents anyone from being able to determine whether the earlier reported inequity in expenditure is continuing. Also, while the WISDOM database will provide valuable information at a patient level, it is unclear how much this data will meet the need for adequate financial and performance management information. The authors also found that the absence of data tracking money from year-to-year makes it impossible to accurately track funding commitments against expenditures.

The review also looked at the extent of progress on implementation of *A Vision for Change's* recommendations for the establishment of multi-disciplinary Community Mental Health Teams (CMHTs). While the authors recognised significant progress as far as commencing the work required to implement the policy, they found significant shortages in staffing of CMHTs, which is limiting choice in treatments. There is also a persistent over-reliance on in-patient treatment instead of the shift to community services that *A Vision for Change*, and its predecessor of 1984 (*Planning for the Future*), was intended to instigate. The authors conclude that at the current rate of progress, the HSE will not be able to achieve its own target date of implementation by 2013, even for the generalist, adult mental health service. Indecon has provided a wealth of new analysis at national, regional and catchment area levels that can provide baseline evidence for assessing implementation of *A Vision for Change* in future years. However, financial and performance management systems must improve in order to prevent wasting Government investment.

Implications for Human Rights

Clearly, the findings of Indecon's review have implications for the Government's fulfilment of the right to the highest attainable standard of mental health. Firstly, given the lack of data it is impossible for the Government to demonstrate the extent of its progress towards the realisation of this right. The Department of Health and Children cannot show accessibility, availability or adequacy of services because it does not have accurate information on a regular basis about the types of services and the extent of service provision available in each community.

The second consequence of this lack of data is that people with experience of mental health difficulties and NGOs such as AI cannot hold Government to account. These stakeholders are integral components of the human rights accountability framework. People with mental health difficulties need transparent, good quality information in order to determine the extent to which their Government is fulfilling its obligations under human rights law. Currently, they are being hindered in carrying out this role due to the lack of transparent

information. This means that individuals affected are not in a position to be able to press Government on implementation of its policy, nor to seek that Government prioritise mental health. It also means that Government does not have the opportunity to explain its actions or failures to act to implement *A Vision for Change*.

Thirdly, the lack of adequate information makes it impossible for the Government's own monitoring mechanism for *A Vision for Change*, the Independent Monitoring Group, to operate effectively. The IMG does not have reliable information in sufficient detail to assess progress. The HSE's reporting on numbers of established CMHTs is the most obvious example of this, where the HSE's representations on achievement of CMHTs obscure the fact that most teams do not have their full complement of staff, as shown in Indecon's report.

The evidence presented by Indecon puts into question the HSE's own target date of 2013 for completing *A Vision for Change*, set out as recently as February 2009 in its Implementation Plan. Based on the rate of progress to date, Indecon projects that even for the generalist adult Community Mental Health Teams, recommended staffing levels will not be achieved by the HSE's target date. And these projections are based on progress made during periods when additional investment was available, that is from 2006 to 2008. In the current economic climate, it is even more unlikely that the HSE will deliver the additional staff and new services required to implement *A Vision for Change* within the intended timeframe.

Indecon's review also illustrates how failure to implement *A Vision for Change* impacts upon the fulfilment of human rights principles in mental health. Thus, for example, the fact that services continue to be overly reliant on inpatient rather than community-based treatment means that the right to treatment in the least restrictive environment (that is, as far as possible, in the community) cannot be fulfilled for those people who cannot access appropriate services in the community.²⁴

It is worth recalling once more that the Mental Health Expert Group cautioned against piecemeal implementation of their recommendations. One of the core principles of the policy is comprehensiveness of services. The Expert Group emphasised that in order to provide an effective community-based service, CMHTs should offer a comprehensive range of medical, psychological and social therapies relevant to the needs of service users and their families.²⁵ AI recognises the need for a realistic approach to implementation of Government policy in the near term, in light of economic circumstances. However, it is vital that future decisions on implementation are directed towards respecting, protecting and fulfilling individuals' human rights. This includes providing individuals with a range of treatment options as well as continuing to develop community-based services.

²⁴ This right is contained in Articles 7(1) and 9(1) of the Mental Illness Principles and in the Council of Europe Recommendation 2004(10).

²⁵ Mental Health Expert Group (2006) *A Vision for Change*. Dublin: Stationery Office, p.9.

Conclusion

In 2006, Government adopted *A Vision for Change* as its mental health policy. Successive reports by the Inspectorate of Mental Health Services have highlighted the urgent need for reform of the services, and this need has not abated since the policy was launched. Rather, the most recent report of the Inspectorate found serious and systematic deficiencies in provision across the country. If this mental health policy is not to go the way of its predecessor, the 1984 *Planning for the Future*, which was never fully implemented, the Government must ensure better accountability going forward.

Indecon's review has provided valuable baseline evidence at national, regional and local levels that the state of progress as of the end of 2008 in implementing *A Vision for Change*. AI thanks Indecon for their careful and thorough analysis of the available data. There is an urgent need to build on this report and for Government to establish the effective accountability mechanisms that can enable the development of a mental health service in Ireland that fulfils human rights.