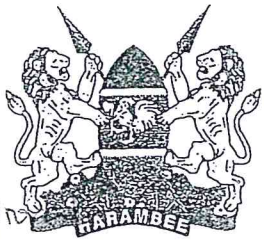
REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

THE STANDING COMMITTEE ON HEALTH

REPORT OF THE COMMITTEE ON THE MENTAL HEALTH (AMENDMENT) BILL, SENATE BILL NO.32 OF 2018

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

PAPERS LAID	
DATE	20/6/19
TABLED BY	Chairperson
COMMITTEE	Health
CLERK AT THE TABLE	CM

2019

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PREFACE

Mr. Speaker Sir,

The Mental Health (Amendment) Bill, 2018 was read a First Time in the Senate on Wednesday 5th December, 2018 and was thereafter committed to the Senate Standing Committee on Health.

Mandate of the Standing Committee on Health

The Senate Standing Committee on Health is mandated, under the Second Schedule of the Senate Standing Orders, to, *"to consider all matters relating to medical services, public health and sanitation."*

Committee Membership

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Malinga Mbito - Chairperson
2. Sen. (Dr.) Ali Abdullahi Ibrahim - Vice-Chairperson
3. Sen. Beth Mugo
4. Sen. Nderitu John Kinyua
5. Sen. Iman Falhada Dekow
6. Sen. Okong'o Omogeni
7. Sen. Naomi Shinyonga
8. Sen. Petronilla Were Lokorio
9. Sen. Fred Outa

Mr. Speaker Sir,

Pursuant to the Provisions of Article 118 (1) (b) of the Constitution and standing Order 140 (5) of the Senate Standing Orders the Senate Standing Committee on Health invited interested members of the public to submit their views on the Bill by way of written memoranda or attend public hearings on Tuesday, 12th March, 2019.

The Standing Committee on Health wishes to thank the Offices of the Speaker and the Clerk of the Senate for their support during the process of considering this Bill.

Mr. Speaker Sir,

It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to Standing Order No. 140 (5) of the Senate Standing Orders.

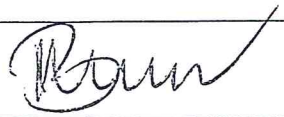
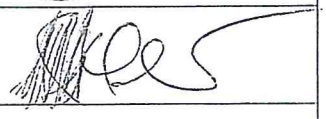
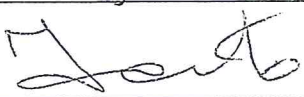
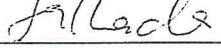
Signed..... Date..19-06-2019.....

SEN. MBITO MICHAEL MALING'A, MP

CHAIRPERSON, STANDING COMMITTEE ON HEALTH

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH ON THE MENTAL HEALTH (AMENDMENT) BILL, SENATE BILL NO.32 OF 2018

We, the undersigned Members of the Standing Committee on Health of the Senate, do hereby append our signatures to adopt the Report-

1.	Sen. Mbito Michael Malinga, MP	Chairperson	
2.	Sen. (Dr) Ali Abdullahi Ibrahim, MP	Vice Chairperson	
3.	Sen. Beth Mugo, EGH, MP	Member	
4.	Sen. Nderitu John Kinyua, MP	Member	
5.	Sen. Fred Outa, MP	Member	
6.	Sen. Petronilla Were Lokorio, MP	Member	
7.	Sen. Iman Falhada Dekow, MP	Member	
8.	Sen. Okong'o Mogeni, MP	Member	
9.	Sen. Masitsa Naomi Shiyonga, MP	Member	

1. Purpose of the Bill

The Bill seeks to amend the Mental Health Act, Cap. 248, Laws of Kenya to align it to the provisions of the Constitution and the Health Act, 2017. The Bills overarching interest is to ensure that persons with mental illness receive the highest attainable standards of health in accordance with the provisions of Article 43 (1) of the Constitution by outlining the obligations of both the National and County Governments with regard to provision and access to mental health services.

2. Background of the Bill

The Mental Health (Amendment) Bill, 2018 is sponsored by Sen. Sylvia Kasanga. The Bill seeks to amend the Mental Health Act, 1989 in order to align it to the requirements of the Constitution and to give effect to section 73 of the Health Act which provides as follows—

There shall be established by an Act of Parliament, legislation to—

(a) protect the rights of any individual suffering from any mental disorder or condition;

(b) ensure the custody of such persons and the management of their estates as necessary;

(c) establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country at the national and county levels;

(d) advance the implementation of other measures introduced by specific legislation in. the field of mental health; and

(e) ensure research is conducted to identify the factors associated with mental health.

In this regard, various gaps have been identified in the Mental Health Act. Some of the gaps identified include-

(a) lack of clarity on the role of national government and county governments with regard to mental health care services;
(b) lack of representation of county governments within the Kenya Mental Health Board;
(c) lenient fines in regard to penalties under the Mental Health Act that do not reflect Kenya's current economy;
(d) need to ensure consultations between the Cabinet secretary, the Board and the county governments when developing regulations for the better carrying out of the objects of the Mental Health Act.

This Bill was published vide Kenya gazette Supplement No. 136 on 1st November, 2018. The Bill was read a first time in the Senate on Wednesday 5th December, 2018 and was thereafter

committed to the Senate Standing Committee on Health, pursuant to standing order 140 of the Senate Standing Orders, for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118 (1) (b) of the Constitution and standing order 140 (5), invited submissions from members of the public on the Bill via an advertisement on Tuesday, 12th March, 2019 in the National Newspapers.

3. Brief Overview of the Bill

The Bill proposes the following amendments to the Mental Health Act –

The Bill proposes to amend the long title to read as follows –

An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental illness; for the custody of their persons and the management and control of mental health facilities.

Clause 4 of the Bill amends the Act by providing for the purpose of the Act and the guiding principles as follows –

2A The purpose of this Act is to provide a framework to—

(a) promote the mental health and well-being of all persons, including reducing the incidences of mental illness;

(b) co-ordinate the prevention of mental illness, access to mental health care, treatment and rehabilitation services of persons with mental illness;

(c) reduce the impact of mental illness, including the effects of stigma on individuals, family and the community;

(d) promote recovery from mental illness and enhance rehabilitation and integration of person with mental illness into the community; and

(e) ensure that the rights of a person with mental illness is protected and safeguarded.

Clause 5 of the Bill amends the Act to introduce a new Part which outlines the obligations of the national and county governments.

The obligations of the national government are provided for in the new clauses 2C as follows –

2C The National Government shall—

(a) provide the necessary resources for the provision of mental health care and treatment at National referral health facilities;

(b) collaborate with the county governments in—

(i) the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of health services to persons with mental illness;

(ii) expanding and strengthening community and family-based care and support systems for persons with disability;

(c) put in place mechanisms to ensure the rights of persons with mental illness are realised;

(d) adopt a comprehensive national strategy and plan of action and policies to promote the realisation of the rights of persons with mental illness under Article 43 of the Constitution and put in place measures designed to improve the general welfare and treatment of persons with mental illness;

(e) develop standards to be maintained by mental health facilities including—

(i) the number of qualified health professionals required to serve a mental health facility and more specifically the number of psychiatrists, psychologists, psychiatric nurses, counsellors, and psychotherapists;

(ii) the type and quantity of diagnostic and therapeutic equipment required by a mental health facility; and

(iii) the medication and methods of care, rehabilitation and treatment to be administered to persons with mental illness.

(f) develop programmes for the rehabilitation of persons with mental illness;

(g) promote research, data collection, analysis and the sharing and dissemination of information on the welfare of persons with mental illness in the Republic; and

(h) carry out sensitization programmes on and promote access to information on the care and management of persons with mental illness.

The obligations of the county government are provided for in the new clauses 2D as follows–

2D The County governments shall—

(a) provide mental health care, treatment and rehabilitation services within the county health facilities, in particular ensure that level 2, 3 and 4 county health facilities set aside dedicated clinics to offer outpatient services for persons with mental illness;

(b) provide community based care and treatment for persons with mental illness including initiating and organizing community or family based programmes for the care of persons suffering from mental illness;

(c) implement the national policy and strategies relating to persons with mental illness within the county;

(d) allocate funds necessary for the provision of mental health care in the county budgets;

(e) provide appropriate resources, facilities, services and personnel capable of dealing with mental illness at the community level;

(f) formulate rehabilitation programmes suitable for persons with mental illness and provide access to after-care service by persons with mental illness after discharge from mental health facilities;

(g) formulate and implement county specific programmes to deal with stigma associated with mental illness;

(h) ensure mental health interventions at county level—

(i) are comprehensive and include prevention, early intervention, treatment, continuing care and prevention from relapse;

(ii) target persons at risk of developing mental illness including children, women, youth and elderly persons;

(iii) target persons affected by catastrophic incidences and emergencies; and

(iv) include education, awareness and training on mental health promotion and interventions; and

(i) provide adequate resources to ensure a person with mental illness lives a dignified and life outside the mental health facility by financing efforts towards reintegrating the person in to the community.

The county executive committee member in each county shall be required to —

(a) advise the Governor on all matters relating to the status of mental health and mental illness in the county;

(b) develop and implement county specific programmes that promote the rights of persons with mental illness in the county;

(c) monitor and evaluate the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;

(d) initiate and organise community or family based programmes for the care of persons suffering from mental illness;

(e) co-ordinate the implementation of programmes relating to persons with mental illness in the county developed by National Government; and

(f) prepare and publish reports containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation

(g) to persons with mental illness.

Clause 6 provides for the rights of persons with mental illness. Every person with mental illness has the right to —

(a) fully participate in the affairs of the community and in any position suitable and based on the person's interests and capabilities;

(b) access medical, social and legal services for the enhancement of the protection of the rights of the person under the Constitution to live in dignity and security;

(c) protection from physical and mental abuse and any form of discrimination and to be free from exploitation;

(d) take part in activities that promote the person's social, physical, mental and emotional well-being; and

(e) receive reasonable care, assistance and protection from their family and the State.

The Bill further makes provisions for the following rights of persons with mental illness –

(1) Right to mental health services

A person with mental illness has the right to appropriate, affordable, accessible physical and mental medical health care, counselling, rehabilitation and (d) after-care support.

(2) Consent to treatment

A person with mental illness capable of making an informed decision on the need for treatment shall be required to give written consent before any treatment. Where the person with mental illness is incapable of making an informed decision on the need for treatment, the consent shall be sought and obtained from the representative of that person.

(3) Right to participate in treatment planning

A person with mental illness has a right to participate in the formulation of their treatment plans and where incapable, their representative shall be entitled to participate in the formulation of the treatment plans.

(4) Access to medical insurance

A person with mental illness shall have the right of access to medical insurance for the treatment from public or private health insurance providers.

Any person or health insurance company that discriminates against a person with mental illness or subjects a person with mental illness to unfair treatment in obtaining the

necessary insurance cover commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.

(5) Protection of persons with mental illness

A person with mental illness has the right to protection from physical, economic, social, sexual and other forms of exploitation and shall not be subjected to forced labour (within or outside a mental health facility). Further, a person with mental illness has the right to receive remuneration for any work done, similar to that payable to a person without mental illness.

The penalty for contravening this provision is imprisonment for a term not exceeding three years or a fine not exceeding one million shillings, or both. 7

The Bill provides for the following additional rights of persons with mental illness —

(6) Right to civil, political and economic rights

(7) Right to access to information

(8) Right to confidentiality

(9) Right to representation

(10) Right to recognition before the law

Kenya Board of Mental Health

Section 4 of the Mental Health Act establishes the Kenya Board of Mental Health which consists of —

(a) a chairman, who shall be the Director of Medical Services or a Deputy Director of Medical Services appointed by the Minister;

(b) one medical practitioner with specialization and experience in mental health care appointed by the Minister;

(c) one clinical officer with training and experience in mental health care appointed by the Minister;

(e) one nurse with training and experience in mental health care appointed by the Minister;

(f) the Commissioner for Social Services or, where the Commissioner cannot serve, his nominee appointed by the Minister;

(g) the Director of Education or, where the Director cannot serve, his nominee appointed by the Minister;

(h) a representative of each of the provinces of Kenya being persons resident in the provinces, appointed by the Minister;

(i) the Deputy Director of Mental Health;

(j) the Chief Nursing Officer.

Section 4 (3) of the Act provides for the term of office of the Board as serving at the Minister's pleasure for a period not exceeding three years and shall be eligible for re-appointment. The Bill proposes to change the composition and terms of the Board as follows —

The Board shall consist of —

(a) the Director who shall be the chairperson;

(b) the following persons with knowledge and at least four years' experience in mental health care —

(i) a psychiatrist nominated by the Medical Practitioners and Dentists Board;

(ii) a counsellor or psychologist nominated by the Counsellors and Psychologists Board ;

(iii) a nurse nominated by the Nursing Council of Kenya;

(iv) a clinical officer nominated by the Clinical Officers Council.

(c) one person nominated by the Kenya National Commission on Human Rights with knowledge and experience in matters related to mental health;

(d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;

(e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;

(f) the Director of Mental Health, who shall be the secretary to the Board an *ex officio* member of the Board.

The Director shall also serve as the chief executive and accounting officer of the Board and shall be responsible to the Board for the day to day administration of the affairs of the Secretariat and implementation of the decisions arising from the Board.

Section 5 of the Act provides for the functions of the Board. Clause 9 of the Bill proposes to amend the said functions as follows –

(a) to advise the national and county governments on the state of mental health and mental health care facilities in Kenya;

(b) to set the standards for the establishment of mental health facilities and approve the establishment of national referral mental health facilities;

(c) to inspect mental health facilities to ensure that they meet the prescribed standards;

(d) to assist, whenever necessary, in the administration of any mental health facilities;

(e) to investigate on its own initiative or upon receiving a complaint from any person regarding the treatment of a person with mental illness at a mental health facility and

(f) where necessary to advise the Cabinet Secretary or county executive committee member on appropriate remedial action;

(g) to advise the national and county governments on the care of persons suffering from mental sub normality without mental illness;

(h) to develop guidelines on emergency treatment of persons with mental illness the procedures to be adhered to during emergency treatment;

(i) to collaborate with the Cabinet Secretary responsible for education in developing and integrating in the education syllabus instructions relating to mental health, including instructions on prevention, treatment, rehabilitation and general information on mental health related illness;

(j) to prepare reports on prevalence of mental illness in the country and in particular to articulate in the reports an analysis of the specific types of mental illness recorded in every county; and

(k) to perform such other functions as may be conferred upon it by or under this or other written law.

Section 6 (1) of the Act provides for the office of the Director of Mental Health who also serves as the secretary and chief executive officer of the Board. Clause 10 of the Bill proposes to amend the provisions relating to the office of the Director of Mental Health. The Director shall be competitively recruited and appointed by the Public Service Commission. A person shall be eligible for appointment as Director if that person –

(a) holds a degree in medicine from a university recognized in Kenya;

(b) is registered by the Medical Practitioners and Dentists Board as a mental health practitioner;

(c) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and

(d) meets the requirements of Chapter Six of the Constitution.

Section 7 of the Mental Health Act establishes the District mental health councils. The councils are appointed by the Minister in consultation with the Board to perform, at the district level some of the Board's functions and report to the Board. The council consists of not less than five and not more than seven persons including the district medical officer of health with the members serving at the Minister's pleasure but for not more than three years at one time and shall be eligible for re-appointment.

Clause 11 of the Bill proposes to amend the Act by deleting the provision on District mental health councils.

Clause 14 of the Bill makes provision for the Management of Mental Health Facilities, Admission and Treatment of Persons with Mental Illness. The Board may, by notice in the *Gazette*, designate a national referral health facility or any other national government facility as a mental health facility. On the other hand, the county executive committee member may, by notice in the *Gazette*, designate a county health facility in the respective county as a mental health facility.

Section 9 (4) of the Act provides that an application to the Board for authority to establish a mental hospital shall be in the prescribed form accompanied by the prescribed fee. The Bill proposes to amend the Act and delete this provision to provide a clear framework for the application process. A person who intends to establish a mental health facility or provide mental health services in an existing county health facility shall make an application (together with the prescribed fee) for designation of the facility to the respective county executive committee member in the prescribed form.

The Cabinet Secretary in consultation with the Board and the Council of County Governors shall be required to make rules for the control and proper management of mental health facilities including setting the standards to be maintained for mental health facilities.

Level 3, 4, 5 and 6 health facilities and private mental health facilities which are designated as mental health facilities shall provide in-patient and out-patient treatment of persons suffering from mental illness.

Clause 15 of the Bill provides for the establishment of mental health facilities which may be public (operated and managed by the national or a county government) or private mental health facility.

To establish a mental health facility, a person will be required to submit an application (in the prescribed form together with the prescribed fee) to the Board in the respective county. The premises to be used must be authorized for such purpose by the Board. The in charge of the private mental health facility must be a mental health practitioner qualified and duly registered as a psychiatrist, psychologist or a clinical officer.

The Bill provides for the offence of fraudulent procurement of registration of private mental health facilities. The penalty for contravening this provision is –

(a) a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both, for a natural person; or

(b) a fine not exceeding ten miliion shillings, **for a body corporate.**

In addition to the penalty imposed, the Board may lodge a complaint with the relevant professional body to which that person is a member, for the institution of disciplinary proceedings.

The proposed clause 9D provides for reports by mental health facilities which shall be submitted monthly to the Board and the county executive committee member on—

(a) the number of voluntary or involuntary patients the mental health facility has received;

(b) the number of voluntary or involuntary patients the mental health facility has discharged;

(c) the number of voluntary patients or involuntary patients still under the care of the mental health facility; and

(d) the number of voluntary or involuntary patients who have died in the course of treatment in the mental health facility.

The proposed clause 9E provides for seclusion and restraint. Physical restraint or seclusion shall only be used where it is the only means available to prevent immediate or imminent harm to the person with mental illness or other people. The physical restraint or seclusion shall not be prolonged beyond the period which is strictly necessary to —

(a) administer treatment to the person with mental illness; or

(b) allow the person with mental illness to co-habit peacefully with other users within the mental health facility or the person's family, or with members of the community.

All the instances of physical restraint or seclusion, their reasons, nature and extent shall be recorded in the medical records of the person with the mental illness. The restrained or secluded person shall be kept under humane conditions and shall be under the care and regular supervision of a mental health practitioner within the facility. Within twenty-four hours, notice of the restraint or seclusion shall be given to the representative of the person with mental illness.

Administration of any mental health care, treatment or admission of a person with mental illness shall not be done without the person's informed consent or that of the person's representative. The consent shall be valid if —

(a) the person with mental illness or the person's representative is competent to give the consent;

(b) consent is given freely without threats or improper inducements;

(c) there is appropriate and adequate disclosure of all relevant information relating to treatment, including information on the type, purpose, likely duration and expected benefits of the treatment;

(d) choices, where available, are given to the person with mental illness in accordance with prescribed clinical practice; and

(e) consent is written and documented in the person with mental illness' records.

Section 10 of the Act on power to receive voluntary patients is deleted and substituted with clause 17 on voluntary admission of a patient. A person who presents themselves voluntarily to a mental health facility for treatment or admission shall be entitled to receive appropriate care and treatment or to be referred to an appropriate mental health facility.

Where a person below the age of eighteen years requires voluntary admission to a mental health facility, the parent or guardian of that person shall submit a written application in the prescribed form to the person in charge of a mental health facility for the admission of the child.

The person in charge of a mental health facility shall review or cause the condition of the person to be reviewed, within seventy-two hours.

The Board shall in consultation with the Council of County Governors formulate guidelines on —

(a) the conditions for admitting and retaining a voluntary patient, beyond forty- two days, after the patient becomes incapable of expressing themselves;

(b) the procedure to be followed by the mental health facility while dealing with a patient who is a minor, where the parents or guardians of the patient die, become incapable of representing the patient or refuse or neglect to perform their duties under the Act; and

(c) the conditions and procedure for discharging a patient on voluntary admission.

Clause 22 of the Bill provides for involuntary admission. A person may be admitted involuntarily –

(a) when there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(b) in the case a person whose mental illness is severe and whose judgment is impaired, failure to admit or retain the person is likely to —

(i) lead to a serious deterioration in the condition of that person; or

(ii) hinder the provision of appropriate treatment that can only be given by admission to a mental health facility.

The person admitted involuntarily shall only be detained for the duration necessary to stabilize the person and to provide mental health care services to the person. The person shall not be admitted for a period exceeding three months. However, the in charge of the health facility may extend the period for one further period not exceeding three months.

Clause 25 of the Bill provides for conditions for emergency admission and treatment when –

(a) there is immediate and imminent danger to the health and safety of the person with mental illness or other people;

(b) the nature of danger is such that there needs to be urgent care and treatment to stabilize the person with mental illness; and

(c) the time required to comply with substantive procedures would cause delay and lead to harm to the person with mental illness or to other people.

Where emergency treatment is administered and a person is admitted, the person in charge shall within twenty- four hours of admission inform the spouse, parent or guardian of the person or any other representative of the person. The emergency treatment shall not be prolonged for duration necessary to stabilize and treat the person with mental illness or for a period longer than seventy two hours.

However, when the mental health practitioner determines that the person with mental illness requires care beyond the period necessary to stabilize and treat the person or a period longer seventy two hours, the family of the person may, in writing, prolong the time for treatment.

Clause 18 provides for admission of patients from foreign countries. Where it is necessary to admit a person suffering from mental illness from any foreign country into any mental health facility in Kenya, the foreign Government or other relevant authority in that country shall apply in writing seeking the Board's approval to admit the person.

Clause 32 of the Bill proposes to amend section 20 by inserting a provision on review of mental health status. The mental health status of a person with mental illness shall be reviewed periodically and the review shall include a review of —

(a) the nature of the illness;

(b) the need for care and treatment;

(c) the type of care and treatment provided;

(d) the need for referral, transfer or discharge; and

(e) any other matters related to the mental health status of the person.

The review of the mental health status of a person with mental illness may be initiated by —

(a) the person with mental illness;

(b) the mental health care practitioner in charge of managing the person with mental illness;

(c) a representative of the person with mental illness;

(d) the person in charge of the facility;

(e) any other person upon proof of the nature of their interest; or

(f) the Board.

Clause 37 of the Bill proposes to amend the Act be deleting Part XII of the Act on Judicial Power over Persons and Estates of Persons Suffering from Mental Disorder and substituting with Care and Administration of Property of Persons with Mental Illness. The proposed clause 26 provides that an application for an order for the management and administration of the estate of a person with mental illness may be made, in the following order of priority, to the court by —

(a) a parent, or if unable or unwilling;

(b) a spouse, or if unable or unwilling;

(c) the child of that person, where such child has attained the age of eighteen years, or if unable or unwilling;

(d) a relative of the person, or if unable or unwilling; or

(e) a person under whose care or charge the person with mental illness is.

The application shall be submitted together with an affidavit setting out —

(a) the grounds upon which the application is made;

(b) the full particulars as to the property and relatives of the person to whom it relates;

(c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness; and

(d) an affidavit duly executed by the person waiving their right of making an application.

The proposed clause 27 provides that the court may make an order as it considers necessary for the administration and management of the estate of any person with mental illness including —

(a) an order making provision for the maintenance of the person;

(b) an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and

(c) an order making provision for the payment of the person's debts.

The court may appoint a manager of the estate of a person with mental illness to safeguard the property of that person and shall, by notice in the *Gazette*, inform the public of the appointment of a person as the manager of the estate of a person who is suffering from mental illness. Within fourteen days of the *Gazette* notice, any person may lodge an objection to the person appointed as manager.

The manager shall not without the approval of the court —

(a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;

(b) lease any such property for a term exceeding five years; or

(c) invest in any securities other than those authorized under the Trustee Act.

Further, a manager shall not invest any funds or property belonging to the estate managed—

(a) in any company or undertaking in which the manager has an interest; or

(b) in the purchase of immovable property without prior consent of the court.

The manager shall within six months of the date of appointment, deliver to the court and to the Public Trustee an inventory of —

(a) the property belonging to the person in respect of whose estate the manager has been appointed;

(b) all sums of money, goods and effects the manager receives on account of the estate; and

(c) a statement of debts owed by or due to such person with mental illness.

The penalty for a manager who contravenes the provisions of the Act on the administration of property of a person with mental illness is imprisonment for a term not exceeding three years or a fine not exceeding two million shillings, or to both. Further, any property of a person who is mentally ill which is lost due to maladministration of the person's estate shall be a civil debt recoverable summarily from the manager's estate.

The court may on its own motion or upon application for sufficient cause remove any manager and may appoint any other person as manager.

Part XIV of the Act provides for the following offences under the Act –

(a) Section 47 - Person other than medical practitioner signing certificates;

(b) Section 48 - False certificates;

(c) Section 49 - Aiding the escape of person suffering from mental illness;

(d) Section 50 - Permitting patient to quit mental health facility unlawfully;

(e) Section 51 - Ill-treatment of person in mental health facility; and

(f) Section 52 - Dealings with patients.

Section 53 of the Act provides for the general penalty is where no other penalty is expressly provided as a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both. Clause 49 of the Bill proposes to amend this provision in order to enhance the penalty to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

4. STAKEHOLDERS IN ATTENDANCE

The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5), invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper and Standard Newspapers on …, the Committee met at the Red Cross Building, First Floor, Nairobi and received views on the Bill from stakeholders and members of the public. The Committee received oral and written submissions from —

1. Nursing Staff of Mathari National Teaching and Referral Hospital;
2. Calmind Foundation;
3. Kenya Psychiatrists Association;
4. Validity Foundation;
5. International Institute on Legislative Affairs (IILA);
6. Ministry of Health (MOH);
7. Kenya Progressive Nurses Association (KPNA);
8. Health Rights Advocacy Forum (HERAF);
9. Moi Teaching and Referral Hospital;
10. Kenya National Commission on Human Rights (KNCHR);
11. True North;
12. Kenya Private Schools Association (KPSA);
13. Chiromo Lane Medical Centre (CLMC);
14. Users and Survivors of Psychiatry in Kenya (USP-K);
15. Independent Medico Legal Unit (IMLU);
16. Befrienders;
17. Headspace;
18. Tom Osanjo;
19. Mental 360;
20. Tinada Youth Organisation; and
21. Kenya nutrition and Dieticians Institute;

5. SUBMISSIONS BY THE STAKEHOLDERS ON THE MENTAL HEALTH (AMENDMENT) (SENATE BILLS NO. 32 OF 2018) DURING THE PUBLIC HEARINGS

The Committee received and considered the proposals from stakeholders on specific provisions of the Bill as follows—

(1) Long title

Proposal 1

Amend the long title of the Bill in the following manner—

"An Act of Parliament to provide for the prevention of mental illness, care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness; to provide for the establishment of the mental health board and for connected purpose"

Rationale 1

The long title should align and capture with the purpose and the objects and reasons of the Bill.

Proposal 2

Retain the word mental disorder and the word health facility or hospital (not mental hospital or mental health facility)

Rationale 2

Mental disorder refers to the disease or a syndrome while the illness applies to the state of ill health.

Committee's observation

The long title should capture the object of the Bill as succinctly as possible. The use of the term mental disorder is inappropriate and should be substituted by mental illness.

(2) Clause 1- Short title

Proposal

Delete the short title

Rationale

The short title is misleading since the amendments entirely change the content, aim and purpose of the Mental Health Act.

Committee's observation

Pursuant to Article 96 of the Constitution the Senate has been mandated to participate in the law-making function of Parliament and that function includes amendments of Acts that affect county government functions. Section 73 of the Health Act, mandates Parliament to legislate on Mental Health.

(3) Clause 3-Amendment of section 2 of Cap 248

Proposal 1

Under the definition "mental health practitioner" insert psychiatric nurse under the Nurses Act (Cap 257)

Rationale 1

Nurses are trained in psychiatric nursing as a specialty and are registered to practice psychiatric nursing under the Nursing Act. The training includes post-basic training, masters and doctoral degrees. Further, they are the highest number of health practitioners working in all mental health service set ups.

Proposal 2

Delete the word 'mental health practitioner' in all interpretations.

(a) Replace with health care professionals.

(b) Define the professional cadres as defined by the health registering and licensing regulatory laws.

Rationale 2

The term 'mental health practitioner' is a misnomer and an attempt to generalize health professionals working in mental health as one entity and allocate them the same roles and responsibilities despite their differences in training, expertise and regulatory laws. Further, the depth and span of decision making on mental health issues is larger for psychiatrists as opposed to psychologists or clinical officers. Qualifications vary in the following manner; Psychiatrists hold a Bachelors of Medicine and Bachelors of Surgery for 6 years, work at least 3 years as medical officers then undertake a masters of medicine (mental health & psychiatry) while psychologist hold 4 years undergraduate and 2 years postgraduate level qualifications.

Committee's Observation

Psychiatric nurses are essential in the provision of mental health care services and should be recognised are health professionals who are qualified and registered handle mental health cases.

Proposal 3

Substitute the definition "mental health facility" with "Health facilities providing mental health services"

Rationale 3

Mental health services should not be provided in isolation of other health services and therefore all health facilities should provide mental health services. This will ensure that stigma associated with mental health is minimised. Further, it will ensure greater access to the mental health services and ensure that the definition is line with policy to mainstream mental health services.

Committees Observation

To combat stigma associated with mental health illness, mental health care services should be provided in all health facilities.

Proposal 4

Use the term "person suffering from mental disorders" and delete the words "psychopathic person"

Rationale 4

Mental disorder refers to the disease or a syndrome while the illness applies to the state of ill health. The term "psychopathic person" is inappropriate

Proposal 5

Delete and substitute the definition "person suffering from mental illness" with—

"Person suffering from mental illness" means a person suffering from a mental illness that affects their mood, thinking and behaviour, leading to inability to cope with normal stresses of life, work productively and fruitfully and make a contribution to his or her community.

Rationale 5

The definition of "Person suffering from mental illness" needs better definition that is sensitive to those so suffering.

Committee Observation

The use of the terms "mental disorder" and "psychopathic person" have served to entrench stigma.

Proposal 6

Redefine the term "person in charge"

Rationale 6

For clarity

Proposal 7

Define clinical medical social workers or psycho therapists

Rationale 7

They work under mental health and therefore defining them may be beneficial.

Committees Observation

The term "Clinical medical social worker" is not used anywhere in the Bill and the term "psycho therapist" is only used once in the entire Bill.

Proposal 8

Replace the definition of "representative" with—

"representative" means an individual who has been previously selected or appointed by the person living with mental illness having legal capacity to make decisions on behalf of the person with mental illness.

Rationale 8

Representatives such as spouse, parent guardian making decisions on behalf of a person with mental illness is also an area of concern. Family members top the list among people who are guilty of violating the rights of persons with mental illness. How will having them make decisions on behalf of these people be regulated such that their rights are safeguarded? Families even take advantage of patients to commit acts such as disinheriting them or having them committed to institutionalization just to get them out of the way.

Committee's Observation

The provision seems to require substituted decision making which is contrary to Article 12 of the Convention on the Rights of Persons with Disability which requires a legal framework that promotes respect for the will and preferences of persons with mental illness. However, there is still a need for "representatives" as defined under the Bill.

Proposal 9

Insert occupational therapists under the occupational therapists (training, registration and licensing) Act no. 31 of 2017.

Rationale 9

Occupational Therapists are critical partners in resolving mental health issues. Since Occupational Therapy is critical to rehabilitation of survivors by 'enabling occupation' that promotes people's health, quality of life and wellbeing.

Committee's Observation

The Kenya Mental Health Policy makes reference to occupational rehabilitation of persons with mental, neurological and substance use disorders. However, the policy is unclear on the role of occupational therapists in the hierarchy of professionals dealing with persons with mental illness.

(4) Clause 4

Proposal 1

Delete 2A and 2B.

Rationale 1

Proposed purpose of the Act (to provide a framework) and the guiding principles are policy directives best addressed through strategies, standards and guidelines.

Committee Observation

The provisions are necessary.

Proposal 2

Insert the following new paragraphs under the proposed section 2A—

1. Make companies that impact mental health by their activities, such as betting, mobile money lending, events involving alcohol, carry out mental wellness activities at a national level, as a condition to get a license to operate.

2. Compel organizations which contribute to high risk mental illness to provide restoration by supporting initiatives helping the affected such as BAT, EABL, Lenders.

Committee's Observation

The proposed 2A is very comprehensive.

Proposal 3

Insert the following additional principles under the proposed section 2 B—

(a) That takes in to account the multi-sectoral approach to maximizing achievements in mental health
(b) Respect the autonomy, including the freedom to make one's own choice and independence of the person

Rationale 3

(1) The addition of this principle is important to address the linkages between mental health and other sectors that equally play a critical role in attaining overall health goals including the county government, judiciary, children services, finance and planning, education and security.

(2) The Bill should ensure that users of mental health services are seen as individuals who are holders of rights and cannot be denied the exercise of the rights on account of mental

illness. One of the most common violations suffered by users of mental health services is denial of opportunity to participate in making decisions concerning their life decision concerning their health.it is therefore important for the proposed Bill from the onset to clarify that users of mental health services are holders of rights whose dignity and autonomy must be respected.

Committee's Observations

The proposed 2 B is comprehensive.

(5) Clause 5

Proposal 1

Amend paragraph (a) under the proposed section 2 C to read —

(a) provide the necessary resources for the provision of mental health care and maternal mental health care and treatment at National referral health facilities.

Amend paragraph (b) (i) under the proposed section 2 C to read —

(i) the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of health services to persons with mental illness and maternal mental illness

Rationale 1

Maternal mental health, the psychological and emotional wellbeing of women during the perinatal period, that is, during pregnancy, childbirth has been forgotten and many women and mothers are suffering in silence. Leading to mothers committing suicide and others killing their own children.

Committee's Observation

The proposal will enrich the Bill.

Proposal 2

Amend clause 2 C (h) to include a partnership between the Ministry of Education and the Ministry of Health on the dissemination of information would ensure that young people are able to discuss issues of Mental Health with trained professionals.

Proposal 3

The National government should be obligated to –

(a) Set up proper strategies targeting behavioural change; and
(b) Set up proper strategies addressing issues of stigma and awareness around mental health.

Proposal 4

Amend clause 2 C (h) in order to ensure a partnership between the Ministry of Education and the Ministry of Health on the dissemination of information.

Rationale 4

This would ensure that young people are able to discuss issues of Mental Health with trained professionals.

Committee's Observation

The proposal will enrich the Bill

Proposal 5

Insert under the proposed section 2 C (e) (i) "occupational therapists"

Rationale 5

Occupational Therapy is based on prescribed standards which may not be achieved through other professionals stated under 2 C (e) (i)

Committee's Observation

The Kenya Mental Health Policy makes reference to occupational rehabilitation of persons with mental, neurological and substance use disorders. Therefore, it may be necessary to capture the role of allied health workers in the treatment of persons with mental illness.

Committee's Observations

The proposal will enrich the Bill.

Proposal 6

Under the proposed section 2 C insert a new paragraph (i)—

(i) provide mental health care, treatment and rehabilitation services within the national health facilities, in particular, ensure that level 5 health facilities set aside dedicated clinics to offer outpatient services for persons with mental illness.

Rationale 6

There are no provisions in the proposed amendment Bill addressing the current existing psychiatric units in Level 5 health facilities.

Committee's Observation

Pursuant to the first schedule of the Health Act, Level 5 health facilities are under the control and management of counties.

Proposal 7

Insert a new paragraph under 2 C requiring an annual mental health assessment report by national government.

Committee's Observation

The Bill covers reporting under clause 9 (i), in particular the Kenya Mental Health Board is mandated, under the proposed paragraph (hb), to prepare reports on the prevalence of mental illness in the country.

Proposal 8

Insert a new paragraph under the proposed section 2 C to ensure National government provides technical support for purposes of strengthening the provision of mental health services at national and county level.

Rationale 8

This is in line with the functions of the National government under the fourth Schedule of the Constitution

Committee's Observation

National governments function to provide technical assistance and capacity building to counties is already provided for under the Constitution.

Proposal 9

Amend the proposed section 2 D (b)

Rationale 9

To create clarity since the structure of the Bill was not clear on how community-based care would be achieved including after care.

Committee's Observations

The "how" is a question better answered administratively.

Proposal 10

Under the proposed section 2D (1) (a) insert 1 immediately before 2

Rationale 10

The Bill neglects to recognize the provisions of the community health strategy which also includes mental health.

Committee's Observations

The Bill already provides for this under the proposed section 2 D (1) (b)

Proposal 11

Under the proposed section 2 D (1) (a) insert level 5 immediately after level 4

Rationale 11

There is no provisions in the proposed amendment Bill addressing the current existing psychiatric units in Level 5 health facilities.

Committee's Observations

The proposal will enrich the Bill.

Proposal 12
Amend the proposed section 2 D (1) (c) to read—
"Implement national policy and strategies relating to mental healthcare"

Rationale 12
Any such policy should cover more than just persons with mental illness and include preventive strategies.

Committee's Observations

The proposed section 2 D (1) (c) is comprehensive.

Proposal 13

Amend the proposed section 2 D (1) (d) to ensure specific budget allocation in terms if percentage for each county will ensure that the county governments are held accountable

Committee's Observations

This proposal will result in micromanaging of county governments which is contrary to Constitution.

Proposal 13

Under the proposed section 2D (1) (h) (ii) insert the word "men"

Rationale 13

Include men at some point- especially since men have a higher chance than women of committing suicide according to KNBS.

Committee's Observations

Section 2D (1) (h) (ii) does not preclude men it just lays emphasis on children, women, youth and elderly persons.

Proposal 14

Insert a new paragraph under 2 D (1) requiring each county to do county specific mental health assessment and craft interventions for prevention, treatment, management and care.

Committee's Observations

The provision would enrich the Bill by ensuring county governments implement national policy and strategies relating to mental health care

Proposal 15

Amend the proposed section 2D (3) which shifts regulation of health facilities to the Office of County Executive Committee Member (CECM) Health, from the regulatory bodies.

Rationale 15

The provision contravenes Government directives such as the Executive Order No 2 where regulation of health practitioners is the role of National Government. This will lead to uncoordinated regulation.

Committee's Observations

County health facilities are managed and controlled by the counties and the county executive committee member in charge of health in the county is answerable on all matters relating to health in the county to the county governor and the county assembly. Further, health practitioners in the county health system are employed by the respective county public service board of that county and therefore are regulated by that Board. The provision does not therefore contradict and existing legislation.

Proposal 16

Clearly state the role of National and county governments.

Rationale 16

Devolution of health left development of policy and legal framework, health training institutions, and level 5 hospitals to the national government and the county government to offer health services at the county level.

Committee's Observations

The Bill clearly states the roles of both the National and county governments. Further, pursuant to the First Schedule of the Health Act counties manage and control health services offered in level 1, 2, 3, 4, and 5 of the health system.

Proposal 17

Delete 2C and 2D

Rationale 17

Obligations of National and County governments are provided for in the Constitution of Kenya, Health Act and devolution related laws which apply to all citizens. The Bill's proposals are unnecessary, inconsistent and in conflict with existing laws.

Committee's Observations

The Bill seeks to comply with section 73 of the Health Act which obligates Parliament to pass a law on mental health. The duties of the two levels of government prescribed in the Bill are not inconsistent or in conflict with existing law, in fact the Bill seeks to ensure that the Act complies with the Constitution.

(6) Clause 6

Proposal 1

The bill has some provisions which are prescriptive and not feasible for example ...3A. (6) Where a person with mental illness has been discharged from a mental health facility, the person in charge shall ensure that the person with mental illness has access to specialized and personalized aftercare services necessary to enable the person live a decent and dignified life outside the mental health facility.

Committee's Observation

Getting a person in charge to follow up on the progress of a person with mental illness may not be feasible.

Proposal 2

Insert a new subsection under the proposed section 3A to ensure preventive medicine by protecting persons with mental illness from potentially hazards to mental wellness and health.

Committee's Observations

The proposal is adequately addressed under the proposed section 2 D (h) (i) of the Bill.

Proposal 3

The proposed section 3B

Rationale 3

With more information on Mental Health, guardians can make informed decisions on treatment avenues. Schools provide a forum for guardians to get information on Mental Health and thus work towards bringing down the veils and the secrecy which our Kenyan society has on Mental Health.

Proposal 4

Amend the proposed section 3B to ensure that there is supported decision making and not substituted decision making

Rationale 4

Substituted Decision Making curtails legal capacity. Provisions are contrary to article 12 of the CRPD and it is extremely difficult to uphold the rights of persons with mental illness, without full recognition of their legal capacity on an equal basis with others as envisioned on general comment no.1 on legal capacity and the concluding observations of the CRPD committee on Kenya.

Proposal 5

Delete 3 B (2) and obligate healthcare providers to inform users of mental health services to choose appropriate forms of treatment and prescribe a duty to obtain consent. It should further provide for users of mental health services the right to access support services, including supported decision making when seeking mental health services.

Proposal 6

Amend the proposed section 3C to ensure supported decision making and not substituted decision making.

Committee's Observation

Kenya is a signatory to the Convention on the Rights of Persons with Disabilities and pursuant to Article 2 (6) of the Constitution, the Convention forms part of the laws of Kenya.

Proposal 7

Amend clause 6 the proposed section 3D seek to ensure—

1. NHIF offers complete cover for mental illness management despite the class of monthly contributions by the individual;
2. Private insurance companies cover for treatment of all mental health disorders/ illness without exemptions and as sited in the DSM and ICD including alcohol and substance use related disorders; and
3. National and county governments provide insurance or health cover for mental health services in isolation i.e not necessarily accompanied by medical treatment for cases which need psychotherapy and/or counselling

Committee's observations

The Bill provides under the proposed under section 3 (3) ensure persons with mental illness are discriminated against when acquiring health insurance. However, it is

important to ensure that where the county governments offer medical cover then the cover also takes care of mental health needs.

Proposal 8

Under clause 6 the proposed section 3F—

Decriminalise suicide and allow prevention, care, management, treatment of sufferers

Rationale 8

Persons who attempt to commit suicide are more often than not suffering from depression (mental health issues). Therefore, a mental health assessment is important to determine the level of help a suicidal person requires.

Committee's observations

Criminalisation of attempted suicide acts as a deterrent and should be maintained in the penal code.

Proposal 9

Amend the proposed section 3F which essentially allows for which essentially is presidential pleasure sentencing. Accused persons can be placed under indeterminate criminal detention on the basis of their mental status or the presence of an actual or perceived disability.

Revise the criminal procedure code to provide safeguards to ensure that the rights of persons detained in mental health facilities are protected. The safeguards include—

(i) Determination of period of detention or an absolute ban on presidential pleasure sentencing;

(ii) Establishing the rights of a person detained in a mental health facility to review or appeal decision on detention;

(iii) Providing reasonable accommodation to persons with intellectual and psychosocial disabilities who are lawfully detained in prisons;

(iv) Obligate the cabinet secretary in charge of health in consultation with the cabinet secretary in charge of security to set regulations and guidelines on the procedure and process to be followed in transferring persons detained in mental health facilities found fit for trial from the mental health facility to the court.

Rationale 9

Court judgments have declared presidential pleasure sentencing unconstitutional since presidential pleasure sentencing amounts to cruel, inhuman and degrading treatment due to its indeterminate nature. Republic v SOM, Criminal Case No 6 of 2011 and in AOO and 6 others v Attorney General and another NRB Petition No. 570 of 2015 [2017] eKLR, found that detention at the President's Pleasure was unconstitutional.

Committee's observations

Section 167 of the Penal Code was deleted by Act no. 3 of 2006

Proposal 10

Amend 3H to take in to account the legal capacity of the patient as well as the right to confidentiality

Rationale 10

It is extremely difficult to uphold the rights of persons with mental illness, without full recognition of their legal capacity on an equal basis with others as envisioned on general comment no.1 on legal capacity and the concluding observations of the Convention on the Rights of Persons with Disabilities committee on Kenya.

Proposal 11

Amend the proposed section 3H (3) to take in to account the provisions of Access to Information Act. The Act gives the Cabinet secretary in charge of information in consultation with the commission on administrative justice the power to make regulations on the manner in which applications for information can be made under Access to Information Act.

Committee's Observation

The proposals will enrich the Bill and the proposed amendments will ensure that the Bill complies with the Convention on the Rights of Persons with Disabilities.

Proposal 12

Amend 3J to take in to account the legal capacity of the patient Guidance on what constitutes representation is exactly what should be developed in a framework of legal capacity. The concept of 'representative' should be removed from the Bill and replaced with a legal guarantee that persons with mental disabilities have the right to receive support in exercising their legal capacity to make their own decisions.

Embed safeguards to ensure that the will and preference of a person in need of mental healthcare and users of mental health services is respected at all times and recognition of the decisions made with support.

Replace the "best interest" standard with "will and preference" of the person in need of mental healthcare and users of mental health services. If after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace "best interest"

the "best interpretation of will and preferences" should be exercised with the following safeguards—

(i) Where there are difficulties inferring a person's will and preference about a particular matter, attention should be paid to their longer- lasting or more

general beliefs, values, and desires. The process of reaching a decision based on the interpretation of will and preference should, if possible be documented. In other words, the interpreter should be in a position to give reasons for reaching one decision over another if the question arises

(ii) In interpreting an individuals will and preference, regard should be had to the interpretation that upholds the entire gamut of rights that an individual is entitle to under the Constitution and international human rights law

(iii) The interpreter of an individuals will and preferences should not be in a situation of conflict of interest in relation to the decision that is required to be made

(iv) Interpretation of will and preference should apply only for the shortest time possible, and with concomitant efforts to spark the person's expression of their own will or preference

Rationale 12

Someone who was not duly appointed by the individuals cannot step in. The provision contradicts Article 12 of the Convention on the Rights of Persons with Disabilities.

Committee's Observation

An amendment is required to provide for supportive decision making in order to conform to the requirements on the Convention on the Rights of Persons with Disabilities.

Proposal 13

Insert a new section on the Right to earn an income which supports recovery

Committee's Observation

Article 27 of the Constitution on equality and freedom from discrimination adequately provides for this by ensuring that all persons should enjoy equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Further, it forbids both the state and individuals from discriminating against any person on the basis of health status.

Proposal 14

Under the proposed section 3K delete subsection (2) and (3).

Rationale 14

Legal Capacity cannot be limited by a court.

Committee's Observations

The proposed subsection (2) and (3) are in conflict with the Convention on the Rights of Persons with Disabilities.

Proposal 15

Delete Part II on rights of persons with mental illness

Rationale 15

All rights provided by the Constitution of Kenya under bill of rights or ratified international instruments apply to all citizens including a person with mental disorder. Instead the Kenya Board of Mental health and other relevant oversight bodies should ensure the rights are protected.

Committee's Observations

The provisions under Part II of the Bill are necessary.

(7) Clause 7

Proposal 1

Delete the proposed section 4 (2) (b) (iii) and insert—

(a) A psychiatric nurse nominated by the Director Nursing Services Ministry of Health

Rationale 1

1. A member to the Board of Mental Health should be a psychiatric nurse
2. The nominating authority should be the Director Nursing Services since the office represents nursing profession in the government structure whereas the Nursing Council the regulatory body. Further the Director is suited to identify and nominate the most appropriate nurse as a member to the Board.

Proposal 2

Under the proposed section 4 Substitute the membership of the Board with—

(a) The Director General of Health who shall be the chairperson

(b) A Psychiatrist nominated by the Medical Practitioners and Dentists Board with four years' experience in mental health;

(c) A counsellor or Psychologist nominated by the counsellors and psychologists board with four years' experience in mental health

(d) A Nurse nominated by the Nursing council of Kenya with four years' experience in mental health

(e) A clinical officer nominated by the clinical officers council with four years' experience in mental health

(f) One person nominated by the Kenya National Commission on Human Rights with knowledge and experience in matters related to mental health (ex officio member)

(g) One county director of health nominated by the council of governors with knowledge and experience in matters related to mental health

(h) Director mental health

Plus

(i) 2 members from organisations that advocate or represent persons in need of mental health care and/or users of mental health services

(j) Principal Secretary in charge of health

(k) The office of the Attorney General

(l) The office of the Director of Public Prosecutions

Rationale 2

The Kenya National Commission on Human Rights (KNCHR) should be ex officio to enable it impartially advice the Board on matters concerning the rights of persons in need of mental health services or users of mental health services in Kenya. KNCHR needs to maintain it independence in the exercise of its function to monitor public and private entities compliance with the Prevention of Torture Act and the convention against Torture and other cruel, inhuman and degrading treatment or punishment and the implementation of the convention of the Rights of persons with disabilities. As such the Commission's full membership of the Board will compromise its ability to exercise the above functions independently.

Representation of persons in need of mental health care and/or users of mental health services will be in line with Article 4 (3) of the Convention of the Rights of persons with disabilities which requires close consultation and active involvement of persons with disabilities in decision-making processes that concern issues related to them.

Representation of Ministry of Health will ensure impact on decisions of the Board.

Representation of the Attorney General (AG) and the Director of Public Prosecution (ODPP) will be in line with multi-sectoral approach to mental health in Kenya.

Proposal 3

Under the proposed section 4 Substitute the membership of the Board with—

(a) The Director General of Health

(b) A representative from Treasury

(c) County Representation – Council of governors

(d) Kenya National Commission on Human Rights

(e) NGO representative working in mental health

(f) FBO representative working in mental health

(g) Mental Health Nurse

(h) Clinical Psychologist

(i) Psychiatrist

(j) Director mental health

Rationale 3

This being a board of mental health, it is appropriate that a representative from each of these groups to a member to ensure inclusivity.

Proposal 4

Substitute the membership of the Board in the following manner—

The chair should be an individual who is independent/ external and with no professional interest in the day to day work of the board. However, the DG (or his representative) for health should be retained as a member of the Board

(1) Include a representative of users of mental health services and/ or NGO working on mental health issues

(2) Include a representative from Treasury to facilitate finances to mental health

(3) Include a representative from Ministry of education for purposes of mainstreaming mental health into the education system

(4) The psychiatrist should be nominated by the relevant professional body

(5) Replace "Clinical officer" with "clinical psychologist" to be nominated by relevant professional body

(6) Replace "nurse" with "mental health nurse"

(7) Reduce COG representation to 1(one)

(8) Delete The nominated county director of public health as their interest can be served through the COG representative as well as through the respective "County Mental Health Councils" that we propose in a separate section.

Rationale 4

We propose a review of the membership of the board for the following reasons:

(1) To enhance autonomy in the leadership of the board (the chair)

(2) Accommodate more diversity in the membership of the board

(3) Attracting key sectors that can enhance the work of the Board and mental health issues in the country (such as basic education and treasury)

(4) To get the best representation of the professionals such as nurses, psychiatrists and clinical officers

(5) To align the number of the board members to good governance practices and the "mwongozo- Code of governance for state corporations"

Proposal 5

Under the proposed section 4 (2) (b) (i)—

Increase further requirement for psychiatrist nominated by the Medical Practitioners and Dentists Board to be registered with Kenya Psychiatrics and allied mental health workers

Proposal 6

Under the proposed section 4 (2) (b) (ii)—

The counsellor or psychologist should have a basic education in psychology or counselling and a master's degree.

Under the proposed section 4 (2) (b) (iii)—

1. The nurse should have a post graduate diploma and a bachelor's degree in psychiatry; and
2. The nurse should be actively working in a psychiatry clinical set up

Proposal 7

Under the proposed section 4 (2) (b) (iv)—

1. The clinical officer should have a post graduate diploma and a bachelor's degree in psychiatry; and
2. The clinical officer should be actively working in a psychiatry clinical set up.

Proposal 8

Include medical psychologists in the composition of the board.

Proposal 9

Insert in the Board's membership a representative of persons with psychosocial disabilities. A clear procedure in line with the Mwongozo Code should be applied to choose the designated representative in a competitive process in line with Chapter 6 of the Constitution of Kenya.

Rationale 9

Article 4 (3) of the CRPD and article 33 (3) of the CRPD which explicitly states about the inclusion of persons with psychosocial disability in the implementation and monitoring frameworks to this effect the Kenya National Commission on Human Rights is the designated focal point for monitoring the human rights of persons with psychosocial disabilities in line with Article 33 (2).

Proposal 10

Replace the membership of the Board with—

The Board shall consist of the following persons appointed by the Cabinet Secretary–

(a) a chairman, being a person of integrity and a holder of a degree from a university recognized in Kenya with at least ten years experience at a senior management level;

(b) the Director General of Health or a representative nominated in writing by the Director General of Health;

(c) the Principal secretary of National Treasury or a representative nominated in writing;

(d) a registered mental health nurse nominated by the professional association of nurses;

(e) a registered clinical psychologist nominated by the professional association of clinical psychologists;

(f) a registered psychiatrist nominated by the professional association of psychiatrist;

(g) One representative of the Counties nominated in writing by the Council of Governors;

(h) a representative of the Kenya National Commission on Human Rights;

(i) a person with knowledge and experience in mental health nominated by–the nongovernmental organization representing the interest of persons with mental disorder.

Rationale 10

The membership of the three professional cadres nominees (registered by relevant regulatory bodies) will provide mental health expertise equivalent representation, the

professional associations instead of regulatory bodies will be best placed and independently to nominate a person for appointment.

Membership in accordance to Constitution of Kenya, Mwongozo guidelines and multisectoral approach.

Proposal 11

Include Occupational Therapist in the Board

Rationale 11

Occupational Therapists play a key and unique role that requires representation in key decision-making bodies. If omitted to sit in the board, crucial decisions regarding management of patients with mental health may not be realised.

Committee's Observation

The Board must be lean enough to execute its mandate efficiently and effectively. The Board being instrumental in advising on policy related to mental Health should comply with the Convention on the Rights of Persons with Disabilities and ensure that the users of mental health services are represented in the Board. In this regard, persons who are from the civil society bodies representing users of mental health services or users of the mental health services may add value to Board proceedings.

The Board falls under the Ministry of Health and operates like a department of the Ministry of Health. In this regard, in order to ensure smooths operations, the Director General for Health should remain the chairperson of the Board. Since the Board falls within the Ministry of Health, is unnecessary to include the Principal secretary in charge of Health.

Although we appreciate that the Board needs finances to function, this is matter best dealt with within the Ministry of Health since the Board is a "department" within the Ministry of Health and therefore the monies allocated to the Board will be monies allocated to the Ministry of Health. In this regard the nomination of a representative of treasury will be unnecessary.

KNCHR should not be represented in the Board because they need to maintain their independence in order to impartially advice on matters concerning the rights of persons in need of mental health services or users of mental health services in Kenya. Pursuant to section 4 (4) of the Mental health Act, the Board can co-opt KNCHR to the Board as and when its expertise is required.

The Attorney General and the Director of Public Prosecution should not be represented in the Board since the two offices also need to be maintain their independence while interacting with the Board. Pursuant to section 4 (4) of the Mental Health Act, the Board can co-opt AG or the ODPP to the Board as and when required.

Health is a devolved function under the Constitution. The bulk of health facilities required to provide mental health care services are under the control and management of counties. Therefore, counties must be well represented in the Board.

The regulatory body of any profession is the custodian of the register of professionals. Therefore, such regulatory body is best suited to determine who is in good standing. Professional associations are not statutory and therefore change from time to time. Further, the right to freedom of association is voluntary and the mental health professionals should not be compelled to join an association.

Registering with a union is voluntary and therefore to include the added requirement that a member of the Board must be registered to a union is discriminatory.

The idea of ensuring that the mental health professionals appointed to the Board are those who are actively working in a clinical set up may enrich the Board's decisions.

(8) Clause 8

Proposal 1

Ensure Interpretation of the phrase "agent of the board" includes the staff of the Board.

Rationale 1

The Mental Health Act stipulates the staff of the board who may be public officer to enable the board effectively to carry out its functions.

Committee's Observations

The proposed section 4C allows the Board to delegate to an employee of the Board.

(9) Clause 9

Proposal 1

Provide for mental health to be introduced in primary school syllabus.

Rationale 1

Children as young as 5 years old suffer from depression. It would be beneficial to have the children taught and trained how to handle life stresses.

Proposal 6

The curriculum on life skills can be enhanced and strengthened through the addition of Mental Health Instruction

Committee's Observations

The Bill under clause 9 (i) provides that the Board in collaboration with the Cabinet Secretary responsible for education should develop and integrate in the education syllabus instructions relating to mental health including instructions on prevention, treatment, rehabilitation and general information on mental health related illness.

Proposal 2

Delete all the amendments as the terminologies used are not interpreted appropriately. Further, the amendments to paragraph (c) and (h) which mandate the board to set standards for health facilities and guidelines are misplaced.

Rationale 2

The Board functions should revolve around oversight, stewardship and regulatory roles. The standards and guidelines are technically set by the Ministry of Health in consultation with stakeholders and the Board oversees their implementation and takes remedial actions through regulations.

Committee's Observations

The Board should advice the Cabinet secretary on the guidelines and the standards that should be set.

Proposal 3

Harmonize the functions of the Board to the Kenya Health Professional Oversight Authority which has the mandate to inter alia receive and facilitate resolution of complaints from patients, aggrieved parties and regulatory bodies and coordinate the joint inspections with all regulatory bodies.

Regulation of emergency treatment should be provided for under the law rather than being provided for under guidelines.

The Board should be given the mandate to develop guidelines on the management of complaints from users of mental health facilities. This ensures accountability of mental health facilities while addressing complaints from users of mental health facilities.

Give the Board specific mandate to review reports of restraint and seclusion by mental health facilities.

Rationale 3

The proposal is made in light of the fact that most violations to users of mental health services occur under the guise of providing emergency treatment or in situations of mental health crisis.

Proposal 4

The Board can't sit on appeal concerning the treatment of the person with the mental illness at a mental facility and advising the government "on the state of mental health" and "coordinating the mental health care activities in Kenya.

Rationale 4

It is questionable whether two such broad and distinct roles should reside within one body. Additionally, the matter of appeals – crucial to providing a check on denial of people's liberty through forced hospitalization and treatment remains unregulated.

Committee's Observations

The Board's powers should be strengthened to improve its ability to oversight health facilities that offer mental health services.

The Board's mandate should be harmonized with that of other agencies in the health sector that receive and resolve complaints.

The provisions on seclusion and restraint should be redrafted to ensure that the Human rights of the person with mental illness are safeguarded. The additional role by the Board to review reports of restraint and seclusion will safeguard the rights of the person with mental illness.

Emergency treatment protocols should be left to regulation since regulations are more flexible than legislation. However, it is imperative to ensure that the rights of all patients including persons with mental illness are respected during emergency procedures.

Proposal 5

Delete clause 9 (h).

Rationale 5

This role of the Board can be deleted and captured under the board's role in "advising the national and county governments on the state of mental health and mental healthcare facilities in Kenya" as proposed in this amendment Bill.

Committee's Observation

The provision should be carried under the proposed new section 5 (b).

Proposal 7

Retain the provisions under paragraph (h) of the Mental Health Act relating to community and family-based programmes for the care of persons suffering from mental illness.

Rationale 7

Community based programmes are critical in management of mental health and should be retained.

Committee's Observations

The Bill, under the proposed new section 2D (b), mandates county governments to provide community and family-based programmes.

(10) Clause 10

Proposal 1

Substitute the proposed sub-section (1B) with the following—

(a) a mental health practitioner who holds at least a degree from a university recognized in Kenya;

(b) is registered by the relevant regulatory bodies as a mental health practitioner;

(c) has at least ten years' experience in the practice of mental health, five of which shall be experience at senior management level; and

(d) meets the requirements of Chapter Six of the Constitution.

Rationale 1

Restricting this position to one cadre of mental health practitioners is unfair and counter to the provisions of the Constitution.

To give equal opportunity to all, the office bearer as the Director of Mental health should be open to all mental health practitioners as per the definition under the amended Bill.

This will accord equal opportunity to all, the office bearer as the Director of Mental health should be open to all mental health practitioners as per the definition under the amended Bill.

Further restricting this position to one cadre of mental health practitioners is unfair and likely to bring disunity more so contrary to the constitution.

Proposal 2

Under the proposed section 6 (1B)—

Insert the following additional requirements—

(a) Holds a masters degree in psychiatry

(b) Has at least 10 years' experience in the practice of medicine. Five of which shall be experience at senior management level in a clinical mental health care setting

(c) Should be registered by the Kenya Psychiatrics and allied mental health workers association

Proposal 3

A person is eligible for appointment for the office of the Director of Mental health if the person is—

1. A clinical psychologist with a doctorate degree in clinical psychology

2. Is registered with the relevant bodies
3. Has at least 10 years experience, five of which shall be experience at a senior management level in a clinical mental health set up
4. Is be registered by the Kenya Psychiatrics and allied mental health workers association, Kenya counsellors and psychologists association, clinical psychologists association of Kenya

Proposal 4

Under the proposed section 6 (1B)—

Amend the requirements as follows—

a. Remove the need to have the director have a medical degree
b. Add that the director hold a Master's degree in a mental health course with an additional qualification of a leadership training.
c. Registered by the medical practitioners and dentists for medical doctors' board. In the case of Psychologists, that they be registered with the counsellors and Psychologists board.
d. Ten years practicing and five years in leadership in mental health management

Committee's Observation

The Director of Mental health is the chief executive officer of the Board and should be a psychiatrist in accordance with current Public Service Commission requirements.

(11) Clause 11

Proposal 1

Establish County Mental Health Councils in place of District Mental Health Councils.

Rationale 1

Mental Health has been neglected for a long period of time, for there to be drastic change in this sector, county mental health councils need to be formed so as to ensure the proper coordination of county mental health activities and programmes.

Proposal 2

Retain section 7 under the Mental Health Act and rename them "County mental health Councils" similar to what is envisioned in the Principle Act, with roles that mirror the National board's roles and with financial resources from County Budgets.

Rationale 2

Section 7 in Principle Act relates to establishment of "District Mental Health Councils" a concept that is applicable and useful in promoting mental health at County level.

Committee's Observation

There is need to establish the county mental health councils to replace the already existing district mental health councils.

(12) Clause 12

Proposal 1

The proposed amendment (determination of remuneration of the board) does not adequately address issues of financial provisions for the board functions.

Rationale 1

The legislation of the board should set a mental health fund to facilitate board functions.

Committee's Observation

The proposal is not in line with the objectives of the Bill.

(13) Clause 13

Proposal 1

Substitute "mental health facilities" to " Health facilities providing mental health services"

Proposal 2

Substitute Mental health facilities with Health facilities offering mental health services

Rationale 2

To provide comprehensive care/ Integration.

The registration and licensing of health facilities should be the mandate of regulatory bodies

Committee's Observation

Mental healthcare services should be provided in all health facilities.

Proposal 3

Retain section 9 of the Mental Health Act.

Proposal 4

Delete all amendments

The amendments propose the mandates of registration and licensing health facilities to the board and County Executive Committee Member

Rationale 4

The registration and licensing of health facilities is already clearly defined in law as the function of regulatory bodies and the board only authorizes a hospital or a part of a hospital by notice in the gazette to be a mental hospital and a place for the reception and treatment as inpatients.

Committee's Observation

Section 9 of the Mental Health Act does not reflect the Kenyan Constitutional reality. The Bill proposes to amend it to ensure that it conforms to the Constitution.

Registration and licensing of private mental health facilities should be done by the various professional regulatory bodies as provided for under clause 15 of the Bill under the proposed new section 9B.

(14) Clause 14

Proposal 1

Amend the provision in subsection (3) by deleting the words "during their term of remand or imprisonment of remand prisoners and convicted criminal prisoners who are persons suffering from mental disorder" appearing immediately after the words "reception and treatment" at the end of that section and substituting therefor the words "of prisoners, either remanded or convicted, suffering from mental illness"

Rationale 1

Offer integrated services.

Committee's Observations

The proposal is similar to the provision in the Bill.

(15) Clause 15

Proposal 1

Delete the proposed section 9A-D

Rationale 1

All these provisions are already provided for under the laws and regulations of regulatory bodies. Mental health services are part of health services in Kenya.

Committee's Observations

The provisions are necessary.

Proposal 2

If our proposal for establishment of County Mental health Councils is accepted, the role of licensing could be played by respective County mental health Council in consultation with or approval with the National board.

Rationale 2

The Board may not be able to accommodate all counties with interest establishing a facility.

Proposal 3

Amend the proposed section 9B to be in line with existing health regulatory laws.

Rationale 3

Registration and licensing of private health facilities is already clearly defined in law as the function of regulatory bodies. The Board only authorises a hospital or part thereof, by notice in the gazette, to be a mental hospital and place for the reception and treatment of inpatients.

Proposal 4

Private health facilities should be licensed by relevant regulatory bodies

Public health facilities should be licensed in the following manner—

(a) The Board to approve the establishment of National Referral mental Health facilities

(b) The counties to approve establishment of county mental health facilities.

Rationale 4

This is in keeping with section 89 of the Health Act

Committee's Observations

Medical professional regulatory bodies have the mandate to register and license private health facilities under the Health Act and the various statutes setting up the regulatory bodies.

Proposal 5

Amend the proposed section 9B (3) by inserting "psychiatric nurse"

Rationale 5

1. Psychiatric nurses have undergone approved training that meets international standards and are adequately prepared to take charge of mental health facilities whether public or private, a responsibility they are currently discharging successfully.

Furthermore, many nurses in Kenya have attained higher qualifications in mental health at masters' and doctorate levels and can competently manage mental health facilities either as private practitioners or as employees.

Committee's Observations

Under the Nurses Act a Nurse can open and manage a private health facility.

Proposal 6

Amend the proposed section 9B (3) by inserting—

(d) Chief Occupational therapist

Rationale 6

Any qualified health professional has the capacity to manage any health facility and Occupational therapists have the requisite knowledge and skills to manage the said facilities.

Committee's Observations

Under the Health Act management of health facilities, an occupational therapist does not feature.

Proposal 7

Amend the proposed section 9 D—

To have the mental facilities file reports with the Health Information System.

Rationale 7

The Bill needs to recognize the already existing health structures in the country. Wider discussions with MOH and County Health Departments needs to be done for the Bill to incorporate the already existing structure in the health sector

Proposal 8

Amend 9 D on reports by mental health facilities by inserting—

Reports on the number of patients received and who have undergone emergency treatment and number of times physical restraint and seclusion is used as an addition parameter.

Committee's Observations

Incorporating health information systems in the Bill will seek to enrich it.

Proposal 9

Amend the proposed section 9D on informed consent to take into consideration the legal capacity of the patient. Amend to 9F. another 9 D refers to reports by mental health facilities

Proposal 10

Amend the proposed section 9D on informed consent—

To ensure that informed consent is always sort from users of mental health services and supports must be provided to ensure that the will and preference of user of mental health service is taken in to account when providing mental health services

Rationale 10

Delegation of the informed consent is contrary to the CRPD.

Committee's Observations

Compliance with the Convention on the Rights of Persons with Disability is a Constitutional requirement. Even so safeguards must be given to ensure that treatment is still given when the person with mental illness is not able to give consent.

Proposal 11

Delete the proposed section 9E

Rationale 11

Provisions are contrary to article 12 of the CRPD

Proposal 12

Delete section 9E on seclusion and restraint.

Require the Ministry of Health in consultation with the Mental Health Board and persons with disability to develop a national strategy working towards the ban of seclusion and use of restraint in mental health facilities. The National strategy should address challenges and support mental health providers as they work towards the absolute ban on restraint and seclusion which is prevalent in practice.

Rationale 12

The committee on the rights of persons with disabilities as well as the special rapporteur on Torture and other cruel, inhumane or degrading treatment or punishment have called for an end to all coercive and non-consensual psychiatric interventions including the use of restraint and seclusion as it amounts to torture and ill treatment.

Committee's Observations

The safeguards in the Bill on seclusion and restraint are important even as the country works towards a complete Ban of seclusion and restraint.

Proposal 13

Substitute 9D with 9F

Rationale 13

9 D already exists

Proposed 14

Under the proposed section 9F insert the following new subsection—

(3) A Consent to administer treatment or admit maybe given by a mental health practitioner authorized by the mental health facility in absence of the persons' Representative. This can only happen if a person with mental illness may cause harm to themselves or others and needs urgent treatment.

Rationale 14

In an event a person with mental illness is not able to give consent and not accompanied by a guardian there will be a gap on who is to consent on the treatment to be administered.

Committee's Observations

Clause 25 of the Bill provides for emergency admission of persons with mental illness and gives safeguards to ensure the rights of the person with mental illness are protected.

(16) Clauses 16, 17, 18, 19 and 20

Proposal 1

Delete all the sections

Rationale 1

Voluntary patients are always attended to in all health facilities as provided in the mental health act or as part of liaison care. The bill's proposal that the board and Council of Governors (COG) set guidelines on voluntary admission is an isolationism approach.

Committee's observations

The sections are necessary

Proposal 2

The issues proposed for guidelines should be legislated upon rather than being left to guidelines to ensure better protection and safeguards for users of mental health facilities

Committee's Observations

Guidelines should be developed by the ministry, since they are likely to change from time to time.

Proposal 3

Reinstate section 12 and that death of voluntary patient of a mental health facility be notified to the Mental Health Board as well as the National Coroner Service establish under the National Coroners Act

Committee's Observation

The Bill provides for reporting of the number of voluntary patients who died while receiving treatment in clause 15. However, the proposal to have the matter reported to the National Coroner Service may enrich the Bill.

(17) Clauses 21, 22 and 23

Proposal 1

Delete all amendments

Rationale 1

The roles and responsibilities are given to an amorphous entity 'mental health practitioner' without due consideration of the capacity of cadres under that umbrella entity to make an appropriate diagnosis and determination for involuntary admission and treatment

Proposal 2

Delete the proposal on involuntary admission.

The state should develop a wide range of community-based services that respond to the needs of persons with disabilities and respects the person's autonomy, choices, dignity, privacy, including peer support and other alternatives to the medical model of mental health.

Proposal 3

Amend Part VI of the Act to take in to account the legal capacity of the patient

Rationale 2

Committee on CRPD in its concluding observations to Kenya called on Kenya to amend its legislation and prohibit involuntary placement.

Committee's Observation

The safeguards in the Bill on involuntary placement are important even as the country works towards a complete removal of involuntary placement. However, it is import to amend the provision to conform to the CRPD and provide for supported decision making.

(18) Clause 24 and 25

Proposal 1

Delete all amendments and insertion.

Rationale 1

Emergency treatment is clearly defined in the health act, conditions for emergency admission and treatment are determined by the medical practitioner upon examination and diagnosis and there are appropriate standard and guidelines on management. The mental health act already stipulates the emergency admission procedures.

Proposal 2

Amend the Part VII of the Act to take in to account the legal capacity of the patient.

Rationale 2

provisions are contrary to article 12 of the CRPD

Committee's Observation

The safeguards in the Bill on emergency treatment are important to ensure the rights of the person with mental illness. However, it is import to amend the provision to conform to the CRPD and provide for supported decision making.

Proposal 3

Limited the period for provisions of emergency treatment to 24 hours and thereafter the mental health facility/ practitioner attending to the person needs to seek informed consent before continuing with any form of treatment

Committee's Observation

Twenty-four hours may be too short a time. The Bill's proposal of seventy-two hours is reasonable.

(19) Clause 26, 27, 28, 29, 30

Proposal 1

Delete all amendments and insertion

Rationale 1

Terminology used can be inappropriately interpreted and roles and responsibilities have been allocated to offices and persons without the relevant capacity.

Proposal 2

Delete the entire sub section (2A) and replace with the following; A competent Mental health practitioner shall certify that a person delivered by the police in the mental health facility is mentally ill before admission in the said facility. Admission can only last until one cannot cause harm to themselves or others

Rationale 2

The police officer is not a mental health practitioner to bear burden of proof as to whether a person suffer from mental illness or not.

Committee's Observation

The provisions are necessary.

Proposal 3

Substitute "armed forces" with "armed security services and personnel"

Rationale 3

The term includes The military, police and other armed security services

Proposal 4

Amend the part to reflect that armed security personnel are to be treated in civilian mental health facilities.

Rationale 4

The Military, police and other armed security services do not have mental health facilities in their Garrison and units. Thus armed security personnel suffering from mental illness ought to be treated in civilian mental health facilities in concert with the mental health care providers from the ministry of defense and internal security.

Committee's Observation

The proposals may enrich the Bill.

(20) Clause 31 and 32

Proposal 1

Delete all amendments and insertion

Rationale 1

Terminology used can be inappropriately interpreted and roles and responsibilities have been allocated to offices and persons without the relevant capacity. This Bill is prescriptive, directing the management of patients which is a medical matter rather than a legislative function.

Committee's Observation

The proposals seek to create safeguards to protect the person with mental illness and are therefore important.

Proposal 2

Amend the proposed section 20A to take in to account the legal capacity of the patient

Rationale 2

The provisions are contrary to article 12 of the CRPD

Committee's Observation

The Bill should be amended to conform to the requirements of Article 12 of the Convention on the Rights of Persons with disability.

Proposal 3

Amend the proposed section 26 (1) in the following manner—

(a) a spouse, or if unable or unwilling;

(b) the child of that person, where such child has attained the age of eighteen years, or if unable or unwilling;

(c) a parent, or if unable or unwilling;

(d) a relative of the person, or if unable or unwilling; or

(e) a person under whose care or charge the person with mental illness is.

Proposal 4

Amend the proposed section 26 (1) in the following manner—

An application for an order for the management and administration of the estate of a person with mental illness may be made, in the following order of priority, to the court by an individual who has been previously selected/appointed by the person living with mental illness having legal capacity to make decisions on behalf of the person with mental illness

Rationale 4

Representative such as spouse, parent guardian making decisions on behalf of a person with mental illness is also an area of concern. Family members top the list among people who are guilty of violating the rights of persons with mental illness. How will having them make decisions on behalf of these people be regulated such that their rights are safeguarded? Families even take advantage of patients to commit acts such as disinheriting them or having them committed to institutionalization just to get them out of the way. I am very concerned about this.

Committee's Observation

The Bill should be amended to conform to the requirements of Article 12 of the Convention on the Rights of Persons with Disabilities.

(21) Clause 37 to 52

Proposal 1

Delete all amendments.

Rationale 1

The section should be revised to align to the statutes on guardianship and administration of properties. The Health Act defines health to include mental health and health care services to include mental health services.

Proposal 2

Redraft and ensure users of mental health services participate in the management of their property and that the denial of the same through appointment of guardians, representatives and trustees violates the provisions of the convention on the rights of persons with disabilities.

Rationale 2

Amend the provisions in light of Article 12 (5) of the CRPD.

Committee's Observations

The provision should be amended to reflect Article 12 of the Convention on the Rights of Persons with Disabilities.

(22) Clause 45 and 49

Proposal 1

Delete the references to aiding escape of a person from a mental health facility or permitting them to leave unlawfully.

Rationale 1

Full recognition of the right to liberty of persons with mental disabilities necessarily requires respecting the will of people to choose whether or not to be admitted to health facilities and to leave freely at a time of their choosing the CRPD Committee called on the Government of Kenya to amend its legislation to prohibit involuntary placement and, in particular, to repeal provisions of the Mental Health Act (1989), and to amend the Persons Deprived of Liberty Act 2015, which allow detention for the purpose of

psychiatric treatment, and ensure that new legislation is fully compatible with Article 14 of the Convention in all cases.

Committee's Observations

The provision is necessary for purposes of deterrent.

(23) Clause 50

Proposal 1

The Cabinet secretary in charge of health, in consultation with stakeholders including organisations of persons with psychosocial disabilities, should develop within a certain time frame, a plan for transition to community-based mental healthcare.

Committee Observations

The proposal will enrich the Bill.

(24) Clause 52

Proposal 1

No need to amend section 19 of the Health ACT

Rationale 1

The health Act defines health to include mental health and health care services to include mental health services

Committee Observations

The provision is not fatal.

(25) Memorandum of Objects and Reasons

Proposal 1

The Bill's proposals concern both National and county governments and have significant financial implications. The provisions are making it a money bill contrary to the statement of Objects and Reasons for the Bill which indicates otherwise. The bill obligates National and County governments to provide access to medical insurance in Part II- Rights of Persons with Mental, Clause 3 (d). This makes this bill a money as the exchequer will need to allocate funds for the same.

Rationale 1

The Bill obligates both National and County Government to provide insurance to persons with mental disorder, the implementation of this provision will have a financial implication.

The Kenya Board of mental health is appointed by Cabinet secretary for Health and the Mental health act is implemented under the Ministry of health.

Committee's Observations

The provision seeks to ensure that the where the national or county government has a medical scheme for the citizens then the scheme should not discriminate against persons who seek mental health care. The provision should be redrafted to ensure clarity.

(26) <u>OTHERS</u>

Proposal 1

The Bill needs to have a human rights based approach.

Rationale 1

The Bill of rights under the Constitution of Kenya, 2010 clearly outlines Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights, the Mental Health (Amendment) Bill, 2018 does not employ the guiding principles of the rights based approach that includes persons living with mental illness to have participation, accountability, non-discrimination and equality, empowerment and linkages to human rights standards.

Committee's Observations

The Bill seeks to ensure that the rights of the person with mental illness are observed and respected.

Proposal 2

Human resource management needs to come out in the bill for regulation purposes considering that a lot of the other professionals are not trained, with even general practitioners and clinical officers may not be able to diagnose even a common mental illness such as depression or anxiety. As for counsellors, the field is very unregulated without any proper training practicing as counsellors. There are a lot of unqualified counsellors who are practicing in Kenya, some with no clue about mental health.

Rationale 2

There hasn't been a proper regulation of the qualifications of a Mental health practitioners in Kenya, considering that one can be a counsellor with either a month's training, a year's training or a certificate holder The Bill needs to outline the establishment of regulations that will clearly guide the requirements for one to be a mental health practitioner

Committee's Observations

The Cabinet Secretary should develop guidelines on the qualifications of mental health practitioners.

Proposal 3

Mental Health was not clearly defined in the Bill.

Rationale 3

More public participation needs to be conducted to come up with a wider definition of mental health

Committee's Observations

The committee conducted public participation in accordance with the requirements of standing order 140 (5) of the Senate Standing Orders on 12th March, 2019.

Proposal 4

Integration of mental health in all sectors of the country did not come out clearly

Rationale 4

Mental illness can affect anyone in the country, be it in the education sector (learning institutions), the defence forces (military and police), including work places. Hence mental health interventions need to be integrated into the entire health sector and other sectors

Committee Observations

The Bill seeks to ensure that mental health services are widely available by ensuring mental health care services are integrated through out the national health system. The Bill also obligates Ministry of education to develop and integrate in the education syllabus instructions relating to mental health.

Proposal 5

The structure of the Bill was not clear on how community based care would be achieved including after care.

Rationale 5

The Mental Health Policy 2015-2030 clearly outlines the importance of community based mental health services. This does not come out clearly in the Bill

Committee's Observations

The Bill obligates county governments to develop programmes on community based mental health services.

Proposal 6

The role of the Ministry of Health was missing and its next to impossible to have a law not given input from the mother Ministry

Rationale 6

Devolution of health left the development of laws to the national government (MOH) this Bill has not demonstrated its involvement of the MOH who are very critical in the formulation of laws. To avoid the law not being rejected by MOH, they need to have their input on the Bill.

Proposal 7

Further public participation on the Bill is required to ensure that the Bill incorporates every stakeholder's views

Rationale 7

Mental Health stakeholders feel that the Bill did not involve them from the beginning, further public participation is required to ensure that the Bill is not rejected on grounds that there was little public input on its provisions.

Proposal 8

The Role of the national and county government needs to come out clear or reference the Health Act, 2017

Rationale 8

Devolution of health left development of policy and legal framework, health training institutions, and level 5 hospitals to the national government and the county government to offer health services at the county level. This is not coming out clearly

Committee's Observations

The Constitution clearly outlines the functions of various government agencies. Article 94 of the Constitution states that the legislative authority of Kenya is vested in and exercised by Parliament. Article 96 further provides that Senate shall participate in the law making function of Parliament by considering and approving Bills that concern counties. Article 110 defines "Bills that concern county governments" to mean a Bill that contains provisions affecting the functions and powers of county governments set out in the Fourth Schedule. Paragraph 2 of Part 2 of the Fourth Schedule lists County health services as functions of county government. Paragraph 28 of Part 1 of the Fourth Schedule requires the National government to develop Health Policy. Paragraph 23 of Part 1 of the Fourth Schedule of the Constitution is clear that the National government should manage and control National referral health facilities. Under the First Schedule to the Health Act National Referral hospitals are categorised as Level 6. Therefore, the management and control of level five health facilities is to be under counties.

The committee conducted public participation in accordance with the requirements of standing order 140 (5) of the Senate Standing Orders on 12th March, 2019.

Proposal 9

The Bill was framed as if there exists no other laws and it's a stand-alone Bill

Rationale 9

The integration of the already existing structures in the health sector did not come out in the Bill, for instance the intergovernmental commission, the DHIS, the Community Strategy

Proposal 10

The proposal on community mental health services need to be made concrete and monitor-able in order to give more clout to this section. For example, an obligation can be placed on the Minister to develop within a certain time frame a plan for a transition to a community-based system, in consultation, among others, with representative organizations of persons with psychosocial disabilities; the essential components of such a plan should be enumerated already in the bill.

Committee's Observations

The Bill seeks to amend the Mental Health Act of 1989 to the new Constitutional reality. The Bill does take in to account the role of community based care and obligate county governments to implement programmes to realise it. County governments should be allowed to make the decision on the time within which to they should transition in to community based care.

Proposal 11

Just like the role of NEMA, a body to make the impact assessment of goods and services which influence the mental health status of Kenyans ought to be realized. This way, we are not reacting to the negative outcomes once they begin to create a burden to care, security and family cohesion. An example is gambling shops in residential areas. Revise the mental health care model and include a preventive component.

Committee's Observations

The Bill mandates County Governments to ensure that mental health care interventions are comprehensive and include prevention.

Proposal 12

Electro-Convulsive Therapy (ECT), psychosurgery and other invasive treatments remain largely unregulated (apart from the limit on administering them as part of "emergency treatment")

Committee's Observations

The Bill mandates the National Government to develop standards for the medication and methods of care, rehabilitation and treatment to be administered to persons with mental illness.

6. COMMITTEE'S OBSERVATIONS

(a) Senate's Legislative mandate

The Constitution clearly outlines the functions of various government agencies. Article 94 of the Constitution states that the legislative authority of Kenya is vested in and exercised by Parliament and Article 96 further provides that Senate shall participate in the law making function of Parliament by considering and approving Bills that concern counties. Article 110 defines "Bills that concern county governments" to mean a Bill that contains provisions affecting the functions and powers of county governments set out in the Fourth Schedule. Paragraph 2 of Part 2 of the Fourth Schedule lists County health services as functions of county government. Paragraph 28 of Part 1 of the Fourth Schedule requires the National government to develop Health Policy.

The Senate's law-making function includes making amendments of Acts that affect county government functions. Section 73 of the Health Act, mandates Parliament to legislate on Mental Health.

Pursuant to Article 96 of the Constitution the Bill is therefore properly before the Senate.

(b) Public Participation

Article 10 of the Constitution lists public participation as one of the national values and principles of governance.

The Committee conducted public participation in accordance with the requirements of standing order 140 (5) of the Senate Standing Orders on 12th March, 2019.

(c) The Obligations of the National Government and County Governments

The Mental Health Act was passed in 1989, it is therefore important to amend it to reflect the current Constitutional reality.

The Fourth Schedule of the Constitution sets out the distinct functions and powers of the National and County governments. Paragraph 23 of Part 1 of the Fourth Schedule of the Constitution is clear that the National government should manage and control National referral health facilities. Under the First Schedule to the Health Act National Referral hospitals are categorised as Level 6. Therefore, the management and control of level one to five health facilities is to be under counties. Paragraph 28 of Part 1 of the Fourth Schedule requires the National government to develop Health Policy.

The proposed new Part 1A of the Bill is necessary since it seeks to delineate the obligations of the National Government and county governments in regard to mental health care in order to conform with the Constitution.

(d) The Role of Psychiatric Nurses

Psychiatric nurses are essential in the provision of mental health care services and should be recognised as health professionals who are qualified and registered handle mental health cases. Under the Nurses Act a Nurse can open and manage a private health facility. *Amend the Bill to take in to account the role of a psychiatric nurse. In particular amend clause 15.*

(e) The role of Occupational Therapists and other allied health workers

The Kenya Mental Health Policy makes reference to occupational rehabilitation of persons with mental, nuerological and substance use disorders. However, the policy is unclear on the role of occupational therapists and other allied health workers such as dieticians in the hierarchy of professionals dealing with persons with mental illness.

Amend the proposed new section 2C (e) to account for occupational therapists and other allied health workers.

(f) Efforts to combat stigma related to mental health

To effectively combat stigma associated with mental health illness, mental health care services should be provided in all health facilities.

The Bill should be amended to ensure that mental health services are provided in all health facilities.

(g) The Rights of Persons with Mental Illness

The Bill under the proposed new Part II makes provision for the rights of persons with mental illness, however the provisions of Article 12 of the Convention on the Rights of Persons with Disabilities is not adequately encompassed.

The Bill should be amended to ensure compliance with Article 12 of the Convention on the Rights of Persons with Disabilities.

(h) Legal Capacity of a person with mental illness

Persons with mental illness have legal capacity.

Therefore, the Bill should be amended to conform to the requirements of Article 12 of the Convention on the Rights of Persons with Disabilities.

(i) Maternal Mental Health

The psychological and emotional wellbeing of women during the perinatal period, that is, during pregnancy, childbirth is important and should be provide for in order to ensure less incidences of mothers committing suicide and others killing their own children.

The Bill should be amended to cater for maternal mental health.

(j) Role of the Ministry of Education

Partnership between the Ministry of Education and the Ministry of Health on mental health information would ensure that young people are able to discuss issues of Mental Health with trained professionals.

The Bill should be amended to ensure collaboration between the Ministry of Health and Ministry of Education.

(k) Reporting and the Health Information System

Accurate reports must be given by mental health facilities regarding the persons with mental illness that they treat. This is important since it allows both National government and county government plan properly. With the introduction of Health information systems reports are more readily available to persons in places of authority.

The proposed new section 9D on reports by mental health facilities should be amended to take in to account health information systems.

(l) National Government and county government medical schemes

The Bill does not compel either National government or county governments to provide insurance instead it simply seeks to ensure that where the National or County government have a medical scheme for citizens, case in point UHC, then mental health care is also covered under those schemes.

The proposed new section 3D on access to medical insurance should be amended for clarity.

(m)Decriminalisation of suicide

CHAPTER XXI of the Penal code provides for Offences Connected with murder and Suicide. In particular, section 226 of the Penal Code provides "any person who attempts to kill himself is guilty of a misdemeanour".

The proposal is rejected since criminalisation of attempted suicide acts as a deterrent and should be maintained in the penal code.

(n) Presidential Pleasure sentencing

Republic v SOM, Criminal Case No 6 of 2011 and in AOO and 6 others v Attorney General and another NRB Petition No. 570 of 2015 [2017] eKLR, found that detention at the President's Pleasure was unconstitutional. Section 167 of the Penal Code was deleted by Act no. 3 of 2006.

The proposed new section 3F of the Bill should be deleted.

(o) Substituted decision making versus Supportive decision making

The current laws advocate for guardianship of persons with mental illness which results in substituted decision making. Substituted decision making is contrary to Article 12 of the Convention on the Rights of Persons with Disability which bequeaths a person with mental illness legal capacity on equal basis as any other person.

The Bill should be amended to provide for supportive decision making which promotes respect for the will and preferences of persons with mental illness. However, there is still a need for "representatives" as defined under the Bill where a supporter has not been appointed by the person with mental illness.

(p) The Kenya Mental Health Board

The Board must be lean enough to execute its mandate efficiently and effectively. *In this regard the membership of the Board should be between 9 to 11 persons.*

The Board being instrumental in advising on policy related to mental Health should comply with the Convention on the Rights of Persons with Disabilities and ensure that the users of mental health services are represented in the Board. *In this regard, the Bill should be amended to ensure that persons with mental illness are represented in the Board.*

The Board falls under the Ministry of Health and operates like a department of the Ministry of Health. Since the Board falls within the Ministry of Health, *it is unnecessary to include the Principal secretary in charge of Health.*

The chairperson of the Board cannot be independent of the Ministry since as currently constituted the Board is a "department" under the Ministry of Health. *In this regard, in order to ensure smooths operations, the Director General for Health should remain the chairperson of the Board.*

Although we appreciate that the Board needs finances to function, this is matter best dealt with within the Ministry of Health since the Board is a "department" within the Ministry of Health and therefore the monies allocated to the Board will be monies allocated to the Ministry of Health. *In this regard the nomination of a representative of treasury will be unnecessary. Further establishment of a fund for the Board would be impractical given the current form of the Board.*

Kenya National Commission on Human Rights (KNCHR) should not be represented in the Board because they need to maintain their independence in order to impartially advice on matters concerning the rights of persons in need of mental health services or users of mental health services in Kenya. Pursuant to section 4 (4) of the Mental health Act, the Board can coopt KNCHR to the Board as and when its expertise is required. *The Bill should therefore be amended to remove KNCHR.*

The Attorney General and the Director of Public Prosecution should not be represented in the Board since the two offices also need to be maintain their independence while interacting with the Board. Pursuant to section 4 (4) of the Mental Health Act, the Board can coopt AG or the ODPP to the Board as and when required.

Health is a devolved function under the Constitution. The bulk of health facilities required to provide mental health care services are under the control and management of counties. *The provision requiring three persons to be nominated by the Council of Governors are satisfactory.*

The regulatory body of any profession is the custodian of the register of professionals. Therefore, such regulatory body is best suited to determine who is in good standing. Professional associations are not statutory and therefore change from time to time. Further, *the right to freedom of association is voluntary and the mental health professionals should not be compelled to join an association.*

In the same vein registering with a union is voluntary and therefore to include the added requirement that a member of the Board must be registered to a union is discriminatory. *In this regard the proposal to require that only mental health professionals who are registered with a union be appointed to the Board is rejected.*

The idea of ensuring that the mental health professionals appointed to the Board are those who are actively working in a clinical set up may enrich the Board's decisions. *In this regard the Bill should be amended to ensure that mental health professionals eligible for appointment to the Board are actively working in a clinical set up.*

The Director of Mental health is the chief executive officer of the Board and should be a psychiatrist in accordance with current Public Service Commission requirements. *In this regard the Bill should be amended to ensure qualifications are in line with the Public Service requirements.*

(q) District Mental Health Councils

Despite the change in geographical structure after the 2010 Constitution, mental health councils is a concept that is applicable and useful in promoting mental health. *In this regard the Bill should be amended to provide for county mental health councils.*

(r) Informed Consent

Persons with mental illness have legal capacity and therefore have the right to give informed consent before treatment and participate in treatment planning. *In this regard, the Bill should be amended to conform to the requirements of Article 12 of the Convention on the Rights of Persons with Disabilities.*

(s) Restraint and Seclusion

The safeguards in the Bill on seclusion and restraint are important even as the country works towards a complete Ban of seclusion and restraint. *In this regard, the Bill should be amended to give the Board the additional role to review reports of restraint and seclusion to ensure the rights of the person with mental illness is are safeguarded.*

(t) Involuntary Patients

The safeguards in the Bill on involuntary placement are important even as the country works towards a complete removal of involuntary placement. However, it is import to amend the provision to conform to the CRPD and provide for supported decision making. *In this regard, the Bill should be amended to conform to the CRPD and provide for supported decision making.*

(u) **Emergency treatment**

Emergency treatment protocols are best handled under regulation. However, it is imperative to ensure that the rights of all patients including persons with mental illness are respected during emergency procedures. *In this regard, the Board's powers should be strengthened to improve its ability to oversight health facilities that offer mental health services.*

(v) **Role of Police**

The police are required to maintain order in society and therefore the provisions under clause 26 of the Bill are necessary.

(w) **Mental health care for disciplined forces**

The provisions in the Bill regarding armed forces should be amended to include the military and police personnel.

(x) **Disputes**

The Bill needs to be clear on dispute resolution.

7. COMMITTEE'S RECOMMENDATIONS

The committee makes the following recommendations and proposes to make the following amendments to the Bill—

1. Clause 3 of the Bill be amended to ensure that mental health services are provided in all health facilities in the country.
2. Clause 5 of the Bill be amended in section 2C to incorporate the role of played by occupational therapists and other allied health worker, to ensure collaboration between the Ministry of health and education in regard to mental health strategies targeting young people
3. Clause 6 of the Bill be amended to—
   (a) conform to Article 12 of the Convention on the Rights of Persons with Disabilities, in particular the proposed section 3B on consent to treatment, 3C on right to participate in treatment planning, 3G on right to access information, 3I on the right to confidentiality, 3J on the right to representation and 3K legal capacity;
   (b) to ensure that the provision on medical insurance is clear as appertains the role of national and county governments;
   (c) delete the provision on application of the criminal procedure code;
   (d) allow for supportive decision making and create safeguards to be employed when a supporter has not been appointed
4. Clause 7 of the Bill should be amended to—
   (a) remove the representative of the Kenya National Commission on Human Rights;
   (b) ensure that persons with mental illness are represented in the Board;
   (c) ensure the membership of the Board is restricted to 9 to 11 persons;
   (d) ensure that mental health professionals eligible for appointment to the Board are actively working in a clinical set up;
5. Clause 9 of the Bill should be amended—
   (a) to ensure the Board's functions do not conflict with functions of the cabinet secretary;
   (b) empower the Board to review reports of restraint and seclusion to ensure the rights of the person with mental illness is are safeguarded;
   (c) strengthen the Board's ability to oversight health facilities that offer mental health services.

6. Clause 10 of the Bills should be amended to ensure the qualifications of the Director of Mental Health are line with the Public Service requirements;

7. Clause 11 of the Bill should be deleted and substituted with provisions that provide for the establishment of county mental health councils.

8. Clause 14 and 15 of the Bill should be amended to ensure that there is clarity in the establishment of public and private mental health facilities.

9. Clause 15 of the Bill should be amended to—

    (a) take in to account the ability of a psychiatric nurse to be in charge of a private mental health facility;

    (b) incorporate the use of health information systems in the monthly reporting to be done by mental health facilities;

    (c) incorporate supportive decision making in the in the provision on informed consent

10. Clause 22 of the Bill on involuntary patients should be amended to make provision for the concept relating to a supporter of the person with mental illness

11. Clause 25 of the Bill on conditions for emergency admission and treatment should be amended to make provision for the concept relating to a supporter of the person with mental illness.

12. Clause 27 and 28 of the Bill should be amended to provide for both the military and police.

13. Clause 32 of the Bill should be amended by deleting the proposed new section –

    (a) 20A (2) (b) on review of mental health status;

    (b) 20B on appeals.

14. Clause 37 of the Bill should be amended to ensure that supportive decision making in provided for in the care and administration of property of persons with mental illness.

15. Inserting a new clause to address dispute resolution under the Bill.

The Committee shall introduce the above amendments during the committee of the whole house for consideration and approval by the Senate.

8. ANNEXES

(i) Minutes

MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON TUESDAY, 18TH JUNE, 2019, GROUND FLOOR COMMITTEE ROOM, RED CROSS BUILDING AT 10.00 A.M.

PRESENT

1. Sen. Mbito Michael Malinga, MP - **Chairperson**
2. Sen. (Dr) Ali Abdullahi Ibrahim, MP - **Vice Chairperson**
3. Sen. Beth Mugo, EGH, MP
4. Sen. Nderitu John Kinyua, MP
5. Sen. Fred Outa, MP
6. Sen. Iman Falhada Dekow, MP
7. Sen. Masitsa Naomi Shiyonga, MP

ABSENT WITH APOLOGY

1. Sen. Petronilla Were Lokorio, MP
2. Sen. Okong'o Mogeni, MP

IN ATTENDANCE **SENATE**

1. Mr. Stephen Gikonyo - Senior Clerk Assistant
2. Ms. Toona Sombe - Legal Officer
3. Ms. Faith Karimi - Serjeant-At-Arm (Intern)

MIN. NO.048/2019 **PRAYER**

The Sitting of the Committee commenced at 10.30 a.m. followed by a word of prayer by the Chairperson.

MIN. NO.049/2019 **ADOPTION OF THE AGENDA**

The agenda of the meeting as approved after being proposed by Sen. Ali and Seconded by Sen. Falhada as follows-

1. Preliminaries
   - Approval of the Agenda
2. Confirmation of Minutes
3. Matters Arising.

4. Adoption of the Committee's Report on the Mental Health (Amendment) Bill, Senate Bills No.32 of 2018
5. Adoption of the Committee's Report on the Kenya Medical Supplies Authority (Amendment) Bill, Senate Bills No. 38 of 2018.
6. Adjournment and Date of the Next Meeting

MIN. NO.050/2019 **ADOPTION OF THE COMMITTEE'S REPORT ON THE MENTAL HEALTH (AMENDMENT) BILL, SENATE BILLS NO.32 OF 2018**

The Committee considered and adopted the final Report on the Mental Health (Amendment) Bill, Senate Bills No.32 of 2018 to be tabled in the Senate with its recommendations for the amendments to be formulated on the Bill after being proposed by Sen. Ali and seconded by Sen. Outa.

MIN. NO.051/2019 **ADOPTION OF THE COMMITTEE'S REPORT ON THE MENTAL HEALTH (AMENDMENT) BILL, SENATE BILLS NO.32 OF 2018**

The Committee adopted and approved the Report on the Kenya Medical Supplies Authority (Amendment) Bill, Senate Bills No.38 of 2018 to be tabled in the Senate with its recommendations for the amendments to be formulated on the Bill after being proposed by Sen. Kinyua and seconded by Sen. Falhada.

MIN. NO.052/2019 **ADJOURNMENT**

There being no other business the Sitting was adjourned at 11.00 a.m.

SIGNED: .....

(CHAIRPERSON)

DATE: 18-06-2019

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON WEDNESDAY 20TH MARCH, 2019, ROOM NO.10 MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1.	Sen. Mbito Michael Malinga, MP	-	Chairperson
2.	Sen. (Dr) Ali Abdullahi Ibrahim, MP	-	Vice Chairperson
3.	Sen. Nderitu John Kinyua, MP		
4.	Sen. Petronilla Were Lokorio, MP		

ABSENT WITH APOLOGY

1. Sen. Beth Mugo, EGH, MP
2. Sen. Fred Outa, MP
3. Sen. Okong'o Mogeni, MP
4. Sen. Masitsa Naomi Shiyonga, MP
5. Sen. Iman Falhada Dekow, MP

IN ATTENDANCE — SENATE

1. Mr. Stephen Gikonyo	-	Senior Clerk Assistant
2. Ms. Sombe Toona	-	Legal Officer

MIN. NO.012/2019 PRAYER

The Sitting of the Committee commenced at 10.05 a.m. followed by a word of prayer from the Chairperson .

MIN. NO.013/2019 CONSIDERATION OF THE AMENDMENTS/ INSERTIONS PROPOSED DURING THE PUBLIC HEARING ON THE KENYA MENTAL HEALTH (AMENDMENT) BILL, 2018.

The Committee was taken through the submissions from the public hearings and made recommendation and comments as follows-

Long title	International Institute on Legislative Affairs (IILA)	Proposal Amend the long title of the Bill in the following manner— "An Act of Parliament to provide for the prevention of mental illness, care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness; to provide for the establishment of the mental health board and for connected purpose" Rationale The long title should align and capture with the purpose and the objects and reasons of the Bill	
	Ministry of Health (MOH)	Proposal Retain the word mental disorder and the word health facility or hospital (not mental hospital or mental health facility) Rationale Mental disorder refers to the disease or a syndrome while the illness applies to the state of ill health. Mental health services should be part of services provided by a health facility. Establishing facilities providing mental health services alone is isolationism and contradict integrated and collaborative healthcare approach principle.	The long title should capture the object of the Bill as succinctly as possible. The use of the term mental disorder is inappropriate and should be substituted by mental illness.
	KPA	Proposal Revert to mental disorder Rationale Mental disorder refers to the disease while mental illness applies to a state of ill health	
	KPA	Proposal Seek to have mental health services provided by any hospital.	

	needs psychotherapy and/or counselling Rationale	
CLMC True North	Proposal Under clause 6 the proposed section 3F— Include decriminalisation of suicide and allow prevention, care, management, treatment of sufferers. Rationale	Criminalisation of attempted suicide acts as a deterrent and should be maintained in the penal code.
Independent Medico Legal Unit (IMLU)	Proposal Decriminalise suicide by revising the Penal code Rationale Persons who attempt to commit suicide are more often than not suffering from depression (mental health issues). Therefore a mental health assessment is important to determine the level of help a suicidal person requires.	
USP-K Validity	Proposal Amend the proposed section 3F which essentially allows for which essentially is presidential pleasure sentencing. Accused persons can be placed under indeterminate criminal detention on the basis of their mental status or the presence of an actual or perceived disability. Rationale Court judgments have declared presidential pleasure sentencing unconstitutional since presidential pleasure sentencing amounts to cruel, inhuman and degrading treatment due to its indeterminate nature. Republic v SOM, Criminal Case No 6 of 2011 and in AOO and 6 others v Attorney General and another NRB Petition No. 570 of 2015 [2017] eKLR, found that detention at the President's Pleasure was unconstitutional.	Section 167 of the Penal Code was deleted by Act no. 3 of 2006
KNCHR	Proposal Amend the proposed section 3F by---- Revising the criminal procedure code to provide safeguards to ensure that the rights of persons detained in mental health facilities are protected. The safeguards include--- (i) Determination of period of detention or an absolute ban on presidential pleasure	

	sentencing (ii) Establishing the rights of a person detained in a mental health facility to review or appeal decision on detention (iii) Providing reasonable accommodation o persons with intellectual and psychosocial disabilities who are lawfully detained in prisons (iv) Obligate the cabinet secretary in charge of health in consultation with the cabinet secretary incharge of security to set regulations and guidelines on the procedure and process to be followed in transferring persons detained in mental health facilities found fit for trial from the mental health health facility to the court. Rationale	
USP-K Validity	Proposal Amend 3H to take in to account the legal capacity of the patient as well as the right to confidentiality Rationale provisions are contrary to article 12 of the CRPD and it is extremely difficult to uphold the rights of persons with mental illness, without full recognition of their legal capacity on an equal basis with others as envisioned on general comment no.1 on legal capacity and the concluding observations of the CRPD committee on Kenya.	The proposals will enrich the Bill and the proposed amendments will ensure that the Bill complies with the Convention on the Rights of Persons with Disabilities.
KNCHR	Proposal Amend the proposed section 3H (3) to take in to account the provisions of Access to Information Act. The Act gives the Cabinet secretary in charge of information in consultation with the commission on administrative justice the power to make regulations on the manner in which applications for information can be made under Access to Information Act	
USP-K Validity	Proposal Amend 3J to take in to account the legal capacity of the patient Guidance on what constitutes representation is exactly what should be developed in a framework of legal capacity The concept of 'representative' should be removed from the Bill and replaced with a legal guarantee that	

		persons with mental disabilities have the right to receive support in exercising their legal capacity to make their own decisions. Rationale someone who was not duly appointed by the individuals cannot step in provisions are contrary to article 12 of the CRPD	An amendment is required to provide for supportive decision making in order to conform to the requirements on the Convention on the Rights of Persons with Disabilities.
	KNCHR	Proposal Delete the proposed section 3 J (2) Embed safeguards to ensure that the will and preference of a person in need of mental healthcare and users of mental health services is respected at all times and recognition of the decisions made with support. Replace the "best interest" standard with "will and preference" of the person in need of mental healthcare and users of mental health services. If after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace "best interest" the "best interpretation of will and preferences" should be exercised with the following safeguards— (i) Where there are difficulties inferring a person's will and preference about a particular matter, attention should be paid to their longer- lasting or more general beliefs, values, and desires. The process of reaching a decision based on the interpretation of will and preference should, if possible be documented. In other words, the interpreter should be in a position to give reasons for reaching one decision over another if the question arises (ii) In interpreting an individuals will preference, regard should be had to the interpretation that upholds the entire gamut of rights that an individual is entitle to under the Constitution and international human rights law (iii) The interpreter of an individuals will and preferences should not be in a situation of conflict of interest in relation to the decision that is required to be made (iv) Interpretation of will and preference should apply only for the shortest time possible, and with concomitant efforts to spark the person's expression of their	