

Approved for tabling

But SNA  
17/3/2020

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY



\*\*\*\*\*

TWELFTH PARLIAMENT – (FOURTH SESSION)

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

DIRECTORATE OF COMMITTEE SERVICES  
THE NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI

MARCH, 2020

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 MAR 2020	DAY: TUESDAY
TABLED BY:	HON. CHARLES WAMUKU CHANPERS ON
CLERK OF THE TABLE:	LEMUNA MUGES

## TABLE OF CONTENTS

ABBREVIATIONS .....	2
LIST OF ANNEXURES .....	3
CHAIRMAN'S FOREWORD.....	4
1.0 PREFACE .....	6
1.1 Establishment and Mandate of the Committee .....	6
1.2 Oversight .....	6
1.3 Committee Membership .....	7
1.4 Secretariat .....	8
2.0 Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) .....	9
2.1 Memorandum of Objects and Reasons of the Bill .....	9
3.0 Public Participation in the review of the Bill .....	9
3.1 Legal provision on public participation .....	9
3.2 Methodology used by the Committee in public participation .....	9
4.0 OBSERVATIONS .....	11
5.0 RECOMMENDATIONS .....	12
Volume 1.....	19
OVERVIEW OF THE MENTAL HEALTH (AMENDMENT) BILL, (SENATE BILL NO. 32 OF 2018) .....	19
PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION ON THE MENTAL HEALTH (AMENDMENT) BILL, (SENATE BILL NO. 32 OF 2018) .....	106
1. The Kenya National Commission On Human Rights (KNCHR).....	106
2. Nanga Board Members .....	108
3. Waringa Wagemu - Community Mental Health Worker .....	109
4. True North Society .....	109
5. Validity .....	111
6. Safe-Hands Organisation on Behalf of – Tunawiri CBO; and Speak Mind Love Organization .....	116
Volume 2.....	117

## **ABBREVIATIONS**

CBO	-	Community Based Organization
CCM	-	Chama Cha Mashinani
CRPD	-	Convention on the Rights of Persons with Disabilities
Ford	-	Forum for the Restoration of Democracy
KANU	-	Kenya African Union
KDF	-	Kenya Defense Forces
KNCHR	-	Kenya National Commission on Human Rights
MDG	-	Movement for Democracy and Growth
NHIF	-	National Health Insurance Fund
ODM	-	Orange Democratic Movement
PPB	-	Pharmacy and Poisons Board
PSK	-	Pharmaceutical Society of Kenya (PSK)
WPM	-	Wiper Democratic Movement
UHC	-	Universal Health Coverage
UN	-	United Nations

**LIST OF ANNEXURES**

**Volume 1**

Annexure 1: Analysis of public submissions on the Bill

Annexure 2: Public memoranda from the public

Annexure 3: List of the individuals and institutions who submitted their memoranda and participated in the public hearing meeting

**Volume 2**

Annexure 4: Adoption schedule

Annexure 5: Copy of the newspaper advertisements of Monday, October 7, 2019 inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on 13<sup>th</sup> February, 2020.

Annexure 6: Minutes of Committee Sittings on consideration of the Bill

## CHAIRMAN'S FOREWORD

The Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) was considered and passed by the Senate on 24/07/19 and the Amendments were then sent to the National Assembly for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The Amendments were then committed to the Departmental Committee on Health on 12<sup>th</sup> September, 2019.

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.

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127(3) of the National Assembly, the Committee through local daily newspapers of Monday, October 7, 2019 published an advertisement inviting the public to submit memoranda. Further, in a letter dated 6<sup>th</sup> February, 2020 the Committee invited individuals and institutions to make presentations on the Bill. The meeting was held on Thursday 13<sup>th</sup> February, 2020 in the Mini Chamber, County Hall, Parliament Buildings.

The following individuals and institutions submitted their memoranda and appeared before the Committee:

1. The Kenya National Commission on Human Rights (KNCHR);
2. NANGA Board Members;
3. Waringa Wagemu, a Community Mental Health Worker;
4. True North Society;
5. Validity ;and
6. Safe Hands Organisation on behalf of –
  - (i) Tunawiri CBO; and
  - (ii) Speak Mind Love Organisation.

The report is in two volumes. Volume 1 of the Bill contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of the individuals and institutions that submitted their memoranda and participated in the public hearing meeting.

Volume 2 of the Bill contains adoption schedule, a copy of the newspaper advertisements of Monday, October 7, 2019 inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on 13<sup>th</sup> February, 2020 and the minutes of the committee sittings during the consideration of the Bill.

May I take this opportunity to thank and commend Committee Members for devotion and commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction and finally the Committee secretariat for exemplary performance in the provision of technical and logistical support. Indeed, their efforts were critical in the consideration of the Bill and production of this report.

The Committee also reiterates its gratitude to stakeholders who made submissions in relation to the Consideration of the Bill. On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 127 (4), it is my pleasant privilege and duty to present the House a report of the Committee on its consideration of the **Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018)**

**HON. SABINA CHEGE,  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

## **1.0 PREFACE**

### **1.1 Establishment and Mandate of the Committee**

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216(5) of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee is to;
  - a) *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
  - b) *Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
  - c) *Study and review all legislation referred to it;*
  - d) *Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
  - e) *Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - f) *Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and*
  - g) *Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

### **1.2 Oversight**

2. In executing this mandate, the Committee oversees State Department of Health and followings SAGAs:
  - i. Ministry of Health
  - ii. Kenya Medical Supplies Authority
  - iii. Kenyatta National Hospital
  - iv. Moi Teaching and Referral Hospital
  - v. Kenya Medical Training College
  - vi. National Hospital Insurance Fund
  - vii. Kenya Medical Research Institute
  - viii. National Aids and Control Council
  - ix. Kenyatta University Teaching, Referral & Research Hospital

### 1.3 Committee Membership

3. The Committee comprises the following Honourable Members;

#### **Chairperson**

Hon. Sabina Chege, MP

MP for Murang'a

**Jubilee Party**

#### **Vice-Chairperson**

Hon. Swarup Ranjan Mishra, MP for Kesses

**Jubilee Party**

#### **Members**

Hon. (Dr.) Eseli Simiyu, MP  
Tongaren Constituency

**Ford Kenya Party**

Hon. (Dr.) James Nyikal, MP  
Seme Constituency

**ODM Party**

Hon. Alfred Agoi Masadia, MP  
Sabatia Constituency

**ANC Party**

Hon. (Dr.) James Kipkosgei Murgor,  
MP

Keiyo North Constituency

**Jubilee Party**

Hon. Muriuki Njagagua, MP  
Mbeere North Constituency

**Jubilee Party**

Hon. (Dr.) Mohamed Dahir Duale, MP  
Daadab Constituency

**KANU Party**

Hon. Stephen Mule, MP  
Matungulu Constituency

**Wiper Democratic Movement  
Party**

Hon. David Ochieng' MP  
Ugenya Constituency

**MDG Party**

Hon. Prof. Mohamud Sheikh  
Mohamed, MP  
Wajir South

**Jubilee Party**

Hon. Esther M. Passaris, MP  
Nairobi County

**ODM Party**

Hon. Gladwell Jesire Cheruiyot, MP  
Baringo County

**KANU Party**

Hon. Kipsengeret Koros, MP  
MP for Sigowet-soin Constituency

**Independent Party**

Hon. Martin Peters Owino, MP  
Ndhiwa Constituency

**ODM Party**

Hon. Mercy Wanjiku Gakuya, MP  
Kasarani Constituency

**Jubilee Party**

Hon. Patrick Munene Ntwiga, MP  
Chuka Igamba Ng'ombe Constituency

**Jubilee Party**

Hon. Tongoyo Gabriel Koshal, MP  
Narok West Constituency

**CCM Party**

Hon. Zachary Kwenya Thuku, MP  
Kinangop Constituency

**Jubilee Party**

#### **1.4 Secretariat**

4. The Committee is facilitated by the following members of the Secretariat;

**Head of the Secretariat**  
Mr. Benjamin Magut  
**Senior Clerk Assistant**

Mr. Muyodi Meldaki Emmanuel  
**Clerk Assistant III**

Ms. Lynette Otieno  
**Legal Counsel I**

Mr. Erick Kanyi  
**Fiscal Analyst**

Ms. Maureen Kweyu  
**Audio Office**

## **2.0 Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018)**

### **2.1 Memorandum of Objects and Reasons of the Bill**

5. The Bill proposes to impose obligations on each level of government to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness. It also proposes to incorporate within the membership of Kenya Mental Health Board representation of the County government. It further seeks to review the membership of the Kenya Mental Health Board from the current fourteen executive's members to nine in order to make the workings of the council more efficient and representative.

## **3.0 Public Participation in the review of the Bill**

### **3.1 Legal provision on public participation**

6. Article 118 (1) (b) of the Constitution of Kenya provides as follows –

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”*

7. Standing Order 127(3) provides as follows –

*“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendation to the House”*

### **3.2 Methodology used by the Committee in public participation**

8. The Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) was considered and passed by the Senate on 24/07/19 and the Amendments were then sent to the National Assembly for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The Amendments were then committed to the Departmental Committee on Health on 12<sup>th</sup> September, 2019 for review.

The review process was to entail public participation through appropriate mechanisms including inviting submission of memoranda, holding public hearings and consulting relevant stakeholders pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly.

9. Pursuant to the said provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Monday, October 7, 2019 published an advertisement

inviting the public to submit memoranda. Further, in a letter dated 6<sup>th</sup> February, 2020 the Committee invited individuals and institutions to make presentations on the Bill. The meeting was held on Thursday 13<sup>th</sup> February, 2020 in the Mini Chamber, County Hall, Parliament Buildings.

10. Volume 1 of the Bill as the contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of the individuals and institutions that submitted their memoranda and participated in the public hearing meeting.
11. Volume 2 of the Bill contains adoption schedule, a copy of the newspaper advertisements of Monday, October 7, 2019 inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on 13<sup>th</sup> February, 2020 and the minutes of the committee sittings during the consideration of the Bill.

#### **4.0 OBSERVATIONS**

The Committee having considered the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) and the submissions from the stakeholders makes the following observations.

- i. The Mental Health Act is outdated and it is therefore important to amend it to reflect the current constitutional reality and address the current needs of people with mental illness.
- ii. The Bill provides that mental health services shall be provided in all health facilities, this will ensure decentralization of services.
- iii. The government needs to incorporate the mental health services into one of its major national health priorities, i.e., Universal Health Coverage (UHC) and to increase access to services, mental health should also be integrated with primary health care which is one of the major components of UHC.
- iv. Committee noted that Part VII of the Mental Health Act, Cap. 248 and proposed amendments in the Senate Bill make provision for the admission and treatment of the members of the Kenya Defense Forces. However, the Mental Health Act does not make similar reference or provisions concerning members of the National Police Service and other uniformed officers.
- v. The Committee, further, noted that all security forces groups are at a high risk of developing mental health illness as a result of various potential traumatic events they encounter during the tenure of their service. In this regard, the Committee's recommends that all security forces, including members of the National Police Service mental wellbeing, be catered for in the Bill.

## 5.0 RECOMMENDATIONS

Upon considering the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) and the submissions from the stakeholders the Committee recommends the following amendments.

### CLAUSE 5

THAT Clause 5 of the Bill be amended in the proposed new Part IA —

- (a) in section 2C (g) by deleting the words “in the Republic”;
- (b) in section 2D by—
  - (i) inserting the word “to” immediately after the word “relating” appearing in subsection (1)(c);
  - (ii) deleting the word “the” appearing in subsection (1)(d) immediately before the word “county” ;
  - (iii) deleting the words “including children, women, youth and elderly persons” appearing in subsection (1)(h) (ii);
  - (iv) deleting the word “Governor’ appearing in subsection (2)(a) and substituting therefor the word “county executive committee”; and
  - (v) inserting the word “the” immediately before the word “National” appearing in subsection (2)(e).
- (c) in section 2E —
  - (i) in subsection (3) by deleting paragraph (a) and substituting therefor the following new paragraph—
    - (a) that one person is nominated to represent each of the following—
      - (i) supporters, guardians or representatives of persons with mental illness in the county;
      - (ii) mental health practitioners in the county;
      - (iii) youth in the county;
      - (iv) persons with disabilities in the county; and
      - (v) religious organizations in the county.

- (ii) in subsection (4) by deleting the words “shall serve for a single term of three years and shall not be eligible for reappointment” and substituting therefor the following word “shall serve for a term of three years renewable once.”
- (d) by inserting the following new subsection immediately after subsection (5) —
  - (6)A county mental health council shall conduct its business and affairs in accordance with the Schedule with the necessary modifications.

**CLAUSE 6**

**THAT** Clause 6 of the Bill be amended in the proposed new Part II—

- (a) in section 3A(2) by deleting the word “medical” appearing in paragraph (a);
- (b) in section 3C(3)—
  - (i) deleting the word “the” appearing in the peremptory statement immediately after the word “inform”;
  - (ii) inserting the word “the” immediately before the word “supporter” appearing in paragraph (a).
- (c) in section 3D by —
  - (i) inserting the word “where suitable” immediately before the word “private” appearing in subsection (1);
  - (ii) deleting the word “fair” appearing in subsection (2) and substituting therefor the words “highest standard of”; and
  - (iii) deleting the words “this section” appearing in subsection (4) and substituting therefor the words “subsections (2) and (3).”
- (d) in section 3E by—
  - (i) deleting the words “whether within or outside a health facility” appearing in subsection (2)(a); and
  - (ii) deleting subsection (4).
- (e) in section 3F by inserting the words “or any other written law” immediately after the words “Act” appearing in subsection (2).

(f) in section 3H (2) by—

- (i) deleting the words “mental” appearing in the peremptory statement;
- (ii) deleting paragraph (c); and
- (iii) deleting paragraph (g);

(g) in section 3I (2) by deleting the word “the doctor of the person with mental illness” appearing in paragraph (d) and substituting therefor the words “a medical practitioner”.

(h) by deleting section 3K.

#### **CLAUSE 7**

**THAT** Clause 7 (a) of the Bill be amended in the proposed new subsection (2)—

(a) in paragraph (a) by—

- (i) deleting the words “in a mental health care set up” appearing in subparagraph (i);
- (ii) deleting the words “in a mental health care set up” appearing in subparagraph (ii);
- (iii) deleting the words “in a mental health care set up” appearing in subparagraph (iii); and
- (iv) deleting the words “in a mental health care set up” appearing in subparagraph (iv);

(b) in paragraph (d) by deleting the words “two persons” and substituting therefor the word “one person”—

(c) by inserting the following new paragraph immediately after paragraph (e) —

“(ea) one person nominated by the Law Society of Kenya; and”

**CLAUSE 10**

**THAT** Clause 10 (a) of the Bill be amended—

- (a) in the proposed new subsection (1C) by inserting the words “of Mental Health” immediately after the word “Director”; and
- (b) in the proposed new subsection (1D) by inserting the words “of Mental Health” immediately after the word “Director”.

**CLAUSE 14**

**THAT** Clause 14 (b) of the Bill be amended by deleting the proposed new subsection (2A) and substituting therefor the following—

(2A) A county mental health council may, by notice in the *Gazette*, designate such a place within a county health facility in the respective county as the county mental health council may consider necessary as a mental health unit.

**CLAUSE 15**

**THAT** Clause 15 of the Bill be amended—

- (a) in the proposed new section 9B by deleting the word “medical” appearing in the peremptory statement in subsection (2);
- (b) in the proposed new section 9C (1) by deleting paragraph (b) and substituting therefor the following—
  - (b)body corporate, to a fine not exceeding five million for the first conviction and ten million for any subsequent conviction.

**CLAUSE 17**

**THAT** Clause 17 of the Bill be amended in the proposed new section 10 –

- (a) in subsection (1) by deleting the word “mental” appearing in paragraph (a); and

(b) in subsection (4) by deleting the word “fort-two” appearing in paragraph (a) and substituting therefor the word “sixty”.

**CLAUSE 22**

**THAT** Clause 22 (b) of the Bill be amended in the proposed new section (1A) by deleting the words “who is carer or relative of that person” appearing in paragraph (d).

**CLAUSE 26**

**THAT** Clause 26 (c) of the Bill be amended in the proposed new subsection (3) by deleting the peremptory statement and substituting therefor the following—

“(3) Upon presentation of a person to a health facility under subsection (2), the person in charge of the health facility shall, within twenty-four hours —”

**CLAUSE 28**

**THAT** Clause 28 of the Bill be amended in the proposed new section 17 by inserting the following new subsections immediately after subsection (6) —

(7) A member of the Kenya Defence Forces shall not be dismissed from service by virtue of being admitted to a mental facility or unit under this section or otherwise seeking treatment under this section.

(8) The provisions of this section shall apply to a member of the National Police Service, with the necessary modifications, subject to the provisions of the National Police Service Act, 2011 and guidelines set by the National Police Service Commission.

**CLAUSE 32**

**THAT** Clause 32 of the Bill be amended in the proposed new section 20A (2) by inserting the following new paragraph immediately after paragraph (c) —

“(ca) a duly appointed supporter of the person with mental illness.”

**CLAUSE 35**

**THAT** Clause 35(a) of the Bill be amended in the proposed new subsection (1B) by deleting the words “by inserting the following new subsection immediately after subsection (1)” appearing in paragraph (b)(iii).

**CLAUSE 36**

**THAT** Clause 36 of the Bill be amended in the proposed new section 24(2) by inserting the following new paragraph immediately after paragraph (a)—

“(aa) a mental health practitioner;”

**CLAUSE 37**

**THAT** Clause 37 of the Bill be amended in the proposed new Part XII-

- (a) in section 27(3) by inserting the word “guardian” immediately after the word “supporter”;
- (b) in section 28 (2) by inserting the word “ or movable” immediately after the word “immovable” appearing in paragraph (a);
- (c) in section 31 by deleting the words “on its own motion” appearing in subsection (1).

**CLAUSE 43**

**THAT** Clause 43 of the Bill be amended in the proposed new section 45 by deleting the words “leaves, is removed or” appearing in subsection (1).

**CLAUSE 49**

**THAT** Clause 49 of the Bill be amended by deleting the words “five hundred thousand” and substituting therefor the word “one million”.

**CLAUSE 51**

**THAT** Clause 51 of Bill be amended by inserting the following new subsection immediately after subsection (2)

(2) At the commencement of this Act, any person who, immediately before the commencement of this Act was a member or staff of any of the Boards proposed to be reconstituted under this Act shall be deemed to be a member or staff of the reconstituted Board for the unexpired period of his or her term of service.


(3) At the commencement of this Act, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in any of the Boards shall by virtue of this sub-section, vest in the new Board under this Act.

(4) At the commencement of this Act, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such date were before such date were vested in, imposed on or enforceable against any Board shall, by virtue of this sub-section, be deemed to be vested in, imposed on or enforceable against the respective new Board.

(3)The Cabinet Secretary shall constitute the new Board within six months of the commencement of this Act.

**CLAUSE 52**

**THAT** Clause 52 of Bill be deleted.

**SIGNED** .....  


**DATE**.....17/3/2020.....

**HON. SABINA CHEGE,**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**

**OVERVIEW OF THE MENTAL HEALTH (AMENDMENT) BILL, (SENATE BILL NO. 32 OF 2018)**

The table below contrasts the various sections of the Bill with the stakeholder's comments

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
2.	2	An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals; and for connected purposes	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'		
3	2	In this Act, unless the context otherwise requires- "Board" means the Kenya Board of Mental Health established under section 4; "court" means the High Court; "Director" means the Director of Medical Services; "magistrate"	Clause 3 of the Bill amends section 2 of the Act by–  1. deleting the definitions of Director, mental hospital, person in charge, person suffering from mental disorder; and	<b>No objection from the stakeholders with relation to this proposed amendments i.e</b>  <b>1. THE KENYA NATIONAL COMMISSION ON</b>	<b>The bill has no reference to <i>person suffering from mental disorder</i>”,</b>  <b><i>“person suffering from mental illness”,</i></b>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>means a magistrate holding a subordinate court of the first class; "manager" means any person appointed under Part XII; "medical practitioner" has the meaning assigned to that term in sections 2 and 3 of the Medical Practitioners and Dentists Act; "mental hospital" means a mental hospital established under section 7; "person in charge", in relation to a mental hospital, means the person for the time being authorized by the Director to be in medical charge of the mental hospital; "person suffering from mental disorder" means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol of substance abuse; "substance abuse" means the maladaptive pattern of use as indicated by</p>	<p>2. inserting new definitions as follows: "Cabinet Secretary", "care treatment and rehabilitation", "county executive committee member", "Director", "health care provider", "Health Information system", "mental health unit", "person in charge", "person with mental illness", "mental health practitioner", "representative" and "supporter"</p>	<p><b>HUMAN RIGHTS (KNCHR);</b></p> <p><b>2. NANGA BOARD MEMBERS;</b></p> <p><b>3. WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>4. SAFE HANDS ORGANISATION</b></p> <p><b>VALIDITY</b></p> <p><b>The Bill is replete with discriminatory and derogatory language which attacks the dignity of persons with mental disabilities as citizens of Kenya.</b></p> <p><b>In addition, the Constitution of</b></p>	<p><i>"psychopathic person" and "mental subnormality" as indicated by Validity.</i></p>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>either recurrent or continued use of any psychoactive substances</p> <p>(such as alcohol, amphetamines, cannabis saliva, cocaine, hallucinogens, inhalants, opioids, sedatives, hypnotics, or anxiolytics) where such use causes or exacerbates persistent or recurrent social, occupational psychological or physical problems; "treatment" includes medical treatment, nursing and care and training under medical supervision.</p>		<p><b>Kenya states that a person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning. At present, the Bill uses derogatory terminology and phraseology which has been widely rejected by persons with mental disabilities and undermines their dignity, including referring to people as</b></p> <p><i>“person suffering from mental disorder”,</i></p> <p><i>“person suffering from mental illness”,</i>  <i>“psychopathic person” and “mental subnormality”.</i></p>	
4.		No provisions as to the	Clause 4 of the Bill	WARINGA	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		purpose and guiding principles of the Act.	<p>amends by the Act by providing for the purpose of the Act and the guiding principles as follows –</p> <p>2A. The purpose of this Act is to provide a framework to—</p> <p>(i) promote the mental health and well-being of all persons, including reducing the incidences of mental illness;</p> <p>(ii) co-ordinate the prevention of mental illness, access to mental health care, treatment and rehabilitation services of persons with mental illness;</p> <p>(iii) reduce the impact of mental illness, including the effects of stigma on individuals, family and the community;</p> <p>(iv) promote recovery from mental</p>	<p><b>WAGEMA</b></p> <p><b>COMMUNITY MENTAL HEALTH WORKER</b></p> <p><b>When we invest in the support system of a person living with a mental health condition, they are empowered to know what they are looking at, listening to and how to take dignified action and empathetic care.</b></p> <p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR); NANGA BOARD MEMBERS; AND</b></p> <p><b>SAFE HANDS ORGANISATION did not comment</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>illness and enhance rehabilitation and integration of person with mental illness into the community; and</p> <p>(v) ensure that the rights of a person with mental illness is protected and safeguarded.</p> <p>Guiding principles</p> <p>2B. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles —</p> <p>(a)the promotion and fulfilment of the right to the highest attainable standard of health as enshrined under Article 43 of the Constitution;</p> <p>(b)preservation of the freedom and dignity of every human being;</p> <p>(c)the fair and equitable treatment of persons with mental</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>illness;</p> <p>(d) the protection of persons with mental illness from discrimination;</p> <p>(e) accountability of duty bearers and transparency in the implementation of this Act;</p> <p>(f) co-ordinated public participation in the formulation and implementation of policies and plans related to care and protection of persons with mental illness;</p> <p>(g) that interventions for the care and protection of persons with mental illness are based on objective information and methods and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the management of facilities and care of persons with mental illness.</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
5		<p>No outline of the obligations of the national and county governments.</p> <p>Insertion of New Part</p>	<p>Clause 5 of the Bill amends the Act to introduce a new Part which outlines the obligations of the national and county governments.</p> <p>The obligations of the national government are provided for in the new clauses 2C as follows –</p> <p>(i) The National Government shall—</p> <p>(a) provide the necessary resources for the provision of mental health care and treatment at National referral health facilities;</p> <p>(b) collaborate with the county governments in—</p> <p>(a) the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of</p>	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission recommends that there be representation in the County Mental Health Councils of at least one member from organizations that advocates/represent persons with mental health conditions or users of mental health services. This will ensure that perspectives from persons in need of mental health care and/or users of mental health services and those with lived experience are properly represented in the Council and its deliberations. This will also be in line with article 4(3) of the Convention on</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>health services to persons with mental illness;</p> <p>(b) expanding and strengthening community and family-based care and support systems for persons with disability;</p> <p>(c) put in place mechanisms to ensure the rights of persons with mental illness are realised;</p> <p>(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;</p> <p>(e) develop standards to be maintained by mental health facilities</p>	<p><b>the Rights of Persons with Disabilities which provides for the close consultation and active involvement of persons with disabilities in decision-making processes that concern issues related to them.</b></p> <p><b>NANGA BOARD MEMBERS;</b></p> <p><b>WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION had no comment</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>including—</p> <p>(a) the number of qualified health professionals required to serve a mental health unit and more specifically the number of psychiatrists, psychologists, psychiatric nurses, counsellors, and psychotherapists;</p> <p>(b) the type and quantity of diagnostic and therapeutic equipment required by a mental health unit; and</p> <p>(c) the medication and methods of care, rehabilitation and treatment to be administered to persons with mental illness.</p> <p>(f) develop programmes for the rehabilitation of persons with mental illness;</p> <p>(g) promote research, data collection, analysis</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>and the sharing and dissemination of information on the welfare of persons with mental illness in the Republic;</p> <p>(h) carry out sensitization programmes on and promote access to information on the care and management of persons with mental illness;</p> <p>(i) develop and implement strategies and programmes to curb stigma related to mental health and mental health care and treatment; and</p> <p>(j) implement programmes and strategies to guarantee students access information on mental health, mental health care and treatment.</p> <p>The obligations of the county government are provided for in the</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>new clauses 2D as follows—</p> <p>2D. The County governments shall—</p> <p>(a) provide mental health care, treatment and rehabilitation services within the county health facilities, in particular ensure that level 2, 3, 4 and 5 county health facilities set aside dedicated clinics to offer outpatient services for persons with mental illness;</p> <p>(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;</p> <p>(c) implement the national policy and strategies relating to mental illness and mental health care</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(d) allocate funds necessary for the provision of mental health care in the county budgets;</p> <p>(e) provide appropriate resources, facilities, services and personnel capable of dealing with mental illness at the community level;</p> <p>(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;</p> <p>(g) formulate and implement county specific programmes to deal with stigma associated with mental illness;</p> <p>(h) ensure mental health interventions at county level—</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(a) are comprehensive and include prevention, early intervention, treatment, continuing care and prevention from relapse;</p> <p>(b) target persons at risk of developing mental illness including children, women, youth and elderly persons;</p> <p>(c) target persons affected by catastrophic incidences and emergencies; and</p> <p>(d) include education, awareness and training on mental health promotion and interventions; and</p> <p>(i) provide adequate resources to ensure a person with mental illness lives a dignified and life outside the mental health unit by financing efforts towards reintegrating the person in to the</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>community.</p> <p>The county executive committee member in each county shall be required to —</p> <p>(i) advise the Governor on all matters relating to the status of mental health and mental illness in the county;</p> <p>(ii) develop and implement county specific programmes that promote the rights of persons with mental illness in the county;</p> <p>(iii) monitor and evaluate the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;</p> <p>(iv) initiate and organise community or family based programmes for the care of persons</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>suffering from mental illness;</p> <p>(v) co-ordinate the implementation of programmes relating to persons with mental illness in the county developed by National Government;</p> <p>(vi) prepare and publish reports containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation to persons with mental illness;</p> <p>(vii) advise the Board on the implementation of county specific programmes on mental health;</p> <p>(viii) collaborate with the Board and such other relevant agencies in ensuring a coordinated approach in the delivery of mental health services in the respective county;</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(ix) undertake the collection and dissemination of data on mental health in the respective county; and</p> <p>(x) coordinate the activities of all institutions, private sector institutions, non-governmental organisations and community-based organisation involved in the delivery of mental health services in the county.</p> <p>2E. (1) There is established in each county government a county mental health council.</p> <p>(2) The county mental health council shall consist of—</p> <p>(a) the county director of health appointed under section 19 of the Health Act;</p> <p>(b) the chairperson to the county education</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>board established under section 17 of the Basic Education Act or a representative; and</p> <p>(c) five persons nominated by the county executive committee member by notice in the Gazette.</p> <p>(3) The county executive committee member when making appointments under subsection 2 (c) shall ensure —</p> <p>(a) that one person is nominated from each of the following organisations—</p> <p>(i) a body representing caregivers of persons with mental illness in the county; and</p> <p>(ii) a body representing the mental health practitioners in the county; and</p> <p>(b) the one third gender principle is</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>observed.</p> <p>(4) The members of the county mental health council, except the person appointed under subsection (2) (a) and (b) shall serve for a single term of three years and shall not be eligible for reappointment.</p> <p>(5) A member of the county mental health council shall cease to be member if that person—</p> <p>(a) is absent from three consecutive meetings of the council without the permission of the chairperson;</p> <p>(b) resigns in writing, addressed, to the county executive committee member;</p> <p>(c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;</p> <p>(d) is declared bankrupt;</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(e) is unable to perform the functions of his office by reason of mental or physical infirmity; or</p> <p>(f) dies.</p>		
6			<p>Clause 6 provides for the rights of persons with mental illness. Every person with mental illness has the right to —</p> <p>(a) fully participate in the affairs of the community and in any position suitable and based on the person's interests and capabilities;</p> <p>(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;</p> <p>(c) protection from physical and mental abuse and any form of</p>	<p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission recognizes that on a positive note, clause 6 proposes to introduce clause 3K which recognizes the right of a person with a mental illness to equal recognition before the law and enjoyment of rights on an equal basis with other persons in all aspects of life. In addition, the Bill recognizes the role of a 'supporter' who should act in accordance with the will and preference of the person with a</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>discrimination and to be free from exploitation;</p> <p>(d) take part in activities that promote the person's social, physical, mental and emotional well-being; and</p> <p>(e) receive reasonable care, assistance and protection from their family and the State.</p>	<p><b>mental health condition.</b></p> <p><b>Clause 6 3I (3) (d) provides that a supportive decision-making agreement should be attested by two or more witnesses, one of whom should be the doctor of the person with a mental health condition. We propose to change from doctor to 'mental health practitioner' which encompasses a broader range of mental health professionals, given the dearth of 'doctors' in some parts of the country. The rationale for this is that it should be as easy as possible to appoint a supporter and the law must not make the process challenging. If effecting a supporter is difficult, the default position will remain</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>that of 'representative' which is contrary to article 12 of the CRPD.</p> <p>Clause 6 3I should provide a draft form for appointment of a supporter to give users of mental health services a concrete idea about what a supportive decision-making agreement comprises</p> <p><b>VALIDITY FOUNDATION</b></p> <p>Informed consent in the field of health refers to the process whereby explicit information is provided to a person in a language and format they can access and which is relevant for them to decide on whether or not to have a particular treatment, to choose from a range of options, to</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>deny treatment, or to participate in a particular experiment.</p> <p>The validity of informed consent is premised upon the full disclosure of appropriate information to a person who is then permitted to make a voluntary choice.</p> <p>A recent ruling from Australia further elaborated on informed consent, stating that a person cannot be deemed to lack the capacity to give informed consent simply by making a decision that others consider to be unwise according to their individual values and situation. To impose upon persons with</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>mental disabilities a higher threshold of capacity, and to afford them less respect for personal autonomy and individual dignity, than people without disabilities, would be discriminatory.</b></p> <p><b>For instance, while Section 3B recognises the right to informed consent to treatment, and participation in development of a treatment plan, Section 3C (2) proceeds to deny that right by substituting the decision making with a representative.</b></p> <p><b>In so doing, this approach fundamentally undermines the principle that health care and</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>treatment should only be provided on the basis of informed consent, and should be removed</p> <p><i>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. In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.7 The Committee called on the Government of Kenya to –</i></p> <p>(a) Eliminate all</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee's General Comment No. 1 (2014) on equal recognition before the law;</b></p> <p><b>(b) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>(c) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and</p> <p>(d) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>Clause 3F alludes to admission via the Criminal Procedure Code.</b></p> <p><b>In compliance with Article 14 CRPD, legislative reforms should remove the possibility that 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.</b></p>	
New Additional amendment	Part II	<p>Reception Of Persons In Mental Hospitals</p> <p>3. Reception into mental hospital</p> <p>Subject to the Criminal Procedure Code (Cap. 75), no person shall be received or detained for treatment in a mental hospital unless he is received and detained under this Act.</p>	<p>Rights of persons with mental illness.</p> <p>3. Every person with mental illness has the right to—</p> <p>(a) fully participate in the affairs of the community in any position suitable and based on the person’s interests and capabilities;</p> <p>(b) access</p>	<p><b>NANGA BOARD MEMBERS; WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION did not comment</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>medical, social and legal services for the enhancement of the protection of the rights of the person under the Constitution;</p> <p>(c) protection from physical and mental abuse and any form of discrimination and to be free from exploitation;</p> <p>(d) take part in activities that promote the person's social, physical, mental and emotional well-being; and</p> <p>(e) receive reasonable care, assistance and protection from their family and the State.</p> <p>Right to mental health services</p> <p>3A. A person with mental illness has the right to appropriate, affordable, accessible physical and mental</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>medical health care, counselling, rehabilitation and (d) after-care .</p>		
		<p>No provision on Consent to treatment</p>	<p>Consent to treatment</p> <p>3B. 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.</p>		
		<p>No provision on Right to participate in treatment planning</p>	<p>Right to participate in treatment planning</p> <p>3C. A person with mental illness has a right to participate in the formulation of their treatment plans and where incapable,</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>their representative shall be entitled to participate in the formulation of the treatment plans.</p>		
		<p>No provision on Access to medical insurance</p>	<p>Access to medical insurance</p> <p>3D. A person with mental illness shall have the right of access to medical insurance for the treatment from public or private health insurance providers.</p> <p>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.</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>No provision on Protection of persons with mental illness</p>	<p>Protection of persons with mental illness</p> <p>3E. 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 unit). 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.</p> <p>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.</p> <p>The Bill provides for the following additional rights of persons with mental illness —</p>	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission welcomes clause 3J which elaborates on the role of the supporter. Recognition of this role is in line with article 12(3) of the UN Convention on the Rights of Persons with Disabilities which places an obligation on States Parties to provide access by persons with disabilities to the support they may require in exercising their legal capacity.</b></p> <p><b>2. NANGA</b></p> <p><b>Diversion is a practice of placing offenders in mental health treatment instead of prison or jail;</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(a) Right to civil, political and economic rights</p> <p>(b) Right to access to information</p> <p>(c) Right to confidentiality</p> <p>(d) Right to representation</p> <p>(e) Right to recognition before the law.</p> <p>Legal Capacity</p> <p>3K. A person with mental illness has a right to recognition before the law and shall enjoy legal rights on an equal basis with other persons in all aspects of life.</p>	<p><b>Occupational Safety And Health Administration For Correctional Officers; and</b></p> <p><b>Psychiatric Medication</b></p> <p><b>WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION</b> did not comment</p>	<p><b>3K conflicts with set legal principal on capacity. The mental status of person is a key consideration in determining capacity and this should have exceptions.</b></p>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
7	4	<p>PART III-THE KENYA BOARD OF MENTAL HEALTH 4.</p> <p>(1) There shall be established a Board to be known as the Kenya Board of Mental Health for the purposes of this Act.</p> <p>(2) The Board shall consist of-</p> <p>(a) a chairman, who shall be the Director of Medical Services or a Deputy Director of Medical Services appointed by the Minister;</p> <p>(b) one medical practitioner with specialization and experience in mental health care appointed by the Minister;</p> <p>(c) one clinical officer with training and experience in mental health care appointed by the Minister;</p> <p>(d) one nurse with training and experience in mental health care</p>	<p>Clause 7 seeks to reconstitute the Kenya Board of Mental Health which consists of—</p> <p>(a) a chairman, who shall be the Director of Medical Services or a Deputy Director of Medical Services appointed by the Minister;</p> <p>(b) the following persons with knowledge and at least four years' experience in mental healthcare—</p> <p>(i) a psychiatrist, in active practice in a mental health care set up, nominated by the Medical Practitioners and Dentists Board;</p> <p>(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board;</p> <p>(iii) a psychiatric nurse, in active</p>	<p><b>All the stakeholders joined their voice in this proposed amendments.</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>appointed by the Minister;</p> <p>(e) the Commissioner for Social Services or where the Commissioner cannot serve, his nominee appointed by the Minister;</p> <p>(f) the Director of Education or, where the Director cannot serve, his nominee appointed by the Minister;</p> <p>(g) a representative of each of the provinces of Kenya being persons resident in the provinces, appointed by the Minister.</p> <p>(3) The members of the Board appointed by the Minister shall serve at the Minister's pleasure for a period not exceeding three years and shall be eligible for re-appointment.</p> <p>(4) The Board may co-opt any person whose skills, knowledge or experience may be useful to the Board or to any committee of the</p>	<p>practice in a mental health care set up, nominated by the Nursing Council of Kenya;</p> <p>(iv) a clinical officer, in active practice in a mental health care set up, nominated by the Clinical Officers Council.</p> <p>(c) one person nominated by such organisations that advocate for the rights of persons with mental illness as the Cabinet Secretary may determine</p> <p>(d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;</p> <p>(e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>Board.</p> <p>(5) The Board may for any purpose or function establish committees of the Board.</p> <p>(6) Subject to this section, the Board shall regulate its own procedure and the procedure of any committee established by it.</p>	<p>(f) The Director of Mental Health, who shall be the secretary to the Board an ex officio member of the Board.</p>		
8	New Sections 4A-4C	No provision on the manner in which a vacancy may occur in the Board, the procedure for removal of Board members and delegation of the exercise of the powers of the Board.	Clause 8 of the Bill proposes to insert new provisions in the act to provide for the manner in which a vacancy may occur in the Board, the procedure for removal of Board members and delegation of the exercise of the powers of the Board.		
9	5	<p>5. The functions of the Board shall, under the control and direction of the Minister, be-</p> <p>(a) to co-ordinate the mental health care activities in Kenya; (deleted)</p> <p>(b) to advise the</p>	<p>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 –</p> <p>b)to advise the national and county governments on the</p>	<p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission makes the following proposals in terms of the functions of the Board:</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>Government on the state of mental health and mental health care facilities in Kenya; (substituted)</p> <p>(c) to approve the establishment of mental hospitals; (substituted)</p> <p>(d) to inspect mental hospitals to ensure that they meet the prescribed standards: (substituted)</p> <p>(e) to assist, whenever necessary, in the administration of any mental hospital;</p> <p>(f) to receive and investigate any matter referred to it by a patient or a relative of a patient concerning the treatment of the patient at a mental hospital and where necessary to take, or recommend to the Minister, any remedial action;</p> <p>(g) to advise the Government on the care of persons suffering from mental subnormality without mental disorder;</p>	<p>state of mental health and mental health care facilities in Kenya;</p> <p>(c) to set the standards for the establishment of mental health facilities and approve the establishment of national referral mental health facilities;</p> <p>(ca) to inspect mental health facilities to ensure that they meet the prescribed standards;</p> <p>(d) to assist, whenever necessary, in the administration of any mental health facilities;</p> <p>(h) 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 unit and where necessary to advise the Cabinet Secretary or county executive committee member on</p>	<p><b>➤ Review of use of restraint/seclusion- In order to support a complete ban on the use of seclusion and restraint, the Commission proposes that the Board be given an express mandate to review reports of restraint and seclusion by mental health facilities.</b></p> <p><b>NANGA BOARD MEMBERS; WARINGA WAGEMBA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION had no comment on this.</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>(h) to initiate and organize community or family based programmes for the care of persons suffering from mental disorder; and (substituted)</p> <p>(i) to perform such other functions as may be conferred upon it by or under this or other written law.</p>	<p>appropriate remedial action;</p> <p>(f) to advise the national and county governments on the care of persons suffering from mental subnormality without mental illness;</p> <p>(ha) to develop guidelines on emergency treatment of persons with mental illness the procedures to be adhered to during emergency treatment;</p> <p>(hb) 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;</p> <p>(ha)to prepare reports on prevalence of</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>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</p> <p>to perform such other functions as may be conferred upon it by or under this or other written law.</p>		
10	6 & 7	<p>The Director of Mental Health and staff of the Board</p> <p>6. (1) There shall be a Director of Mental Health whose office shall be an office in the public service and who shall be the secretary and chief executive officer of the Board.</p> <p>(2) There may be appointed such staff for the Board, who may be public officers, as are necessary to enable the Board to effectively carry out its functions.</p>	<p>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 –</p> <p>(a) holds a masters of medicine degree in psychiatry from a university</p>	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR);</b></p> <p><b>2. NANGA BOARD MEMBERS;</b></p> <p><b>3. WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION all agreed to this proposed amendment.</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>Section 7 of the Mental Health Act establishes the District mental health councils. The councils are appointed by the Cabinet Secretary 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 Cabinet Secretary's pleasure but for not more than three years at one time and shall be eligible for re-appointment.</p>	<p>recognized in Kenya;</p> <p>(b) is registered by the Medical Practitioners and Dentists Board as a psychiatrist;</p> <p>(c) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and</p> <p>(d) meets the requirements of Chapter Six of the Constitution.</p>		
11	7.	<p>District mental health councils</p> <p>7(1) The Minister may, in consultation with the Board, appoint district mental health councils to perform, at the district level, such of the Board's functions as the Minister shall direct and report thereon to</p>	<p>Clause 11 of the Bill proposes to amend the Act by deleting the provision on District mental health councils.</p>	<p><b>No comment</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>the Board in such manner as the Minister shall approve.</p> <p>(2) A district mental health council shall consist of not less than five and not more than seven persons including the district medical officer of health.</p> <p>(3) The members of a district mental health council other than the district medical officer of health shall serve thereon at the Minister's pleasure but for not more than three years at one time and shall be eligible for re-appointment.</p> <p>(4) For the purposes of this section the Nairobi Area shall be a district for which a district mental health council may be appointed.</p>			
12		<p>Expenses of the Board and the district mental health councils</p> <p>8, (1) The expenses of the Board and the district mental health councils shall be met</p>	<p>Clause 12 of the Bill proposes to amend section 8 of the principal Act in view of the deletion of District mental health councils, this is a consequential</p>	<b>No comment</b>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>out of funds voted for the purpose by Parliament.</p> <p>(2) There may be paid to the members of the Board, other than public officers in receipt of a salary, such allowances as the Minister, in consultation with the Minister for the time being responsible for finance, shall determine.</p>	<p>amendment.</p>		
13		<p>PART IV-MENTAL HOSPITALS 9.</p> <p>(1) A mental hospital authorized by the Director under section 2 of the Mental Treatment Act</p> <p>(now repealed) shall be deemed to have been established under this Act.</p> <p>(2) A hospital or part of a hospital or other place may be authorized by the Board, by notice in the Gazette, to be a mental hospital and a place for the reception and treatment as in-patients of two or more</p>	<p>Clause 13 amend the part heading for PART IV this is a consequential amendment in view of introduction of new terms such as “mental health units”</p>	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR);</b></p> <p><b>2. NANGA BOARD MEMBERS;</b></p> <p><b>3. WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION</b></p> <p><b>All agreed to this proposed</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>persons who are suffering from mental disorder.</p> <p>(3) The Board may, under this section, authorize places within prisons established under the Prisons Act to be places for the reception and treatment during their term of remand or imprisonment of remand prisoners and convicted criminal prisoners who are persons suffering from mental disorder.</p> <p>(4) An application to the Board for authority to establish a mental hospital shall be in the prescribed form accompanied by the prescribed fee.</p> <p>(5) The Minister may, in consultation with the Board make rules for the control and proper management of mental hospitals and may by such rules prescribe the standards to be maintained for mental hospitals.</p>		<p><b>amendment.</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>(6) Every mental hospital shall have facilities for in-patient and out-patient treatment of persons suffering from mental disorder.</p> <p>(7) There may be established public mental hospitals operated and managed by the Government and private mental hospitals operated and managed by persons other than the Government.</p> <p>Establishment of mental hospitals. Cap.248 (1970). Cap.90.</p>			
14		No provision for the Management of Mental Health Facilities, Admission and Treatment of Persons with Mental Illness.	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 such places within a national referral hospital or any other national government unit as the Board may consider necessary as	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission calls for an absolute ban on the use of seclusion and restraint in mental health facilities and removal of clause 9E. The ban should be accompanied by</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>a mental health unit.</p> <p>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 unit or provide mental health services in an existing county health unit shall make an application (together with the prescribed fee) for designation of the unit to the respective county executive committee member in the prescribed form.</p> <p>The Cabinet Secretary in consultation with the Board and the Council of County Governors shall be required to make rules for the control and</p>	<p><b>a national strategy working towards the ban of seclusion and use of restraint in mental health facilities to be developed by the Mental Health Board in consultation with organizations of persons with disabilities. The inclusion of organizations of persons with disabilities is in line with article 4(3) of the CRPD and is critical in ensuring that persons with lived experiences of mental health conditions, families and researchers input into the strategy. The national strategy would address challenges and support mental health providers as they work towards the absolute ban on restraint and seclusion which is prevalent in practice. In any event, seclusion and</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>proper management of mental health facilities including setting the standards to be maintained for mental health facilities.</p> <p>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.</p>	<p><b>restraints should not be used on children/minors.</b></p> <p><b>NANGA BOARD MEMBERS; WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION</b>  <b>all joined their voices in support of the amendment and the sentiments of THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).</b></p>	
15		No provisio for the establishment of mental health facilities	Clause 15 of the Bill provides for the establishment of mental health facilities which may be public (operated	<b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR</b>  <b>The Commission</b>	<b>Clause 15 of the Bill proposes introduction of clause 9F which provides that mental health</b>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>and managed by the national or a county government) or private mental health unit.</p> <p>To establish a mental health unit, 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 unit must be a mental health practitioner qualified and duly registered as a psychiatrist, psychologist or a clinical officer.</p> <p>The Bill provides for the offence of fraudulent procurement of registration of private mental health facilities. The penalty for contravening this provision is –</p>	<p><b>remains concerned that the Bill under clause 15 proposes to retain under proposed new section 9E provisions that allow for seclusion and restraint in circumstances prescribed under the Bill, the prescribed procedures and upon authorization by a mental health practitioner. The Committee on the Rights of Persons with Disabilities as well as the Special Rapporteur on Torture and other Cruel, Inhuman 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.</b></p> <p><b>The observations</b></p>	<p>services shall not be administered without informed consent of the user of mental health services or his/her representative. In addition, consent is deemed to be valid if the user of mental health services or his/her representative is competent to give consent; consent is given freely without threats or improper inducements; there is appropriate disclosure of information on the type, purpose and likely duration of the treatment and expected benefits; choices where available are given to the user of mental health services</p>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(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</p> <p>(b) a fine not exceeding ten million shillings, for a body corporate.</p> <p>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.</p> <p>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—</p> <p>(a) the number of voluntary or involuntary patients</p>	<p>are made in light of the mental, emotional and physical harm that users of mental health services have experienced or are likely experience from the use of seclusion and restraint. Kenya is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provides for the absolute prohibition against torture under article 2 of the Convention. It is on this basis that the Commission strongly recommends that the National Assembly removes new proposed clause 9E and provides for the absolute ban of the use of seclusion and restraint.</p>	<p>and consent is written and documented in the person's medical records.</p>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>the mental health unit has received;</p> <p>(b) the number of voluntary or involuntary patients the mental health unit has discharged;</p> <p>(c) the number of voluntary patients or involuntary patients still under the care of the mental health unit; and</p> <p>(d) the number of voluntary or involuntary patients who have died in the course of treatment in the mental health unit.</p> <p>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</p>	<p><b>NANGA BOARD MEMBERS;</b>  <b>WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION all joined their voices in support of the amendment and the sentiments of THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).</b></p> <p><b>VALIDITY FOUNDATION</b></p> <p><b>In its present form, the Bill would legalise abusive practices which breach Constitutional protections and the human rights of persons with mental disabilities</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>shall not be prolonged beyond the period which is strictly necessary to —</p> <p>(a) administer treatment to the person with mental illness; or</p> <p>(b) allow the person with mental illness to co-habit peacefully with other users within the mental health unit or the person’s family, or with members of the community.</p> <p>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</p>	<p><b>including legislating to enable</b></p> <p><b>involuntary detention, forced treatment, seclusion, restraint and electro-convulsive therapy (“ECT”).</b></p> <p><b>Clause 9D provides that mental health treatments may be authorised by a representative without the informed consent of the person concerned. This means that the Bill allows for the treatment of people without their consent. Involuntary psychiatric intervention/treatment is</b></p> <p><b>contrary to the rights to health on the basis of informed consent and personal integrity</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>unit. Within twenty-four hours, notice of the restraint or seclusion shall be given to the representative of the person with mental illness.</p> <p>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 —</p> <p>(a) the person with mental illness or the person's representative is competent to give the consent;</p> <p>(b) consent is given freely without threats or improper inducements;</p> <p>(c) there is appropriate and adequate disclosure of all relevant information relating</p>	<p><b>guaranteed under Articles 25 and 17, respectively, of the CRPD. Certain forms of involuntary treatment are also likely to amount to torture or ill-treatment in contravention of Article 15 CRPD and the Convention against Torture.</b></p> <p><b>Further, the option of empowering "representatives" to consent to treatment or hospitalisation of people without their consent or against their will undermines their legal capacity. This is a serious misunderstanding and misconstruction of the concept of "support" which is set out under Article 12 of the CRPD and Article 7 of the Protocol to</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>to treatment, including information on the type, purpose, likely duration and expected benefits of the treatment;</p> <p>(d) choices, where available, are given to the person with mental illness in accordance with prescribed clinical practice; and</p> <p>(e) consent is written and documented in the person with mental illness' records.</p>	<p><b>the African Charter on the Rights of Persons with Disabilities.</b></p> <p><i>(i) 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. In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.7 The Committee called on the</i></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>Government of Kenya to –</b></p> <p><b>(e) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;</b></p> <p><b>(f) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>legal capacity on a customary basis;</p> <p>(g) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and</p> <p>(h) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>involvement of all relevant stakeholders.</b></p> <p><b>Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A )</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>Clause 9E allows for the use of seclusion and physical restraint. The CRPD Committee, as well as the</p> <p>Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, have both called for an end to all coercive and non-consensual psychiatric interventions including the use of restraint and seclusion as such practices may amount to torture or ill-treatment, violating Article 15 CRPD.</p> <p>The application of seclusion and restraints as provided in 9E cannot be regarded</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>as justifiable and these possibilities should be explicitly prohibited under the law.</p>	
17	10	<p>Section 10 of the Act on power to receive voluntary patients</p> <p>PART V- VOLUNTARY PATIENTS 10.</p> <p>(1) Any person who has attained the apparent age of sixteen years, who desires to voluntarily submit himself to treatment for mental disorder and who makes to the person in charge a written application in duplicate in the form prescribed may be received as a voluntary patient into a mental hospital.</p> <p>(2) Any person who has not attained the apparent age of sixteen years and whose parent or guardian desires to submit him to treatment for mental disorder</p>	<p>Section 10 of the Act is deleted and substituted with clause 17 on voluntary admission of a patient. A person who presents themselves voluntarily to a mental health unit for treatment or admission shall be entitled to receive appropriate care and treatment or to be referred to an appropriate mental health unit.</p> <p>Where a person below the age of eighteen years requires voluntary admission to a mental health unit, 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</p>	<p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission proposes that 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.</b></p> <p><b>NANGA BOARD MEMBERS; WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION all joined their</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>may, if the parent or guardian makes to the person in charge of a mental hospital a written application in duplicate in the prescribed form, be received as a voluntary patient.</p> <p>(3) Any person received as a voluntary patient under this section may leave the mental hospital, upon giving to the person in charge seventy-two hours' notice in writing of his intention to leave and if he is a person who has not attained the apparent age of sixteen years, upon such notice being given by his parent or guardian, and the release shall be at the discretion of the person in charge of the mental hospital concerned.</p>	<p>unit for the admission of the child.</p> <p>The person in charge of a mental health unit shall review or cause the condition of the person to be reviewed, within seventy-two hours.</p> <p>The Board shall in consultation with the Council of County Governors formulate guidelines on —</p> <p>(a) the conditions for admitting and retaining a voluntary patient, beyond forty-two days, after the patient becomes incapable of expressing themselves;</p> <p>(b) the procedure to be followed by the mental health unit while dealing with a patient who is a minor, where the parents or guardians of the patient die, become incapable of representing the</p>	<p><b>voices in support of the amendment and the sentiments of THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>patient or refuse or neglect to perform their duties under the Act; and</p> <p>(c) the conditions and procedure for discharging a patient on voluntary admission</p>		
2		<p>PART VI- INVOLUNTARY PATIENTS 14.</p> <p>(1) Subject to this section, a person who is suffering from mental disorder and is likely to benefit by treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive treatment may, on a written application under this section, be received into a mental hospital as an involuntary patient for treatment,</p> <p>(2) An application under this section shall be made in the prescribed form to the person in charge and shall be made-</p>	<p>Clause 22 of the Bill provides for involuntary admission. A person may be admitted involuntarily –</p> <p>(a) when there is a serious likelihood of immediate or imminent harm to that person or to other persons; or</p> <p>(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 –</p> <p>(a) lead to a serious deterioration in the condition of that person; or</p>	<p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>Clause 22(1A)(a) provides that an application for involuntary treatment can be made by a supporter of the person with a mental health condition. The role of a supporter is to act in accordance to the will and preferences of the individual. Involuntary commitment is inherently about admitting and treating an individual without his/her consent</b></p>	<p><b>Commission calls for the removal of the proposed provisions on involuntary admission in the Bill specifically clause 22 of the Bill to ensure compliance with the CRPD. Concomitantly, the State should develop a wide range of community-based services that respond to the needs of persons with disabilities and respect the person's autonomy, choices, dignity and privacy, including peer</b></p>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>(a) by the husband or wife, or by a relative, of the person to whom it relates; or</p> <p>(b) if there is no husband, wife or relative available or willing to make an application, by any other person who shall state in his application the reason why it is not made as provided under paragraph</p> <p>(a), the connection of the applicant with the person to whom the application relates and the circumstances in which the application is made.</p> <p>(3) The application shall be accompanied by a recommendation in duplicate, in the prescribed form. signed by a medical practitioner, who shall where practicable be the usual medical practitioner attending the person concerned and where this is not practicable a medical practitioner approved</p>	<p>(b) hinder the provision of appropriate treatment that can only be given by admission to a mental health unit.</p> <p>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 unit may extend the period for one further period not exceeding three months.</p>	<p><b>(otherwise, the person would voluntarily admit themselves to hospital). Implicating a supporter in involuntary treatment would damage the relationship of trust that should exist between the individual and his/her supporter, whose main role is to give effect to the person's will and preferences. In involuntary treatment, the expressed will and preference of the individual is to not receive treatment.</b></p> <p><b>NANGA BOARD MEMBERS; WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION</b></p>	<p>support and other alternatives to the medical model of mental health as urged by the Committee on the 'Rights of Persons with Disabilities in its Concluding Observations to Kenya.</p>

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>by the Director for the purpose of making any such recommendation, shall make it.</p> <p>(4) The medical practitioner who makes a recommendation under this section shall, before signing the recommendation, examine the person to whom the recommendation relates and specify in the recommendation the date or dates on which he examined the person and the grounds on which the recommendation is based.</p> <p>(5) A recommendation shall cease to have effect on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.</p> <p>(6) A person received as an involuntary patient into a mental hospital may be admitted in the hospital for a period not</p>		<p><b>all joined their voices in support of the amendment and the sentiments of THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).</b></p> <p><b>VALIDITY FOUNDATION</b></p> <p><b>While we acknowledge the need for serious reform of emergency admissions, which the Bill proposes should only be held for 24 hours, the choice to retain such draconian and coercive measures will also result in forced detention and deprivation of liberty in conflict with CRPD Article 14.</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>exceeding six months which period may be extended by the person in charge for a further period not exceeding six months; Provided that an involuntary patient shall not be admitted in a mental hospital for any continuous period exceeding twelve months.</p> <p>(7) Where a person has been received into a mental hospital as an involuntary patient under this section, or if a patient so received dies in or departs from the mental hospital, information of the reception, death or departure shall be given by the person in charge to the district mental health council.</p>		<p><b>Deprivation of liberty on the grounds of actual or perceived “mental illness” or mental disability is unjustified, a position which has been authoritatively stated by the UN Special Rapporteur on Torture, Inhuman and Degrading Treatment or Punishment,<sup>8</sup> the CRPD Committee,<sup>9</sup> and more recently in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities.</b></p> <p><b>In their concluding observations on Kenya’s report, the CRPD Committee called on the Government of</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>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.</p> <p>The above refers to clauses 21 and 22 on the procedure of admission for “<i>involuntary patients</i>” where a family member can have a person admitted without their consent. Further the Police have the power to</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>escort a person for admission at a mental health facility. Clauses 45 and 49 of the Bill make reference to</p> <p>aiding escape of a person from a mental health facility or permitting them to leave unlawfully commits an offence.</p>	
25		No provision for conditions for emergency admission and treatment	<p>Clause 25 of the Bill provides for conditions for emergency admission and treatment when –</p> <p>(a) there is immediate and imminent danger to the health and safety of the person with mental illness or other people;</p> <p>(b) the nature of danger is such that there needs to be urgent care and treatment to stabilize the person with mental illness; and</p>	<p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) emphasized on the importance of the protection of the rights of the patients. NANGA BOARD MEMBERS; WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(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.</p> <p>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 longer than necessary to stabilize and treat the person with mental illness or for a period longer than seventy two hours.</p> <p>However, when the mental health practitioner determines that the</p>	<p><b>did not comment</b></p> <p><b>VALIDITY FOUNDATION</b></p> <p><i>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. In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.7 The Committee called on the Government of Kenya to –</i></p> <p><b>(i) Eliminate all formal and informal</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>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.</p>	<p><b>substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee's General Comment No. 1 (2014) on equal recognition before the law;</b></p> <p><b>(j) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;</b></p> <p><b>(k) Support and facilitate</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and</p> <p>(l) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.</p> <p>Other clauses that should be</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A</p>	
27		No provision on court making an order as it considers necessary for the administration and management of the estate of any person with mental	The proposed clause 27 provides that the court may make an order as it considers necessary for the administration and management of the	1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR);	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>estate of any person with mental illness including —</p> <p>(a) an order making provision for the maintenance of the person;</p> <p>(b) an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person; and</p> <p>(c) an order making provision for the payment of the person's debts.</p> <p>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</p>	<p><b>2. NANGA BOARD MEMBERS;</b></p> <p><b>3. WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION</b></p> <p><b>Had no objection to the proposed amendment.</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>illness. Within fourteen days of the Gazette notice, any person may lodge an objection to the person appointed as manager.</p> <p>The manager shall not without the approval of the court —</p> <ol style="list-style-type: none"> <li>1. mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;</li> <li>2. lease any such property for a term exceeding five years; or</li> <li>3. invest in any securities other than those authorized under the Trustee Act.</li> </ol> <p>Further, a manager shall not invest any funds or property belonging to the estate managed—</p> <ol style="list-style-type: none"> <li>1. in any</li> </ol>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>company or undertaking in which the manager has an interest; or</p> <p>2. in the purchase of immovable property without prior consent of the court.</p> <p>The manager shall within six months of the date of appointment, deliver to the court and to the Public Trustee an inventory of —</p> <p>1. the property belonging to the person in respect of whose estate the manager has been appointed;</p> <p>2. all sums of money, goods and effects the manager receives on account of the estate; and</p> <p>3. a statement of debts owed by or due to such person with mental illness.</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>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.</p> <p>The court may on its own motion or upon application for sufficient cause remove any manager and may appoint any other person as manager.</p>		
28	17	Admission And Discharge Of Members Of The Armed Forces	Admission of a member of the Kenya Defence Forces for	<b>NANGA emphasized on the importance of</b>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>17. (1) Notwithstanding anything to the contrary in this Act, any member of the armed forces may be admitted into a mental hospital for observation if a medical officer of the armed forces by a letter addressed to the person in charge certifies that-</p> <p>(a) he has examined the member of the armed forces within a period of forty-eight hours before issuing the letter; and</p> <p>(b) for the reasons recorded in the letter the member of the armed forces is a proper person to be admitted to a mental hospital for observation and treatment.</p> <p>(2) A member of the armed forces may be admitted to a mental hospital under subsection</p> <p>(1) for an initial period not exceeding twenty-eight days from the date of admission and that</p>	<p>observation and treatment.</p> <p>(1) Notwithstanding anything to the contrary in this Act, any member of the Kenya Defence Forces may be admitted in to a mental health unit for observation if a medical officer of the Kenya Defence Forces certifies to the person in charge that—</p> <p>(a) the medical officer has examined the member of the Kenya Defence Forces within a period of forty-eight hours of the admission; and</p> <p>(b) for the reasons recorded in the certificate, the member of the Kenya Defence Forces requires</p>	<p><b>Mental health provisions on the members of the defence forces.</b></p> <p><b>THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR); WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION had no objections.</b></p> <p><b>TRUE NORTH</b></p> <ul style="list-style-type: none"> <li>• <b>They propose that there should be more collaboration by military health units and external civilian hospitals to which they are referred.</b></li> </ul>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>period may be extended if at or before the end of the twenty-eight days two medical practitioners, one of whom shall be a psychiatrist, recommend the extension after re-examining the patient.</p> <p>(3) A member of the armed forces admitted to a mental hospital under subsection</p> <p>(1) may be discharged from that hospital if two medical practitioners, one of whom shall be a psychiatrist, by a letter addressed to the person in charge certify that-</p> <p>(a) they have examined the member of the armed forces within a period of seventy-two hours before issuing the letter; and</p> <p>(b) for the reasons recorded in the letter it is desirable that the member of the armed forces be discharged from the mental hospital and where the mental hospital is not</p>	<p>admission to a mental health unit for observation and treatment.</p> <p>(2) A member of the Kenya Defence Forces may, subject to subsection (3), be admitted to a mental health unit under subsection (1) for an initial period not exceeding fourteen days from the date of admission.</p> <p>(3) A person in charge may extend the period of admission after—</p> <p>(a) carrying out or causing to be carried out a review of the status of mental health of the member of the Kenya Defence Forces;</p>	<ul style="list-style-type: none"> <li>• <b>Such collaboration will involve psychiatrists and psychologists on both ends</b></li> <li>• <b>In the section describing the action taken when a member of the armed forces suffers a mental illness, the rights of the officer should be upheld and their employment not terminated on the grounds of illness/incapacitation.</b></li> </ul>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>an armed forces hospital the member of the armed forces shall be discharged to the nearest armed forces health unit which shall arrange to transport the patient to his armed forces unit.</p> <p>(4) Where any member of the armed forces suffers from mental disorder while away from his armed forces unit, and is in any circumstances admitted into a mental hospital, the person in charge shall inform the nearest armed forces unit directly or through an administrative officer or gazetted police officer.</p> <p>(5) If a member of the armed forces admitted to a mental hospital under this section ceases to be a member of the armed forces while admitted, the relevant authority in the armed forces shall inform the person in charge of that fact and the patient shall be deemed to be an involuntary patient</p>	<p>and</p> <p>(b) seeking the recommendation of two medical practitioners, one of whom shall be a psychiatrist, and the medical officer of the Kenya Defence Forces for the extended admission of the patient.</p> <p>(4) A member of the Kenya Defence Forces admitted to a mental health unit under subsection (1) may be discharged from that hospital if two medical practitioners, one of whom shall be a psychiatrist, by a letter to the person in</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>under Part VI admitted from the date the information is received.</p> <p>Admission of member of armed forces into mental hospital for observation and treatment.</p>	<p>charge certifies that--</p> <p>(a) they have examined the member of the Kenya Defence Forces within a period of seventy-two hours before issuing the letter; and</p> <p>(b) for the reasons recorded in the letter it is desirable that the member of the Kenya Defence Forces be discharged from the mental health unit and where the mental</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>health unit is not within a Kenya Defence Forces hospital the member of the Kenya Defence Forces shall be discharged to the nearest Kenya Defence Forces health unit which shall arrange to transport the patient to the Kenya Defence Forces Unit the patient belongs to.</p> <p>(5) Where any member of the Kenya</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>Defence Forces suffers from mental illness while away from the member's Kenya Defence Forces unit, and is in any circumstances admitted in to a mental health unit, the person in charge shall inform the nearest Kenya Defence Forces unit directly or through an administrative officer or gazetted police officer.</p> <p>(6) If a member of the Kenya Defence Forces admitted to a mental health unit under this section ceases to be a member of the Kenya Defence Forces while admitted, the relevant authority in the Kenya Defence Forces shall inform the person in charge of that fact and the patient shall be deemed to be an involuntary patient under Part VI admitted from the date the information is received.</p>		

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
32	20	<p>No provision on review of mental health status.</p> <p>Section 20. (1) The Minister may after consultation with the Minister for the time being responsible for finance, by notice in the Gazette, prescribe the fees payable for admission of persons into Government mental hospitals under this Part and the manner of payment of those fees.</p> <p>(2) A non-Government mental hospital admitting persons under this Part may charge such fees and in such manner as the Minister for the time being responsible for finance may from time to time approve in writing.</p>	<p>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 —</p> <p>(a) the nature of the illness;</p> <p>(b) the need for care and treatment;</p> <p>(c) the type of care and treatment provided;</p> <p>(d) the need for referral, transfer or discharge; and</p> <p>(e) any other matters related to the mental health status of the person.</p> <p>The review of the mental health status of a person with mental illness may be initiated by —</p>	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>The Commission notes that the supporter is not identified as one of the persons who can initiate such review. The Commission proposes that this should be rectified, as the review of mental health status is a positive measure which the supporter should be able to support the person with a mental health condition initiate.</b></p> <p><b>It is on this basis that the Commission recommends that:</b></p> <p><b>a) The Bill must not allow the supporter to act against the expressed will and preferences of the person with a</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
			<p>(a) the person with mental illness;</p> <p>(b) the mental health care practitioner in charge of managing the person with mental illness;</p> <p>(c) a representative of the person with mental illness;</p> <p>(d) the person in charge of the unit;</p> <p>(e) any other person upon proof of the nature of their interest; or</p> <p>(f) the Board.</p>	<p><b>mental health condition. Therefore, clause 22(1A)(a) should be deleted.</b></p> <p><b>b) The Bill should make the process of appointing a supporter easy, including by providing a sample form for designating supporters and by ensuring that the supportive decision-making agreement can be attested by any mental health practitioner (the term 'mental health practitioner' is defined in Clause 3 of the Bill).</b></p> <p><b>c) The Bill should permit the supporter to initiate review of mental health status under Clause 32 (20A) (2).</b></p> <p><b>NANGA BOARD MEMBERS; WARINGA WAGEMA, A</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>COMMUNITY MENTAL HEALTH WORKER; AND</b></p> <p><b>SAFE HANDS ORGANISATION did not comment</b></p> <p><b>VALIDITY FOUNDATION</b></p> <p><i>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. In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.7 The</i></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p><b>Committee called on the Government of Kenya to –</b></p> <p><b>(m) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;</b></p> <p><b>(n) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>deprivation of legal capacity on a customary basis;</p> <p>(o) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and</p> <p>(p) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities,</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
				<p>ensuring the involvement of all relevant stakeholders.</p> <p>Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A</p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
37		<p>Part XII of the Act on Judicial Power over Persons and Estates of Persons Suffering from Mental Disorder</p> <p><b>PART XII - JUDICIAL POWER OVER PERSONS AND ESTATES OF PERSONS SUFFERING FROM MENTAL DISORDER 26.</b></p> <p>(1) The court may make orders-</p> <p>(a) for the management of the estate of any person suffering from mental disorder; and</p> <p>(b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person-</p> <p>(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person,</p>	<p>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.</p> <p>Part XIV of the Act provides for the following offences under the Act –</p> <ol style="list-style-type: none"> <li>1. Section 47 - Person other than medical practitioner signing certificates;</li> <li>2. Section 48 - False certificates;</li> <li>3. Section 49 - Aiding the escape of person suffering from mental illness;</li> <li>4. Section 50 - Permitting patient to quit mental health unit unlawfully;</li> </ol>	<p><b>1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)</b></p> <p><b>Clause 37 proposes to amend section 26 of the Mental Health Act to the effect that a supporter should be able to apply for an order for the management of the estate of a person with a mental health condition. The role of a supporter is to act in accordance to the will and preferences of the individual. Unless the person with a mental health condition in the support agreement expressly gives the supporter power over property, the supporter, whose main role is to give effect to the person's will and preferences, should not initiate</b></p>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		<p>(3) Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder [o such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such member, of his family as are dependent upon him for maintenance, bur need not, in such case. make any order as to the custody of the person suffering from mental disorder.</p>	<p>5. Section 51 - Ill-treatment of person in mental health unit; and</p> <p>6. Section 52 - Dealings with patients.</p>	<p><b>proceedings to manage the property of the person with a mental health condition. If this role (which is contrary to article 12(5) of the CRPD) must remain in the Bill, the same should be carried out by a representative.</b></p> <p><b>NANGA BOARD MEMBERS; WARINGA WAGEMA, A COMMUNITY MENTAL HEALTH WORKER; AND SAFE HANDS ORGANISATION did not comment</b></p>	
49	53	Section 53 of the Act provides for the general penalty is where no other penalty is expressly provided as a	Clause 49 of the Bill proposes to amend this provision in order to enhance the penalty to a fine not	<b>No comments</b>	

CLAUSE	SECTION	PRINCIPAL ACT	SUMMARY AMENDMENT	STAKEHOLDER COMMENTS	COMMENTS
		fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.	exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.		
50	54	54. The Minister may in consultation with the Board, make regulations - (a) prescribing anything which under this Act;	Clause 50 amends section 54 of the principal Act to provide that the Cabinet Secretary shall make regulations in consultation with the Board and the Council of county Governors.	<b>No comments</b>	
51		56. transitional provisions	Clause 51 provides for the transitional provisions that is transition of existing mental health hospitals and licenses issued by the Board.	<b>No comments</b>	

## **PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION ON THE MENTAL-HEALTH (AMENDMENT) BILL, (SENATE BILL NO. 32 OF 2018)**

The Committee received memorandum from the following individuals and institutions following a call for memoranda through the print media on 10<sup>th</sup> October, 2019 and a letter dated 6<sup>th</sup> February, 2020.

1. The Kenya National Commission on Human Rights (KNCHR)
2. NANGA Board Members
3. Waringa Wagemu - Community Mental Health Worker
4. True North Society
5. Validity
6. Safe Hands Organisation on behalf of –
  - i. Tunawiri CBO; and
  - ii. Speak Mind Love Organisation.

### **1. The Kenya National Commission On Human Rights (KNCHR)**

**Clause 5** - The Commission recommended that there be representation in the County Mental Health Councils of at least one member from organizations that advocates/represent persons with mental health conditions or users of mental health services.

They said it would ensure that perspectives from persons in need of mental health care and/or users of mental health services and those with lived experience are properly represented in the Council and its deliberations.

And it will also be in line with article 4(3) of the Convention on the Rights of Persons with Disabilities which provides for the close consultation and active involvement of persons with disabilities in decision-making processes that concern issues related to them.

**Clause 6** - Proposes to introduce clause 3K which recognizes the right of a person with a mental illness to equal recognition before the law and enjoyment of rights on an equal basis with other persons in all aspects of life. In addition, the Bill recognizes the role of a ‘supporter’ who should act in accordance with the will and preference of the person with a mental health condition.

**Clause 6 3I (3) (d)** - provides that a supportive decision-making agreement should be attested by two or more witnesses, one of whom should be the doctor of the person with a mental health condition. They proposed to change from doctor to ‘mental health practitioner’ which encompasses a broader range of mental health professionals, given the dearth of ‘doctors’ in some parts of the country. The rationale for this is that it should be as easy as possible to appoint a supporter and the law must not make the process challenging. If effecting a supporter is difficult, the default position will remain that of ‘representative’ which is contrary to article 12 of the CRPD.

**Clause 6 3I** - should provide a draft form for appointment of a supporter to give users of mental health services a concrete idea about what a supportive decision-making agreement comprises.

**Clause 6 3I** - The Commission welcomed this clause which elaborates on the role of the supporter. Recognition of this role is in line with article 12(3) of the UN Convention on the

Rights of Persons with Disabilities which places an obligation on States Parties to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

**Clause 9 Section 5** - The Commission made the following proposals in terms of the functions of the Board:

Review of use of restraint/seclusion- In order to support a complete ban on the use of seclusion and restraint, the Commission proposed that the Board be given an express mandate to review reports of restraint and seclusion by mental health facilities.

**Clause 14** - The Commission called for an absolute ban on the use of seclusion and restraint in mental health facilities and removal of clause 9E.

The ban should be accompanied by a national strategy working towards the ban of seclusion and use of restraint in mental health facilities to be developed by the Mental Health Board in consultation with organizations of persons with disabilities.

They said that inclusion of organizations of persons with disabilities is in line with article 4(3) of the CRPD and is critical in ensuring that persons with lived experiences of mental health conditions, families and researchers input into the strategy. The national strategy would address challenges and support mental health providers as they work towards the absolute ban on restraint and seclusion which is prevalent in practice. In any event, seclusion and restraints should not be used on children/minors.

**Clause 15** - The Commission was concerned that the Bill under clause 15 proposes to retain under proposed new section 9E provisions that allow for seclusion and restraint in circumstances prescribed under the Bill, the prescribed procedures and upon authorization by a mental health practitioner. The Committee on the Rights of Persons with Disabilities as well as the Special Rapporteur on Torture and other Cruel, Inhuman 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.

The observations are made in light of the mental, emotional and physical harm that users of mental health services have experienced or are likely experience from the use of seclusion and restraint. Kenya is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provides for the absolute prohibition against torture under article 2 of the Convention. It is on this basis that the Commission strongly recommended that the new proposed clause 9E be removed and provides for the absolute ban of the use of seclusion and restraint.

**Clause 17 Section 10** - The Commission proposed that 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.

**Clause 22 Section 10** - Clause 22(1A)(a) provides that an application for involuntary treatment can be made by a supporter of the person with a mental health condition. The role of a supporter is to act in accordance to the will and preferences of the individual. Involuntary commitment is inherently about admitting and treating an individual without his/her consent (otherwise, the person would voluntarily admit themselves to hospital). Implicating a supporter in involuntary treatment would damage the relationship of trust that should exist between the individual and his/her supporter, whose main role is to give effect to the person's will and preferences. In

involuntary treatment, the expressed will and preference of the individual is to not receive treatment.

Commission called for the removal of the proposed provisions on involuntary admission in the Bill specifically clause 22 of the Bill to ensure compliance with the CRPD. Concomitantly, the State should develop a wide range of community-based services that respond to the needs of persons with disabilities and respect the person's autonomy, choices, dignity and privacy, including peer support and other alternatives to the medical model of mental health as urged by the Committee on the Rights of Persons with Disabilities in its Concluding Observations to Kenya.

**Clause 25 - Emergency treatment** – The Commission emphasized on the importance of the protection of the rights of the patients.

**Clause 32** - The Commission noted that the supporter is not identified as one of the persons who can initiate such review. The Commission proposed that this should be rectified, as the review of mental health status is a positive measure which the supporter should be able to support the person with a mental health condition initiate.

It is on this basis that the Commission recommended that:

- a) The Bill must not allow the supporter to act against the expressed will and preferences of the person with a mental health condition. Therefore, clause 22(1A)(a) should be deleted.
- b) The Bill should make the process of appointing a supporter easy, including by providing a sample form for designating supporters and by ensuring that the supportive decision-making agreement can be attested by any mental health practitioner (the term 'mental health practitioner' is defined in Clause 3 of the Bill).
- c) The Bill should permit the supporter to initiate review of mental health status under Clause 32 (20A) (2).

**Clause 37** - Proposes to amend section 26 of the Mental Health Act to the effect that a supporter should be able to apply for an order for the management of the estate of a person with a mental health condition. The role of a supporter is to act in accordance to the will and preferences of the individual. Unless the person with a mental health condition in the support agreement expressly gives the supporter power over property, the supporter, whose main role is to give effect to the person's will and preferences, should not initiate proceedings to manage the property of the person with a mental health condition. If this role (which is contrary to article 12(5) of the CRPD) must remain in the Bill, the same should be carried out by a representative.

## **2. Nanga Board Members**

**NANGA** recommended a practice known as *Diversion* which advocates for placing offenders in mental health treatment instead of prison or jail. It often takes one of two forms.

- a) **Forensic Psychiatric Hospitalization**:- Offenders who have been found not guilty by reason of insanity are to be sent to forensic Psychiatric mental health hospitals such as Mathare Mental and Referral Hospital. Which can be spread in different counties these facilities do confine people like prisons and jails do. The aim should be to rehabilitate rather than to punish.

- b) **Mental Health Courts:-** These courts are for offenders who have mental health concerns but don't qualify for the insanity defense. Judges may offer defendants reduced sentences in exchange for getting treatment. In many cases, a defendant may not go to jail or prison at all.

**Occupational safety and health administration for correctional officers** –given the stressful and dangerous conditions experienced by correctional officer there is need to come up with policies and programs with a specific purpose of enhancing officers well-being.

**Psychiatric Medication –**

NANGA recommended for subsidization or tax exemption for mental health drugs, expansion of insurance coverage for prescription drugs, promotion of the establishment of managed behavioral health care organizations.

They also recommended for provision of prosecutorial powers to the Pharmacy and Poisons Board (PPB) and the Pharmaceutical Society of Kenya (PSK) –to arrest quacks and curb dumping of antipsychotic drugs like Risperdal.

Lastly they recommended for offering of tax havens to Pharmaceutical Manufacturers of Mental Health Drugs, Appropriation vote to Universities and research Institutes on mental health.

**Clause 28 Section 17 - Admission and Discharge of Members Of The Armed Forces.**

NANGA emphasized on the importance of Mental health provisions on the members of the defence forces.

**3. Waringa Wagama - Community Mental Health Worker**

**Support Systems –** She noted that there is need to invest in the support system of a person living with a mental health condition, they should be empowered to know what they are looking at, listening to and how to take dignified action and empathetic care.

**4. True North Society**

True North organization, was created to lead the way through action, to pay the military veterans back for their service by ensuring war wounds do not limit their life experiences and tragically, life expectancy. It is against this background that they made their contribution as follows-

**Clause 28 Section 17 - Admission and Discharge of Members of The Armed Forces**

- i. They proposed that there should be more collaboration by military health units and external civilian hospitals to which they are referred. Such collaboration will involve psychiatrists and psychologists on both ends.
- ii. In the section describing the action taken when a member of the armed forces suffers a mental illness, the rights of the officer should be upheld and their employment not terminated on the grounds of illness/incapacitation.

They further submitted as follows:

- (i) The Constitution of Kenya 2010, in article 43. (1a) provides that “every person has the right to the highest attainable standard of health, which includes the right to healthcare services”. This is also in line with the strategic objectives and priority areas of Vision 2030, the Kenya Health Policy (2014-2030) and the global commitments. It goes without saying that every Kenyan citizen needs better mental health care and to live in an environment that is psychologically safe for them.
- (ii) Their key priority issue is with the armed security personnel; persons in the National Police Service, The Kenya Prisons, The Kenya Wildlife Service, The Kenya Defense Forces, military veterans and their families. Members of the armed security personnel face unique challenges to their mental health and general wellbeing. The nature of their job is stressful in and of its self, coupled with the strains on family, finances and other integral aspects of their lives and this is why it is important to stand in the gap and ensure they receive better mental health care when in active service and upon retirement or death in the case of families left behind.
- (iii) They further proposed the following practical solutions to deal with mental health issue in the Armed forces -
  - (a) Ensure funding for mental and behavioral management for both active service personnel and their families is a revolving annual requirement with its independent vote cemented by an authority to incur expenses. This vote should cover wounded and retired personnel, widows, orphans and vulnerable children to support reintegration and transition.
  - (b) Include mental health screening as a requirement during recruitment. This screening ought to include screening for drugs use such as and not limited to cocaine, khat, heroin and majiuana.
  - (c) Establishment of mental wellness units in the various security services stations and garrisons country wide.
  - (d) Establishment of an armed security informed facility and program in Mathari hospital which is fully equipped with personnel trained in the care of armed security.
  - (e) Capacity building in skills, techniques and knowledge for medical care givers within the inter-disciplinary spectrum in for example but not limited to; Psychological First Aid, Skills for recovery, incident command systems, critical incidence management skills population and behavior management in disaster and crisis, professional supervision, addressing moral injury and commanders guilt, response moderation and resilience building and eclectic approaches in trauma care
  - (f) Capacity building in skills, techniques and knowledge for non-medical professionals especially those in humanitarian spheres in for example but not limited to; psycho-education, incident command systems, psychological first Aid and professional supervision.
  - (g) Repeal the section in the Defense Forces Standing Orders that criminalizes soldier suicide and denies the family financial compensation.

## 5. Validity

Validity has been working in Kenya on mental health rights since 2010 and published a report on the right to legal capacity of persons with mental disabilities in 2014. Validity has also been involved in advocacy around the drafting of the Mental Health (Amendment) Bill 2018 taking into consideration international human rights standards, specifically the Convention on the Rights of Persons with Disabilities (“CRPD”), the Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa, as well as rights enshrined under Article 54 of the Kenyan Constitution and the Persons with Disabilities Act of 2012.

They submitted as follows-

- **Clause 3 Section 2** – they noted that the Bill is replete with discriminatory and derogatory language which attacks the dignity of persons with mental disabilities as citizens of Kenya.

In addition, the Constitution of Kenya states that a person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning. At present, the Bill uses derogatory terminology and phraseology which has been widely rejected by persons with mental disabilities and undermines their dignity, including referring to people as: “*person suffering from mental disorder*”, “*person suffering from mental illness*”, “*psychopathic* and *person*” and “*mental sub normality*”.

### **Clause 6 - Rights of persons with mental illness.**

Informed consent in the field of health refers to the process whereby explicit information is provided to a person in a language and format they can access and which is relevant for them to decide on whether or not to have a particular treatment, to choose from a range of options, to deny treatment, or to participate in a particular experiment.

The validity of informed consent is premised upon the full disclosure of appropriate information to a person who is then permitted to make a voluntary choice.

A recent ruling from Australia further elaborated on informed consent, stating that a person cannot be deemed to lack the capacity to give informed consent simply by making a decision that others consider to be unwise according to their individual values and situation. To impose upon persons with mental disabilities a higher threshold of capacity, and to afford them less respect for personal autonomy and individual dignity, than people without disabilities, would be discriminatory.

For instance, while Section 3B recognizes the right to informed consent to treatment, and participation in development of a treatment plan, Section 3C (2) proceeds to deny that right by substituting the decision making with a representative.

In so doing, this approach fundamentally undermines the principle that health care and treatment should only be provided on the basis of informed consent, and should be removed

***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.***

In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD. The Committee called on the Government of Kenya to –

- (a) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
- (b) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- (c) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
- (d) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

#### **Clause 3F alludes to admission via the Criminal Procedure Code.**

In compliance with Article 14 CRPD, legislative reforms should remove the possibility that 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.

#### **Clause 15 - Establishment of mental health facilities**

In its present form, the Bill would legalise abusive practices which breach Constitutional protections and the human rights of persons with mental disabilities including legislating to enable involuntary detention, forced treatment, seclusion, restraint and electro-convulsive therapy (“ECT”).

**Clause 9D** provides that mental health treatments may be authorised by a representative without the informed consent of the person concerned. This means that the Bill allows for the treatment of people without their consent. Involuntary psychiatric intervention/treatment is contrary to the rights to health on the basis of informed consent and personal integrity guaranteed under Articles 25 and 17, respectively, of the CRPD. Certain forms of involuntary treatment are also likely to amount to torture or ill-treatment in contravention of Article 15 CRPD and the Convention against Torture.

Further, the option of empowering “representatives” to consent to treatment or hospitalisation of people without their consent or against their will undermines their legal capacity. This is a

serious misunderstanding and misconstruction of the concept of “support” which is set out under Article 12 of the CRPD and Article 7 of the Protocol to the African Charter on the Rights of Persons with Disabilities.

- (i) ***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.*** In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –
- (e) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
  - (f) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
  - (g) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
  - (h) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

Clause 9E allows for the use of seclusion and physical restraint. The CRPD Committee, as well as the

Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, have both called for an end to all coercive and non-consensual psychiatric interventions including the use of restraint and seclusion as such practices may amount to torture or ill-treatment, violating Article 15 CRPD.

The application of seclusion and restraints as provided in 9E cannot be regarded as justifiable and these possibilities should be explicitly prohibited under the law.

#### **Clause 22 - PART VI - INVOLUNTARY PATIENTS 14.**

They proposed that emergency admissions, should only be held for 24 hours, the choice to retain such draconian and coercive measures will also result in forced detention and deprivation of liberty in conflict with CRPD Article 14.

Deprivation of liberty on the grounds of actual or perceived “mental illness” or mental disability is unjustified, a position which has been authoritatively stated by the UN Special Rapporteur on Torture, Inhuman and Degrading Treatment or Punishment,<sup>8</sup> the CRPD Committee,<sup>9</sup> and more recently in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities.

In their concluding observations on Kenya’s report, 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.

The above refers to clauses 21 and 22 on the procedure of admission for “*involuntary patients*” where a family member can have a person admitted without their consent. Further the Police have the power to escort a person for admission at a mental health facility. Clauses 45 and 49 of the Bill make reference to aiding escape of a person from a mental health facility or permitting them to leave unlawfully commits an offence.

#### **Clause 25 - emergency admission and treatment**

*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.* In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –

- (i) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
- (j) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- (k) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
- (l) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

#### **Clause 32 - Review of mental health status**

*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.* In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –

- (m) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
- (n) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- (o) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
- (p) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

As relates to the bill they further submitted as follows-

- i. Various aspects of the Bill are welcome, notably the objects and guiding principles contained in sections 2A and 2B, including the restatement of obligations of national and county governments to provide mental health services in the community, to promote the highest attainable standard of health and protections of the rights and dignity of persons with mental disabilities. We also welcome Section 2D on promoting community-based services that aims at ensuring inclusion in the community. These commitments are positive contributions towards realisation of Article 19 of the CRPD and Article 10 of the Protocol to the African Charter of the Rights of Persons with Disabilities in Africa.
- ii. 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. In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –
- iii. Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
- iv. Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial

- disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- v. Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
  - vi. Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.
  - vii. Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A).

#### **6. Safe-Hands Organisation on Behalf of – Tunawiri CBO; and Speak Mind Love Organization**

Safe-Hands is a non-profit organization based organization registered under the societies act. Its objectives are: To create mental health awareness and break the stigma in the community; to influence Policy change through lobbying decision makers to improve mental health services and Capacity building through trainings and workshops.

As relates to the bill they submitted as follows-

The government should ensure subsidization of mental illness medication and facilities. This should include expanding of the National Health Insurance Fund (NHIF) packages to provide coverage for mental disorders.

Do away with the penal code section that criminalizes suicide. Suicide should be viewed as a mental health disorder. Individuals who attempt suicide should be assessed first before being arrested.

## **Volume 2**

Annexure 4: Adoption schedule

Annexure 5: Copy of the newspaper advertisements of Monday, October 7, 2019 inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on 13<sup>th</sup> February, 2020.

Annexure 6: Minutes of Committee Sitings on consideration of the Bill

THE NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON HEALTH

ATTENDANCE SCHEDULE

Adoption of Mental Health (Amendment) Bill, 2018

8<sup>th</sup> floor, Ukulima, Sacco Building

10<sup>th</sup> March, 2020

	NAME	SIGNATURE
1.	Hon. Sabina Chege, MP – Chairperson	
2.	Hon. Swarup Ranjan Mishra, MP – Vice-Chairperson	
3.	Hon. (Dr.) Eseli Simiyu, MP	
4.	Hon. (Dr.) James Nyikal, MP	
5.	Hon. Alfred Agoi Masadia, MP	
6.	Hon. (Dr.) James Kipkosgei Murgor, MP	
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. (Dr.) Mohamed Dahir Duale, MP	
9.	Hon. Stephen Mule, MP	
10.	Hon. David Ochieng', MP	
11.	Hon. Prof. Mohamud Sheikh Mohamed, MP	
12.	Hon. Martin Peters Owino, MP	
13.	Hon. Gladwell Jesire Cheruiyot, MP	
14.	Hon. Esther M. Passaris, MP	
15.	Hon. Kipsengeret Koros, MP	
16.	Hon. Mercy Wanjiku Gakuya, MP	
17.	Hon. Patrick Munene Ntwiga, MP	
18.	Hon. Tongoyo Gabriel Koshal, MP	
19.	Hon. Zachary Kwenya Thuku, MP	

HEALTH  
MAGAZINE

Monday, October 7, 2019

THE-STAR.CO.KE

9\*

## NEWS GENERAL

REPORT ON SAFETY DELAYED

# Kebs put on the spot over sugar seized from Kwale

House team wants resampling, testing done

SHABAN OMAR  
@TheStarKenya

MPs have given the Kenya Bureau of Standards 14 days to resample and determine the safety of the sugar impounded at the Kenya International Sugar Company in Kwale.

More than 8,900 sacks of sugar were confiscated last year over allegations that they were illegally imported and harmful to consumers.

The National Assembly Committee on Trade, Industries and Cooperatives said the delay to file the sugar reports has cost more than 2,400 jobs because of negligence by some few individuals in government.

"The company has closed, destroying livelihoods of thousands just because somebody in a public office has failed to do his work," chairman Kanini Kega said.

He spoke on Saturday in Msamb-

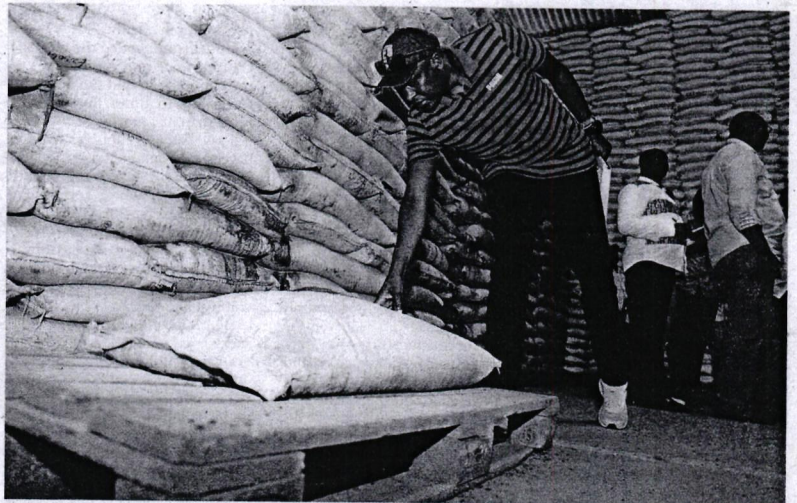
weni where the committee inspected go-downs holding condemned sugar and edible oils. Kega said investors have incurred losses and several businesses have collapsed because of Kebs' indecisiveness.

Kiscol general Manager Pamela Ogada said the business has highly suffered since their sugar was seized. She said they cannot cater for expenses because their only source of income has been paralysed.

Ogada appealed to the government to intervene. She said time is limited, adding that the impounded sugar will have expired by December, hence resulting in huge losses.

Kega accused Kebs of defying a court order that directed it to resample the sugar. "I don't understand why a government agency could disobey a court order. This is bad."

He said Kebs' arrogance might burden the national government in



National Assembly Committee on Trade, Industries and Cooperatives chairman Kanini Kega looks at the impounded sugar in a Mombasa warehouse on Saturday / JOHN CHESOLI

recompensing the affected companies for accrued losses. The Kiemi lawmaker said the sugar was domestically manufactured and not imported as alleged. "This product comes from within. It has actually been extracted from the sugarcane seen around the place."

Kega said once the sugar is found unsafe for use, it should be destroyed immediately so it is not smuggled

into the market. The committee blamed the multiagency team that looked into the sugar problem for dragging the case and urged President Uhuru Kenyatta to dismantle it to ease executions of orders.

Kega said a lot of time is wasted through prolonged consultations that the board has to consider. The multiagency team comprises Kebs, the Directorate of Criminal Investi-

gations, the Kenya Revenue Authority and the Anti-Counterfeit Agency, among others. He said the team has outlived its mandate and should be dissolved so each department works freely on its own.

"I believe the multiagency team, for now, has done its duties and it is time the group was split for each and every sector to operate alone to be held liable on an individual basis."

REPUBLIC OF KENYA



### NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Mental Health (Amendment) Bill (Senate Bill No. 32 of 2018)
2. The Radiographers Bill (National Assembly Bill No. 47 of 2019)
3. The Health (Amendment) Bill (National Assembly Bill No. 64 of 2019)
4. The Cancer Prevention and Control (Amendment) Bill (National Assembly Bill No. 65 of 2019)

#### SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

1. The Mental Health (Amendment) Bill (Senate Bill No. 32 of 2018) proposes to impose obligations on each level of government to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness. It also proposes to incorporate within the membership of Kenya Mental Health Board representation of the county governments. The Bill further seeks to review the membership of the Kenya Mental Health Board from the current fourteen executive members to nine in order to make the workings of the Council more efficient and representative.
2. The Radiographers Bill (National Assembly Bill No. 47 of 2019) principal object is to provide a legislative framework for the training, registration and licensing of radiographers, so as to regulate their practice.
3. The Health (Amendment) Bill (National Assembly Bill No. 64 of 2019) seeks to amend the Health Act No. 21 of 2017 to introduce a new section which provides for the development of policy guidelines to regulate the referral of patients to health institutions both within and outside the country.
4. The Cancer Prevention and Control (Amendment) Bill (National Assembly Bill No. 65 of 2019) seeks to amend the Cancer Prevention and Control Act, 2012 to make provision for training of health cadres in the specialized medical field of oncology, to include cancer treatment as part of the provision of primary healthcare and to incorporate the use of e-health and telemedicine.

The above mentioned Bills have undergone First reading and are now committed to the Departmental Committee on Health for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any presentations they may have on the four Bills. The presentations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to the clerk@parliament.go.ke; to be received on or before Monday, 14th October, 2019 at 5.00 pm.

Copies of the Bills may be downloaded from Parliamentary website:  
<http://www.parliament.go.ke/the-national-assembly/house-business/bills>

MICHAEL R. SIALA, EBS  
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



### NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 60 of 2019)
2. The Public Fundraising Appeals Bill, (National Assembly Bill No. 66 of 2019)

#### SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Constitution of Kenya (Amendment) Bill, 2019 seeks to amend the Constitution of Kenya in order to enforce the principle of separation of powers so as to allow Parliament and County Assemblies to discharge their functions on matters under consideration or being proceeded with by Parliament, County Assemblies or any of their committees in line with international practice where Courts only intervene after Parliament has executed its mandate.

The Public Fundraising Appeals Bill, 2019 seeks to regulate public collections or harambees; to repeal the Public Collections Act and in its place have a more robust legal architecture in addressing pertinent issues in public collections. Further, it seeks to provide a framework for transparency and accountability in the conduct of fundraising appeals, avail proper safeguards to curb corruption that arises in voluntary collections with a view to ensuring that organizers of public fundraisings account for the monies raised.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Select Committee on National Cohesion & Equal Opportunity for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites members of the Public to submit representations they may have on the said Bills. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 14th October, 2019 at 5.00 pm.

Copies of the Bills may be downloaded from Parliamentary website:  
<http://www.parliament.go.ke/the-national-assembly/house-business/bills>

MICHAEL R. SIALA, EBS  
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address  
'Bunge', Nairobi  
Tel. +254-020-2221291  
Fax: +254-020-22243694  
E-mail: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)  
*When replying please quote*



NATIONAL ASSEMBLY

Clerk's Chambers  
National Assembly  
Parliament Buildings  
P. O. Box 41842 -00100  
NAIROBI, Kenya

Ref:NA/DCS/HEALTH/CORR/2020/009

6<sup>th</sup> February, 2020

**Executive Director**

Alzheimers & Dementia Organization of Kenya  
Soin Arcade, 3<sup>rd</sup> Floor, Westlands  
**NAIROBI**

**Executive Director**

International Institute of Legislative Affairs  
Kush Office Suites, Raptha Road  
**NAIROBI**

**Executive Director**

Kenya Association of the Intellectually Handicapped  
Mutindwa Flats, Office A1, Off Moi drive  
**NAIROBI**

**Executive Director**

Mental 360 Institute  
Fatima Apartments, Office 29, Chaka Road,  
**NAIROBI**

**Executive Director**

Calmind Foundation  
Woodvale Grove, Westlands  
**NAIROBI**

Dear

**REF: PUBLIC HEARINGS ON THE MENTAL HEALTH (AMENDMENT) BILL, 2018**

---

The Departmental Committee on Health is constituted under Standing Order 216 and is mandated to, inter-alia, "study and review programs and all legislation referred to it".

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislation and other business of the Parliament and its Committees". Standing Order 127(3) of the National Assembly Standing Orders provides that,

“the Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its report to the House”. Pursuant to the provisions of Standing Order 127, the Mental Health (Amendment) Bill, 2018 (Senate Bill No.32), has been committed to the Committee for consideration and thereafter submission of a report to the House.

**The Mental Health (Amendment) Bill, 2018 (Senate Bill No.32)**, seeks to impose obligations on each level of government to address the issue of accessibility to mental health services including care, treatment and rehabilitation of persons with mental illness. Further, the Bill proposes to incorporate within the membership of Kenya Mental Health Board representation of the county governments, review the membership of the Kenya Mental Health Board from the current fourteen executive members to nine in order to make the workings of the Council more efficient and representative.

Therefore, this is to inform you that the Departmental Committee on Health shall be holding public hearings on **Thursday 13<sup>th</sup> February, 2019** in the **Mini-Chamber, First Floor, County Hall, Parliament Buildings** at **10.00 am** to seek public views on the above mentioned Bill. Consequently, this is to invite you to make presentations during the hearings.

Our liaison officer for this purpose is **Mr. Benjamin Magut, Committee Clerk** who may be reached on Telephone No. 0712 974 966 and email [bmagut@parliament.go.ke](mailto:bmagut@parliament.go.ke) or [bemack2@gmail.com](mailto:bemack2@gmail.com).

Yours



**JEREMIAH W. NDOMBI**

**For: CLERK OF THE NATIONAL ASSEMBLY**



DEPARTMENTAL COMMITTEE ON HEALTH

Date: 13/03/2019

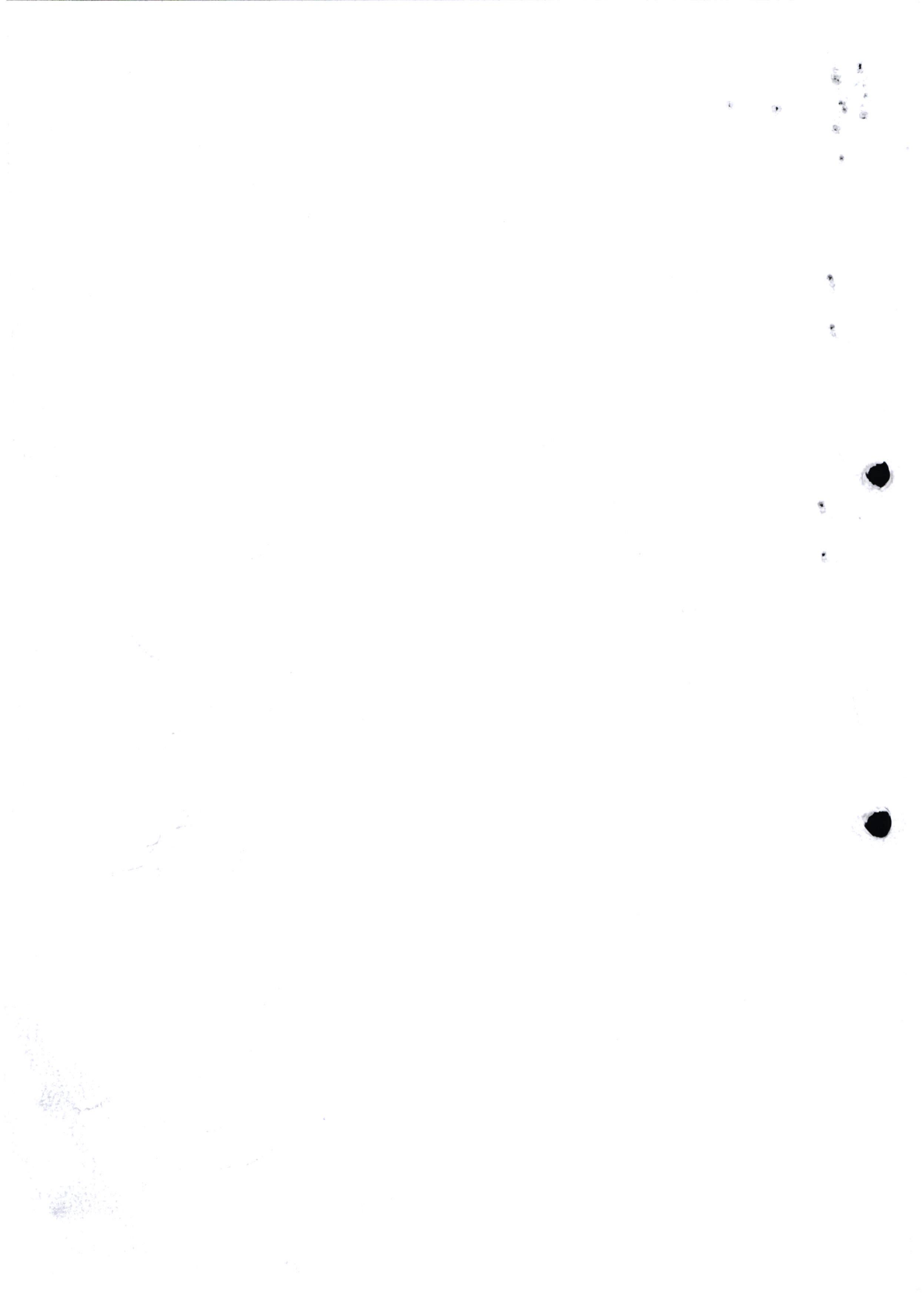
Venue: C Hall

Time Started: .....

Time Ended: .....

Agenda: Public Hearing on the Mental Health (Amendment) Bill 2019

NO.	NAME	INSTITUTION	DESIGNATION	TEL NO	SIGNATURE
1	Sau Syria Kasanga	Senate	Nominated	0912788028	
2	Maj. Gen. Lw. Mubona	UPBE NORTH	Founder + CEO	73334772	
3	Waringa Wogema	Centre for Mental Health & Wellness	Founder + COO	0700831004	
4	Francis Mubank	KNCHR	INT DIRECTOR	0711 206 455	
5	Faizah Sidi	KNCHR	SECRETARY GENERAL RIGHTS OFFICER	0720633687	
6	ANNE MARY OKOTOSI	KNCHR	Director + RAO	0702124540	
7	Dr. Magsasa Sanyal	KNCHR	CEO	0720966637	
8	Chinwe Nwankwo	KNCHR	Human Rights Officer	0726 917660	

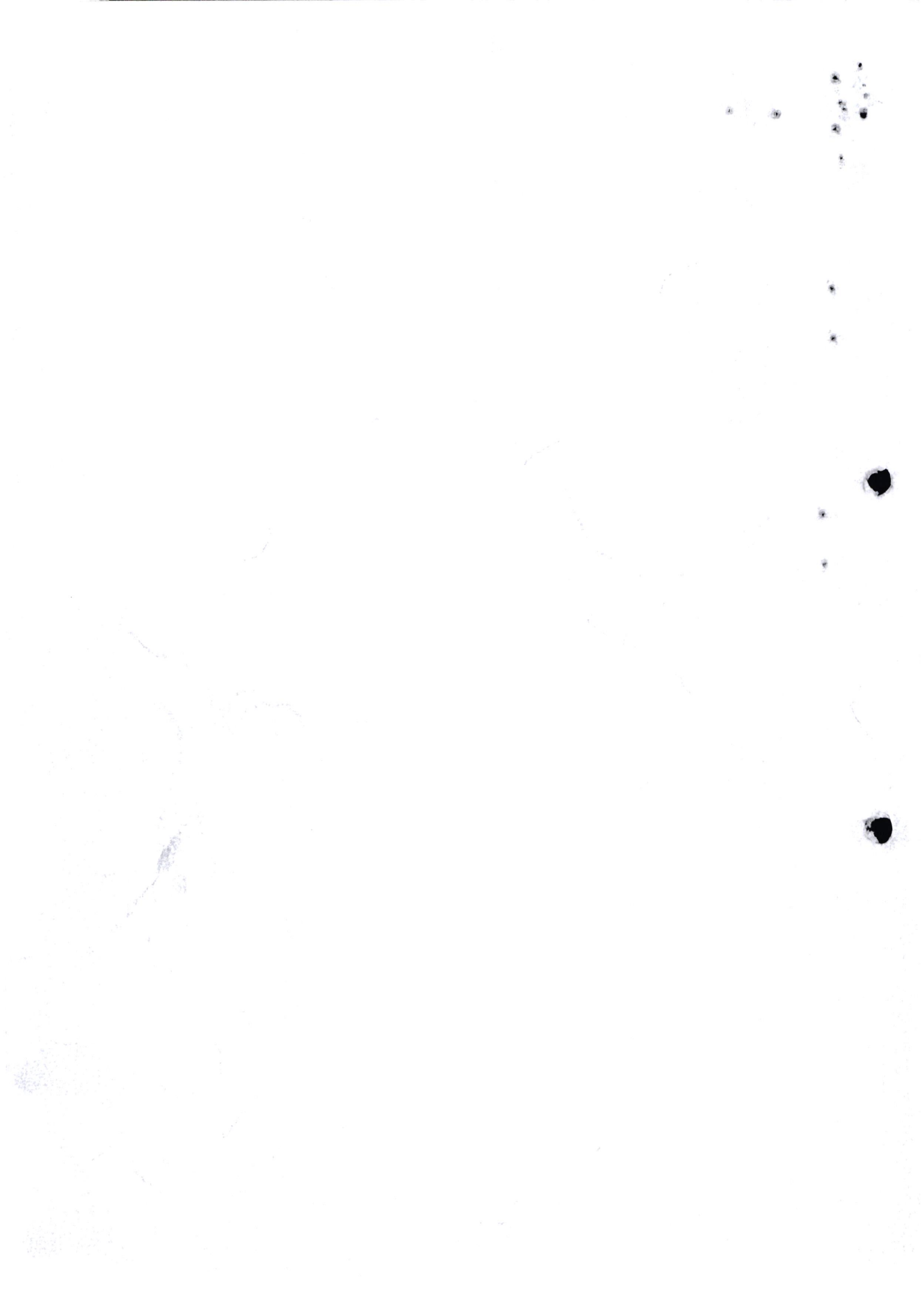


DEPARTMENTAL COMMITTEE ON HEALTH

Date: .....  
 Time Started: .....  
 Venue: .....  
 Time Ended: .....

Agenda: Public Hearing on the Mental Health (Amendment) Bill 2019

NO.	NAME	INSTITUTION	DESIGNATION	TEL NO	SIGNATURE
9.	Lolie Machira	Advocate (Consultant) International Institute For Regulatory Affairs	Advocate	0723448448	
10.	Rose Nabwire	Martice Logistics	Mental Health in Prisons	071385382	
11.	Nathens Mubiso	Mzalendo Trust	Programme Assistant	0707632228	
12.	Sylvia Katya	JINSIANGU	MEDIA ADMIN	0714617259	
13.	AVA H. MARIYA	JINSIANGU	CRIC. PROGRAM	0726951179	
14.	AUD. SONIA	JINSIANGU	Prog. Officer	0721351669	
15.	Cecile AWUDR	ILLIA			
16.	Dr. JOYCE KAMISO	MENTAL HEALTH NEEDLE SOCIETY			



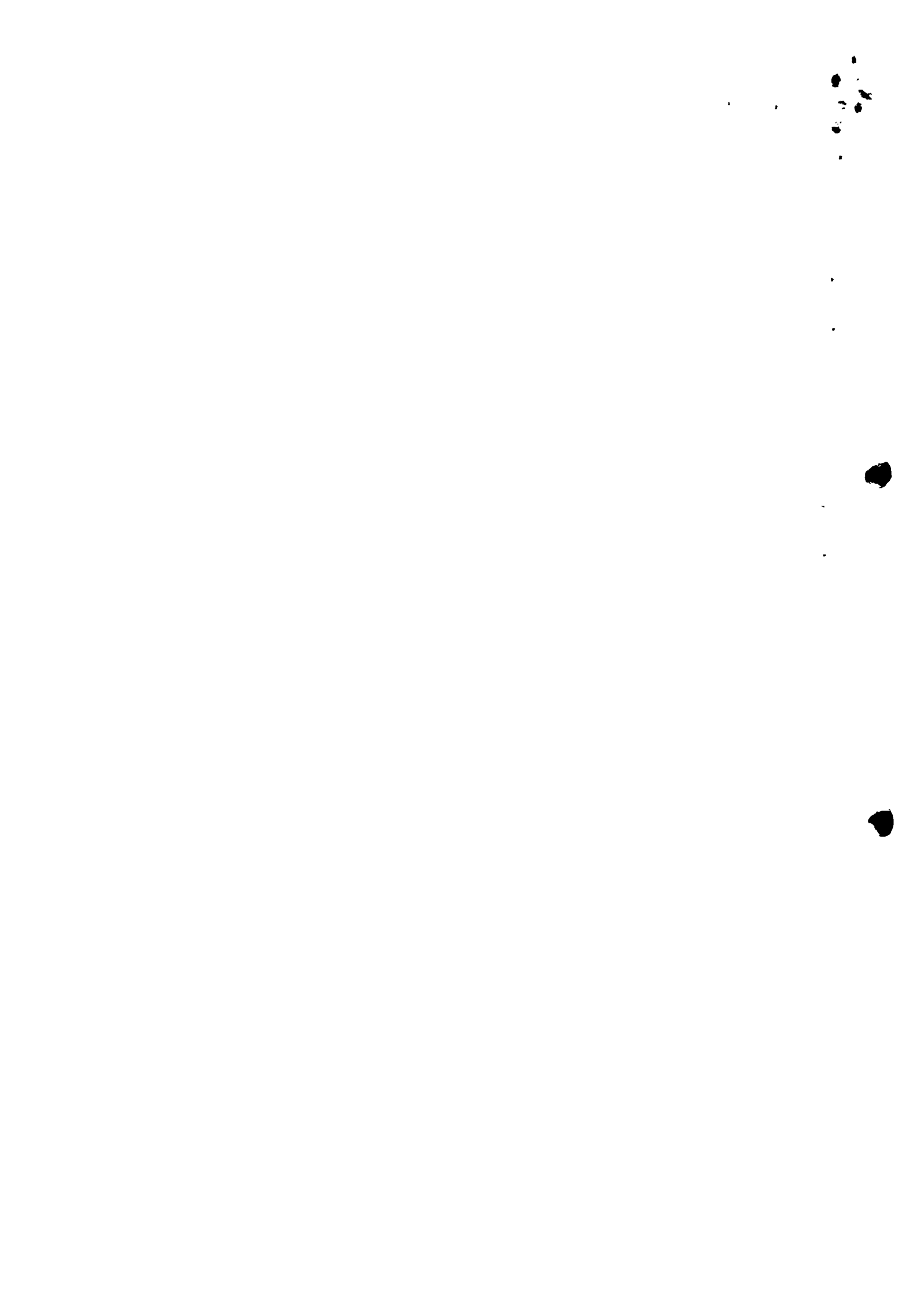


DEPARTMENTAL COMMITTEE ON HEALTH

Date: .....  
 Time Started: .....  
 Venue: .....  
 Time Ended: .....

Agenda: Public Hearing on the Mental Health (Amendment) Bill 2019

NO.	NAME	INSTITUTION	DESIGNATION	TEL NO	SIGNATURE
✓	William Ayera	Validity Trust	Adviser Manager	0721677000	
	Himwe Markfish	Validity Foundation	Advisory Manager	0797 222811	Moses L.
	DR OSCAR W. GITHUI	MENTAL HEALTH TASKFORCE	TASKFORCE MEMBER	0121507312	
	Bianca Waiiganjo	ADOK Kenya	Member	0717234024	
	Elizabeth Macharia	Nipati Foundation	Founder	0719614642	
	Biko Mangula	Safe Hands	Founder	0720840522	



**MINUTES OF THE THIRTEENTH SITTING (13<sup>TH</sup>) OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN BOARDROOM 8<sup>TH</sup> FLOOR, UKULIMA SACCO BUILDING ON TUESDAY 10<sup>TH</sup> MARCH, 2020 AT 9.30AM.**

---

**PRESENT**

1. The Hon. Sabina Chege, MP - **Chairperson**
2. The Hon. Dr. Swarup Ranjan Mishra, MP - **Vice-Chairperson**
3. The Hon. Dr. Eseli Simiyu, MP
4. The Hon. Dr. James Nyikal, MP
5. The Hon. Dr. James Kipkosgei Murgor, MP
6. The Hon. Muriuki Njagagua, MP
7. The Hon. Dr. Mohamed Dahir Duale, MP
8. The Hon. Stephen Mule, MP
9. The Hon. David Ochieng', MP
10. The Hon. Martin Peters Owino, MP
11. The Hon. Esther M. Passaris, MP
12. The Hon. Mercy Wanjiku Gakuya, MP
13. The Hon. Patrick Munene Ntwiga, MP
14. The Hon. Tongoyo Gabriel Koshal, MP
15. The Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGY**

1. The Hon. Prof. Mohamud Sheikh Mohamed, MP
2. The Hon. Alfred Agoi Masadia, MP
3. The Hon. Gladwell Jesire Cheruiyot, MP
4. The Hon. Kipsengeret Koros, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Muyodi Emmanuel - Clerk Assistant III
2. Lynette Otieno - Legal Counsel I
3. Maureen Kweyu - Audio Officer

**MIN. NO.NA/DC.H/2020/57:            PRELIMINARIES**

The Chairperson called the meeting to order at 9.42 a.m. and said a prayer. After that, the meeting proceeded to business.

**MIN. NO. NA/DC.H/2020/58:            ADOPTION OF AGENDA**

The Committee adopted the agenda as hereunder after being proposed by Hon. Dr. James Kipkosgei Murgor, MP and seconded by Hon. Stephen Mule, MP.

**AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Substantive Agenda

**Adoption of the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018)**

**MIN. NO.NA/DC.H/2020/59:            CONSIDERATION AND ADOPTION OF THE  
REPORT ON THE MENTAL HEALTH  
(AMENDMENT) BILL, (SENATE BILL NO. 32  
OF 2018)**

The Committee considered and adopted the report on the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) after being proposed by the Hon. Muriuki Njagagua, MP and seconded by Hon. Martin Peters Owino, M.P. as follows:-

**CLAUSE 5**

**THAT** Clause 5 of the Bill be amended in the proposed new Part IA —

- (a) in section 2C (g) by deleting the words “in the Republic”;
- (b) in section 2D by—
  - (i) inserting the word “to” immediately after the word “relating” appearing in subsection (1)(c);
  - (ii) deleting the word “the” appearing in subsection (1)(d) immediately before the word “county” ;
  - (iii) deleting the words “including children, women, youth and elderly persons” appearing in subsection (1)(h) (ii);
  - (iv) deleting the word “Governor” appearing in subsection (2)(a) and substituting therefor the word “county executive committee”; and
  - (v) inserting the word “the” immediately before the word “National” appearing in subsection (2)(e).

(c) in section 2E —

(i) in subsection (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) that one person is nominated to represent each of the following—

- (i) supporters, guardians or representatives of persons with mental illness in the county;
- (ii) mental health practitioners in the county;
- (iii) youth in the county;
- (iv) persons with disabilities in the county; and
- (v) religious organizations in the county.

(ii) in subsection (4) by deleting the words “shall serve for a single term of three years and shall not be eligible for reappointment” and substituting therefor the following word “shall serve for a term of three years renewable once.”

(d) by inserting the following new subsection immediately after subsection (5) —

(6) A county mental health council shall conduct its business and affairs in accordance with the Schedule with the necessary modifications.

#### **CLAUSE 6**

**THAT** Clause 6 of the Bill be amended in the proposed new Part II—

(a) in section 3A(2) by deleting the word “medical” appearing in paragraph (a);

(b) in section 3C(3)—

- (i) deleting the word “the” appearing in the peremptory statement immediately after the word “inform”;
- (ii) inserting the word “the” immediately before the word “supporter” appearing in paragraph (a).

(c) in section 3D by —

- (i) inserting the word “where suitable” immediately before the word “private” appearing in subsection (1);
- (ii) deleting the word “fair” appearing in subsection (2) and substituting therefor the words “highest standard of”; and
- (iii) deleting the words “this section” appearing in subsection (4) and substituting therefor the words “subsections (2) and (3).”

(d) in section 3E by—

- (i) deleting the words “whether within or outside a health facility” appearing in subsection (2)(a); and
  - (ii) deleting subsection (4).
- (e) in section 3F by inserting the words “or any other written law” immediately after the words “Act” appearing in subsection (2).
- (f) in section 3H (2) by—
- (i) deleting the words “mental” appearing in the peremptory statement;
  - (ii) deleting paragraph (c); and
  - (iii) deleting paragraph (g);
- (g) in section 3I (2) by deleting the word “the doctor of the person with mental illness” appearing in paragraph (d) and substituting therefor the words “a medical practitioner”.
- (h) by deleting section 3K.

**CLAUSE 7**

**THAT** Clause 7 (a) of the Bill be amended in the proposed new subsection (2)—

- (a) in paragraph (a) by—
- (i) deleting the words “in a mental health care set up” appearing in subparagraph (i);
  - (ii) deleting the words “in a mental health care set up” appearing in subparagraph (ii);
  - (iii) deleting the words “in a mental health care set up” appearing in subparagraph (iii); and
  - (iv) deleting the words “in a mental health care set up” appearing in subparagraph (iv);
- (b) in paragraph (d) by deleting the words “two persons” and substituting therefor the word “one person”—
- (c) by inserting the following new paragraph immediately after paragraph (e) —

“(ea) one person nominated by the Law Society of Kenya; and”

#### **CLAUSE 10**

**THAT** Clause 10 (a) of the Bill be amended—

- (a) in the proposed new subsection (1C) by inserting the words “of Mental Health” immediately after the word “Director”; and
- (b) in the proposed new subsection (1D) by inserting the words “of Mental Health” immediately after the word “Director”.

#### **CLAUSE 14**

**THAT** Clause 14 (b) of the Bill be amended by deleting the proposed new subsection (2A) and substituting therefor the following—

(2A) A county mental health council may, by notice in the *Gazette*, designate such a place within a county health facility in the respective county as the county mental health council may consider necessary as a mental health unit.

#### **CLAUSE 15**

**THAT** Clause 15 of the Bill be amended—

- (a) in the proposed new section 9B by deleting the word “medical” appearing in the peremptory statement in subsection (2);
- (b) in the proposed new section 9C (1) by deleting paragraph (b) and substituting therefor the following—
  - (b)body corporate, to a fine not exceeding five million for the first conviction and ten million for any subsequent conviction.

#### **CLAUSE 17**

**THAT** Clause 17 of the Bill be amended in the proposed new section 10 –

- (a) in subsection (1) by deleting the word “mental” appearing in paragraph (a); and
- (b) in subsection (4) by deleting the word “fort-two” appearing in paragraph (a) and substituting therefor the word “sixty”.

**CLAUSE 22**

**THAT** Clause 22 (b) of the Bill be amended in the proposed new section (1A) by deleting the words “who is carer or relative of that person” appearing in paragraph (d).

**CLAUSE 26**

**THAT** Clause 26 (c) of the Bill be amended in the proposed new subsection (3) by deleting the peremptory statement and substituting therefor the following—

“(3) Upon presentation of a person to a health facility under subsection (2), the person in charge of the health facility shall, within twenty-four hours —”

**CLAUSE 28**

**THAT** Clause 28 of the Bill be amended in the proposed new section 17 by inserting the following new subsections immediately after subsection (6) —

(7) A member of the Kenya Defence Forces shall not be dismissed from service by virtue of being admitted to a mental facility or unit under this section or otherwise seeking treatment under this section.

(8) The provisions of this section shall apply to a member of the National Police Service, with the necessary modifications, subject to the provisions of the National Police Service Act, 2011 and guidelines set by the National Police Service Commission.

**CLAUSE 32**

**THAT** Clause 32 of the Bill be amended in the proposed new section 20A (2) by inserting the following new paragraph immediately after paragraph (c) —

“(ca) a duly appointed supporter of the person with mental illness.”

**CLAUSE 35**

**THAT** Clause 35(a) of the Bill be amended in the proposed new subsection (1B) by deleting the words “by inserting the following new subsection immediately after subsection (1)” appearing in paragraph (b)(iii).

**CLAUSE 36**

**THAT** Clause 36 of the Bill be amended in the proposed new section 24(2) by inserting the following new paragraph immediately after paragraph (a)—

“(aa) a mental health practitioner;”

**CLAUSE 37**

**THAT** Clause 37 of the Bill be amended in the proposed new Part XII-

(a) in section 27(3) by inserting the word “guardian” immediately after the word “supporter”;

- (b) in section 28 (2) by inserting the word “ or movable” immediately after the word “immovable” appearing in paragraph (a);
- (c) in section 31 by deleting the words “on its own motion” appearing in subsection (1).

**CLAUSE 43**

THAT Clause 43 of the Bill be amended in the proposed new section 45 by deleting the words “leaves, is removed or” appearing in subsection (1).

**CLAUSE 49**

THAT Clause 49 of the Bill be amended by deleting the words “five hundred thousand” and substituting therefor the word “one million”.

**CLAUSE 51**

THAT Clause 51 of Bill be amended by inserting the following new subsection immediately after subsection (2)

(2) At the commencement of this Act, any person who, immediately before the commencement of this Act was a member or staff of any of the Boards proposed to be reconstituted under this Act shall be deemed to be a member or staff of the reconstituted Board for the unexpired period of his or her term of service.

(3) At the commencement of this Act, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in any of the Boards shall by virtue of this sub-section, vest in the new Board under this Act.

(4) At the commencement of this Act, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such date were before such date were vested in, imposed on or enforceable against any Board shall, by virtue of this sub-section, be deemed to be vested in, imposed on or enforceable against the respective new Board.

(3)The Cabinet Secretary shall constitute the new Board within six months of the commencement of this Act.

**CLAUSE 52**

THAT Clause 52 of Bill be deleted.

MIN. NO.NA/DC.H/2020/60:

ADJOURNMENT

There being no other business, the meeting adjourned at 12.17 p.m.

Sign.....  ..... Date..... 17<sup>TH</sup> MARCH, 2020 .....

(Chairperson)

**MINUTES OF THE TWELVETH SITTING (12<sup>TH</sup>) OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN CONFERENCE ROOM, THE SHAZA HOTEL ON SATURDAY 7<sup>TH</sup> MARCH, 2020 AT 2.30 P.M.**

---

**PRESENT**

1. The Hon. Sabina Chege, MP - **Chairperson**
2. The Hon. Dr. Eseli Simiyu, MP
3. The Hon. Dr. James Kipkosgei Murgor, MP
4. The Hon. Dr. Mohamed Dahir Duale, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Prof. Mohamud Sheikh Mohamed, MP
7. The Hon. Gladwell Jesire Cheruiyot, MP
8. The Hon. Esther M. Passaris, MP
9. The Hon. Patrick Munene Ntwiga, MP
10. The Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Swarup Ranjan Mishra, MP - **Vice-Chairperson**
2. The Hon. Dr. James Nyikal, MP
3. The Hon. Stephen Mule, MP
4. The Hon. Alfred Agoi Masadia, MP
5. The Hon. David Ochieng', MP
6. The Hon. Martin Peters Owino, MP
7. The Hon. Kipsengeret Koros, MP
8. The Hon. Tongoyo Gabriel Koshal, MP
9. The Hon. Mercy Wanjiku Gakuya, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Muyodi Emmanuel - Clerk Assistant III
2. Lynette Otieno - Legal Counsel I
3. Maureen Kweyu - Audio Officer

**MIN. NO.NA/DC.H/2020/53:            PRELIMINARIES**

The Chairperson called the meeting to order at 2.32 p.m. and said a prayer. After that, the meeting proceeded to business.

**MIN. NO. NA/DC.H/2020/54:            ADOPTION OF AGENDA**

The Committee adopted the agenda as hereunder after being proposed by Hon. Prof. Mohamud Sheikh Mohamed, MP and seconded by Hon. Zachary Kwenya Thuku, MP.

**AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Substantive Agenda

**Clause by clause consideration of the Mental Health (Amendment) Bill, 2018**

**MIN. NO.NA/DC.H/2020/55:            CLAUSE BY CLAUSE CONSIDERATION OF  
THE MENTAL HEALTH (AMENDMENT) BILL,  
2018**

Upon considering the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) and the submissions from the stakeholders the Committee recommended the following amendments.

**CLAUSE 43**

**THAT** Clause 43 of the Bill be amended in the proposed new section 45 by deleting the words “leaves, is removed or” appearing in subsection (1).

**CLAUSE 49**

**THAT** Clause 49 of the Bill be amended by deleting the words “five hundred thousand” and substituting therefor the word “one million”.

**CLAUSE 51**

**THAT** Clause 51 of Bill be amended by inserting the following new subsection immediately after subsection (2)

(2) At the commencement of this Act, any person who, immediately before the commencement of this Act was a member or staff of any of the Boards proposed to be reconstituted under this Act shall be deemed to be a member or staff of the reconstituted Board for the unexpired period of his or her term of service.

(3) At the commencement of this Act, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in any of the Boards shall by virtue of this sub-section, vest in the new Board under this Act.

(4) At the commencement of this Act, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such date were

before such date were vested in, imposed on or enforceable against any Board shall, by virtue of this sub-section, be deemed to be vested in, imposed on or enforceable against the respective new Board.

(3)The Cabinet Secretary shall constitute the new Board within six months of the commencement of this Act.

**CLAUSE 52**

**THAT** Clause 52 of Bill be deleted.

**MIN. NO.NA/DC.H/2020/56:**

**ADJOURNMENT**

There being no other business, the meeting adjourned at 3.07 p.m.

Sign.....

Date.....

(Chairperson)

**MINUTES OF THE ELEVENTH SITTING (11<sup>TH</sup>) OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN CONFERENCE ROOM, THE SHAZA HOTEL ON SATURDAY 7<sup>TH</sup> MARCH, 2020 AT 9.30 A.M.**

---

**PRESENT**

1. The Hon. Sabina Chege, MP - **Chairperson**
2. The Hon. Dr. Eseli Simiyu, MP
3. The Hon. Dr. James Kipkosgei Murgor, MP
4. The Hon. Dr. Mohamed Dahir Duale, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Prof. Mohamud Sheikh Mohamed, MP
7. The Hon. Gladwell Jesire Cheruiyot, MP
8. The Hon. Esther M. Passaris, MP
9. The Hon. Patrick Munene Ntwiga, MP
10. The Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Swarup Ranjan Mishra, MP - **Vice-Chairperson**
2. The Hon. Dr. James Nyikal, MP
3. The Hon. Stephen Mule, MP
4. The Hon. Alfred Agoi Masadia, MP
5. The Hon. David Ochieng', MP
6. The Hon. Martin Peters Owino, MP
7. The Hon. Kipsengeret Koros, MP
8. The Hon. Tongoyo Gabriel Koshal, MP
9. The Hon. Mercy Wanjiku Gakuya, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Muyodi Emmanuel - Clerk Assistant III
2. Lynette Otieno - Legal Counsel I
3. Maureen Kweyu - Audio Officer

**MIN. NO.NA/DC.H/2020/49:            PRELIMINARIES**

The Chairperson called the meeting to order at 9.37 a.m. and said a prayer. After that, the meeting proceeded to business.

**MIN. NO. NA/DC.H/2020/50:            ADOPTION OF AGENDA**

The Committee adopted the agenda as hereunder after being proposed by Hon. Gladwell Jesire Cheruiyot, MP and seconded by Hon. Patrick Munene Ntwiga, MP.

**AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Substantive Agenda

**Clause by clause consideration of the Mental Health (Amendment) Bill, 2018**

**MIN. NO.NA/DC.H/2020/51:            CLAUSE BY CLAUSE CONSIDERATION OF  
THE MENTAL HEALTH (AMENDMENT) BILL,  
2018**

Upon considering the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) and the submissions from the stakeholders the Committee recommended the following amendments.

**CLAUSE 32**

**THAT** Clause 32 of the Bill be amended in the proposed new section 20A (2) by inserting the following new paragraph immediately after paragraph (c) —

“(ca) a duly appointed supporter of the person with mental illness.”

**CLAUSE 35**

**THAT** Clause 35(a) of the Bill be amended in the proposed new subsection (1B) by deleting the words “by inserting the following new subsection immediately after subsection (1)” appearing in paragraph (b)(iii).

**CLAUSE 36**

**THAT** Clause 36 of the Bill be amended in the proposed new section 24(2) by inserting the following new paragraph immediately after paragraph (a)—

“(aa) a mental health practitioner;.”

**CLAUSE 37**

**THAT** Clause 37 of the Bill be amended in the proposed new Part XII-

- (a) in section 27(3) by inserting the word “guardian” immediately after the word “supporter”;

- (b) in section 28 (2) by inserting the word “ or movable” immediately after the word “immovable” appearing in paragraph (a);
- (c) in section 31 by deleting the words “on its own motion” appearing in subsection (1).

MIN. NO.NA/DC.H/2020/52:

ADJOURNMENT

There being no other business, the meeting adjourned at 12.05 pm.

Sign.....

Date..... 17<sup>TH</sup>, MARCH 2020

(Chairperson)

**MINUTES OF THE TENTH SITTING (10<sup>TH</sup>) OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN CONFERENCE ROOM, THE SHAZA HOTEL ON FRIDAY 6<sup>TH</sup> MARCH, 2020 AT 2.30 P.M.**

---

**PRESENT**

1. The Hon. Sabina Chege, MP - **Chairperson**
2. The Hon. Dr. Eseli Simiyu, MP
3. The Hon. Dr. James Kipkosgei Murgor, MP
4. The Hon. Dr. Mohamed Dahir Duale, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Prof. Mohamud Sheikh Mohamed, MP
7. The Hon. Gladwell Jesire Cheruiyot, MP
8. The Hon. Esther M. Passaris, MP
9. The Hon. Patrick Munene Ntwiga, MP
10. The Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Swarup Ranjan Mishra, MP - **Vice-Chairperson**
2. The Hon. Dr. James Nyikal, MP
3. The Hon. Stephen Mule, MP
4. The Hon. Alfred Agoi Masadia, MP
5. The Hon. David Ochieng', MP
6. The Hon. Martin Peters Owino, MP
7. The Hon. Kipsengeret Koros, MP
8. The Hon. Tongoyo Gabriel Koshal, MP
9. The Hon. Mercy Wanjiku Gakuya, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Muyodi Emmanuel - Clerk Assistant III
2. Lynette Otieno - Legal Counsel I
3. Maureen Kweyu - Audio Officer

**MIN. NO.NA/DC.H/2020/45:            PRELIMINARIES**

The Chairperson called the meeting to order at 2.43 p.m. and said a prayer. Thereafter, the meeting proceeded to business.

**MIN. NO. NA/DC.H/2020/46:            ADOPTION OF AGENDA**

The Committee adopted the agenda as hereunder after being proposed by Hon. Dr.Dahir Duale, MP and seconded by Hon. Esther M. Passaris, MP.

**AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Substantive Agenda

**Clause by clause consideration of the Mental Health (Amendment) Bill, 2018**

**MIN. NO.NA/DC.H/2020/47:            CLAUSE BY CLAUSE CONSIDERATION OF  
THE MENTAL HEALTH (AMENDMENT) BILL,  
2018**

Upon considering the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) and the submissions from the stakeholders the Committee recommended the following amendments.

**CLAUSE 14**

**THAT** Clause 14 (b) of the Bill be amended by deleting the proposed new subsection (2A) and substituting therefor the following—

(2A) A county mental health council may, by notice in the *Gazette*, designate such a place within a county health facility in the respective county as the county mental health council may consider necessary as a mental health unit.

**CLAUSE 15**

**THAT** Clause 15 of the Bill be amended—

- (a) in the proposed new section 9B by deleting the word “medical” appearing in the peremptory statement in subsection (2);
- (b) in the proposed new section 9C (1) by deleting paragraph (b) and substituting therefor the following—

(b)body corporate, to a fine not exceeding five million for the first conviction and ten million for any subsequent conviction.

**CLAUSE 17**

**THAT** Clause 17 of the Bill be amended in the proposed new section 10 –

- (a) in subsection (1) by deleting the word “mental” appearing in paragraph (a); and
- (b) in subsection (4) by deleting the word “fort-two” appearing in paragraph (a) and substituting therefor the word “sixty”.

**CLAUSE 22**

**THAT** Clause 22 (b) of the Bill be amended in the proposed new section (1A) by deleting the words “who is carer or relative of that person” appearing in paragraph (d).

**CLAUSE 26**

**THAT** Clause 26 (c) of the Bill be amended in the proposed new subsection (3) by deleting the peremptory statement and substituting therefor the following—

“(3)Upon presentation of a person to a health facility under subsection (2), the person in charge of the health facility shall, within twenty-four hours —”

**CLAUSE 28**

**THAT** Clause 28 of the Bill be amended in the proposed new section 17 by inserting the following new subsections immediately after subsection (6) —

- (7) A member of the Kenya Defence Forces shall not be dismissed from service by virtue of being admitted to a mental facility or unit under this section or otherwise seeking treatment under this section.
- (8) The provisions of this section shall apply to a member of the National Police Service, with the necessary modifications, subject to the provisions of the National Police Service Act, 2011 and guidelines set by the National Police Service Commission

**MIN. NO.NA/DC.H/2020/48:**

**ADJOURNMENT**

There being no other business, the meeting adjourned at 5.05 pm.

Sign..... *[Signature]* ..... Date..... *17<sup>th</sup> MARCH, 2020* .....

**(Chairperson)**

**MINUTES OF THE NINTH SITTING (9<sup>TH</sup>) OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN CONFERENCE ROOM, THE SHAZA HOTEL ON FRIDAY 6<sup>TH</sup> MARCH, 2020 AT 9.30 A.M.**

---

**PRESENT**

1. The Hon. Sabina Chege, MP - **Chairperson**
2. The Hon. Dr. Eseli Simiyu, MP
3. The Hon. Dr. James Kipkosgei Murgor, MP
4. The Hon. Dr. Mohamed Dahir Duale, MP
5. The Hon. Muriuki Njagagua, MP
6. The Hon. Prof. Mohamud Sheikh Mohamed, MP
7. The Hon. Gladwell Jesire Cheruiyot, MP
8. The Hon. Esther M. Passaris, MP
9. The Hon. Patrick Munene Ntwiga, MP
10. The Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Swarup Ranjan Mishra, MP - **Vice-Chairperson**
2. The Hon. Dr. James Nyikal, MP
3. The Hon. Stephen Mule, MP
4. The Hon. Alfred Agoi Masadia, MP
5. The Hon. David Ochieng', MP
6. The Hon. Martin Peters Owino, MP
7. The Hon. Kipsengeret Koros, MP
8. The Hon. Tongoyo Gabriel Koshal, MP
9. The Hon. Mercy Wanjiku Gakuya, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Muyodi Emmanuel - Clerk Assistant III
2. Lynette Otieno - Legal Counsel I
3. Maureen Kweyu - Audio Officer

**MIN. NO.NA/DC.H/2020/41:            PRELIMINARIES**

The Chairperson called the meeting to order at 9.47 a.m. and said a prayer. Thereafter, the meeting proceeded to business.

**MIN. NO. NA/DC.H/2020/42:            ADOPTION OF AGENDA**

The Committee adopted the agenda as hereunder after being proposed by Hon. Dr.James Kipkosgei Murgor, MP and seconded by Hon. Muriuki Njagagua, MP.

**AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Substantive Agenda

**Clause by clause consideration of the Mental Health (Amendment) Bill, 2018**

**MIN. NO.NA/DC.H/2020/43:            CLAUSE BY CLAUSE CONSIDERATION OF  
THE MENTAL HEALTH (AMENDMENT) BILL,  
2018**

Upon considering the Mental Health (Amendment) Bill, (Senate Bill No. 32 of 2018) and the submissions from the stakeholders the Committee recommended the following amendments.

**CLAUSE 5**

**THAT** Clause 5 of the Bill be amended in the proposed new Part IA —

- (a) in section 2C (g) by deleting the words “in the Republic”;
- (b) in section 2D by—
  - (i) inserting the word “to” immediately after the word “relating” appearing in subsection (1)(c);
  - (ii) deleting the word “the” appearing in subsection (1)(d) immediately before the word “county” ;
  - (iii) deleting the words “including children, women, youth and elderly persons” appearing in subsection (1)(h) (ii);
  - (iv) deleting the word “Governor’ appearing in subsection (2)(a) and substituting therefor the word “county executive committee”; and
  - (v) inserting the word “the” immediately before the word “National” appearing in subsection (2)(e).
- (c) in section 2E —
  - (i) in subsection (3) by deleting paragraph (a) and substituting therefor the following new paragraph—
    - (a) that one person is nominated to represent each of the following—

- (i) supporters, guardians or representatives of persons with mental illness in the county;
- (ii) mental health practitioners in the county;
- (iii) youth in the county;
- (iv) persons with disabilities in the county; and
- (v) religious organizations in the county.

(ii) in subsection (4) by deleting the words “shall serve for a single term of three years and shall not be eligible for reappointment” and substituting therefor the following word “shall serve for a term of three years renewable once.”

(d) by inserting the following new subsection immediately after subsection (5) —

(6) A county mental health council shall conduct its business and affairs in accordance with the Schedule with the necessary modifications.

#### **CLAUSE 6**

**THAT** Clause 6 of the Bill be amended in the proposed new Part II—

(a) in section 3A(2) by deleting the word “medical” appearing in paragraph (a);

(b) in section 3C(3)—

- (i) deleting the word “the” appearing in the pre-emptory statement immediately after the word “inform”;
- (ii) inserting the word “the” immediately before the word “supporter” appearing in paragraph (a).

(c) in section 3D by —

- (i) inserting the word “where suitable” immediately before the word “private” appearing in subsection (1);
- (ii) deleting the word “fair” appearing in subsection (2) and substituting therefor the words “highest standard of”; and
- (iii) deleting the words “this section” appearing in subsection (4) and substituting therefor the words “subsections (2) and (3).”

(d) in section 3E by—

- (i) deleting the words “whether within or outside a health facility” appearing in subsection (2)(a); and
- (ii) deleting subsection (4).

(e) in section 3F by inserting the words “or any other written law” immediately after the words “Act” appearing in subsection (2).

(f) in section 3H (2) by—

- (i) deleting the words “mental” appearing in the peremptory statement;
- (ii) deleting paragraph (c); and
- (iii) deleting paragraph (g);

(g) in section 3I (2) by deleting the word “the doctor of the person with mental illness” appearing in paragraph (d) and substituting therefor the words “a medical practitioner”.

(h) by deleting section 3K.

**CLAUSE 7**

**THAT** Clause 7 (a) of the Bill be amended in the proposed new subsection (2)—

(a) in paragraph (a) by—

- (i) deleting the words “in a mental health care set up” appearing in subparagraph (i);
  - (ii) deleting the words “in a mental health care set up” appearing in subparagraph (ii);
  - (iii) deleting the words “in a mental health care set up” appearing in subparagraph (iii);  
and
  - (iv) deleting the words “in a mental health care set up” appearing in subparagraph (iv);
- (b) in paragraph (d) by deleting the words “two persons” and substituting therefor the word “one person”—

(c) by inserting the following new paragraph immediately after paragraph (e) —

“(ea) one person nominated by the Law Society of Kenya; and”

**CLAUSE 10**

**THAT** Clause 10 (a) of the Bill be amended—

- (a) in the proposed new subsection (1C) by inserting the words “of Mental Health” immediately after the word “Director”; and
- (b) in the proposed new subsection (1D) by inserting the words “of Mental Health” immediately after the word “Director”.

**MIN. NO.NA/DC.H/2020/44:**

**ADJOURNMENT**

There being no other business, the meeting adjourned at 12.45 pm.

Sign.....  ..... Date..... 17th March, 2020 .....

**(Chairperson)**

**MINUTES OF THE SECOND SITTING (2<sup>ND</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN MINI CHAMBER, COUNTY HALL, 1<sup>ST</sup> FLOOR, , PARLIAMENT BUILDINGS ON TUESDAY 13<sup>TH</sup> FEBRUARY, 2020 AT 10.00 am.**

---

**PRESENT**

1. The Hon. Sabina Chege, MP - **Chairperson**
2. The Hon. Dr. Eseli Simiyu, MP
3. The Hon. Dr. James Nyikal, MP
4. The Hon. Dr. Mohamed Dahir Duale, MP
5. The Hon. Dr. James Kipkosgei Murgor, MP
6. The Hon. Stephen Mule, MP
7. The Hon. Muriuki Njagagua, MP
8. The Hon. Prof. Mohamud Sheikh Mohamed, MP
9. The Hon. Martin Peters Owino, MP
10. The Hon. Esther M. Passaris, MP
11. The Hon. Gladwell Jesire Cheruiyot, MP
12. The Hon. Tongoyo Gabriel Koshal, MP

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Swarup Ranjan Mishra, MP - **Vice-Chairperson**
2. The Hon. Alfred Agoi Masadia, MP
3. The Hon. David Ochieng', MP
4. The Hon. Kipsengeret Koros, MP
5. The Hon. Mercy Wanjiku Gakuya, MP
6. The Hon. Patrick Munene Ntwiga, MP
7. The Hon. Zachary Kwenya Thuku, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Benjamin Magut - Senior Clerk Assistant
2. Mr. Muyodi Emmanuel - Clerk Assistant III
3. Ms. Lynette Atieno - Legal Counsel I
4. Winnie Kizia - Media Relation Officer

## **STAKEHOLDERS**

1. The Kenya National Commission on Human Rights (KNCHR);
2. NANGA Board Members;
3. Waringa Wagama, a Community Mental Health Worker;
4. True North Society;
5. Validity ;and
6. Safe Hands Organisation on behalf of –
  - (i) Tunawiri CBO; and
  - (ii) Speak Mind Love Organisation

## **MIN. NO.NA/DC.H/2020/007:      PRELIMINARIES**

The Chairperson called the meeting to order at 10.15 am and invited Members present and the stakeholders for a round of introductions. After that, the meeting proceeded to business.

## **MIN. NO. NA/DC.H/2020/008:      ADOPTION OF AGENDA**

The Committee adopted the agenda as hereunder after being proposed by Hon. Stephen Mule, MP and seconded by Hon. Dr. James Nyikal, MP.

## **AGENDA**

1. Prayers
2. Adoption of the Agenda
3. Substantive Agenda:

## **The Public hearing on the Mental Health (Amendment) Bill 2019**

## **MIN. NO.NA/DC.H/2020/009:      STAKEHOLDERS PRESENTATIONS ON THE** **MENTAL HEALTH (AMENDMENT) BILL 2019**

The Committee received memorandum from the following individuals and institutions following a call for memoranda through the print media on 10<sup>th</sup> October, 2019 and a letter dated 6<sup>th</sup> February, 2020.

1. The Kenya National Commission on Human Rights (KNCHR)
2. NANGA Board Members
3. Waringa Wagama - Community Mental Health Worker
4. True North Society
5. Validity
6. Safe Hands Organisation on behalf of –
  - i. Tunawiri CBO; and
  - ii. Speak Mind Love Organisation.

As relates to the Bill the stakeholders submitted as follows-

## **1. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)**

**Clause 5** - The Commission recommended that there be representation in the County Mental Health Councils of at least one member from organizations that advocates/represent persons with mental health conditions or users of mental health services.

They said it would ensure that perspectives from persons in need of mental health care and/or users of mental health services and those with lived experience are properly represented in the Council and its deliberations.

And it will also be in line with article 4(3) of the Convention on the Rights of Persons with Disabilities which provides for the close consultation and active involvement of persons with disabilities in decision-making processes that concern issues related to them.

**Clause 6** - Proposes to introduce clause 3K which recognizes the right of a person with a mental illness to equal recognition before the law and enjoyment of rights on an equal basis with other persons in all aspects of life. In addition, the Bill recognizes the role of a 'supporter' who should act in accordance with the will and preference of the person with a mental health condition.

**Clause 6 3I (3) (d)** - provides that a supportive decision-making agreement should be attested by two or more witnesses, one of whom should be the doctor of the person with a mental health condition. They proposed to change from doctor to 'mental health practitioner' which encompasses a broader range of mental health professionals, given the dearth of 'doctors' in some parts of the country. The rationale for this is that it should be as easy as possible to appoint a supporter and the law must not make the process challenging. If effecting a supporter is difficult, the default position will remain that of 'representative' which is contrary to article 12 of the CRPD.

**Clause 6 3I** - should provide a draft form for appointment of a supporter to give users of mental health services a concrete idea about what a supportive decision-making agreement comprises.

**Clause 6 3I** - The Commission welcomed this clause which elaborates on the role of the supporter. Recognition of this role is in line with article 12(3) of the UN Convention on the Rights of Persons with Disabilities which places an obligation on States Parties to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

**Clause 9 Section 5** - The Commission made the following proposals in terms of the functions of the Board:

Review of use of restraint/seclusion- In order to support a complete ban on the use of seclusion and restraint, the Commission proposed that the Board be given an express mandate to review reports of restraint and seclusion by mental health facilities.

**Clause 14** - The Commission called for an absolute ban on the use of seclusion and restraint in mental health facilities and removal of clause 9E.

The ban should be accompanied by a national strategy working towards the ban of seclusion and use of restraint in mental health facilities to be developed by the Mental Health Board in consultation with organizations of persons with disabilities.

They said that inclusion of organizations of persons with disabilities is in line with article 4(3) of the CRPD and is critical in ensuring that persons with lived experiences of mental health conditions, families and researchers input into the strategy. The national strategy would address challenges and support mental health providers as they work towards the absolute ban on restraint and seclusion which is prevalent in practice. In any event, seclusion and restraints should not be used on children/minors.

**Clause 15** - The Commission was concerned that the Bill under clause 15 proposes to retain under proposed new section 9E provisions that allow for seclusion and restraint in circumstances prescribed under the Bill, the prescribed procedures and upon authorization by a mental health practitioner. The Committee on the Rights of Persons with Disabilities as well as the Special Rapporteur on Torture and other Cruel, Inhuman 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.

The observations are made in light of the mental, emotional and physical harm that users of mental health services have experienced or are likely experience from the use of seclusion and restraint. Kenya is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which provides for the absolute prohibition against torture under article 2 of the Convention. It is on this basis that the Commission strongly recommended that the new proposed clause 9E be removed and provides for the absolute ban of the use of seclusion and restraint.

**Clause 17 Section 10** - The Commission proposed that 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.

**Clause 22 Section 10** - Clause 22(1A)(a) provides that an application for involuntary treatment can be made by a supporter of the person with a mental health condition. The role of a supporter is to act in accordance to the will and preferences of the individual. Involuntary commitment is inherently about admitting and treating an individual without his/her consent (otherwise, the person would voluntarily admit themselves to hospital). Implicating a supporter in involuntary treatment would damage the relationship of trust that should exist between the individual and his/her supporter, whose main role is to give effect to the person's will and preferences. In involuntary treatment, the expressed will and preference of the individual is to not receive treatment.

Commission called for the removal of the proposed provisions on involuntary admission in the Bill specifically clause 22 of the Bill to ensure compliance with the CRPD. Concomitantly, the State should develop a wide range of community-based services that respond to the needs of persons with disabilities and respect the person's autonomy, choices, dignity and privacy, including peer support and other alternatives to the medical model of mental health as urged by the Committee on the Rights of Persons with Disabilities in its Concluding Observations to Kenya.

**Clause 25 - Emergency treatment** – The Commission emphasized on the importance of the protection of the rights of the patients.

**Clause 32** - The Commission noted that the supporter is not identified as one of the persons who can initiate such review. The Commission proposed that this should be rectified, as the review of mental health status is a positive measure which the supporter should be able to support the person with a mental health condition initiate.

It is on this basis that the Commission recommended that:

- a) The Bill must not allow the supporter to act against the expressed will and preferences of the person with a mental health condition. Therefore, clause 22(1A)(a) should be deleted.
- b) The Bill should make the process of appointing a supporter easy, including by providing a sample form for designating supporters and by ensuring that the supportive decision-making agreement can be attested by any mental health practitioner (the term 'mental health practitioner' is defined in Clause 3 of the Bill).
- c) The Bill should permit the supporter to initiate review of mental health status under Clause 32 (20A) (2).

**Clause 37** - Proposes to amend section 26 of the Mental Health Act to the effect that a supporter should be able to apply for an order for the management of the estate of a person with a mental health condition. The role of a supporter is to act in accordance to the will and preferences of the individual. Unless the person with a mental health condition in the support agreement expressly gives the supporter power over property, the supporter, whose main role is to give effect to the person's will and preferences, should not initiate proceedings to manage the property of the person with a mental health condition. If this role (which is contrary to article 12(5) of the CRPD) must remain in the Bill, the same should be carried out by a representative.

## 2. NANGA BOARD MEMBERS

**NANGA** recommended a practice known as *Diversion* which advocates for placing offenders in mental health treatment instead of prison or jail. It often takes one of two forms.

- a) **Forensic Psychiatric Hospitalization**:- Offenders who have been found not guilty by reason of insanity are to be sent to forensic Psychiatric mental health hospitals such as Mathare Mental and Referral Hospital. Which can be spread in different counties these facilities do confine people like prisons and jails do. The aim should be to rehabilitate rather than to punish.
- b) **Mental Health Courts**:- These courts are for offenders who have mental health concerns but don't qualify for the insanity defense. Judges may offer defendants reduced sentences in exchange for getting treatment. In many cases, a defendant may not go to jail or prison at all.

**Occupational safety and health administration for correctional officers** –given the stressful and dangerous conditions experienced by correctional officer there is need to come up with policies and programs with a specific purpose of enhancing officers well-being.

### **Psychiatric Medication** –

**NANGA** recommended for subsidization or tax exemption for mental health drugs, expansion of insurance coverage for prescription drugs, promotion of the establishment of managed behavioral health care organizations.

They also recommended for provision of prosecutorial powers to the Pharmacy and Poisons Board (PPB) and the Pharmaceutical Society of Kenya (PSK) –to arrest quacks and curb dumping of antipsychotic drugs like Risperdal.

Lastly they recommended for offering of tax havens to Pharmaceutical Manufacturers of Mental Health Drugs, Appropriation vote to Universities and research Institutes on mental health.

**Clause 28 Section 17 - Admission and Discharge of Members Of The Armed Forces.**

NANGA emphasized on the importance of Mental health provisions on the members of the defence forces.

### **3. WARINGA WAGEMA - COMMUNITY MENTAL HEALTH WORKER**

**Support Systems** – She noted that there is need to invest in the support system of a person living with a mental health condition, they should be empowered to know what they are looking at, listening to and how to take dignified action and empathetic care.

### **4. TRUE NORTH SOCIETY**

True North organization, was created to lead the way through action, to pay the military veterans back for their service by ensuring war wounds do not limit their life experiences and tragically, life expectancy. It is against this background that they made their contribution as follows-

**Clause 28 Section 17 - Admission and Discharge of Members of The Armed Forces**

- i. They proposed that there should be more collaboration by military health units and external civilian hospitals to which they are referred. Such collaboration will involve psychiatrists and psychologists on both ends.
- ii. In the section describing the action taken when a member of the armed forces suffers a mental illness, the rights of the officer should be upheld and their employment not terminated on the grounds of illness/incapacitation.

They further submitted as follows:

- (i) The Constitution of Kenya 2010, in article 43. (1a) provides that “every person has the right to the highest attainable standard of health, which includes the right to healthcare services”. This is also in line with the strategic objectives and priority areas of Vision 2030, the Kenya Health Policy (2014-2030) and the global commitments. It goes without saying that every Kenyan citizen needs better mental health care and to live in an environment that is psychologically safe for them.
- (ii) Their key priority issue is with the armed security personnel; persons in the National Police Service, The Kenya Prisons, The Kenya Wildlife Service, The Kenya Defense Forces, military veterans and their families. Members of the armed security personnel face unique challenges to their mental health and general wellbeing. The nature of their job is stressful in and of its self, coupled with the strains on family, finances and other integral aspects of their lives and this is why it is important to stand in the gap and ensure they receive better mental health care when in active service and upon retirement or death in the case of families left behind.
- (iii) They further proposed the following practical solutions to deal with mental health issue in the Armed forces -
  - (a) Ensure funding for mental and behavioral management for both active service personnel and their families is a revolving annual requirement with its independent vote cemented by an authority to incur expenses. This vote should cover wounded and retired personnel, widows, orphans and vulnerable children to support reintegration and transition.
  - (b) Include mental health screening as a requirement during recruitment. This screening ought to include screening for drugs use such as and not limited to cocaine, khat, heroin and majiwana.

- (c) Establishment of mental wellness units in the various security services stations and garrisons country wide.
- (d) Establishment of an armed security informed facility and program in Mathari hospital which is fully equipped with personnel trained in the care of armed security.
- (e) Capacity building in skills, techniques and knowledge for medical care givers within the inter-disciplinary spectrum in for example but not limited to; Psychological First Aid, Skills for recovery, incident command systems, critical incidence management skills population and behavior management in disaster and crisis, professional supervision, addressing moral injury and commanders guilt, response moderation and resilience building and eclectic approaches in trauma care
- (f) Capacity building in skills, techniques and knowledge for non-medical professionals especially those in humanitarian spheres in for example but not limited to; psycho-education, incident command systems, psychological first Aid and professional supervision.
- (g) Repeal the section in the Defense Forces Standing Orders that criminalizes soldier suicide and denies the family financial compensation.

## 5. VALIDITY

Validity has been working in Kenya on mental health rights since 2010 and published a report on the right to legal capacity of persons with mental disabilities in 2014. Validity has also been involved in advocacy around the drafting of the Mental Health (Amendment) Bill 2018 taking into consideration international human rights standards, specifically the Convention on the Rights of Persons with Disabilities (“CRPD”), the Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa, as well as rights enshrined under Article 54 of the Kenyan Constitution and the Persons with Disabilities Act of 2012.

They submitted as follows-

**Clause 3 Section 2** – they noted that the Bill is replete with discriminatory and derogatory language which attacks the dignity of persons with mental disabilities as citizens of Kenya.

In addition, the Constitution of Kenya states that a person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning. At present, the Bill uses derogatory terminology and phraseology which has been widely rejected by persons with mental disabilities and undermines their dignity, including referring to people as: “*person suffering from mental disorder*”, “*person suffering from mental illness*”, “*psychopathic* and *person*” and “*mental sub normality*”.

### **Clause 6 - Rights of persons with mental illness.**

Informed consent in the field of health refers to the process whereby explicit information is provided to a person in a language and format they can access and which is relevant for them to decide on whether or not to have a particular treatment, to choose from a range of options, to deny treatment, or to participate in a particular experiment.

The validity of informed consent is premised upon the full disclosure of appropriate information to a person who is then permitted to make a voluntary choice.

A recent ruling from Australia further elaborated on informed consent, stating that a person cannot be deemed to lack the capacity to give informed consent simply by making a decision that others consider to be unwise according to their individual values and situation. To impose upon persons with mental disabilities a higher threshold of capacity, and to afford them less respect for personal autonomy and individual dignity, than people without disabilities, would be discriminatory.

For instance, while Section 3B recognizes the right to informed consent to treatment, and participation in development of a treatment plan, Section 3C (2) proceeds to deny that right by substituting the decision making with a representative.

In so doing, this approach fundamentally undermines the principle that health care and treatment should only be provided on the basis of informed consent, and should be removed

*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.*

In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD. The Committee called on the Government of Kenya to –

- (a) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee's General Comment No. 1 (2014) on equal recognition before the law;
- (b) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- (c) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights ("KNCHR") and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
- (d) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

#### **Clause 3F alludes to admission via the Criminal Procedure Code.**

In compliance with Article 14 CRPD, legislative reforms should remove the possibility that 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.

## Clause 15 - Establishment of mental health facilities

In its present form, the Bill would legalise abusive practices which breach Constitutional protections and the human rights of persons with mental disabilities including legislating to enable involuntary detention, forced treatment, seclusion, restraint and electro-convulsive therapy (“ECT”).

Clause 9D provides that mental health treatments may be authorised by a representative without the informed consent of the person concerned. This means that the Bill allows for the treatment of people without their consent. Involuntary psychiatric intervention/treatment is contrary to the rights to health on the basis of informed consent and personal integrity guaranteed under Articles 25 and 17, respectively, of the CRPD. Certain forms of involuntary treatment are also likely to amount to torture or ill-treatment in contravention of Article 15 CRPD and the Convention against Torture.

Further, the option of empowering “representatives” to consent to treatment or hospitalisation of people without their consent or against their will undermines their legal capacity. This is a serious misunderstanding and misconstruction of the concept of “support” which is set out under Article 12 of the CRPD and Article 7 of the Protocol to the African Charter on the Rights of Persons with Disabilities.

- (i) *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.* In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –
- (e) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
  - (f) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
  - (g) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
  - (h) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

Clause 9E allows for the use of seclusion and physical restraint. The CRPD Committee, as well as the

Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, have both called for an end to all coercive and non-consensual psychiatric

interventions including the use of restraint and seclusion as such practices may amount to torture or ill-treatment, violating Article 15 CRPD.

The application of seclusion and restraints as provided in 9E cannot be regarded as justifiable and these possibilities should be explicitly prohibited under the law.

#### **Clause 22 - PART VI - INVOLUNTARY PATIENTS 14.**

They proposed that emergency admissions, should only be held for 24 hours, the choice to retain such draconian and coercive measures will also result in forced detention and deprivation of liberty in conflict with CRPD Article 14.

Deprivation of liberty on the grounds of actual or perceived “mental illness” or mental disability is unjustified, a position which has been authoritatively stated by the UN Special Rapporteur on Torture, Inhuman and Degrading Treatment or Punishment,<sup>8</sup> the CRPD Committee,<sup>9</sup> and more recently in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities.

In their concluding observations on Kenya’s report, 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.

The above refers to clauses 21 and 22 on the procedure of admission for “*involuntary patients*” where a family member can have a person admitted without their consent. Further the Police have the power to escort a person for admission at a mental health facility. Clauses 45 and 49 of the Bill make reference to aiding escape of a person from a mental health facility or permitting them to leave unlawfully commits an offence.

#### **Clause 25 - emergency admission and treatment**

*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.* In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –

- (i) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
- (j) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- (k) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
- (l) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

#### **Clause 32 - Review of mental health status**

*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.* In 2015, the Government of Kenya received concluding observations of the CRPD Committee following the first periodic review of the country under the CRPD.<sup>7</sup> The Committee called on the Government of Kenya to –

- (m) Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee's General Comment No. 1 (2014) on equal recognition before the law;
- (n) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
- (o) Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights ("KNCHR") and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
- (p) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.

Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A)

As relates to the Bill they further submitted as follows-

- i. Various aspects of the Bill are welcome, notably the objects and guiding principles contained in sections 2A and 2B, including the restatement of obligations of national and county governments to provide mental health services in the community, to promote the highest attainable standard of health and protections of the rights and dignity of persons with mental disabilities. We also welcome Section 2D on promoting community-based services that aims at ensuring inclusion in the community. These commitments are positive contributions towards realisation of Article 19 of the CRPD and Article 10 of the Protocol to the African Charter of the Rights of Persons with Disabilities in Africa.
- ii. 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. In 2015, the Government of Kenya received concluding observations of the CRPD Committee

- following the first periodic review of the country under the CRPD.7 The Committee called on the Government of Kenya to –
- iii. Eliminate all formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee’s General Comment No. 1 (2014) on equal recognition before the law;
  - iv. Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, in particular of persons with intellectual and/or psychosocial disabilities, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
  - v. Support and facilitate ongoing initiatives to implement Article 12 CRPD, including research by the Kenya National Commission on Human Rights (“KNCHR”) and the models of supported decision-making spearheaded by representative organisations of persons with disabilities; and
  - vi. Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life of persons with disabilities, ensuring the involvement of all relevant stakeholders.
  - vii. Other clauses that should be considered in light of the right to supported decision making include Clause 3K where it is proposed that courts can determine whether a person has legal capacity and can appoint a representative; clauses on consent to treatment (3B), right to participate in treatment planning (3C), right to access information (3H), right to representation (3J), seclusion and restraint (9E), informed consent (9D), conditions for emergency admission and treatment (15A), and review of mental health status (20A).

**6. SAFE-HANDS ORGANISATION ON BEHALF OF – TUNAWIRI CBO; AND SPEAK MIND LOVE ORGANIZATION**

Safe-Hands is a non-profit organization based organization registered under the societies act. Its objectives are: To create mental health awareness and break the stigma in the community; to influence Policy change through lobbying decision makers to improve mental health services and Capacity building through trainings and workshops.

As relates to the Bill they submitted as follows-

The government should ensure subsidization of mental illness medication and facilities. This should include expanding of the National Health Insurance Fund (NHIF) packages to provide coverage for mental disorders.

Do away with the penal code section that criminalizes suicide. Suicide should be viewed as a mental health disorder. Individuals who attempt suicide should be assessed first before being arrested.

**MIN. NO.NA/DC.H/2020/10:**

**ADJOURNMENT**

There being no other business, the meeting adjourned at 1.34 pm. It was agreed that the dates for the next meeting would be communicated.

Sign..... Date..... 17TH MARCH 2020

(Chairperson)