



REPUBLIC OF KENYA
TWELFTH PARLIAMENT – (THIRD SESSION)
THE SENATE
ORDER PAPER
WEDNESDAY, JULY 17, 2019 AT 2.30 PM

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers (as listed in the Appendix)
6. Notices of Motion (as listed in the Appendix)
7. Statements (as listed in the Appendix)
8. **MOTION - ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 3 OF 2018)**
(Chairperson, Mediation Committee)

THAT, the Senate adopts the report of the Mediation Committee on the Land Value Index Laws Bill (National Assembly Bills No. 3 of 2018) laid on the Table of the Senate on Wednesday, 10th July, 2019 and pursuant to Article 113 of the Constitution and Standing Order 161 (3) of the Senate Standing Orders approves the mediated version of the Bill.

(Resumption of debate interrupted on Tuesday, 16th July, 2019)
(Division)

9. ***THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO. 3 OF 2019)**
(Sen. (Dr.) Agnes Zani, MP)

(Second Reading)
(Resumption of debate interrupted on Tuesday, 16th July, 2019)
(Division)

10. **COMMITTEE OF THE WHOLE**

*****THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)**

(The Senate Majority Leader)

11. **COMMITTEE OF THE WHOLE**

***THE LOCAL CONTENT BILL (SENATE BILLS NO. 10 OF 2018)**

(Sen. Gideon Moi, MP)

12. **COMMITTEE OF THE WHOLE**

***THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO 31 OF 2018)**

(Sen. (Dr.) Agnes Zani, MP)

13. **COMMITTEE OF THE WHOLE**

***THE ELECTION LAWS (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2018)**

(Sen. Ledama Olekina, MP)

14. **COMMITTEE OF THE WHOLE**

***THE ELECTION LAWS (AMENDMENT) (NO.2) BILL (SENATE BILLS NO. 37 OF 2018)**

(Sen. (Dr.) Agnes Zani, MP)

15. **COMMITTEE OF THE WHOLE**

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

(Sen. (Arch.) Sylvia Kasanga, MP)

16. ***THE COMMISSION ON ADMINISTRATIVE JUSTICE (AMENDMENT) BILL (SENATE BILLS NO. 6 OF 2019)**

(Sen. Petronilla Were Lokorio, MP)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 16th July, 2019)

17. ***THE CONTROL OF STRAY DOGS BILL (SENATE BILLS NO. 4 OF 2019)**

(Sen. Mary Seneta, MP)

(Second Reading)

18. ***THE NATIONAL MUSEUM AND HERITAGE (AMENDMENT) BILL (SENATE BILLS NO. 7 OF 2019)**

(Sen. (Dr.) Alice Milgo, MP)

(Second Reading)

19. ***THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL (SENATE BILLS NO. 9 OF 2019)**

(Sen. (Dr.) Abdullahi Ali, MP)

(Second Reading)

...../Bill

20. **MOTION - STAFF RATIONALIZATION IN COUNTIES.**

(Sen. (Dr.) Agnes Zani, MP)

THAT, AWARE THAT the Senate represents the counties, and serves to protect the interests of the Counties and their governments;

FURTHER AWARE THAT, the launch of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme was launched by the Inter-Governmental Steering Committee (IGSC) on 14th July 2014 with the objective of transforming the Public Service for efficient and effective service delivery at both levels of Government;

NOTING THAT, the implementation timelines for the CARPS programme of two years specifically with regard to the capacity assessment, workload analysis and staff redeployment and transfers, are of paramount importance in the Counties as the terms of all second term County Governors come to a close in 2022;

CONCERNED THAT, County governments are still engaged in uncontrolled hiring of staff in total violation of applicable laws, exposing a glaring imbalance between money spent on recurrent expenditure, versus budgets for development projects which are the essence of devolution;

CONCERNED FURTHER THAT, contrary to Section 15(2)(b) of the Public Finance Management (PFM) Act, in counties such as Nairobi, Machakos, Garissa, Kisumu, Wajir, Baringo, Narok, Nakuru and Nyamira, staff salaries consumed in excess of 75% of total expenditure, over and above the set limit of 35% as provided in Regulation 25 (1) of the Public Finance Management (County Governments) Regulations, 2015 during the FY 2018/2019;

DEEPLY CONCERNED THAT, although Section 65 of the County Governments Act requires that more than 30% of the vacancies at entry level be given to members of ethnic groups that are not dominant in their precincts, the 2016 Ethnic and Diversity audit launched by the National Cohesion and Integration Commission revealed that 68% of Counties have hired more than 70% of their staff from one ethnic group;

NOW THEREFORE in exercise of its oversight function, the Senate resolves that the Public Service Commission (PSC), Intergovernmental Relations Technical Committee (IGTRC) and the Council of Governors provide a comprehensive report on:-

1. the progress and implementation status of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme indicating the County Governments that are compliant; and
2. the number of employees in each County Government showing the amount spent as wage bill vis a vis recurrent expenditure budgeted for FY 2018/2019. and submit these reports to the Senate within 60 days of this resolution.

(Resumption of debate interrupted on Thursday, 4th July, 2019)

(Balance of Time – 2 hours 57 minutes)

21. **MOTION - RENAMING OF MURANG'A UNIVERSITY OF TECHNOLOGY TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY.**

(Sen. Isaac Mwaura, MP)

THAT, AWARE THAT, Murang'a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act, 2012, and is positioning itself to develop a distinctive profile as a progressive and international

...../Motion

Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang’a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD –Asili under which he ran for presidency in 1992 general election;

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba’s contribution to our Nation, to rename Murang’a University of Technology to Kenneth Matiba University of Technology.

22. **MOTION - CREATION OF SUPPORT SERVICES FOR MEMBERS OF THE DISCIPLINED FORCES AND THEIR FAMILIES**

(Sen. George Khaniri, MP)

THAT, APPRECIATING the commitment and sacrifice by members of the disciplined forces in protecting our country from both internal and external aggression;

AWARE of the risky and stressful environment that the officers are exposed to daily in the line of duty, combined with the increased terrorism threats at home, and abroad;

NOTING that members of the disciplined forces, and by extension, their families are exposed to traumatic incidents both at home and abroad that manifest as living in constant fear, debilitating depression, nightmares, crippling anxiety and thoughts of suicide commonly referred to as Post Traumatic Stress Disorder (PTSD) leaving them exposed to the stigma of society and unable to care for themselves and their families the way they could before;

RECOGNIZING that there is no structured national comprehensive program for post-traumatic stress counseling either for active or returning soldiers and their families;

...../Motion

NOW THEREFORE the Senate calls upon the Ministry of Interior and Co-ordination of National Government, in partnership with the Ministry of Defence, to establish counseling and support centers in all premises housing disciplined forces, and provide mandatory counseling to all service personnel and the families of those currently serving, and those who may have been killed in the line of duty.

NOTICE

The Senate resolved on 13th February, 2019 as follows:-

THAT, pursuant to Standing Order 106 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

KEY

******** - Denotes a Majority /Minority Party Bill

******* - Denotes a National Assembly Bill

****** - Denotes a Committee Bill

***** - Denotes any other Bill

A. *THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)**

(The Senate Majority Leader)

NOTICE is given that Sen. Farhiya Ali Haji, intends to move the following amendments to the County Governments’ Retirement Scheme Bill, National Assembly Bills No. 10 of 2018, at the Committee Stage—

CLAUSE 16

THAT clause 16 of the Bill be amended by deleting the words “remuneration or” appearing immediately after the words “paid such” and substituting therefor the word “sitting allowance”.

CLAUSE 21

THAT clause 21 of the Bill be amended in paragraph (d) by deleting the words “provide regular information” appearing immediately before the words “on investment strategy” and substituting the words “submit reports on a quarterly basis”.

CLAUSE 22

THAT clause 22 of the Bill be amended in subclause (1) by inserting the following new paragraph immediately paragraph (f)-

(fa) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

CLAUSE 23

THAT clause 23 of the Bill be amended in subclause (2) by-

- (a) inserting the words “at least on a quarterly basis” immediately after the words “including access” in paragraph (d);
- (b) inserting the following new paragraph immediately after paragraph (d)-

(da) keep and maintain proper books of accounts of the scheme;

CLAUSE 24

THAT clause 24 of the Bill be amended -

- (a) in subclause (1) by inserting the word “member” immediately after the words “long as the”;
- (b) in subclause (2) by inserting the words “not less than” immediately after the words “contribute to the scheme”.
- (c) in subclause (5) by deleting the words “on each occasion” appearing immediately after the words “salary of the contributor” and substituting therefor the words “in each month”.

...../Amendments

CLAUSE 36

THAT clause 36 of the Bill be amended in paragraph (a) by deleting the words “except where a member works on a contractual basis for the sponsor after their resignation or early retirement” appearing immediately after the words “a sponsor”.

CLAUSE 44

THAT clause 44 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause-

- (1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

CLAUSE 46

THAT clause 46 of the Bill be amended in the introductory phrase in subclause (2) by inserting the word “actuary” immediately after the words “fund Manager”.

CLAUSE 48

THAT clause 48 of the Bill be amended by inserting the following new subclause immediately after subclause (2)-

- (3) A person who is convicted of an offence under subsection (1) (c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

B. *THE LOCAL CONTENT BILL (SENATE BILLS NO. 10 OF 2018)

(Sen. Gideon Moi, MP)

NOTICE is hereby given that Sen. Mary Seneta, Vice-Chairperson to the Senate Standing Committee on Energy, intends to move the following amendments to the Local Content Bill, Senate Bills No. 10 of 2018, at the Committee Stage –

CLAUSE 3

THAT clause 3 of the Bill be amended by inserting the words “and minerals” immediately after the words “other petroleum resources”.

CLAUSE 4

THAT clause of the Bill be amended –

- (a) by deleting the words “and their retention in the country” appearing at the end of paragraph (a);
- (b) in paragraph (d) by inserting the word “local” immediately after the words “capable and sustainable”; and
- (c) in paragraph (f) by deleting the word “content” appearing immediately after the words “through local” and substituting therefore the word “capacity”.

CLAUSE 7

THAT clause 7 of the Bill be amended –

- (a) in paragraph (b) by –
 - (i) deleting sub-paragraph (i) and substituting the following new paragraph –
 - (i) managing, in collaboration with the relevant State entity, the pace and scheduling of extractive industry programmes in order to enable local persons to take advantage of the opportunities along the extractive value chain;
 - (ii) inserting the words “identified by the Committee” immediately after the words “in-country programmes” in sub-paragraph (ii)
 - (iii) deleting the word “capture” appearing immediately after the words “development and wealth” in paragraph (iv) and substituting therefor the word “creation”.
- (b) in paragraph (d) by inserting the words “developed by the respective Ministries” immediately after the words “across all policy frameworks”.

CLAUSE 8

THAT clause 8 of the Bill be amended –

- (a) by inserting the following new paragraph immediately after paragraph (f) –

...../Amendments

(fa) collaborate with the Committee in the identification of goods and services that are available within the respective county and keep a data base of such goods and services;

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (2) by inserting the words “the relevant Ministries and the relevant stakeholders” immediately after the words “the county governments).

CLAUSE 11

THAT clause 11 of the Bill be amended by –

- (a) renumbering the existing provision as sub clause (1);
- (b) inserting the following new sub-clause immediately after the new sub-clause (1) –

(2) The Committee shall avail for inspection by members of the public, the register kept by it under subsection (1).

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (1) by–

- (i) inserting the following new paragraph immediately after paragraph (d) –
 - (da) the Principal Secretary responsible for matters relating to education or a representative designated in writing;
- (ii) deleting paragraph (e) and substituting therefor the following new paragraph –
 - (e) two persons of the opposite gender nominated by the Council of Governors from persons residing in a county in which extractive activities are being undertaken and appointed by the Cabinet Secretary;
- (iii) deleting the words “nominated by players” and substituting therefor the words “of the opposite gender nominated by an association representing the largest number of players” immediately after the words “two persons” in paragraph (f).

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by deleting the words “Ministry responsible for matters relating to the petroleum industry” appearing immediately after the words “unit within the” and substituting therefor the words “respective Ministry”.

CLAUSE 22

THAT clause 22 of the Bill be amended –

- (a) in sub-clause (2) by deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;
- (b) in sub-clause (3) by–
 - (i) deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph –
 - (c) workforce development strategies in relation to locals including training plans and projections to address any competency gaps that may have been identified by the Committee and the operator in relation to the local labour force;
- (c) by deleting the introductory clause in sub-clause (4) and substituting therefor the following new introductory clause –

(4) An applicant shall set out in the applicant’s local content plan, the strategies through which the applicant shall –

CLAUSE 26

THAT clause 26 of the Bill be amended –

- (a) in sub-clause (1) deleting the word “operator” appearing immediately after the word “An” and substituting therefor the word “applicant”;
- (b) in sub-clause (2) by deleting the word “skills” appearing immediately after the words “specification of the” in paragraph (a)(i) and substituting therefor the word “competencies”;
- (c) in sub-clause (3) by deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”.

CLAUSE 27

THAT clause 27 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

- (4a) The Committee shall –
 - (a) in consultation with the relevant Ministries, operators and stakeholders, identify existing gaps in competencies and skills in the local workforce;
 - (b) develop a common competency system and development plan within the respective sectors and for the various disciplines required in the extractive industry;

- (c) maintain a database of the skills and competencies available locally; and
- (d) collaborate with the relevant Ministries in building the capacity of local training institutions to administer the trainings necessary to develop the skills and competencies identified under paragraph (a).

CLAUSE 38

THAT clause 38 of the Bill be amended by –

- (a) deleting sub-clause (3); and
- (b) deleting sub-clause (5).

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting the words “grant of a licence or” appearing immediately after the words “company in the”.

CLAUSE 49

THAT clause 49 of the Bill be amended in sub-clause (3) by inserting the words “and non-Kenyans” immediately after the words “are Kenyan nationals” in paragraph (e).

CLAUSE 50

THAT clause 50 of the Bill be amended in the introductory clause to sub-clause (2) by deleting the word “a” appearing immediately after the words “the Cabinet Secretary” and substituting therefor the words “an annual”.

CLAUSE 54

THAT clause 54 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “not more than two million shillings or to imprisonment for at term of not more than three years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least three years”;
- (b) in sub-clause (2) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least five million shillings or to imprisonment for a term of at least five years”;
- (c) in sub-clause (3) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least five years”;

(d) in sub-clause (5) by deleting the words “not exceeding eight hundred thousand shillings or to imprisonment for at term not exceeding twelve months” appearing immediately after the words “liable to a fine” and substituting therefor the words “of at least five million shillings or to imprisonment for a term of at least three years”.

CLAUSE 57

THAT clause 57 of the Bill be amended –

(a) in sub-clause (3) by deleting the words “neglected children” appearing immediately after the words “in relation to” in paragraph (a) and substituting therefor the words “the extractive industry”;

(b) in sub-clause (4) by deleting the words “county executive committee member” appearing immediately after the words “authority of the” in paragraph (a) and substituting therefor the words “Cabinet Secretary”.

CLAUSE 2

THAT clause 2 of the Bill be amended in the definition of the word “Cabinet Secretary” by deleting the words “the extractive industry” appearing immediately after the words “matters related to” and substituting therefor the word “devolution”.

LONG TITLE

THAT the Bill be amended by deleting the Long Title and substituting therefor the following new Long Title –

AN ACT of Parliament to provide a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil, petroleum resources and mineral resources; to provide a framework to increase the local value capture along the value chain in the exploration of gas, oil, petroleum resources and mineral resources; and for connected purposes.

C. *THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 31 OF 2018)

(Sen. (Dr.) Agnes Zani, MP)

NOTICE is given that Sen. Paul Mwangi Githiomi, the Chairperson to the Standing Committee on Land, Environment and Natural Resources, intends to move the following amendments to the Natural Resources (Benefit Sharing) Bill, 2018, at the Committee Stage—

CLAUSE 6

THAT clause 6 of the Bill be amended—

- (a) in subclause (1) by inserting the words “in consultation with the Council of County Governors and relevant national government entities” immediately after the words “The Commission shall”; and
- (b) in subclause (2) by deleting the word “overall” appearing immediately after the word “the” in paragraph (a) and substituting therefor the word “total”.

CLAUSE 9

THAT clause 9 of the Bill be amended in subclause (1) by inserting the words “with the relevant county government” immediately after the words “benefit sharing agreement”.

CLAUSE 10

THAT clause 10 of the Bill be amended —

- (a) in subclause (2) by —
 - (i) by inserting the following new paragraph immediately after paragraph (b) —
 - (ba) two technical officers of the relevant county departments, appointed by the county executive committee member in consultation with the county executive committee member responsible for the respective natural resources; and
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph —
 - (c) five persons, two of whom shall be of the opposite gender, elected by the local communities where the natural resource is found and representing the areas with the main natural resources within the county”;
- (b) in subclause (5) by inserting the words “in consultation with Council of County Governors” immediately after the words “Cabinet Secretary shall”.

CLAUSE 13

THAT clause 13 of the Bill be amended by inserting the following new subclause immediately after subclause (4) —

(4A) A local community benefit sharing forum shall not hold more than eight meetings in one year.

CLAUSE 14

THAT clause 14 of the Bill be amended by deleting subclause (4).

CLAUSE 16

THAT clause 16 of the Bill be amended in subclause (3) by deleting the word “principal” appearing immediately after the words “this Act every”.

CLAUSE 17

THAT clause 17 of the Bill be amended—

(a) in subclause (1) by deleting the word “one” appearing immediately after the words “Commission shall within” and substituting therefor the word “two”;

(b) by inserting the following new subclauses immediately after subclause (3)
—

(4) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a natural resource under this Act shall be considered to be authorised to conduct such exploitation under this Act.

(5) Despite subsection (4), an affected entity shall comply with the provisions this Act within two years of its commencement.

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) in the definition of the term “Cabinet Secretary” by deleting the word “mining” appearing immediately after the words “matters related to” and substituting therefor the words “finance”;

(b) by deleting the definition of the term “local community” and substituting therefor the following new definition—

“local community” means

- (a) people living in a ward within which a natural resource is situated; and
- (b) people displaced to make way for the exploitation of a natural resource;

(c) by deleting the definition of the term “natural fund” and substituting therefor the following new definition—

“natural resources” means the natural resources provided under section 3 of this Act;

(d) by inserting the following new definitions in their proper alphabetical sequence—

“county executive committee member” means the county executive committee member responsible for matters relating to finance in the respective county;

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“officer” has the meaning assigned to it under section 3 of the Companies Act;

LONG TITLE

THAT the Long Title to the Bill be amended by inserting the word “natural” immediately after the words “benefit sharing in”.

D. *THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 32 OF 2018)
(Sen. (Arch.) Sylvia Kasanga, MP)

- (i) **NOTICE** is given that the Chairperson of the Standing Committee on Health, Senator Michael Mbiti intends to move the following amendments to the Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018) at the Committee Stage
—

CLAUSE 2

THAT the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

2. The Mental Health Act, hereinafter referred to as the principal Act, is amended by deleting the long title and substituting therefor the following new long title—

An Act of Parliament to provide for the prevention of mental illness, to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness; and for connected purposes.

CLAUSE 3

THAT clause 3 of the Bill be amended—

- (a) in paragraph (b) by deleting the definition of the term “mental health facility” and substituting therefor the following new definition—

“mental health unit” means a place within a health facility, designated by a notice in the *Gazette*, to be a place for the reception and treatment of persons with mental illness, by the—

- (a) Board, in the case of a national referral hospital or any other national government facility; or
- (b) county executive committee member in the case of a county health facility in that county.

- (b) by inserting the following new definition immediately after the definition of the term “Director”—

“guardian” in relation to a minor with mental illness includes—

- (a) the parents of the minor;
- (b) a person who has parental responsibility over the minor;
- (c) a person who has legal custody of the minor;
- (d) in the absence of a parent, a person who has care and control of the minor;
- (e) in the absence of a parent or a person who has care and control of the minor, a person who has actual custody of the minor.

- (c) by inserting the following new definition immediately after the definition of the term “health care provider”—

“Health Information System” means the Health Information System established by the Ministry of Health under section 105 of the Health Act;

(d) by deleting the definition of the term “person suffering from mental illness and substituting therefor the following new definition—

“person with mental illness” means a person who has been found to be so suffering under this Act and includes—

- (a) a person suffering from maternal mental illness; and
- (b) a person diagnosed with mental impairment due to alcohol or substance abuse.

(e) by deleting the definition of the term “a person in charge” and substituting therefor the following new definition—

“person in charge”, in relation to a health facility, means the person for the time being authorized by the Director, in the case of a National Referral Hospital, or the County Executive Committee Member, in the case of a county health facility, to be in medical charge of the respective health facility.

(f) by deleting the definition of the term “representative” and substituting therefor the following new definition —

“representative” means—

- (a) a spouse of that person, or if unable or unwilling;
- (b) the child of that person, where such child has attained the age of eighteen years, or if unable or unwilling;
- (c) a parent of that person, or if unable or unwilling;
- (d) a relative of that person, or if unable or unwilling; or
- (e) a person under whose care or charge the person with mental illness is.

(g) in the definition of the term “mental health practitioner” by inserting the following new paragraph immediately after paragraph (d)—

(e) psychiatric nurse under the Nurses Act.

(h) by inserting the following new definition immediately after the definition of the term “representative”—

“supporter” means a person appointed under section 3J by the person with mental illness to make decisions on behalf of the person with mental illness according to the will and preference of the person with mental illness.

CLAUSE 5

THAT clause 5 of the Bill be amended –

(a) in the proposed new section 2C –

- (i) by deleting the word “disability” appearing immediately after the words “for persons with” in paragraph (b) (ii) and substituting therefor the words “mental illness”;
- (ii) by deleting paragraph (e) (i) and substituting therefor the following new paragraph—

- (i) the number of qualified health professionals required to serve a mental health unit including the number of psychiatrists, psychologists, clinical officers who specialise in psychiatry, psychiatric nurses, counsellors, occupational therapists and allied health workers;
- (iii) by deleting the word “facility” appearing immediately after the words “by a mental health” in paragraph (e) (ii) and substituting therefor the word “unit”;
- (iv) by inserting the following new paragraphs immediately after paragraph (h)—
 - (i) develop and implement strategies and programmes to curb stigma related to mental health and mental health care and treatment; and
 - (j) implement programmes and strategies to guarantee students access information on mental health, mental health care and treatment.
- (b) in the proposed new section 2D –
 - (i) by deleting the words “and 4” appearing immediately after the words “level 2, 3” in subsection (1) (a) and substituting therefor the words “4 and 5”;
 - (ii) by deleting the words “persons with mental illness within the county” appearing immediately after the words “strategies relating to” in subsection (1) (c) and substituting therefor the words “mental illness and mental health care”;
 - (iii) by deleting the words “dignified and life outside the mental health facility” appearing immediately after the words “mental illness lives a” in subsection (1) (i) and substituting therefor the words “dignified life outside the mental health unit”;
 - (iv) by deleting the words “suffering from” appearing immediately after the words “care of persons” in subsection (2) (d) and substituting therefor the word “with”;
 - (v) by inserting the following new paragraphs immediately after subsection (2) (f) —
 - (g) advice the Board on the implementation of county specific programmes on mental health;
 - (h) 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;
 - (i) undertake the collection and dissemination of data on mental health in the respective county; and

(j) 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.

(vi) by deleting the word “committee” appearing immediately after the words “this section to a” in subsection (3) and substituting therefor the words “county mental health council”

(c) by inserting the following new section immediately after the proposed new section 2D—

County
mental
health
councils.

2E. (1) There is established in each county government a county mental health council.

(2) The county mental health council shall consist of—

(a) the county director of health appointed under section 19 of the Health Act;

(b) the chairperson to the county education board established under section 17 of the Basic Education Act or a representative; and

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2017.

(c) five persons nominated by the county executive committee member by notice in the *Gazette*.

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2013.

(3) The county executive committee member when making appointments under subsection 2 (c) shall ensure —

(a) that one person is nominated from each of the following organisations—

(i) a body representing caregivers of persons with mental illness in the county; and

(ii) a body representing the mental health practitioners in the county; and

(b) the one third gender principle is observed.

(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.

(5) A member of the county mental health council shall cease to be member if that person—

- (a) is absent from three consecutive meetings of the council without the permission of the chairperson;
- (b) resigns in writing, addressed, to the county executive committee member;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is declared bankrupt;
- (e) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (f) dies.

CLAUSE 6

THAT clause 6 of the Bill be amended—

- (a) in the proposed new section 3 by—
 - (i) deleting the word “and” appearing immediately after the word “affairs of the community” in paragraph (a); and
 - (ii) deleting the words “to live in dignity and security” appearing immediately after the words “under the Constitution” in paragraph (b);
- (b) in the proposed new section 3A by —
 - (i) inserting the word “outpatient” immediately after the words “to community health and” in subsection (3); and
 - (ii) deleting subsection (6);
- (c) by deleting the proposed new section 3B substituting therefor the following new section—

Consent to treatment **3B** (1) Every health care provider shall, where the person with mental illness has attained the age of majority—

 - (a) inform the person with mental illness, of the right of that person to choose an appropriate form of treatment; and
 - (b) obtain the written consent from that person before administering any treatment.

(2) Where the person with mental illness is incapable of making an informed decision on the form of treatment under subsection (1), such consent shall be sought and obtained from —

- (a) the supporter of the person with mental illness duly appointed under this Act, who shall, when giving consent, comply with the will and preferences of that person; or
- (b) the representative of the person with mental illness, where a supporter has not been appointed.

(3) Every health care provider shall, where a person with mental illness is a minor, —

- (a) inform the guardian of the minor of the right of the guardian to choose an appropriate form of treatment for the minor; and
- (b) obtain written consent from the guardian before administering any treatment.

(d) by deleting the proposed new section 3C and substituting therefor the following new section—

Right to participate in treatment planning. **3C.** (1) A person with mental illness has the right to participate in the formulation of their treatment plans.

(2) Every mental health practitioner shall, where the person with mental illness —

- (a) has attained the age of majority inform the person, of their right to participate in the formulation of their treatment plans; or
- (b) is a minor, inform the guardian of the minor of the right of the guardian to participate in formulating treatment plans on behalf of the minor.

(3) Where a person with mental illness is incapable of exercising the right under subsection (1) due to the nature of the illness, the mental health practitioner shall inform the—

(a) supporter of the person with mental illness duly appointed under this Act, of the supporter's right to participate in formulating the treatment plans; or

(b) where a person with mental illness has not appointed a supporter, inform the representative of the person with mental illness, of the representative's right to participate in formulating the treatment plans.

(4) A supporter, while exercising the right to participate in treatment planning under this section, shall comply with the will and preference of the person with mental illness.

(e) in the proposed new section 3D by deleting subsection (2) and substituting therefor the following new subsection—

(2) Where the National or county government has in place a medical scheme, the National and county governments shall, in implementing the scheme, take in to account the needs of persons with mental illness and shall ensure that the implementation of the scheme results in the fair treatment of such persons.

(f) in the proposed new section 3E by deleting the word “mental” appearing immediately after the words “within or outside a” in subsection (2) (a);

(g) by deleting the proposed new section 3F;

(h) by deleting the proposed new section 3H and substituting therefor the following new section—

Right to **3H.** (1) A person with mental illness is, access to pursuant to Article 35 of the Constitution, entitled information to information regarding that person's –

- (a) mental and other health status;
- (b) clinical records and other related information maintained by a health facility; and
- (c) health service providers.

(2) Any representations made by a person with mental illness shall, on the request of the person with mental illness, form part of the records of that person.

(3) Where a person with mental illness is unable to exercise their rights under this section, the following persons shall be entitled to access the information on that person’s behalf—

- (a) a duly appointed supporter of the person with mental illness;
- (b) in the absence of a supporter, the representative of the person with mental illness; or
- (c) in the case where the person with mental illness is a minor, the guardian of that minor.

(4) The Access to Information Act shall apply to the access of information by a person with mental illness under this Act.

(5) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to information and communication technology and the Commission on Administrative Justice, make regulations on access to information under this section.

(6) Without prejudice to the generality of subsection (5), such regulations may provide for—

- (a) the procedure for making an application for access to information under this section;
- (b) the procedure for the processing of an application and availing the information applied for; and
- (c) the duration within which the information requested under this section shall be made available.

(i) in the proposed new section 3I (2) by inserting the following new paragraph immediately after paragraph (e)—

(ea) is authorised by the person with mental illness under a duly executed supportive decision-making agreement.

(j) by deleting the proposed new section 3J and substituting therefor the following new sections—

Right to **3J.** (1) A person with mental illness may appoint a person to act as that person’s supporter for the purposes of this Act.

(2) A person with mental illness shall in appointing a supporter, enter in to a supportive decision-making agreement with the proposed supporter.

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- (3) A supportive decision-making agreement shall be in writing and shall only be valid if—
 - (a) at the time of making of the agreement, the person with mental illness was aware of their actions;
 - (b) the person with mental illness has signed or affixed their mark to the agreement;
 - (c) the signature or mark of the person with mental illness, is so placed that it shall appear that it was intended to give effect to the writing as a supportive decision-making agreement;
 - (d) the agreement is attested by two or more competent witnesses, one of whom shall be the doctor of the person with mental illness;
 - (e) the person with mental illness signs or affixes their mark to the agreement in the presence of the witnesses; and
 - (f) each of the witnesses signs the agreement in the presence of the person with mental illness.

- (3) A person is eligible for appointment as a supporter if that person—
 - (a) has attained the age of majority; or
 - (b) is a Public Trustee appointed under the Public Trustee Act.

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(4) Where a person with mental illness is unable to appoint a supporter under subsection (1), the representative of the person may represent the person with mental illness for the purpose of treatment and care under this Act.

(5) A supporter or representative of a person with mental illness, as the case may be, may appoint another person to represent the person with mental illness in any complaint procedure or appeal.

(6) A person with mental illness, the supporter or representative of a person with mental illness or a person appointed under subsection (5) is entitled, where necessary, to the services of an interpreter who shall be made available free of charge.

(7) A person with mental illness, the supporter or the representative of the person with mental illness, or a person appointed under subsection (5) has the right to—

- (a) produce at any hearing, independent medical reports and such other reports or evidence that are relevant to the status of the person with mental illness; and
- (b) attend, participate and be heard in any hearing under this Act.

Decisions by the supporter. **3JA.** (1) A supporter owes a duty of care to the person with mental illness and shall ensure that any decision made by the supporter is in accordance to the will and preference of the person with mental illness.

(2) In determining whether a decision conforms to the will and preference of the person with mental illness the supporter shall—

- (a) consider whether the decision conforms to the longer lasting general beliefs, values and desires that the person with mental illness subscribes to; and
- (b) interpret the will and preference of the person with mental illness taking in to account the rights conferred on such person under the Constitution and international human rights law.

(3) In exercising the power to make a decision in accordance with the will and preference of a person with mental illness, the supporter shall—

- (a) not make a decision that will result in a conflict of interest; and
- (b) ensure that the decision applies for the shortest time possible and the supporter shall make continuous efforts to have the person with mental illness express their own will and preference.

- (k) in the proposed new section 3K by—
 - (i) deleting subsection (2); and
 - (ii) deleting subsection (3).

CLAUSE 7

THAT clause 7 of the Bill be amended—

(a) in paragraph (a)—

(i) by deleting paragraph (b) in the proposed new subsection (2) and substituting therefor the following new paragraph—

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

(i) a psychiatrist, in active practice in a mental health care set up, nominated by the Medical Practitioners and Dentists Board;

(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board;

(iii) a psychiatric nurse, in active practice in a mental health care set up, nominated by the Nursing Council of Kenya;

(iv) a clinical officer, in active practice in a mental health care set up, nominated by the Clinical Officers Council.

(ii) by deleting paragraph (c) in the proposed new subsection (2) and substituting therefor the following new paragraph—

(c) one person nominated by such organisations that advocate for the rights of persons with mental illness as the Cabinet Secretary may determine;

CLAUSE 8

THAT clause 8 of the Bill be amended by deleting the words “the county mental health council” appearing immediately after the words “committee of the Board” in the proposed new section 4C.

CLAUSE 9

THAT clause 9 of the Bill be amended—

(a) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) advise the National government and county governments on the levels of access to mental health care services in Kenya and the most appropriate strategies and programmes for the care of persons with mental illness and the effective delivery of mental health care services at the national and county levels of government;

(b) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) by deleting paragraph (c) and substituting therefor the following new paragraphs—

(c) set standards for the establishment of mental health units;

(ca) approve the establishment of mental health units within a national referral hospitals;

(c) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) inspect mental health units and mental health facilities to ensure that they meet the prescribed standards;

(d) by deleting paragraph (f) and substituting therefor the following new paragraph—

(f) by deleting paragraph (e);

(e) by deleting paragraph (g) and substituting therefor the following new paragraph—

(g) by deleting paragraph (f);

(f) by deleting paragraph (h) and substituting therefor the following new paragraph—

(h) by deleting paragraph (g);

CLAUSE 10

THAT clause 10 of the Bill be amended—

(a) in paragraph (a)—

(i) by deleting paragraph (a) in the proposed new subsection (1B) and substituting therefor the following new paragraph—

(a) holds a masters of medicine degree in Psychiatry from a university recognised in Kenya;

(ii) by deleting paragraph (b) in the proposed new subsection (1B) and substituting therefor the following new paragraph—

(b) is registered by the Medical Practitioners and Dentists Board as a psychiatrist;

CLAUSE 13

THAT clause 13 of the Bill be amended by inserting the words “units and” appearing immediately after the words “Management of mental health”.

CLAUSE 14

THAT clause 14 of the Bill be amended—

(a) in paragraph (a) by deleting the word “facilities” and substituting therefor the word “units”;

(b) in paragraph (b) by—

(i) deleting the proposed new subsection (2) and substituting therefor the following new subsection—

(2) The Board may, by notice in the *Gazette*, designate such places within a national referral hospital or any other national government facility as the Board may consider necessary as a mental health unit.

- (ii) deleting the proposed new subsection (2A) and substituting therefor the following new subsection—

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

- (c) by deleting paragraph (d);

- (d) by deleting paragraph (e) and substituting therefor the following new paragraph—

- (e) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The Cabinet Secretary, in consultation with the Board and the Council of County Governors, shall make rules for the proper management of mental health units.

- (e) in paragraph (f)—

- (i) by deleting the proposed new subsection (6) and substituting therefor the following new subsection—

(6) A level 3, 4, 5 and 6 health facility which has a mental health unit designated under this section shall provide within it in-patient and out-patient treatment of persons with mental illness.

- (ii) by deleting the words “subsection (7) (b)” appearing immediately after the words “facility established under” in the proposed new subsection (6A) and substituting therefor the words “subsection (9A) (b)”.

CLAUSE 15

THAT clause 15 of the Bill be amended—

- (a) by deleting paragraph (a) in the proposed new section 9A and substituting therefor the following new paragraph—

(a) a mental health unit operated and managed by the national government or a county government as the case may be; and

- (b) by deleting the proposed new section 9B and substituting therefor the following new section—

Establishment of a private mental health facility.	9B. (1) A person who intends to establish a private mental health facility shall submit an application to the relevant medical regulatory body in the prescribed form together with the prescribed fee.
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(2) A person in medical charge of a private mental health facility shall be a mental health practitioner who is qualified and duly registered as a—

- (a) psychiatrist;
- (b) psychologist;
- (c) clinical officer who specialises in psychiatry; or
- (d) psychiatric nurse.

(3) Where an approval is given under subsection (1), the applicant shall notify the county mental health council of the approval in the prescribed form.

(4) The county mental health council shall—

- (a) maintain a register of all private mental health facilities operating in the county;
- (b) submit a list of all private mental health facilities operating in the county to the Board annually; and
- (c) inspect private mental health facilities within the respective county and report its findings to the Board for remedial action.

(5) A private mental health facility shall be subject to the standards and regulations affecting mental health units under this Act.

(6) The Cabinet Secretary in consultation with county executive committee members and the Board shall –

- (a) develop a template for reports to be submitted to the Board under subsection (4); and
- (b) prescribe any other standards and regulations that a private mental health facility should adhere to.

(c) by deleting the proposed new section 9 D and substituting therefor the following new section—

Reports by mental health facilities and units. **9D.** (1) A person in charge of a mental health facility or unit shall submit a monthly report to the Board and the county executive committee member on—

- (a) the number of voluntary or involuntary patients the mental health facility or unit has received;
- (b) the number of voluntary or involuntary patients the mental health facility or unit has discharged;
- (c) the number of voluntary patients or involuntary patients still under the care of the mental health facility or unit;
- (d) the number of voluntary or involuntary patients who have died in the course of treatment in the mental health facility or unit;

- (e) the number of patients who have undergone emergency mental health care treatment; and
- (f) the number of patients who have been subjected to restraint and seclusion and the number of times restraint and seclusion has been used as an additional parameter during the course of their treatment.

(2) The subcounty health records officer shall enter the data submitted under subsection (1) in to the Health Information System within fourteen days of receipt.

- (d) in the proposed new section 9E —
 - (i) by inserting the words “or unit as the case may be” immediately after the words “mental health facility” in subsection (3) (b);
 - (ii) by inserting the words “or unit as the case may be” immediately after the words “mental health facility” in subsection (4).
 - (iii) subsection (5) by inserting the words “or unit as the case may be” immediately after the words “health practitioner within the facility”.
 - (iv) by deleting subsection (6) and substituting therefor the following new subsection—
 - (6) The person in charge of a mental health facility or unit as the case may be, shall, within twenty-four hours, give notice of the restraint or seclusion of the person with mental illness to the –
 - (a) duly appointed supporter of the person with mental illness;
 - (b) in the case where the person with mental illness has not appointed a supporter, to the representative of the person with mental illness; or
 - (c) in the case of a minor with mental illness, to the guardian of that minor.

- (e) by deleting the proposed new section 9D appearing immediately after the proposed new section 9E and substituting therefor the following new section—

Informed
Consent

9F. (1) A mental health practitioner shall not administer mental health care, treatment or admit a person to a mental health facility or unit under this Part without the informed consent of—

- (a) the person with mental illness;
- (b) the supporter of that person, where the person with mental illness is unable at the particular time to give consent;

- (c) the representative of that person, where the person with mental illness has not appointed a supporter; or
- (d) the guardian of the person with mental illness, where the person with mental illness is a minor.

(2) Consent under subsection (1) shall be valid

if—

- (a) given freely without threats or improper inducement;
- (b) there is appropriate and adequate disclosure of all relevant information relating to the treatment, including information on the type, purpose, likely duration and expected benefits of the treatment;
- (c) choices are given to the persons under subsection (1), in accordance with prescribed clinical practice;
- (d) where consent is sought from a person under paragraph (b), (c) (d), the person is competent to give the consent; and
- (e) consent is written and recorded in the records of the person with mental illness.

CLAUSE 17

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

(a) in subsection (1)—

- (i) by inserting the words “or unit” immediately after the words “mental health facility” in the introductory clause;
- (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) referral where necessary to an appropriate mental health facility or unit;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) Where a minor requires admission to a mental health facility or unit, for treatment under subsection (1), the guardian of that person shall submit a written application, in the prescribed form, to the person in charge of a mental health facility or unit as the case may be, for the admission of the minor.

(c) in subsection (3) by inserting the words “or unit, as the case may be,” immediately after the words “mental health facility”;

(d) in subsection 4—

(i) by deleting the words “Board shall in consultation with” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “Cabinet Secretary shall in consultation with the Board and” in the introductory clause;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) the procedure to be followed by the mental health facility or unit in dealing with a patient admitted under subsection (2), where the guardian of the person with mental illness—

(i) dies;

(ii) becomes incapable of supporting or representing the person with mental illness as the case may be; or

(iii) refuses or neglects to perform their duties under the Act;

CLAUSE 22

THAT clause 22 of the Bill be amended—

(a) in paragraph (b) by inserting “or unit,” immediately after the words “mental health facility” in the proposed new subsection (1) (b) (ii);

(b) by deleting the proposed new subsection (1A) and substituting therefor the following new subsection—

(1A) An application under subsection (1) shall be made in the prescribed form to the person in charge of the mental health facility or unit, as the case may be, by the following persons—

(a) a duly appointed supporter of the person with mental illness in accordance to the will and preference of the person with mental illness;

(b) in the absence of a duly appointed supporter, a representative of the person with mental illness;

(c) in case of a minor with mental illness, by the guardian of the minor; or

d) where the person in paragraphs (a), (b) or (c) are not available or willing to make the application, by any other person who is carer or relative of that person.

(c) in the proposed new subsection (1C) by deleting the word “condition” appearing immediately after the words “health of the person” in paragraph (b);

(d) in the proposed new subsection (1D) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) by deleting subsection (6) and substituting therefor the following new subsections—

(6) A person in charge shall not admit an involuntary patient for a period exceeding six months unless the person in charge has—

- (a) carried out or caused to be carried out a review of the status of mental health of the patient; and
- (b) sought or retained the recommendation of the medical health practitioner for the extended admission of the patient.

(6A) Before extending the period of admission under subsection (6) the person in charge shall seek the consent of –

- (a) the supporter of that person, where the person with mental illness is unable at the particular time to give consent;
- (b) the representative of that person, where the person with mental illness has not appointed a supporter; or
- (c) the guardian of the person with mental illness, where the person with mental illness is a minor.

- (i) by inserting the words “or unit,” immediately after the words “mental health facility” in the proposed new subsection (6);
- (ii) by deleting the word “hospital” appearing immediately after the words “retained in a mental” in the proposed new subsection (6B) and substituting therefor the words “health facility or unit”.

CLAUSE 25

THAT clause 25 of the Bill be amended in the proposed new section 15 A—

- (a) by deleting subsection (3) and substituting therefor the following new subsection—

(3) Where emergency treatment is administered and a person is admitted under this section, the person in charge shall, within twenty-four hours of admission, inform the next kin of the person with mental illness.

- (b) by deleting subsection (5) and substituting therefor the following new subsection—

(5) Where a mental health practitioner determines that the person with mental illness requires care beyond the period under subsection (4), the mental health practitioner shall obtain written consent from—

- (a) a duly appointed supporter of the person with mental illness;
- (b) a representative of the person with mental illness, where the person with mental illness has not appointed a supporter; or
- (c) the guardian of the person with mental illness, where the person with mental illness is a minor.

(c) by deleting subsection (6).

CLAUSE 26

THAT clause 26 of the Bill be amended—

(a) in paragraph (b)—

- (i) by deleting the word “mental” appearing immediately after the words “subsection (1) to a” in the proposed new subsection (2);
- (ii) by deleting the word “mental” appearing immediately after the words “person was delivered to a” in the proposed new subsection (2A);

(b) in paragraph (c) by deleting the proposed new subsection (3) and substituting therefor the following new subsection—

(3) Upon delivery of a person to a health facility under subsection (2), the person in charge of the health facility shall, within seventy-hours—

(a) examine or cause the person to be examined to determine whether the person should be admitted as an involuntary patient under section 14 or handed over to the care of—

- (i) a duly appointed supporter of the person with mental illness;
- (ii) in the absence of a supporter duly appointed under this Act, a representative of the person with mental illness; or
- (iii) in the case where the person with mental illness is a minor, the guardian of the minor; and

(b) make the necessary arrangements for the person’s treatment and care.

CLAUSE 28

THAT the Bill be amended by deleting clause 28 and substituting therefor the following new clause—

Amendment of section 17 of Cap 248 **28.** The principal Act is amended by deleting section 17 and substituting therefor the following new section—

Admission of a member of the Kenya Defence Forces for observation and treatment **17.** (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—

- (a) the medical officer has examined the member of the Kenya Defence Forces within a period of forty-eight hours of the admission; and
- (b) for the reasons recorded in the certificate, the member of the Kenya Defence Forces requires admission to a mental health unit for observation and treatment.

(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.

(3) A person in charge may extend the period of admission after—

- (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; and
- (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.

(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 psychiatrist, by a letter to the person in charge certifies that—

- (a) they have examined the member of the Kenya Defence Forces within a period of seventy-two hours before issuing the letter; and
- (c) 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 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.

(5) Where any member of the Kenya 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.

(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.

CLAUSE 30

THAT clause 30 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Cabinet Secretary may, upon consultation with the Cabinet Secretary responsible for finance, by notice in the *Gazette*, prescribe the fees payable for the admission of persons with mental illness in a mental health unit established in a National Referral Hospitals.

(b) by inserting the following new paragraph immediately after paragraph (a)—

(aa) by inserting the following new subsection immediately after subsection (1)—

(1A) The county executive committee member may, by notice in the *Gazette*, prescribe the fees payable for admission of persons with mental illness in a county mental health unit.

CLAUSE 32

THAT clause 32 of the Bill be amended—

(a) in the proposed new section 20A by deleting the words “The Board in consultation with the Cabinet Secretary and the Council of County Governors” appearing at the beginning of subsection (3) and substituting therefor the words “The Cabinet Secretary in consultation with the Board and the Council of County Governors”.

(b) by deleting the proposed new section 20B.

CLAUSE 33

THAT the Bill be amended by deleting clause 33 and substituting therefor the following new clause—

Amendment of section 21 of Cap 248 **33.** The principal Act is amended by deleting section 21 and substituting with the following new section—

Discharge. **21** (1) A person in charge may, by order in writing and upon the recommendation of the medical practitioner and mental health practitioner in charge of the person’s treatment, order the discharge of a person with mental illness from the health facility and that person shall thereupon be discharged as having recovered from mental illness.

(2) A person with mental illness shall be discharged from the health facility under subsection (1) where the medical practitioner and the mental health practitioner in charge of managing the person make a decision that the person can no longer receive any other or further treatment from a health facility and appropriate efforts are being made towards re-integration of the person into the community, and for specialized and personalized after-care service.

CLAUSE 34

THAT clause 34 of the Bill be deleted and substituted with the following new clause—

Amendment of section 23 Cap 248. **34.** The principal Act is amended by deleting section 22 and substituting therefor the following new section—

Interim discharge. **22.(1)** A person in charge may, upon consultation with the mental health practitioner in charge of the treatment of a person with illness, discharge the person with mental illness into the custody and care of, —

- (a) the supporter of the person with mental illness;
- (b) the representative of the person with mental illness; or
- (c) where the person with mental illness is a minor, the guardian of the minor.

(2) Any person listed under subsection (1) (a), (b) and (c) who intends to take the person with mental illness into their care and custody under subsection (1) shall apply to the person in charge for the custody and care of the person with mental illness in the prescribed form.

(3) The person in charge shall consider an application under subsection (2) and may release the person with mental illness in to the custody and care of the applicant upon such conditions as the person in charge may impose.

(4) Where a person who takes the custody and care of a person with mental illness under subsection (3) is subsequently unable or unwilling to continue with the care of the person with mental illness such person shall report the matter to the person in charge of the health facility.

(5) The person in charge of the health facility shall admit the person with mental illness back to the mental health unit under the terms and conditions that the person with mental illness had been admitted before delivery to the applicant under subsection (3).

CLAUSE 35

THAT clause 35 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) by deleting subsection (1) and substituting therefor the following new subsections—

(1) A person may, by order of the Director or the respective county executive committee member be transferred from one national referral hospital mental health unit to another national referral hospital mental health unit or from one county health facility mental health unit to another county health facility mental health unit as the case may be.

(1B) Before transferring a person under subsection (1), the person in charge, shall obtain consent from-

- (a) the person with mental illness; or
- (b) where the person with mental illness—
 - (i) is unable to give consent, consent shall be obtained from the supporter of the person;
 - (ii) has not appointed a supporter, consent shall be obtained from the representative of the person; or
 - (iii) is a minor, consent shall be obtained from the guardian of the minor.

(b) in subsection (2) by deleting the words “mental hospital to which the transfer is made a certified copy of the order of the Director” appearing immediately after the words “charge of the mental” and substituting therefor the words “health facility to which the transfer is made a certified copy of the order of the Director or the relevant county executive committee member as the case may be”.

CLAUSE 36

THAT the Bill be amended by deleting clause 36 and substituting therefor the following new clause—

Amendment of section 24 of Cap 248 **36.** The Principal Act is amended by deleting section 24 and substituting therefor the following new section—

Treatment of a person with mental illness abroad.

24 (1) A person with mental illness may be transferred from a mental health unit in Kenya to a mental health unit in a foreign country for subsequent treatment and care with the approval of the Board.

(2) An application for transfer under subsection (1) may be made to the Board by—

- (a) the person with mental illness;
- (b) in the case where a person with mental illness—
 - (i) is unable to make the application, by the supporter of the person with mental illness;
 - (ii) has not appointed a supporter, by a representative of the person with mental illness; or
 - (iii) is minor, by the guardian of the minor.

(3) The Board shall inquire into the case of the person to whom the application under subsection (1) relates in such manner as it considers fit, and if satisfied that the removal is likely to be for the benefit of the person, and that proper arrangements have been made for the proper removal and subsequent treatment and care, the Board may by warrant in the prescribed form and subject to subsection (4), direct that the person be delivered to the person named in the warrant for the purpose of being removed to the foreign country specified in the warrant.

(4) A warrant for the removal of a person with mental illness to a foreign country shall not be issued by the Board under subsection (3) unless a prior consent to receive the person has been obtained from the proper authorities in the foreign country.

CLAUSE 37

THAT clause 37 of the Bill be amended—

(a) in the proposed new section 26—

(i) by deleting subsection (1) and substituting therefor the following new subsection—

(1) An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by —

(a) a supporter of the person with mental illness; or

(b) the representative of the person where the person with mental illness has not appointed a supporter.

(ii) by deleting paragraph (d) in subsection (2);

(iii) by inserting the words “where an application is made by a supporter to the” at the beginning of subsection (3) (b);

(b) in the proposed new section 27 by inserting the following new subsection immediately after subsection (2)—

(2A) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate of the person under subsection (2).

(c) in the proposed new section 30 by inserting the words “the supporter,” immediately after the words “such fee as may be prescribed” in subsection (2);

(d) in the proposed section 31, by deleting the proposed subsection (2) and substituting therefor the following new subsection—

(2) Where the court makes a determination that any property of a person who is mentally ill has been lost due to mismanagement of the estate of the person by the manager, the loss shall be recoverable summarily as a civil debt from the manager’s estate.

CLAUSE 38

THAT clause 38 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) subsection (1) and substituting therefor the following new subsection-

(1) The person in charge or a mental health practitioner in charge of any patient shall submit all letters written by the patient to the recipients as soon as practicable after such letters come to their notice.

(b) by inserting the following new paragraph immediately after paragraph (a)—

(aa) subsection (2);

(c) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) subsection (3).

CLAUSE 39

THAT the Bill be amended by deleting clause 39 and substituting therefor the following new clause—

Amendment of section 41 of Cap 248 **39.** Section 41 of the principal Act is deleted and substituted with the following new section—

Power to refuse reception into mental hospital. **41.** (1) A person in charge may refuse to admit a person with mental illness into the mental facility or unit, if the accommodation within the facility or unit is insufficient or unsuitable.

(2) Where the person in charge refuses to admit the person under subsection (1), the person in charge in consultation with the mental health practitioner in the health facility, shall prescribe and administer an outpatient treatment plan while alternative accommodation is being sought.

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting the proposed new section 44 and substituting therefor the following new subsection—

Correction of admission procedure. **44.** Where, upon a person being admitted into a mental health facility or unit as the case may be, the person in charge discovers a defect in the admission procedure or the medical recommendation upon which the person was admitted, the person in charge may require the defect to be corrected at any time within fourteen days after the person is admitted into the mental health facility or unit as the case may be.

CLAUSE 43

THAT clause 43 of the Bill be amended—

(a) in the proposed new section 45 –

- (i) by inserting the words “or unit as the case may be” immediately after the words “in to a mental health facility” in subsection (1);
- (ii) by deleting subsection (2) and substituting therefore the following new subsection—

(2) Where a person who is admitted into a mental health facility or unit, escapes, a police officer, a person employed in such mental health facility or unit, or any other person authorized by the person in charge of the mental health facility or unit may, upon finding such person, convey that person into the mental health facility or unit.

CLAUSE 44

THAT the Bill be amended by deleting clause 44 and substituting therefor the following new clause—

Amendment
of section
46 Cap 248

44. The principal Act is amended by deleting section 46 and substituting therefor the following new section—

Complaints.

No. 21 of
2017.

46. (1) A person with mental illness shall have the right to lodge a complaint against any health professional with the Kenya Health Professions Oversight Authority established under section 45 of the Health Act, for the manner in which the person was treated by the health professional while in the custody, care and control of the health professional.

(2) Where the person with mental illness is incapable of lodging the complaint, the following persons may lodge the complaint on behalf of that person—

- (a) a duly appointed supporter of that person;
- (b) where the person with mental illness has not appointed a supporter, the representative of the person with mental illness,
- (c) where the person with mental illness is a minor, the guardian of the minor.

(3) Where the persons specified under subsection (2) are unable or unwilling to lodge a complaint on behalf of the person with mental illness, any other person may lodge the complaint on behalf of the person with mental illness.

(4) The Authority shall hear and determine the complaint lodged under subsection (1) or (2) within six months and report its findings to the complainant.

(4) Where the complainant is dissatisfied with the decision of the Authority under this section, the complainant may appeal to the High Court.

CLAUSE 45

THAT clause 45 of the Bill be amended by deleting the proposed new section 49 and substituting therefor the following new section—

Aiding the escape of person suffering from mental illness.	49. A person who wilfully assists the escape of any person with mental illness being conveyed to or from, or while under care and treatment in, a mental health facility or unit as the case may be, or who harbours any person suffering from mental illness whom the person knows has escaped from a mental health facility or unit as the case may be, commits an offence.
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CLAUSE 46

THAT clause 46 of the Bill be amended by deleting the proposed new section 50 and substituting therefor the following new section—

Permitting patient to quit mental health facility unlawfully.	50. A person in charge, or any person employed at a mental health facility or unit as the case may be, who through wilful neglect or connivance permits any patient in the mental health facility or unit as the case may be, to leave such mental health facility or unit other than under this Act or any other law for the time being in force commits an offence.
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CLAUSE 47

THAT clause 47 of the Bill be amended by deleting the proposed new section 51 and substituting therefor the following new section—

Ill-treatment of person in mental health facility.	51. A person in charge of, or any person employed at, a mental health facility or unit as the case may be, who strikes, ill-treats, abuses or wilfully neglects any patient in the mental health facility or unit as the case may be, commits an offence.
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CLAUSE 48

THAT clause 48 of the Bill be deleted and substituted with the following new clause—

Amendment of section 52 of Cap 248.	48. Section 52 of the principal Act is amended by deleting the words “hospital, whether inside or outside the grounds of the mental hospital” appearing immediately after the words “patient in a mental” and substituting therefor the words “health facility or unit as the case may be, whether inside or outside the grounds of the mental health facility or unit as the case may be”
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CLAUSE 51

THAT clause 51 of the Bill be amended by—

- (a) renumbering the existing clause as subclause (1);
- (b) inserting the following new subsection immediately after subsection (1)—
 - (2) A mental hospital by the Board prior to the commencement of this Act shall deemed to have been established under this Act.

(ii) **NOTICE** is given that Senator Beatrice Kwamboka, intends to move the following amendment to the Mental Health (Amendment) Bill, Senate Bills No. 32 of 2018, at the Committee Stage—

CLAUSE 5

THAT clause 5 of the Bill be amended in the proposed new section 2C by inserting the following new paragraph immediately after paragraph (h)—

- (i) in collaboration with county governments provide free counselling services to persons who undergo traumatic experiences;

APPENDIX

1. PAPERS

(i) The Teachers Service Commission Strategic Plan for the Period 2019-2023.

(Chairperson, Standing Committee on Education)

(ii) Report of the Standing Committee on Labour and Social Welfare on the Persons with Disabilities (Amendment) Bill (Senate Bills No. 1 of 2019).

(Chairperson, Standing Committee on Labour and Social Welfare)

2. NOTICE OF MOTION – RETIREMENT AGE FOR PERSONS WITH DISABILITIES IN PUBLIC SERVICE AND IN ACADEMIA

(Sen. (Dr.) Getrude Musuruve, MP)

THAT, AWARE THAT, Persons with Disabilities (PWDs) and their families are among the world’s poorest and are disadvantaged in terms of their late entry into the labour-force;

FURTHER AWARE THAT the reality of employing disabled people does not match the presumptions held by employers, the influence of how they think about disability remains a potent issue for disabled people seeking to work;

COGNIZANT THAT Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) affirms the equal right of all persons with disabilities to live in a community with choices equal to others, and with equal access to services and facilities that are responsive to their needs;

NOTING THAT, unlike current trends around the world, employers in Kenya are not incentivized to employ Persons with Disabilities and therefore most public organizations and parastatals have not yet achieved the threshold of Article 54(2) of the Kenyan Constitution that obligates 5% appointment of PWDs in elective and appointive positions;

CONCERNED THAT, Article 27(e) of the UNCRPD advocates for party states, of which Kenya is one, to promote employment opportunities and career advancements of PWDs in the labour market as well as assistance in finding, obtaining, maintaining and returning to employment;

NOW THEREFORE; the Senate calls upon the Ministry of Labour and Social Protection and county governments to develop a policy to ensure that:

1. PWDs in gainful employment in public service retire at the age of 65 years instead of 60 years; and,
2. PWDs in academia, such as Universities and colleges retire at the age of 75 years, instead of 70 years.

3. **STATEMENTS**

(i) Pursuant to Standing Order 48(1)

- a) Nominated Senator (Sen. (Dr.) Getrude Musuruve, MP) to seek a statement from the Standing Committee on Labour and Social Welfare on recognition of persons living with disabilities (PWDS) who have brought honour to the country;
- b) Nominated Senator (Sen. (Dr.) Alice Milgo, MP) to seek a statement from the Standing Committee on Education on incorporation of drama and other co-curricular activities in the education curriculum in the country; and
- c) Nominated Senator (Sen. Falhada Iman, MP) to seek a statement from the Standing Committee on Education on the increase in incidents of bullying in schools.

(ii) Pursuant to Standing Order 51(1)(b)

- a) The Chairperson, Standing Committee on Roads and Transportation to issue a statement relating to the activities of the Committee; and
 - b) The Chairperson, Sessional Committee on Delegated Legislation to issue a statement relating to the activities of the Committee.
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