**REPUBLIC OF KENYA**

**PARLIAMENT OF KENYA**

**THE SENATE**

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DATE 8/7/2021
TABLED BY Sen. Mary Seneta
COMMITTEE Health
CLERK AT THE TABLE Kawata M Sepko.

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**TWELFTH PARLIAMENT**

**FIFTH SESSION**

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**THE STANDING COMMITTEE ON HEALTH**

# THE MENTAL HEALTH (AMENDMENT) BILL, 2020

## SENATE BILLS NO. 28 OF 2020

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

**MAY,2021**

Rt. Hon. Speaker
You may approve
for tabling.
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**PREFACE**

**Mr. Speaker Sir,**

The Senate Standing Committee on Health is established under standing order 218 (3) of the Senate Standing Orders and is mandated to, "*consider all matters relating to medical services, public health and sanitation.*"

**Committee Membership**

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Mbito, MP.- Chairman
2. Sen. Mary Seneta, MP.
3. Sen. Beth Mugo, EGH, MP.
4. Sen. Beatrice Kwamboka, MP.
5. Sen. (Prof.) Samson Ongeri, EGH, MP.
6. Sen. (Dr.) Abdullahi Ali Ibrahim, MP.
7. Sen. Fred Outa, MP.
8. Sen. Millicent Omanga, MP.
9. Sen. Ledama Olekina, MP.

**Mr. Speaker,**

The Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020) was sponsored by Sen. Sylvia Kasanga. It was published on 30th November, 2020, and read a First Time in the Senate on 4th March, 2021. Following this, it was committed to the Standing Committee on Health for consideration and facilitation of public participation in accordance with standing order 140 (1) and (5) of the Senate Sanding Orders. The Bill is scheduled for Second Reading on 18th May, 2021.

**Mr. Speaker,**

Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee conducted public participation and invited the public and stakeholders to submit memoranda on the Bill.

**Mr. Speaker,**

Having invited interested members of the public and stakeholders to give their submissions on the Bill via written memoranda, the Committee received memoranda from various stakeholders and concerned citizens with regards to the Bill.

In addition, the Committee scrutinized and considered the submissions and made determination and proposed amendments to the Bill. The Committee successfully concluded the consideration of the submissions by the Public on the Bill on Friday, 21st May, 2021 and proposed amendments to the Bill.

**Mr. Speaker,**

The Committee noted that some of the amendments, were already incorporated in the republished Bill and resolved to develop amendments that were not covered but would strengthen the provisions of the Bill.

**Mr. Speaker,**

With regards to the Bill, the Committee made the following observations:

(a) The Mental Health Act was enacted in 1989 and needs to be aligned to the Constitution of Kenya in respect to functional delineation between the county and national government. In addition, the Bill aligns itself to the provisions in the Convention on the Rights of Persons with Disabilities (CRPD) which Kenya ratified in 19th May, 2008.
(b) The Committee commends the sponsor for approaching the Bill through the human rights lens. In particular, the Committee commends the safeguard to legal capacity within the Bill that allows adult persons with mental health illness to make decisions that affect them.
(c) In addition, the Committee notes that the Bill is progressive as it recognises supportive decision making agreements which will allow persons with mental health illness to appoint a supporter to make decisions on the basis of the person with mental illness' will and preference should the person with mental illness be unable to make decisions themselves due to the illness.
(d) The Bill provides for incorporation of mental health services within the mainstream health services provision framework by ensuring mental health services are provided from tier one to six in the classification of health care. This seeks to ensure the reduction of stigmatization related to mental illness.
(e) The Bill seeks to further reduce stigmatization in relation to mental health by changing the word "disorder" to "illness". The Committee is of the view that the change will ensure a paradigm shift by changing mindsets of the citizenry and encouraging them to believe and know that mental illness are treatable just like any other illness.
(f) The Committee recognises that various vulnerable groups are susceptible to mental illness and commends the recognition of this in the Bill. In particular, the Committee commends

the recognition of maternal mental health and hopes that this will ensure that mothers who suffer from post-partum depression, post-delivery psychosis, anxiety etc are given due recognition and given the care they need.

(g) The Committee applauds the Sponsor for recognizing the place of community and family -based care in the promotion of mental health.

(h) The Committee noted that removal on the basis of mental incapacity or infirmity should not be done summarily.

(i) The Committee recognizes that the persons who commit suicide need medical intervention and that it may be important to have a discussion on the decriminalization of attempted suicide under the Penal Code.

(j) As currently drafted, the Bill may not have taken into account the evolved nature of communication and cites only communication through letters. Communication has evolved to include other means that should also be facilitated without censorship, and taking into account the right to privacy of persons with mental health conditions.

(k) The Committee observed that statistical reports on various types of admissions were important to ensure planning and also oversight of provision of mental health services. In this respect the committee proposed an amendment to the reports to be filed in respect to emergency admission of persons with mental health illness.

(l) The Committee recognised that treatment of patients with mental health illness may require more time than is provided in the emergency admission proposal and therefore it was important to allow the mental health practitioner to seek consent from the representative or the supporter to extend the time should the need arise.

Based on the foregoing, the Committee resolved that the Bill be amended to ensure that:

(a) information on the side effects of proposed treatment plans is disclosed to the patients;

(b) removal from the Board and the council on the grounds of mental infirmity is only implemented after an investigation is carried out.

(c) the reports on admissions, discharge and death of patients should include reports relating to patients who were admitted on the basis of emergency admission.

(d) patients be allowed access to communication through letters, telephone calls and emails where practicable.

(e) the Cabinet secretary in consultation with the council of county governors and the Board prescribe the form of the supportive decision making agreement.

**Mr. Speaker,**

The Committee recommends that the House adopts the proposed amendments to the Bill as contained in ***Annex 3.***

**Mr. Speaker,**

## CHAPTER ONE

## INTRODUCTION

### 1. Mandate of the Standing Committee on Health

The Senate Standing Committee on Health is established under standing order 218 (3) of the Senate Standing Orders and is mandated to, "*consider all matters relating to medical services, public health and sanitation.*"

### 2. Committee Membership

The membership of the Standing Committee on Health is comprised of the following:

1) Sen. (Dr.) Michael Mbito, MP - Chairperson
2) Sen. Mary Seneta, MP
3) Sen. Beth Mugo, EGH, MP
4) Sen. Beatrice Kwamboka, MP
5) Sen. (Prof.) Samson Ongeri, EGH, MP
6) Sen. (Dr.) Abdullahi Ali Ibrahim, MP
7) Sen. Ledama Olekina, MP
8) Sen. Fred Outa, MP
9) Sen. Millicent Omanga, MP

### 3. Background of the Mental Health (Amendment) Bill, (Senate Bills No. 28 of 2020)

Under the Fourth Schedule of the Constitution, health is a concurrent function that is to be provided by both the National Government, in respect to national referral hospitals, and the county governments, in respect to county health facilities. Further, under section 73 of the Health Act, Parliament is obligated to establish legislation to protect the rights of any individual suffering from any mental disorder or condition; establish, manage and control mental hospitals having sufficient capacity to serve all parts of the country at the national and county levels and ensure research is conducted to identify the factors associated with mental illness.

Kenya ratified the Convention on the Rights of Persons with Disabilities on 19th May, 2008. Pursuant to Article 2 (6) of the Constitution, the Convention on the Rights of Persons with Disabilities now forms part of the laws of Kenya. Article 12 of the Convention requires state parties to take measures to ensure that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Article 12 (4) provides—

> *States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such* ***safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests***

In addition, the *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, adopted by United Nations General Assembly resolution 46/119 of 17 December 1991 further provide under principle 1.1 that ***all persons have the right to the best available mental health care, which shall be part of the health and social care system***.

Due to the foregoing, various gaps have been identified in the Mental Health Act. Some of the gaps identified include lack of -

(a) representation of county governments within the Kenya Board of Mental Health;

(b) access to mental health care in all public health facilities; and

(c) a supportive decision-making framework to allow persons with mental illness to appoint a supporter and have decisions made for them based on their will and preference.

This Bill seeks to address the gaps identified by aligning the Act to both the Constitution, the Convention on the Rights of Persons with Disabilities and the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.

**4. Republication of the Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020)**

On 20th June 2019, the Senate of the Republic of Kenya passed the motion that the Senate:

(a.) reiterates and re-affirms its commitment in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

(b.) further reiterates and re-affirms its commitment to protect the interests of the counties and their Governments;

(c.) reiterates and re-assures the People of Kenya, on whose behalf it exercises its mandate under Articles 94 and 96 of the Constitution that it shall always, diligently and robustly prosecute that mandate and shall resist any actions or attempts to undermine devolution and the people's aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;

(d.) resolves to institute legal proceedings to –

i.) challenge the laws that have been enacted unprocedurally in the 12th Parliament;

ii.) seek an interpretation of the term "money Bill"; and

iii.) seek a final determination of the procedure to be followed in respect of all the Bills that are pending before Parliament so as to ensure compliance with Article 110(3) of the Constitution and for the future.

Following the above resolutions, the Senate filed a Petition in the High Court in line with the resolution of the House.

The Court made several determinations, amongst which it held-

(a) any law passed without complying with Article 110 (3) of the Constitution is unconstitutional.

(b) a Bill concerning counties and a money bill are mutually exclusive as the High Court held that where a Bill is a Bill that concerns counties, the Bill is not a money Bill and must be considered in line with the procedures under Articles 109 (4), 110 to 113, 122 and 123 of the Constitution.

The Senate therefore sought the republication of all Bills that had not undergone complete concurrence to conform with the decision of the High Court in respect to Petition 284 of 2019 (***See Annex 1).***

As a result of the foregoing, the Mental Health (Amendment) Bill was republished on 30th November, 2020.

## 5. Public Participation and Stakeholder Engagement

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, on 4th March, 2021, the Bill was read a first time and referred to the Senate Health Committee. By an advertisement published on 16th March, 2021 two newspapers with national circulation, the parliamentary website and parliamentary social media pages, the Committee invited interested members of the public and stakeholders to give their submissions on the Bill via written memoranda **(*see Annex 2*).** Notably, in response to this call for memoranda, the Committee received submissions from various stakeholders with regards to the Bill.

Having scrutinized and considered the submissions from various stakeholders, the Committee successfully concluded its consideration of the submissions from the members of the Public on Friday, 21st May, 2021 and proposed amendments to the Bill. **(*see Annex 3).***

## 6. Objectives of the Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020)

The objective of the Bill is 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.

## 7. Overview of the Bill

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

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

> An Act of Parliament to 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 4** of the Bill amends the Act by providing for the purpose of the Act and the guiding principles as follows –

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

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

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

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

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

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

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

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

2C The National Government shall—

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

(b) collaborate with the county governments in—

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

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

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

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

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

(i) the number of qualified health professionals required to serve a mental health unit and more specifically the number of psychiatrists, psychologists, clinical officers who specialise in psychiatry, psychiatric nurses, counsellors, occupational therapists and allied health workers;

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

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

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

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

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

(i) develop and implement strategies and programmes to curb stigma related to mental health and mental health care and treatment.

The obligations of the county government are provided for under the new clause 2D as follows– The County governments shall—

(a) provide mental health care, treatment and rehabilitation services within the county health facilities, in particular ensure that level 2, 3 and 4 and 5 county health facilities set aside dedicated clinics to offer outpatient services for persons with mental illness;

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

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

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

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

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

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

(h) ensure mental health interventions at county level—

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

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

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

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

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

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

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

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

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

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

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

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

**Clause 2E** establishes the county mental health council in place of the District Mental Health Councils. It is proposed that the council consist of: county director of health; the chairperson to the county education board; five other persons nominated by the county executive committee member in charge of health.

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

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

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

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

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

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

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

**(1) Right to mental health services**

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

**(2) Consent to treatment**

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

**(3) Right to participate in treatment planning**

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

**(4) Access to medical insurance**

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

Any person or health insurance company that discriminates against a person with mental illness or subjects a person with mental illness to unfair treatment in obtaining the necessary insurance cover commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both.

**(5) Protection of persons with mental illness**

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

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

**(6) Right to appoint a supporter**

A person with mental illness has the right to enter in to a supportive decision-making agreement with another person (a supporter who shall make decisions in accordance to the will and preference of the person with mental illness. 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.

**(7) Right to recognition before the law**

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.

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

**(8) Right to civil, political and economic rights**

**(9) Right to access to information**

**(10) Right to confidentiality**

**Kenya Board of Mental Health**

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

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

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

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

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

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

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

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

(h) the Deputy Director of Mental Health;

(i) the Chief Nursing Officer.

Section 4(3) of the Act provides for the term of office of the Board as serving at the Minister's pleasure for a period not exceeding three years and shall be eligible for re-appointment. **Clause 7** of the Bill proposes to change the composition and terms of the Board as follows —
The Board shall consist of —

(a) the Director who shall be the chairperson;

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

(i) a psychiatrist, 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; and

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

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

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

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

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

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

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

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

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

(b) set the standards for the establishment of mental health units and approve the establishment of mental health units in national referral hospitals;

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

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

(e) 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;

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

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

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

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

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

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

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

Section 7 of the Mental Health Act establishes the District mental health councils. The councils are appointed by the 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. **Clause 11** of the Bill proposes to amend the Act by deleting the provision on District mental health councils.

**Clause 14** of the Bill makes provision for the Board to designate places within national referral hospitals and national government facilities as mental health units. It further provides that the county executive committee member may designate a place within the county health facility as a mental health unit.

Clause 14 (d) provides that the Cabinet Secretary in consultation with the Board and the Council of County Governors shall make rules for the control and proper management of mental health units. Clause 14(e) further requires that Level 3, 4, 5 and 6 health facilities with mental health units provide in-patient and out-patient treatment of persons suffering from mental illness.

**Clause 15** of the Bill provides for the establishment of mental health units which may be public (operated and managed by the national or a county government) or private mental health facility. To establish a mental health facility, a person will be required to submit an application to the relevant medical regulatory body in the prescribed form together with the prescribed fee. The person in medical charge of the private mental health facility must be a mental health practitioner

qualified and duly registered as a psychiatrist, psychologist, psychiatric nurse or a clinical officer who specialises in psychiatry.

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

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

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

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

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

(a) the number of voluntary or involuntary patients the mental health facility 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.

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

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

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

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

Administration of any mental health care, treatment or admission of a person with mental illness shall not be done without the person's informed consent or that of the person's supporter, representative or guardian as the case may be. The consent 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.

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

Where a person below the age of eighteen years requires voluntary admission to a mental health facility or unit, 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 for the admission of the child.

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

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

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

(b) the procedure to be followed by the mental health facility or unit while dealing with a patient who is a minor, where the guardian dies, become incapable of representing the patient or refuses or neglects to perform their duties under the Act; and

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

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

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

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

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

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

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 six months unless the person in charge has carried out a review of the status of the mental health of the patient and sought or retained the recommendation of the medical health practitioner of extended admission. Further the person in charge shall seek the consent of the supporter the representative or the guardian before extending the admission beyond 6 months.

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

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

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

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

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

However, when the mental health practitioner determines that the person with mental illness requires care beyond the period necessary to stabilize and treat the person or a period longer seventy two hours, a duly appointed supporter, representative or guardian as the case may be may by written consent prolong the time for treatment.

**Clause 29** provides for admission of patients from foreign countries. Where it is necessary to admit a person suffering from mental illness from any foreign country into any mental health facility in Kenya, the foreign Government or other relevant authority in that country shall apply in writing seeking the Board's approval to admit the person.

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

(a) the nature of the illness;
(b) the need for care and treatment;
(c) the type of care and treatment provided;
(d) the need for referral, transfer or discharge; and
(e) any other matters related to the mental health status of the person with mental illness.

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

(a) the person with mental illness;
(b) the mental health care practitioner in charge of managing the person with mental illness;
(c) a representative of the person with mental illness;
(d) the person in charge of the facility;
(e) any other person upon proof of the nature of their interest; or
(f) the Board.

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

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

(a) the grounds upon which the application is made;
(b) the full particulars as to the property and relatives of the person to whom it relates; and
(c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.

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

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

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

The manager shall not without the approval of the court —

(a) mortgage, charge or transfer by sale, gift, surrender or exchange any immovable property of which the estate may consist;
(b) lease any such property for a term exceeding five years; or
(c) invest in any securities other than those authorized under the Trustee Act.

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

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

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

The proposed section 29 requires that the manager, within six months of the date of appointment, deliver to the court and to the Public Trustee an inventory of —

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

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

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

Under the proposed section 30, the penalty for a manager who contravenes the provisions of the Act on the administration of property of a person with mental illness is imprisonment for a term not exceeding three years or a fine not exceeding two million shillings, or to both. Further, any property of a person who is mentally ill which is lost due to maladministration of the person's estate shall be a civil debt recoverable summarily from the manager's estate.

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

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

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

(b) Section 48 - False certificates;

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

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

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

(f) Section 52- Dealings with patients.

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

## CHAPTER TWO

## PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT

As indicated in the previous chapter, the Mental Health (Amendment) Bill, 2020 was republished on 30th November, 2020, and read a First Time in the Senate on 4th March, 2021. Following this, it was committed to the Standing Committee on Health for facilitation of public participation as per standing order 140 (1) and (5).

Accordingly, pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, on 16th March, 2021, by an advertisement published on two newspapers with national circulation, the parliamentary website and parliamentary social media pages, the Committee invited interested members of the public and stakeholders to give their submissions on the Bill via written memoranda ***(see Annex 2).*** The Committee received submissions from various stakeholders and concerned citizens with regards to the Bill. A matrix with a summary of the submissions from the various stakeholders has been attached to this report as ***Annex 4.***

The Committee received and considered submissions from **stakeholders** including government departments and agencies, civil society groups, and various individuals as indicated below:

1. National Gender and Equality Commission (NGEC)
2. Kenya National Commission on Human Rights, Kenya Parliamentary Caucus on SDGs and Business, Adan Foundation, Alzheimer's and Dementia Organisation – Kenya, Amka Africa Justice Initiative, Arthur's Dream Autism Trust, Bipolar Heroes, Centre for Mental Health and Wellness, Coalition for Preventative Mental Health (CAMPH), Edge Consultants, Goinghome.com, Health Rights Advocacy Forum, Hoymas Kenya, Institute of Legislative Affairs, Jinsiangu Transgender Kenya, Kamili Organisation, Kenya Association for the Intellectually Handicapped, Mental 360, Mental Health Alliance Kenya, Mental Health Network Society, New Dawn, PDO Kenya (Psychiatric Disability Organisation Kenya), People Like Us CBO, Shamiri Institute, The Wellness Tribe, TINADA Youth Organisation Kenya, Tizi Talks, Tunawiri CBO, Users and Survivors of

Psychiatry – Kenya, Validity Foundation, Watu Health Innovation Foundation Africa, Women for Dementia – Africa (KNCHR and others)

3. Jinsiangu and Amka Africa Justice Initiative (JAAJI)
4. International Institute for Legislative Affairs (ILA)
5. Emerging Leaders Foundation
6. Kenya Medical Social Workers Association (KEMSWA)
7. Voice of Bungoma CSO network (VOB)
8. Kenya Association for the Intellectually Handicapped (KAIH)
9. Society of Kenya (CPS-K)
10. Health Rights Advocacy Forum, Tinada, Basic Needs Basic Rights, Physicians For Health (HTBP)
11. Mr. David Gitari Njoka
12. The African Women Studies Centre (AWSC)

The minutes of the above meetings have been attached to this report as ***Annex 5***.

## CHAPTER THREE

## COMMITTEE OBSERVATIONS

The Committee made the following observations -

(a) The Mental Health Act was enacted in 1989 and needs to be aligned to the Constitution of Kenya in respect to functional delineation between the county and national government. In addition, the Bill aligns itself to the provisions in the Convention on the Rights of Persons with Disabilities (CRPD) which Kenya ratified in 19th May, 2008.

(b) The Committee commends the sponsor for approaching the Bill through the human rights lens. In particular, the Committee commends the safeguard to legal capacity within the Bill that allows adult persons with mental health illness to make decisions that affect them.

(c) In addition, the Committee notes that the Bill is progressive as it recognises supportive decision making agreements which will allow persons with mental health illness to appoint a supporter to make decisions on the basis of the person with mental illness' will and preference should the person with mental illness be unable to make decisions themselves due to the illness.

(d) The Bill provides for incorporation of mental health services within the mainstream health services provision framework by ensuring mental health services are provided from tier one to six in the classification of health care. This seeks to ensure the reduction of stigmatization related to mental illness.

(e) The Bill seeks to further reduce stigmatization in relation to mental health by changing the word "disorder" to "illness". The Committee is of the view that the change will ensure a paradigm shift by changing mindsets of the citizenry and encouraging them to believe and know that mental illness are treatable just like any other illness.

(f) The Committee recognises that various vulnerable groups are susceptible to mental illness and commends the recognition of this in the Bill. In particular, the Committee commends the recognition of maternal mental health and hopes that this will ensure that mothers who suffer from post-partum depression, post-delivery psychosis, anxiety etc are given due recognition and given the care they need.

(g) The Committee applauds the Sponsor for recognizing the place of community and family -based care in the promotion of mental health.

(h) The Committee noted that removal on the basis of mental incapacity or infirmity should not be done summarily.

(i) The Committee recognizes that the persons who commit suicide need medical intervention and that it may be important to have a discussion on the decriminalization of attempted suicide under the Penal Code.

(j) As currently drafted, the Bill may not have taken into account the evolved nature of communication and cites only communication through letters. Communication has evolved to include other means that should also be facilitated without censorship, and taking into account the right to privacy of persons with mental health conditions.

(k) The Committee observed that statistical reports on various types of admissions were important to ensure planning and also oversight of provision of mental health services. In this respect the committee proposed an amendment to the reports to be filed in respect to emergency admission of persons with mental health illness.

(l) The Committee recognised that treatment of patients with mental health illness may require more time than is provided in the emergency admission proposal and therefore it was important to allow the mental health practitioner to seek consent from the representative or the supporter to extend the time should the need arise.

## CHAPTER FIVE

## COMMITTEE RECOMMENDATIONS & PROPOSED AMENDMENTS

The Committee therefore recommends that the Bill be amended to ensure:

(a) information on the side effects of proposed treatment plans is disclosed to the patients;

(b) that removal from the Board and the council on the grounds of mental infirmity is only implemented after an investigation is carried out.

(c) the reports on admissions, discharge and death of patients should include reports relating to patients who were admitted on the basis of emergency admission

(d) that patients be allowed access to communication through letters, telephone calls and emails where practicable.

(e) The Cabinet secretary in consultation with the council of county governors and the Board prescribe the form of the supportive decision making agreement.

**The Committee proposed the following amendments to the Bill.**

The Committee intends to move the following amendments to the Mental Health (Amendment) Bill, Senate Bills No. 28 of 2020, at the Committee Stage —

**CLAUSE 5**

**THAT** clause 5 of the Bill be amended in the proposed new section 2E (5) by—

(a) deleting paragraph (e) and substituting therefore the following new paragraph—

(e) is removed by the county executive committee member for being unable to perform the functions of the office by reason of mental or physical infirmity.

(b) inserting the following new subclause immediately after subclause (5)

(5A) Before the removal of a member under subsection (5)(e), the county executive committee member shall request the Council to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

**CLAUSE 8**

**THAT** clause 8 of the Bill be amended by deleting the proposed new section 4B and substituting therefor the following new section—

Removal of member of Board from office.

**4B.** (1) A member of the Board may be removed from office for —

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct;

(c) incompetence or negligence of duty; or

(d) any other ground that would justify removal from office under any written law.

(2) Before the removal of a member of the Board under subsection (1)(a), the Cabinet Secretary shall request the Board to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

**CLAUSE 15**

**THAT** clause 15 of the Bill be amended -

(a) in the proposed new section 9D by inserting the following new paragraph immediately after paragraph (e)—

(ea) the number of mental health patients admitted on an emergency basis that the mental health facility or unit has discharged, are still under its care or have died in the course of treatment;

(b) in the proposed new section 9F(2) by inserting the words "side effects" immediately after the words "likely duration" in paragraph (b).

**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 (b) —

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

**CLAUSE 33**

**THAT** clause 33 of the Bill be amended in the proposed new section 21 by inserting the words "A person" immediately before the word "with mental illness" in subsection (2).

**CLAUSE 38**

**THAT** clause 38 of the Bill be amended 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 enable communication by the patient through letters, telephone calls and emails to the recipients where practicable.

**CLAUSE 50**

**THAT** the Bill be amended by deleting clause 50 and substituting therefor the following new clause—

Amendment of section 54 of Cap. 248.

**50.** The Principal Act is amended by deleting section 54 and substituting therefor the following section—

Regulations.

**54.** The Cabinet Secretary shall, in consultation with the Board and the Council of County Governors, make regulations—

(a) prescribing the form of the supportive decision making agreement;

(b) generally regulating the equipping, administration, control and management of mental health units;

(c) for the care, treatment and rehabilitation of person with mental illness;

(d) prescribing the procedure of admission of out-patient patients; and

(e) for the better carrying out of the provisions of this Act.

**24th May, 2021,**
The Clerk of the Senate,
Parliament Buildings,
**NAIROBI.**

**RE: COMMITTEE STAGE AMENDMENTS TO THE MENTAL HEALTH (AMENDMENT) BILL, (SENATE BILLS NO. 28 OF 2020)**

**NOTICE** is given that the Chairperson of the Standing Committee on Health, Senator Michael Mbito, intends to move the following amendments to the Mental Health (Amendment) Bill, Senate Bills No. 28 of 2020, at the Committee Stage —

**CLAUSE 5**

**THAT** clause 5 of the Bill be amended in the proposed new section 2E (5) by—

(a) deleting paragraph (e) and substituting therefore the following new paragraph—

(e) is removed by the county executive committee member for being unable to perform the functions of the office by reason of mental or physical infirmity.

(b) inserting the following new subclause immediately after subclause (5)

(5A) Before the removal of a member under subsection (5)(e), the county executive committee member shall request the Council to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

**CLAUSE 8**

**THAT** clause 8 of the Bill be amended by deleting the proposed new section 4B and substituting therefor the following new section—

Removal of member of Board from office.

**4B.** (1) A member of the Board may be removed from office for —

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct;

(c) incompetence or negligence of duty; or

(d) any other ground that would justify removal from office under any written law.

(2) Before the removal of a member of the Board under subsection (1)(a), the Cabinet Secretary shall request the Board to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

**CLAUSE 15**

**THAT** clause 15 of the Bill be amended -

(a) in the proposed new section 9D by inserting the following new paragraph immediately after paragraph (e)—

(ea) the number of mental health patients admitted on an emergency basis that the mental health facility or unit has discharged, are still under its care or have died in the course of treatment;

(b) in the proposed new section 9F(2) by inserting the words "side effects" immediately after the words "likely duration" in paragraph (b).

**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 (b) —

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

**CLAUSE 33**

**THAT** clause 33 of the Bill be amended in the proposed new section 21 by inserting the words "A person" immediately before the word "with mental illness" in subsection (2).

**CLAUSE 38**

**THAT** clause 38 of the Bill be amended 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 enable communication by the patient through letters, telephone calls and emails to the recipients where practicable.

**CLAUSE 50**

**THAT** the Bill be amended by deleting clause 50 and substituting therefor the following new clause—

Amendment of section 54 of Cap. 248.

**50.** The Principal Act is amended by deleting section 54 and substituting therefor the following section—

Regulations.

**54.** The Cabinet Secretary shall, in consultation with the Board and the Council of County Governors, make regulations—

(a) prescribing the form of the supportive decision making agreement;

(b) generally regulating the equiping, administration, control and management of mental health units;

(c) for the care, treatment and rehabilitation of person with mental illness;

(d) prescribing the procedure of admission of out-patient patients; and

(e) for the better carrying out of the provisions of this Act.

Dated.....**24th May, 2021**....., 2021

Sen. Michael Mbito,
*Chairperson, Standing Committee on Health.*

**TWELFTH PARLIAMENT |FOURTH SESSION**

**MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON FRIDAY, 21ST MAY, 2021, AT 9:00 A.M. ON THE ZOOM ONLINE CONSIDERATION OF THE PUBLIC PARTICIPATION SUBMISSIONS ON THE MENTAL HEALTH (AMENDMENT) BILL, 2020**

**PRESENT**

1) Sen. (Dr.) Michael Mbito, MP - **Chairperson**
2) Sen. Mary Seneta, MP
3) Sen. Millicent Omanga, MP
4) Sen. (Prof) Samson Ongeri, EGH, MP
5) Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP
6) Sen. Fred Outa, MP
7) Sen. Beatrice Kwamboka, MP
8) Sen. Ledama Olekina, MP

**APOLOGY**

1) Sen. Beth Mugo, EGH, MP

**SECRETARIAT**

| | | |
|---|---|---|
| 1) | Ms. Emmy Chepkwony | - Principal Clerk Assistant 1 |
| 2) | Ms. Christine Sagini | -Research Officer/Clerk Asst |
| 3) | Ms. Sombe Toona | -Legal Counsel |
| 4) | Mr. Robert Rop | -Audio Officer |
| 5) | Ms. Fahriya Ibrahim | -SAA |
| 6) | Ms. Lynn Aseka | - Parliamentary Intern, Committees |
| 7) | Mr. Willium Omondi | - Parliamentary Intern, Hansard |

**MIN. NO. SCH 5/132/2021: PRELIMINARIES**

The Chairperson called the meeting to order at 9.00 a.m and the meeting commenced with a word of prayer.

**MIN. NO. SCH 5/133/2021: ADOPTION OF THE AGENDA**

The committee adopted the agenda of the sitting, as set out below, having been proposed by **Sen. (Dr.)Abdullahi Ali, MP** and seconded by **Sen. Prof. Sam Ongeri, EGH,** MP: -

1. Preliminaries

*a) Prayer*
*b) Adoption of the Agenda*

2. ***Consideration and adoption of Public Participation Submissions on the Mental Health (Amendment) Bill, 2021.***
3. Any other business.
4. Date of the Next Meeting.
5. Adjournment

**MIN. NO. SCH5/134/2021: CONSIDERATION OF PUBLIC PARTICIPATION SUBMISSION ON THE MENTAL HEALTH (AMENDMENT) BILL, 2020**

**The submissions were received from the following stakeholders**

1. National Gender and Equality Commission (NGEC)
2. Kenya National Commission on Human Rights, Kenya Parliamentary Caucus on SDGs and Business, Adan Foundation, Alzheimer's and Dementia Organisation – Kenya, Amka Africa Justice Initiative, Arthur's Dream Autism Trust, Bipolar Heroes, Centre for Mental Health and Wellness, Coalition for Preventative Mental Health (CAMPH), Edge Consultants, Goinghome.com, Health Rights Advocacy Forum, Hoymas Kenya, Institute of Legislative Affairs, Jinsiangu Transgender Kenya, Kamili Organisation, Kenya Association for the Intellectually Handicapped, Mental 360, Mental Health Alliance Kenya, Mental Health Network Society, New Dawn, PDO Kenya (Psychiatric Disability Organisation Kenya), People Like Us CBO, Shamiri Institute, The Wellness Tribe, TINADA Youth Organisation Kenya, Tizi Talks, Tunawiri CBO, Users and Survivors of Psychiatry – Kenya, Validity Foundation, Watu Health Innovation Foundation Africa, Women for Dementia – Africa (KNCHR and others)
3. Jinsiangu and Amka Africa Justice Initiative (JAAJI)
4. International Institute for Legislative Affairs (ILA)
5. Emerging Leaders Foundation
6. Kenya Medical Social Workers Association (KEMSWA)
7. Voice of Bungoma CSO network (VOB)
8. Kenya Association for the Intellectually Handicapped (KAIH)
9. Society of Kenya (CPS-K)
10. Health Rights Advocacy Forum, Tinada, Basic Needs Basic Rights, Physicians For Health (HTBP)
11. Mr. David Gitari Njoka
12. The African Women Studies Centre (AWSC)

The Committee considered following submissions by the public on the Mental Health Bill, 2020 and made the following determination.

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| 1. | **Title** | **CPS-K** | **Proposal**<br><br>Amend the title to read:<br><br>Mental Health and **Happiness** (Amendment) Bill, 2020<br><br>**Rationale**<br><br>To align to the recommendations by the Mental Health and Wellness Taskforce . That National and County governments design inclusive mental health care services to cater for all ages and demographic groups, including the children and adolescents, pregnant and lactating mothers, youth and the elderly. | The Committee may make a policy decision on this matter. | **Rejected** |
| 2. | **Long title** | **NGEC** | **Proposal**<br>Replace mental illness with mental disorder.<br><br>**Rationale**<br><br>The parent Act as noted above and the Mental Health Policy 2015-2030 make reference to Mental Disorder and so we advise that the title should be aligned to what the parent Act states. In addition, section 73 of the Health Act, 2017 provides that, "There shall be established by an Act of Parliament, legislation to— protect the rights of any individual suffering from any mental disorder or condition...<br><br>Illness as interpreted is limiting and tactfully locks out many persons with Mental disabilities. It also leans more on the biomedical model than Social or Rights Based Model. | The Taskforce on Mental Health in Kenya was formed in November 2019 through a Cabinet directive. According to the Report of the Taskforce on Mental Health in Kenya titled Mental Health and Wellbeing: Towards Happiness and National Prosperity the term "mental illness" also refers to "mental disorders" (pg 15).<br><br>Patients with mental illness can | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | | be treated and get better. Therefore maintain the term illness | |
| 3. | | **CPS-K** | **Proposal**<br><br>AN ACT of Parliament to amend the Mental Health and **Happiness** Act; and for connected purposes<br><br>**Rationale**<br><br>To align to the recommendations by the Mental Health and Wellness Taskforce | The Committee may make a policy decision on this matter. | **Rejected** |
| 4. | **2** | **AWSC** | **Proposal**<br><br>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.<br><br>**Rationale** | The comma is already in the Bill. | **Rejected** |
| 5. | **3** | **KEMSWA** | **Proposal**<br>Include the medical social workers under the definition of "mental health practitioners<br>**Rationale**<br>Locally and internationally medical social workers are critical in delivering community based mental health services as well as at level 2, 3, 4, 5, and 6 health facilities.<br>In the Mental Health and Wellbeing: Towards Happiness and National Prosperity (2020) report has on page 56 and 97 cited the important role of medical social workers.<br>In addition, the Director General for Health in a letter dated 24th March, 2021 Ref No. MOH/DPPH/DMH/VOL.1 (109) to the Chief Officers of Health identifies medical social workers as one of the human resource for mental health.<br>In 2020 the Ministry of Health directed all counties to establish mental health and psychosocial support teams inclusive of medical social workers in COVID-19 pandemic response.<br>In the Post rape Care form Part B medical social workers are among the health workers to offer mental health | The Committee may make a policy decision on this matter. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | services to the survivors and help the victims through trauma and other assist them in social functioning with reintegration. In to family and community. | | |
| 6. | | **NGEC** | **Proposal**<br><br>The Commission proposes an amendment to consider interpreting what "Mental disorders are" instead of interpreting "the person" and which is essentially describing the symptoms in line with the long title. A schedule of the disorders and protocols on management of each category which will include Autism, schizophrenia, cerebral palsy, learning disorders, dementia, Alzheimer's etc.be included<br><br>**Rationale**<br><br>The definition of "Person with mental illness "is quite limiting. This automatically locks out all the other categories of illnesses and disorders and especially the disorders children and the older members of society suffer from". | The law should be fairly flexible. To define the various types of mental illness may not be ideal since the field of mental medicine continues to grow. Amending legislation is cumbersome and therefore it may be better for the illnesses to be defined in clinical practice manuals. | **Rejected** |
| 7. | | **Emerging Leaders Foundation** | **Proposal**<br>Amend from "person with mental illness" to person suffering from a mental illness or disorder | The sponsor of the Bill aimed to review terminology by replacing disorder with illness. | **Rejected** |
| 8. | | **AWSC** | **Proposal**<br><br>"person with mental illness" means a person who has been found to be so suffering under this Act and includes—<br><br>(a) **A woman suffering from postpartum depression** ~~a person suffering from maternal mental illness~~; and<br><br>(b) a person diagnosed with mental impairment due to alcohol or substance abuse; | The Bill first gives a general definition indicating that a person must be diagnosed with mental illness then emphasises mental health conditions that arise from being a mother or that are | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | (c) **a person suffering from autism**<br><br>(d) **a person suffering from depression**<br><br>**Rationale**<br><br>This section identifies only two categories of mental health illnesses<br><br>It is important to also recognize other mental health challenges which are as a result of conditions such as depression or conditions such as autism | associated with alcohol and substance abuse. | |
| 9. | | **JAAJI** | **Proposal**<br>Amend the definition of person with mental illness to read "person with mental illness" means a person who has been found to be so suffering under this Act and includes—<br>(a) a person suffering from maternal mental illness;<br>And<br>(b) a person diagnosed with mental impairment due to alcohol or substance abuse;<br>(c) **a persons with lived experiences of mental health illness.**<br>**Rationale** | The definition is too. broad.<br>The Committee may make a policy decision on this matter. | **Rejected** |
| 10. | | **JAAJI** | **Proposal**<br>We propose a new sub-clause to define " a persons with lived experiences of mental health illness'.To read as follows:<br>' a person with first-hand personal experience with mental health illness, includes youth, intersex, women, transgender,<br>persons living with disabilities.' | | **Rejected** |
| 11. | | **KNCHR and others** | **Proposal**<br>Amend the definition "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 **but does not include:**<br>**(a) Intellectual / developmental disability which is a condition of arrested or incomplete development** | | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | **of mind of a person, specially characterised by sub normality of intelligence;**<br>**(b) Dementia**<br><br>**Rationale**<br>To create greater clarity and do away with outdated language. Scientific developments in psychiatry has progressed to other terms including 'antisocial personality disorder. | | |
| 12. | **3** | **KAIH** | **Proposal**<br>Amend the definition of 'person with mental illness to add the following words immediately after the word 'abuse':<br><br>'but does not include:<br>intellectual/developmental disability which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence<br><br>**Rationale**<br>This is because we have ratified the UN Convention on Persons with Disabilities and we have started to apply the CRPD for years in Kenya. Part of the definitions of disability is the term intellectual disability which is more suitable that mental retardation. | The Committee may make a policy decision. | **Rejected** |
| 13. | **Part 1A** | **NGEC** | **Proposal**<br>The Commission proposes the establishment of "Inter Agency Committee" instead of a County Health Council which will comprise representation from the National Government at the County, the County Governments, NCPWD, NHIF private practitioners, special schools, care givers etc..<br><br>**Rationale**<br><br>PART 3 of the policy recognizes that the implementation of the policy can only be successful with the collaboration of state and non-state actors. The policy also recognizes the role of the following non- state Actors<br>1. The non-state actors shall expand coverage and improve access to mental health care as well as participate in formulation, financing, implementation, monitoring and evaluation of mental health programmes • The non- state | Clause 7 of the Bill proposes an amendment to section 4 of the principal Act in respect to the membership of the Kenya Mental Health Board. The Board has representation of both state and nonstate actors. The following persons will represent nonstate actors- | **Rejected** |

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| | | | actors shall actively participate in advocacy for promotion of mental health and mental health care.<br>2. Media -The mass media will play a key role in positive advocacy and creation of awareness on matters related to mental health.<br>3. Individuals, families, and communities• The individual, family and community will play a key role in the promotion of mental Health, prevention, treatment and rehabilitation of persons affected by MNS disorders. • They will also advocate for and participate in Community-based mental health programmes.<br>4. Role and Responsibilities of Development and Implementation partners• They will support Mental Health Policy implementation through the Health Sector Partnerships and Coordination Framework with emphasis on mental health priorities and plans.• They will be involved in resource mobilization and technical assistance.<br>5. Roles and Responsibilities of Training and Research Institutions• The universities and colleges training in health shall include mental health in their training curricula that conforms to the national and international standards.• The institutions shall provide evidence-based approaches and practices to mental health issues and shall conduct scientific mental health research and share information to inform the policy implementation.<br>6. Roles and Responsibilities of Professional Bodies<br>• They offer technical advice and professional expertise.• They ensure and facilitate professional growth and look into the welfare of the members.• They maintain professional and ethical standards<br><br>The policy also envisages a Multi-Sectoral approach to maximizing achievement of mental health goals whose approach is based on the recognition that mental health cannot be improved by interventions relating to mental health services alone, but that other related sectors are equally important in attaining the overall health goals. A focus of 'Mental Health in all Sectors' should be applied in attaining the objectives of this policy. Such related sectors include: Education, labour, security, correctional services, children services, planning, finance, legal justice system, industrialization, agriculture. | -Organisations that advocate for the rights of persons with mental illness are represented by one person.<br>-In addition, the council of governors have been given the opportunity to appoint two persons with knowledge and experience in mental health to the Board.<br>Section 4 (4) of the Mental Health Act, allows the Board to coopt membership to advise it<br>The Mwongozo code of governance limits the number of people who may be appointed to the Board. | |

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| 14. | 2A | CPS-K | **Proposal**<br><br>Propose to add to this section 2A (f) and (g) to read as follows:<br><br>**(f) Invest in early intervention, adopt a holistic approach to the community health services**<br><br>**(g) strengthen integrated mental health and reproductive health especially at Primary Health Care facilities**<br><br>**Rationale**<br><br>MOH has structures already in place that can be utilized for intervention and mental health services through the CHS personnel for holistic approach.<br><br>To encourage and support postpartum Family planning for perinatal services in primary health care facilities hence imperative to have this framework in the reproductive health counseling services to adolescent mothers among others. Specialized training in health counseling course/curriculum existing in the KMTC | The Bill relates to mental health. There are other Bills that relate to community health and reproductive health.<br><br>The proposal seeks to entrench community mental health service counsellors. | **Rejected** |
| 15. | | AWSC | **Proposal**<br><br>**2A.** The purpose of this Act is to provide a framework to— (d) promote recovery from mental illness and enhance rehabilitation and integration of **a** person with mental illness into the community;<br><br>**Rationale** | This typographical error and the Committee may recommend it correction. | **Clean up at vellum preparation.** |
| 16. | 2B | AWSC | **Proposal**<br><br>All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles — | When we include conditions, it creates ambiguity as to whether this is something additional. | **Rejected** |

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| | | | (c) the fair and equitable treatment of persons with mental illness **and conditions**;<br><br>**Rationale**<br><br>Persons with autism have conditions since autism is a condition and so this provision should also incorporate persons with such conditions | | |
| 17. | **2C (a)** | **AWSC** | **Proposal**<br><br>The National Government shall—(a) provide the necessary resources for the provision of mental health care and treatment at ~~National referral~~ health facilities<br><br>**Rationale**<br><br>Majority of those who have mental illnesses/challenges seek medical services at the devolves health facilities, therefore, it is important that the National Government provide resources for mental care and treatment at such facilities | The Constitution delineates health service provision between the two levels of government. The National government manages National referral facilities and the county governments manage the county health system that is comprised of the tier 1 to 5 health infrastructure. | **Rejected** |
| 18. | **2C (b) (iii)** | **CPS-K** | **Proposal**<br><br>Propose to add to this section<br>2C. (b)(iii) expanding and strengthening community and family-based<br>care and support systems for youth, street, prison population<br><br>**Rationale** | The provision relates to collaboration between the national and county governments. In addition the proposal seeks to ensure that the community and family based care and support is available to all | **Rejected** |

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| | | | Utilize the Community health services structure to offer home based counseling services and psychoeducation to alleviate stigma and discrimination.<br><br>CHS and Nyumba kumi initiatives shall be strengthened to address stigma and discrimination related issues | persons with mental illness.<br><br>This proposal seeks to elevate different groups which may not necessarily be persons with mental illness. | |
| 19. | **2C (e) (i)** | **KEMSWA** | **Proposal**<br>Replace allied health workers with medical social workers.<br><br>**Rationale**<br>Medical social workers qualify through a diploma from Kenya Medical Training College or A degree from Jomo Kenyatta University of Agriculture and Technology. In addition, the University of Nairobi offers Psychiatric Social Work geared towards mental health service provision. | The Committee may make a policy decision on this matter.<br><br>. | **Rejected** |
| 20. | **2C (e) (iv)** | **CPS-K** | **Proposal**<br><br>2C. (e)(iv) to read as follows:<br><br>Put in place mechanisms for **outpatient comprehensive cover** for mental health **care,** treatment and rehabilitation of substance use disorders to promote prevention as well as continued care for mental illnesses.<br><br>**Rationale**<br><br>The practice with regards to provision of Mental Health cover under NHIF is discriminatory, while it is not explicit under the law on the insurance cover. Current practices do not cover for outpatient services.<br><br>This will go well with the UHC Objectives and mission | The universal health coverage is a policy plan for the National Government.<br><br>The Committee may make a policy decision on this matter. | **Rejected** |

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| 21. | **2C (f)** | **CPS-K** | **Proposal**<br><br>In 2C(f) to read:<br><br>(f) develop **community based mental health service** programs for **the continued counseling care,** rehabilitation of persons with mental illness;<br><br>**Rationale**<br><br>This will help in establishing human resource capacity in counseling from the community health strategy for quality services. Utilize the specialized course in KMTC Health counseling and mental health wellness curriculum in KMTC by CHS personnel | The Committee may make a policy decision on this matter. | **Rejected** |
| 22. | **Insert new 2C (i)** | **CPS-K** | **Proposal**<br><br>(i) establish the directorate of mental health and substance use to coordinate implementation of policies on mental health.<br><br>**Rationale**<br><br>To align to the key recommendations by the Mental Health and Wellness Taskforce on governance and leadership in Mental Health and Happiness. To implement and coordination of the mental health policies, data and research as per this Act. | The Committee may make a policy decision on this matter.<br><br>This is generally an administrative decision that is made by the CS or entity concerned. The Bill could impose the function of coordination but leave it to the entities to determine whether a directorate is required for this purpose. | **Rejected** |
| 23. | **2D (1) (b)** | **CPS-K** | **Proposal**<br>Amend in the following manner—<br><br>(b) provide community-based care and **treatment in community health services level 1** for persons with mental illness including initiating and organizing | The Committee may make a policy decision on this matter | **Rejected** |

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| | | | community or family based programs for the care of persons suffering from mental illness;<br><br>**Rationale**<br><br>This would help to create need for the deployment of the counseling and psychologists in the community health services as it is in the scheme of service and recent UHC Staff qualification by PSC | | |
| 24. | **Insert 2D (1) (g ) and (h)** | **CPS-K** | **Proposal**<br><br>(g) support and organize community-based dialogues and action days programs on mental health.<br><br>(h) ensure and support the mental health services counseling unit and well equipped as per laid procedures by global health authorities<br><br>**Rationale**<br><br>To achieve the goal in psychoeducation and psychological first aid to the community. Insert this part to qualify the CHS Personnel in level 1 to undertake the tasks in mental health. To align the bill with the suggested title.<br><br>Creating awareness and youth friendly centres in the community | The proposal seeks to entrench community mental health counseling. The Committee may make a policy decision on the matter. | **Rejected** |
| 25. | **2D (1)(h)(ii)** | **KNCHR and others**<br><br>**KAIH** | **Proposal**<br>Insert the word 'intersex' after 'women'.<br>Insert 'persons with intellectual/developmental disabilities' and 'persons with dementia' after 'children'<br><br>**Rationale**<br>Intersex persons and their families are particularly at risk of developing mental health conditions as noted in the report of the Task force on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya. The Taskforce noted that 'the immense emotional turmoil, stress and disagreement in the families caused by the birth and life of an intersex child, in a number of cases | The Committee may consider the following amendment—<br><br>target persons at risk of developing mental illness including children, women, **intersex persons,** | **Rejected** |

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| | | | leads to mental breakdown of (usually) the mother'. The Taskforce recommended that the Ministry of Health in consultation with Medical Practitioners and Dentists Board make provision for psychosocial support to both the intersex child and their family. Intersex persons were also featured in the 2019 publication on mental health in Kenya featuring Senators inter alia and dubbed 'The many faces of mental health in Kenya'.<br><br>While persons with an intellectual/developmental disability and persons with dementia may not have mental illness, these individuals are more prone to mental health problems due to the societal, attitudinal, systemic and structural biases and barriers they face in our society. Therefore, including persons with intellectual/developmental disabilities in the bill will acknowledge the immense mental health supports that persons with intellectual disabilities require but do not receive because of their perceived 'immaturity' and biased society beliefs to the effect that persons with intellectual disabilities are too 'childish' to have mental health problems and 'do not understand' what is going on in their lives, (which is untrue and makes mental health supports inaccessible).<br>Similarly, persons with dementia face societal, attitudinal, systemic and structural biases and barriers that make it difficult to access mental health services when needed. | youth, and elderly persons<br><br>Since persons with intellectual or developmental disabilities are not considered to suffer from mental illness perhaps the protections sought should be made in the Persons with Disabilities Act whose objective is "to provide for the rights and rehabilitation of persons with disabilities; to achieve equalisation of opportunities for persons with disabilities" Dementia is also not considered a mental illness. | |
| 26. | | | **Proposal**<br>Insert an additional clause (j) requiring county governments to develop and implement programmes on protection of children from abuse including community protection networks that tackle child abuse as well as addressing other violence at domestic and community levels.<br>**Rationale**<br>Adverse childhood experiences have been demonstrated to be critical predictors for future difficulties with mental health. | Protection of children from abuse is provided for under the Children Act. Section 13 of the Children Act provides<br><br>13 (1) A child shall be entitled to protection from | **Rejected** |

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| | | | | physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.<br><br>(2). Any child who becomes the victim of abuse, in the terms of subsection (1), shall be accorded appropriate treatment and rehabilitation in accordance with such regulations as the Minister may make.<br><br>It may therefore be neater to strengthen the provisions of the Children's Act instead. | |
| 27. | **2D (1) (h) (ii)** | **JAAJI** | **Proposal**<br>Insert the words 'intersex' and 'transgender' after women and<br>"persons with lived experiences of mental health illness' at the<br>end.<br>To read as follows:<br>Target persons at risk of developing mental illness including | Transgender refers to gender identity opposite from assigned sex.<br><br>Intersex refers to a person who is born with reproductive | **Rejected** |

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| | | | children, women, intersex, transgender youth, elderly persons<br>and persons with lived experiences of mental health illness;<br>**Rationale** | anatomy that does not seem to fit the definitions of female or male.<br><br>The Committee may opt to end at the word "illness"…it is aimed at every person at risk so not sure what purpose the subsequent distinction serves<br><br>The Committee may make a policy decision on this matter. | |
| 28. | **2D** | **Emerging Leaders Foundation** | **Proposal**<br>The counties should create a kitty to help very needy cases with mental health problems. In addition, counties in conjunction with schools, religious leaders and the leadership at the grassroot levels should develop a support system for those affected (patients and families)<br>**Rationale** | Counties should have leeway to determine how counties spend on the health function. | **Rejected** |
| 29. | **2D (2) (c)** | **KNCHR and others** | **Proposal**<br>(2) In ensuring that the county governments meet their obligations under subsection (1), the county executive committee member in each county shall<br>(c) monitor and evaluate, **in collaboration with the Kenya National Commission on Human Rights and the National Gender and Equality Commission**, the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;<br>**Rationale**<br>To recognize that the mandate of monitoring the rights of persons with disabilities (including those with mental disabilities) in the country is conducted by independent commissions (Kenya National Commission on Human | What is proposed in clause 2D (2) (c) is self evaluation.<br><br>The KNCHR and NGEC have an independent oversight role. | **Rejected** |

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| | | | Rights in collaboration with National Gender and Equality Commission). These bodies have been appointed by the Attorney General to carry out this mandate, in line with Article 33(2) of the UN Convention on the Rights of Persons with Disabilities.<br>It is not good practice for the implementer (County Executive Committee member) to also monitor and evaluate his/her own work. | | |
| 30. | | **VOB HTBP** | **Proposal**<br><br>**In collaboration with the public and their representatives** monitor and evaluate the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;<br><br>**Rationale**<br>It is important to ensure that the role of monitoring services is not only left to the implementers of policies but to the users too. | | **Rejected** |
| 31. | **2D (3)** | **CPS-K** | **Proposal**<br>Amend to read:<br><br>The county executive committee member may delegate some or all the<br>functions under this section, to a committee or an officer within the county public service with a **prerequisite qualification in mental health and wellness.**<br><br>**Rationale**<br><br>This would help to create need for the deployment of the counseling and psychologists in the community health services as it is in the scheme of service and recent UHC Staff qualification by PSC (social work, psychology, counseling, community health qualifications) | The Committee may make a policy decision on this matter. | **Rejected** |
| 32. | **2E (3)(a)** | **KNCHR and others** | **Proposal**<br>Amend the following—<br>(3) The county executive committee member when making appointments under subsection 2 (c) shall ensure— | The county mental health council carries out the functions | **Reject** |

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| | | | (a) that one person is nominated from each of the following organisations—<br>(i) a body representing caregivers of persons with mental illness in the county;<br>(ii) a body representing the mental health practitioners in the county; and<br>**(iii) a body representing persons with mental health conditions or users of mental health services**; and<br>**Rationale**<br>Under 2E 3(a) on the formation of County Mental Health Councils: There is no representative for persons with lived experience which is discriminatory (in contravention of Article 27(4) of the Constitution), considering that the Council is set up to represent their interests. The exclusion also denies persons with psychosocial disabilities the right to participate fully in matters that affect them, including self – representation.<br>Including a person with lived experience of mental health conditions in the Council will ensure that perspectives from users of mental health services are properly represented in the Council and its deliberations. This will also be in line with article 4(3) of the Convention on the Rights of Persons with Disabilities (CRPD), which provides for the close consultation and active involvement of persons with disabilities in decision-making processes that concern issues related to them. While it is commendable to have representative of caregivers, omitting self representation by persons with mental health conditions from this Board is contrary to article 4(3) of the CRPD. | delegated by the CEC. Lived experiences may enrich the decisions reached by the mental health council. This may be achieved by imposing a requirement on the Council to consult with persons with lived experience<br><br>The Council may coopt a person with mental illness. | |
| 33. | | **VOB HTBP** | **Proposal**<br>Include persons with lived mental health experience in the County Mental Health Councils<br>**Rationale**<br>Elimination of persons with lived mental health experience in the councils is discriminatory and denies persons of psychosocial, cognitive and intellectual disabilities to participate fully when it comes to representation which is also in contravention of Article 27(4) of the Constitution | | **Rejected** |
| 34. | | **KEMSWA** | **Proposal**<br>Include the Medical Social workers in the county mental health council<br>**Rationale** | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | The Medical Social workers will be unable to realise their role in delivering mental health services when left out of such an instrumental organ in the devolved health service delivery system. | | |
| 35. | **2E** | **ILA** | **Proposal**<br>It is proposed that in addition to the 7 members to make up the County Mental Health Councils there be representative(s) from some independent institutions or groups including religious groups, Civil Society, Kenya Board of mental Health, Women's/Youth Group representatives in the county<br><br>**Rationale**<br>This will enhance representation of various groups with interest in mental health affairs while also helping to check decisions of the council to ensure the same are made in good faith | The Committee may make a policy decision on this matter. | **Rejected** |
| 36. | **2E (5)(e)** | **KNCHR and others** | **Proposal**<br>Replace with the following<br>(5) A member of the county mental health council shall cease to be member if that person—<br>(e) ~~is unable to perform the functions of his office by reason of mental or physical infirmity~~<br>**Rationale**<br>As drafted, the clauses are potentially discriminatory against persons with mental health conditions (whom the Bill is meant to serve), who have a right to legal capacity, which entails continuing to perform the functions of office with support in line with article 12 of the UN Convention on the Rights of Persons with Disabilities | The proposal is too wide.<br><br>The committee proposed--<br><br>(e) is removed by the CS or CEC after it is determined by the relevant medical practitioner that the person is unable to perform the functions of his office by reason of mental or physical infirmity. | **Adopted subject to amendment** |
| 37. | | **VOB HTBP** | **Proposal**<br>Delete 'by reason of physical or mental infirmity' and 'arising out of physical or mental incapacity', and replace by:<br>5) A member of the county mental health council shall cease to be member if that person—<br>(e) ~~is unable to perform the functions of his office by reason of mental or physical infirmity~~**is unable to perform the functions of office for any reason**<br><br>**Rationale**<br>The Bill intends to protect and promote the rights of persons with mental health conditions yet the clause goes | | |

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| | | | against the intent of the Bill by introducing a discriminatory term against persons with mental health conditions | | |
| 38. | **Part II** | **NGEC** | **Proposal**<br>Provide for the following fundamental rights need to be explicitly provided for-;<br>i. Right to life;<br>ii. Right to retain their fertility;<br>iii. Right to form and belong to a family and retain their children;<br>iv. Right to independent living;<br>v. Right to living in the community;<br>vi. Right to owning and holding property including inheritance;<br>vii. Right to be free from demeaning and derogatory names;<br>viii. Right to dignity; and<br>ix. Right to quality education.<br>**Rationale**<br>The short title is misleading since the amendments entirely change the content, aim and purpose of the mental health act | The Bill provides for the following right specifically—<br>a) right to mental health services;<br>b) right to consent to treatment<br>c) right to participate in treatment planning;<br>d) right to access medical insurance<br>e) protection of person with mental illness<br>f) rights to civil political and economic rights<br>g) right to access to information<br>h) right to confidentiality | **Reject** |

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| | | | | i) right to appoint a supporter<br>The Bill proposes under clause 3K that the person with mental illness has a right to recognition before the law and enjoys legal rights on an equal basis with other persons in all aspects of life. The effect of this provision is that all the provisions under the Bill of rights apply equally to persons with mental illness. In addition, Article 27 (4) also forbids discrimination on the basis of health status, disability etc. In this regard clause 3K will buttress the provisions of Article 26 which guarantees the right to life to all persons, Article 43 which guarantees the right to education to every person., Article 28 which guarantees | |

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| | | | | Human dignity to every one.<br>The right to human dignity encompasses the freedom from demeaning and derogatory names.<br>In regard to forming and belonging to a family and retaining their children-<br>Article 45 (2) of the Constitution guarantees the right of every adult to marry a person of the opposite sex and guarantees both parties equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.<br>However, section 11 (2) (c) of the marriage Act provides –<br>Consent is not freely given where the party who purports to give it is suffering from any mental condition whether permanent or temporary, or is | |

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| | | | | intoxicated, or is under the influence of drugs, so as not to appreciate the nature or purport of the ceremony. Section 12 (a) (ii) Subject to section 50, a marriage is voidable if— (a) at the date of the marriage either party was and has ever since remained subject to recurrent attacks of insanity. Retention of children is considered under the Children's Act. | |
| 39. | 3A | CPS-K | **Proposal**<br><br>(5) A ~~person~~ **Psychotherapist** in charge shall ensure mental health services are provided in a manner that— ''<br><br>**Rationale**<br><br>This gives onus and responsibility to the psychotherapist in charge (counselor or psychologist) to give the clients all the available conditions of worth and not to expressly harm the client thus give the right of respect to the clients<br><br>In the Kenya constitution, Article 43 (1)(a) provides that, "*every person has the right to the highest attainable* | The Bill proposes to integrate mental health services in to mainstream health care. As such a person in charge of a facility may not always be a psychotherapist. | **Rejected** |

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| | | | *standard of health, which includes the right to healthcare services.*" It is the responsibility of the officer in charge to give the conditions conducive for the psychotherapy but not any other profession that may negate the rights of the clients in matters of mental illness. | | |
| 40. | **3 C (4)** | **KNCHR and others** | **Proposal**<br>The clause binds the supporter to 'comply with the will and preference of the person with mental illness' in treatment planning. We propose to add the word 'and representative' after the word 'supporter'—<br><br>(4) A supporter and **representative,** 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.<br><br>**Rationale**<br>Sub-clause 3B allows a representative to participate in developing treatment plans. When participating in treatment planning, a representative should also comply with the will and preference of the person with a mental health condition. | According to Black Laws Dictionary representative, means One who stands for or acts on behalf of another.<br><br>The effect implies that the representative is not bound to the will or preference of the person with disability. | **Rejected** |
| 41. | **3 E (4)** | **KNCHR and others** | **Proposal**<br>The clause places a duty of reporting on a person who witnesses abuse against a person with a mental health condition. We recommend that the clause should provide a sanction for failing to report.<br>**Rationale**<br>To provide an incentive for compliance of the law. | The Committee may make a policy decision on the request. | **Rejected** |
| 42. | **3 H (2) (g)** | **KNCHR and others** | **Proposal**<br>The clause provides exceptions for when the person in charge may disclose confidential information. We propose deletion of the ground that disclosure 'is in the best interest of the person with mental illness'. | The Committee may make a policy decision on the request. | **Rejected** |

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| | | | (2) A person in charge or a mental health practitioner shall not disclose any confidential information, except where such disclosure—<br><br>(a) is required by law;<br>(b) ordered by a court;<br>(c) is in the public interest;<br>(d) is necessary to prevent the likelihood of serious harm to the person with mental illness or to others;<br>(e) is necessary for purposes of treating the person with mental illness;<br>(f) is authorised by the person with mental illness under a duly executed supportive decision- making agreement; or<br>~~(g) is in the best interest of the person with mental illness.~~<br><br>**Rationale**<br>This is too vague, considering that the aim is to limit the right to confidentiality. The preceding provisos (which include the prevention of harm to the person with a mental health condition or others) are sufficient to cover the exceptions. | | |
| 43. | **3I** | **KNCHR and others** | **Proposal**<br>Provide a form/template of a supportive decision making agreement, since many people may not be aware about how to make one. We have provided a sample at the end of this advisory that could be customized accordingly.<br><br>**Rationale**<br>It is critical that the Bill provides a sample to demonstrate what a supportive decision-making agreement looks like, since this is a new concept. | The Committee may consider making it a requirement for the Cabinet Secretary to develop the form when making regulations. This will allow for greater stakeholder engagement in the process. | **Allow see to prepare while drafting regulations** |

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| 44. | **3I (3) (d)** | **KNCHR and others**<br><br>**VOB HTBP** | **Proposal**<br>The clause provides that a supportive decision making agreement shall be attested by the doctor of the person with a mental health condition. We propose to replace the word 'doctor' with 'mental health practitioner' as defined under clause 3 of the Bill-<br><br>(3) A supportive decision-making agreement shall be in writing and shall only be valid if —<br><br>(a) at the time of making of the agreement, the person with mental illness was aware of their actions,<br>(b) the person with mental illness has signed or affixed their mark to the agreement;<br>(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;<br>(d) the agreement is attested by two or more competent witnesses, one of whom shall be the ~~doctor~~ **mental health practitioner** of the person with mental illness;<br>(e) the person with mental illness signs or affixes their mark to the agreement in the presence of the witnesses; and<br>(f) each of the witnesses signs the agreement in the presence of the person with mental illness.<br><br>**Rationale**<br>To make it possible for more people with mental health conditions to appoint supporters. Considering the limited number of doctors in the country, it is important that other licensed cadres be able to competently witness supportive decision-making agreements. | The Committee may give policy direction on this matter. | **Rejected** |
| 45. | **Clause 74(2) (g)** | **JAAJI** | **Proposal**<br>(2) The Board shall consist of—<br>(a) the Director who shall be the chairperson;<br>(i) a psychiatrist, in active practice in a mental health care set up, nominated by the Medical Practitioners and Dentists Board;<br>(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board ; | The Clause being referred to does not exist. The Committee may give policy direction on whether to | **Rejected** |

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| | | | (iii) a psychiatric nurse, in active practice in a mental health care set up, nominated by the Nursing Council of Kenya;<br>(iv) a clinical officer, in active practice in a mental health care set up, nominated by the Clinical Officers Council;<br>(c) one person nominated by such organisations that advocate for the rights of persons with mental illness as the Cabinet Secretary may determine<br>(d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;<br>(e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;<br>(f) the Director of Mental Health, who shall be the secretary to the Board an ex officio member of the Board<br><br>**Rationale**<br>Persons with lived experiences of mental health illnesses is an all inclusive phrase that provides for persons predisposed to mental illness but otherwise excluded in the groups of persons listed under clause 2D (h) (ii). For instance intersex and transgender who are in dire need of mental health services.<br><br>Gender identity distress predisposes both intersex and transgender persons to the risks of developing mental health illnesses in a society where most of the social-economic and cultural activities are gendered. Mental stress is enhanced at every gendered social space such as schools, bathrooms, names in official and public documents or where gender identity is a requirement, security searches, employment spaces, dressing.<br><br>While the mental health risks of the intersex persons is well documented by the report of the Taskforce on Policy, Legal Institutional and Administrative Reforms Regarding Intersex Persons in Kenya, Kenyan Courts have had a chance to highlight the mental suffering that transgender persons go through in their daily lives. In the Judicial Review Case 147 of 2013, the Applicant, a transgender woman was deeply and mentally stressed by the masculine name appearing on her academic certificate. Most, if not all transgender persons desire to change their names to match | include the additional clause. | |

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| | | | their gender identities, and it can be extremely stressful if they are not able to do so. This is the first point of mental stress in a society where names are gendered.<br>Excerpts from the above case illustrate the potential risk of developing mental health conditions by transgender persons;<br>"AM was born in 1984 and named A M I. She was identified in the records at birth as male child. However from as long as she could remember she felt more inclined to be female. She had an increasing urge to live as a woman rather than as a man. Along the way she become increasingly uncomfortable and depressed which led her to attempt to commit suicide. She was taken to hospital, and first consulted psychiatrist at Mathari Hospital in 2008. She was diagnosed with Gender Identity Disorder, hitherto a rare medical condition in Kenya."<br>Further, "The aentiology of this condition remains uncertain. It is now generally recognized as a Psychiatric disorder, often<br>known as gender identity dysphoria or gender identity disorder. It can result in a cute psychological distress."<br>In this case AM was treated at Mathari Hospital and an excerpt<br>from a letter from the doctor who treated her, Dr. Catherine Syengo Mutisya, a Deputy Medical Superintendent at the hospital wrote;<br>"She has been treated for gender identity disorder and depression. She was evaluated by a panel of psychiatrists (Medical Board) from the Hospital and the Board confirmed that she has gender identity disorder (trans-sexual)" In this case, the High court accepted the doctor's expert opinion.<br>In the Court of Appeal case Civil Appeal Case no. 355 of 2014 between KNEC and A M & Others, a panel of 3 judges unanimously accepted the diagnosis of Dr. Syengo that, "On examination today she is still distressed by the challenges she is encountering as a result of having her referred to as a male even though she has partly transitioned to female. This distress (sic) perpetuated her depression and she has had to be on treatment for depression for longer period."<br>In concluding the judgment the Judges had this to say, "Before we pen off, there is the contention that the lower | | |

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| | | | court waded into a policy and legislative arena and that the judges failed to keep his mind active to the cultural realities of the Kenyan Society. There is of course, need for government, and Parliament in particular to address in holistic manner the interests of minorities such as transgender persons. Other jurisdictions have taken the approach. There is for instance the Gender Recognition Act in UK that deals with gender reassignment. It cannot be the case that until there is a policy and legislative frame work in place , persons like AM are without recourse to secure their dignity."<br>This case was relied on in the Taskforce Report on Intersex Person in Kenya at page 126<br>"In the Judicial Review Case 147 of 2013, the court dealt with the question of requirement of a gender marker on a KCSE Certificate and whether it interfered with the Petitioner's right to human dignity through humiliation or degradation. This judgment raised awareness of existence of intersex (transgender) in the school system and the challenges they likely encounter in going through registration for examinations and other school activities such as sports which all require one to identify as male or female." Reading these judgments and the Taskforce Report on Intersex Persons in Kenya, leads only to one conclusion that transgender person, just like intersex persons, are people at risk of developing mental health conditions. Hence the recommendation to amend Clause 2D (1)(h) (ii) by inserting the words 'intersex, and transgender' immediately after 'women' so that it reads "target persons at risk of developing mental illness including children, women, intersex, transgender, youth and elderly persons." This is will go a long way to secure their dignity. | | |
| 46. | 7 | **AWSC** | **Proposal**<br><br>Add a new clause **(ca)** ***one person nominated by such caretakers organisations for autistic persons***<br><br>**Rationale** | | **Rejected** |

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| | | | It is important to include among the board members a caretaker of autistic persons since autism is a mental challenges the proposed team may not have broad experience | | |
| 47. | | **CPS-K** | **Proposal**<br><br>Insert in the part as follows:<br>(f) the Director of Mental Health **and Happiness** who shall be the secretary to the Board an *ex officio* member of the Board.<br><br>**Rationale**<br><br>To align to the recommendations by the taskforce on the report on the key findings of establishing the Mental Health and Happiness Commission with a Directorate of Mental Health and Happiness | The Committee may make a policy decision on this matter. | **Rejected** |
| 48. | | **KEMSWA** | **Proposal**<br>Include the medical social worker in the Board<br>**Rational**<br>Medical social workers are involved in the social diagnosis and treatment of patients illness; offer psychosocial support to index clients, their supporters, families and communities; participate in patient reintegration and placement in families and institutions; facilitation of psychosocial support groups for patients with chronic health conditions to enhance adherence to treatment in line with promotive , preventive and curative health practices just to mention a few of their work roles. | The Committee may make a policy decision on this matter. | **Rejected** |
| 49. | | **CPS-K** | **Proposal**<br>Insert a new paragraph (g)<br><br>(g) lecturer nominated by universities/KMTC training Counseling Psychology<br><br>**Rationale**<br><br>To bring the input of institutions of higher learning into the profession and council. To advice and promote the | The Board in the Bill is made up of the following persons—<br><br>(2) The Board shall consist of—<br>(a) the Director | **Rejected The Board may coopt** |

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| | | | professional ethics in the profession and professional development for quality services. | who shall be the chairperson;<br><br>(i) a psychiatrist, in active practice in a mental health care set up, nominated by the Medical Practitioners and Dentists Board;<br><br>(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board ;<br><br>(iii) a psychiatric nurse, in active practice in a mental health care set up, nominated by the Nursing Council of Kenya;<br><br>(iv) a clinical officer; in active practice in a mental health care set up, nominated by the Clinical Officers Council;<br><br>(c) one person nominated by such organisations that | |

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| | | | | advocate for the rights of persons with mental illness as the Cabinet Secretary may determine;<br><br>(d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;<br><br>(e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;<br><br>(f) the Director of Mental Health, who shall be the secretary to the Board an *ex officio* member of the Board.<br><br>The Board has a total of nine voting members.<br><br>The Committee may make a | |

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| | | | | policy decision on this matter. | |
| 50. | **Clause 6 3B and 3C and 3I (4)** | **AWSC** | **Proposal**<br><br>1) Every health care provider shall, where the person with mental illness has attained the age of ~~majority~~ **maturity**—<br><br>**Rationale**<br><br>There seems to be an editorial error there is need of clarification because not all persons with mental illness or challenges such as autism will be able to make informed decisions even though they have reached the age of maturity | The age of majority is a term of art coined from the Age of Majority Act when referring to someone above the age of 18. The Age of Majority Act states-<br>A person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years. In addition the Children Act provides "child" means any human being under the age of eighteen. | **Rejected** |

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| 51. | **Clause 84B** | **NGEC** | **Proposal**<br>Qualify the requirement to remove members of the Board for inability to perform the functions of the office arising out of physical or mental incapacity.<br>Ensure that the determination is arrived at following a report of a panel or qualified personnel.<br><br>**Rationale**<br><br>This is the law that is proposed to protect the rights of persons with mental illnesses and so it should not contain a provision that limits those rights without a qualification or a proviso | The Committee may consider inserting a subsection that provides—<br><br>(a) where it is determined by the relevant medical practitioner that the person is unable to perform the functions of his office by reason of mental or physical infirmity. | **As above** |
| 52. | **Clause 10** | **CPS-K** | (1B) A person shall be eligible for appointment as the Director of Mental Health if that person—<br><br>insert the words ''or counseling psychology'' to read:<br><br>(a) holds a degree in medicine **or counseling psychology** from a university recognized in Kenya;<br><br>(b) is –<br><br>**(i)** registered by the Medical Practitioners and Dentists Board as a mental health practitioner; or<br><br>**(ii)** is registered by the Counselors and Psychologists Board<br><br>**Rationale** | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | To align the professional practice in mental health and happiness dispensation | | |
| 53. | **9D** | **KNCHR and Others** | **Proposal**<br>Clause 9 D (d) of the Bill proposes that a report be made to the Board and the relevant County Executive Committee (CEC) member on the number of voluntary and involuntary patients who have died in the course of treatment.<br>We propose the addition of the words 'emergency patients' immediately after the words 'voluntary patients'.<br><br>Death of a patient admitted under emergency that occurs within a mental health facility should also be notified.<br><br>We also propose that a report also be made to the National Coroner Service established under the National Coroners Act in addition to reports being made to the Mental Health Board and the relevant CEC.<br><br>**Rationale**<br>Death of a patient admitted under emergency that occurs within a mental health facility should also be notified.<br><br>Death in mental health facility would likely satisfy conditions for investigation that are stipulated under Sections 24 and 25 of the National Coroners Services Act. | The committee may consider adopting this | **Adopted** |
| 54. | **9E** | **NGEC** | **Proposal**<br>The Commission proposes establishment of a committee of qualified officers, by the facility, which will handle such ad hoc matters and once a decision is made, the same to be communicated to either the family, supporter or guardian immediately and not within the 24 hours proposed in sub-clause (6).<br>**Rationale**<br>A lot of violations of rights and abuse takes place in the name of seclusion and restraint. It is appreciated that at times that is the last option by the facility but then who | The term "immediate" is not quantifiable. Therefore, the Committee should consider retaining the 24 hour limit.<br><br>The Bill currently provides that the | **Rejected** |

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| | | | determines that the same is devoid of abuse and violations and that the patient has been kept in humane conditions during the seclusion or restraint. | decision to restrain is authorised by the mental health practitioner. The Committee may make a policy decision on the establishment of an ad hoc Committee if it considers it necessary.This power may be discretionary | |
| 55. | | **VOB HTBP** | **Proposal**<br>Delete clause 9E<br>**Rationale**<br>The Bill has taken a human rights approach and should therefore not advocate for the seclusion and restraint of persons with lived mental health experiences as this is a violation of their rights that the Bill stands to protect. | Committee may make a policy decision on this matter. | **Rejected** |
| 56. | | **KNCHR and Others** | **Proposal**<br>We propose deletion of Clause 9 E that provides for use of seclusion and restraint.<br>If the provisions on seclusion and restraints are retained (which we strongly recommend against), then we propose that safeguards be introduced as follows:<br>• The mental health practitioner who authorises the use of a restrictive intervention must ensure that the person's needs are met and the person's dignity is protected by the provision of appropriate facilities and supplies, including bedding and clothing appropriate to the circumstances, food and drink and adequate hygiene and toilet arrangements.<br>• A registered mental health practitioner must examine a person in seclusion or being bodily restrained as frequently as the mental health practitioner is satisfied is appropriate in the | The Committee may make a policy decision on the matter.<br><br>Should the committee consider the alternative provided, the Committee should note that the processes contained therein seem clinical in nature and should be contained in a policy documents | **Rejected** |

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| | | | circumstances to do so, but not less frequently than every four hours.<br>• A registered mental health practitioner must provide a written report of the use of seclusion and restraints to the person in charge of the mental health facility or unit, for onward transmission to the mental health Board (Clause 9D f).<br><br>**Rationale**<br>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 we strongly recommend removal of proposed clause 9E and recommend the absolute ban of the use of seclusion and restraint. | and not legislation. | |
| 57. | **9F** | **Emerging Leaders Foundation** | **Proposal**<br>The Bill should insist on appointing qualified supporters preferably psychologists.<br>**Rationale**<br>Appointing a person, say a family member, could breach the privacy of the patient | The supporter is appointed by the person with mental illness and they have lee-way to decide who they want to act on their behalf. | **Rejected** |
| 58. | **9F (2)** | **KNCHR and Others** | **Proposal**<br>The Clause contains the circumstances under which consent shall be valid. We recommend that disclosure of relevant information relating to treatment should include not just benefits of treatment but also possible side effects of the treatment. | The proposal is more inclusive. | **Adopted** |

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| | | | (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 and **side effects** of the treatment;<br><br>**Rationale**<br>Section 8 of the Health Act offers comprehensive guidance on information to be provided to render consent effective. This includes information on benefits, risks, costs and consequences generally associated with each option (Section 8(1)(c) of the Health Act. | | |
| 59. | **17(2)** | **KNCHR and Others** | **Proposal**<br>Clause 17(2) requires that where the person to be admitted voluntarily is a minor, their guardian shall fill a prescribed form in the required manner before admission. We propose the inclusion of a statement to the effect that support to fill such form shall be provided.<br>**Rationale**<br>No provision is made for guardians who cannot read/write. This should be done. Further the requirement should not be mandatory, but rather admission should be on similar grounds as with admission of patients requiring general/physical health treatment in regular hospitals. The Bill indicates that those with mental health conditions have similar rights as everyone else and thus they should access services with similar ease. | The Committee may make a policy decision on this matter. | **Rejected** |
| 60. | | **ILA** | **Proposal**<br>There is a requirement that where the person with mental illness to be admitted voluntarily is a minor, their guardian shall need to fill a prescribed form in the required manner before admission.<br>No provision is made for guardians who cannot read/write. This should be done.<br>**Rationale**<br>The requirement should not be mandatory rather admission should be on similar grounds as with admission of normal patients in regular hospitals. It has been indicated earlier that mentally ill persons have similar rights to normal persons thus they should get similar treatment. | The Committee may make a policy decision on this matter. | **Rejected** |

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| 61. | 17(3) | ILA | **Proposal**<br>It is provided that a review of the person with mental illness be done in the blanket period of 72 hours. We propose that this be changed so the said time (72hrs) does not apply for all cases of illness since patients may respond differently given the many varying conditions.<br>**Rationale**<br>It would be unfair to detain others longer than necessary without review if their condition improves. | The Committee may make a policy decision on this matter. | **Rejected** |
| 62. | 17 (4) | KNCHR and Others | **Proposal**<br>Clause 17(4) provides that the Cabinet Secretary shall, in consultation with the Board and the Council of County Governors formulate Guidelines as required under the section. We propose an additional sub-clause to the effect that in the development of the guidelines, the principles of public participation shall apply.<br>**Rationale**<br>Article 10(2) (a) of the Constitution on national values and principles of governance, and more particularly on 'participation of the people' should apply also in the development of guidelines. This will provide room for broader engagement, including with providers and users of mental health services. | Public participation is a constitutional requirement. The Committee may make a policy decision on the matter. | **Rejected** |
| 63. | | ILA | **Proposal**<br>It is provided that the CS shall in consultation with the Board and the Council of County Governors formulate Guidelines as required under the section.<br>**Rationale**<br>We propose that representatives of staff or owners of the mental health institutions be included in devising the guidelines. Their voice is significant in this exercise as they deal with the patients on a daily basis thus would give valuable input in formulating these guidelines. There should also be provisions for patients who are able to check themselves out of the facility. | | |

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| 64. | 17 (10) | KNCHR and Others | **Proposal**<br>Clause 17(10) 4 provides for retention of a voluntary patient beyond 42 days. We propose to delete this sub-clause.<br><br>**Rationale**<br>A patient who is admitted under voluntary provisions should be able to leave the facility on an equal basis with patients requiring general/physical health treatment in regular hospitals (unless it can be proven that the patient qualifies for emergency admission). | The Committee may make a policy decision on this matter. | **Rejected** |
| 65. | 22 | KNCHR and Others | **Proposal**<br>Delete Clause 22 on involuntary treatment. We propose the deletion of 'involuntary' throughout the Bill, including Clauses: 9D (reports by mental health facilities); 21, 22 (1C); 22 (6); 26(3)(a); 28 17 6;<br><br>**Rationale**<br>To ensure compliance with the UN Convention on the Rights of Persons with Disabilities (CRPD). Article 14(1) b of the CRPD states that the existence of a disability shall in no case justify the deprivation of liberty. Article 25 (d) of the CRPD requires health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent. Article 12 of the CRPD provides for the right of persons with disabilities to exercise legal capacity in all spheres of life. 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. | The Committee may make a policy decision on this matter. | **Rejected** |
| 66. | 22 | ILA | **Proposal**<br>Admission is also conditioned upon application via filling a prescribed form<br>**Rationale** | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | We propose that there be situations where this is not mandatory as it may hinder admission of certain patients that may be in dire need of treatment services. | | |
| 67. | **25**<br><br>**15A** | **KNCHR and Others**<br><br>**VOB HTBP** | **Proposal**<br>We propose a new sub-clause 6 to the effect that: 'A patient shall not be detained under Emergency treatment provisions for a duration that is longer than 30 days'.<br><br>**Rationale**<br>A necessary safeguard, given the UN Convention on the Rights of Persons with disabilities (Article 14 (1)(b)) which states that existence of a disability shall in no case justify a deprivation of liberty.<br><br>Within 72 hours, a facility should have established the nature of treatment to be given based on client's treatment plan as well as conducting medical assessments | The Committee may make a policy decision on this matter. | **Rejected** |
| 68. | **26** | **NGEC** | **Proposal**<br>Replace the word "illness" with "disorder"<br>**Rationale**<br><br>There is no rationale in the memoranda of objects and reasons to explain the replacement of the word "disorder" with "illness" | The Taskforce on Mental Health in Kenya was formed in November 2019 through a Cabinet directive. According to the Report of the Taskforce on Mental Health in Kenya titled Mental Health and Wellbeing: Towards Happiness and National Prosperity the term "mental illness" also refers to "mental disorders" (pg 15). | **Rejected** |

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| 69. | | **KNCHR and Others** | **Proposal**<br>Delete Clause 26(a) and replace with the following: 'The principal Act is amended by deleting sections 16 (1) a, b and c.'<br>According the section 16 of the principal Act, emergency admission may be initiated by: a police officer of or above the rank of inspector; the officer in charge of a police station; an administrative officer; a chief or an assistant chief. A police officer of or above the rank of inspector, an officer in charge of a police station, an administrative officer, a chief or assistant chief may take or cause to be taken into his custody the following persons:<br>~~a) any person whom he believes to be suffering from mental disorder and who is found within the limits of his jurisdiction; and b) any person within the limits of his jurisdiction whom he believes is dangerous to himself or to others, or who, because of the mental disorder acts or is likely to act in a manner offensive to public decency; and c) any person whom he believes to be suffering from mental disorder and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having charge of him~~<br><br>**Rationale**<br>The provisions on emergency admission and treatment under Clause 25 (15) A are sufficient. The grounds for emergency admission under section 16(1) of the Mental Health Act 1989 are too wide, and not limited to 'emergency'. For example, the basis upon which the police officer, administrative officer, chief or assistant chief (who are not medical professionals) decide that a person is suffering from a mental disorder is not defined. In addition, the manner in which the police officer, administrative officer, chief or assistant chief objectively would reach a conclusion that a person is 'likely to act in a manner offensive to public decency' is also not defined. It is also not clear what universally agreed standards of 'public decency' may be. Furthermore, it seems that the fact that a person is being treated cruelly by his relatives should be cause for prosecution of the offending relatives and not the emergency admission of the person to a mental hospital. | The Committee may make a policy decision on this matter. | **Rejected** |

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| 70. | **32 20A** | **KNCHR and Others**<br><br>**HTBP** | **Proposal**<br>The clause provides for persons who may initiate the review of the mental health status of a person with a mental health condition.<br>We propose to add a new (d) **'a supporter of the person with a mental health condition'**<br><br>**Rationale**<br>In addition to the parties listed, a supporter should also be able to initiate review of the mental health status of the person with a mental health condition. | The Committee may make a policy decision on this matter. | **Adopted** |
| 71. | **33** | **KEMSWA** | **Proposal**<br>Include medical social workers under the definition of mental health practitioner.<br>**Rationale**<br>Medical social workers work directly with the persons with mental illness. However, the Bill is blind to their existence and if a complaint were to arise then both the patient and the medical social worker will be prejudiced since the medical social worker is not recognised in the Bill. | The Committee may make a policy decision on this matter. | **Rejected** |
| 72. | **33 21(2)** | **KNCHR and Others** | **Proposal**<br>Add the words 'A person' before the words 'with mental ...'<br><br>**Rationale**<br>Grammar/for coherence | There was an error during publication and this amendment will ensure coherence. | **Adopted** |
| 73. | **34**<br><br>**22 (2)** | **KNCHR and Others.** | **Proposal**<br>The clause provides that interim discharge shall be applied for 'in the prescribed form' but no such form is provided in the Bill. We propose the provision of a template/sample as part of the schedule to the amendment Bill or that a duty be placed on the in charge to develop the 'prescribed form'.<br><br>**Rationale**<br>To enhance enforceability | The form should be developed as part of the regulations that the CS is to develop. | **As above** |

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| 74. | **New subclause** | **KNCHR and Others.** | **Proposal**<br>The Clause has a gap in that it is not clear what happens when a supporter or a representative is unable or unwilling to continue caring for the person with a mental health condition and returns such person for re-admission at the hospital. We propose to add sub-clause 6 and 7: (6) The person in charge shall report the readmission under subsection (3) to the Board. (7) The person in charge of a mental hospital from which a person has been taken into the custody and care under subsection (3) shall within seventy hours recommend review of the mental health status of the person by the medical practitioner in charge of the person's treatment in the mental hospital, and if recovered, order that the person be discharged as having recovered from the mental condition.<br><br>**Rationale**<br>The two proposed subsections are drawn from CAP 248 (Section 22 (4) & (6)). If left as is in the amendment bill, the clause is hanging, as it does not: a) clarify the status of the person upon readmission – is the person being re-admitted as a voluntary patient? Or is it emergency admission? b) provide for what happens if the individual has recovered. If left as is, the Clause would provide legitimacy for the practice where people remain for long durations in mental health facilities because their relatives are unwilling to claim them. | The Committee may make a policy decision on this matter. | **Rejected** |
| 75. | **Clause 35 (a)** | **KNCHR and Others** | **Proposal**<br>The Clause addresses the transfer of patients in government hospitals, but does not envisage transfer from county to referral hospitals. We propose that after the word 'be' appearing at the end of the subclause, add the words 'or from a county health facility mental health unit to a national referral hospital mental health unit'<br><br>**Rationale**<br>To take care of the situation where an individual may require specialized care that may not be present at county health facility mental health units. | The Committee may make a policy decision on this matter. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| 76. | **Clause 37 26 (6)** | **KNCHR and Others** | **Proposal**<br>The clause provides for the court OR a mental health practitioner to examine a person in order for the court to reach a decision on the mental capacity and condition of the person. We propose that the 'or' be changed to 'and' so that BOTH the court and a mental health practitioner are required to examine the individual.<br><br>**Rationale**<br>As a safeguarding measure, given that the right to control one's own property and finances is at stake. This will comprise higher protection against arbitrary deprivation of property of persons with mental health conditions. | The Committee may make a policy decision on this matter. | **Reject** |
| 77. | **Clause 37 28 (4)** | **KNCHR and Others** | **Proposal**<br>The Clause places a duty on the manager to perform his duties taking into account the best interests of the person with a mental health condition. We propose the insertion of the words 'will and preferences of the person' before the words 'best interests.'<br><br>**Rationale**<br>General Comment No. 1 on Article 12 of the CRPD on equal recognition before the law states that: '[t]he "best interests" principle is not a safeguard which complies with article 12 in relation to adults. The "will and preferences" paradigm must replace the "best interests" paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others'. | The Committee may make a policy decision on this matter. | **Rejected** |
| 78. | **Clause 37 31 (1)** | **KNCHR and Others** | **Proposal**<br>The Clause provides for removal of a manager by the Court. We propose to insert a new sub-clause (c) 'Revoke appointment of manager and restore financial control to the person upon proof that the person has recovered'<br><br>**Rationale**<br>Mental health conditions tend to be episodic in nature. It would be unjust to lose financial control of one's estate forever just because an application for another person to manage one's property was made when a person was unwell. The Bill should retain a provision that enables a | The Bill already provides for the removal of a manager. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | person to take charge of his/her property again upon recovery/ restoration of legal capacity in relation to managing one's finances. General Comment No. 1 on Article 12 of the CRPD on equal recognition before the law states that: '[a]ccess to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. That approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property, neither may disability' | | |
| 79. | **Clause 38** | **KNCHR and Others** | **Proposal**<br>Clause 38 addresses letters of patients. We propose to insert a new sub-clause (2) 'The person in charge or a mental health practitioner in charge of any patient shall enable communication through telephones, email and other appropriate modes of communication where practicable'<br><br>**Rationale**<br>The Bill only provides for communication through letters. However, communication has evolved to include other means that should also be facilitated without censorship, and taking into account the right to privacy of persons with mental health conditions. | The Committee may make a policy decision on this matter. | **Adopted** |
| 80. | **40** | **VOB HTBP** | **Proposal**<br>Remove the time frame for reporting of complaints<br>**Rationale**<br>Recovery from Mental Health conditions is not limited to certain amount of time. Abuse to MH patients during their non-lucid intervals is present and rampant. Limiting the time for lodging of complaints to 6 months denies justice to patients that recover lucidity after the said period and denies them the chance to report and bring to justice their abusers at a time when they are well and able to defend themselves. | The provision does not seek to limit the time within which a complaint may be brought it just seeks to ensure that the Director of Public Prosecution is informed of any criminal proceedings when they begin. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | | | |
| 81. | 47 | **VOB HTBP** | **Proposal**<br>Delete the clause<br>The clause states that 'Nothing in this section shall be deemed to make it an offence for the person in charge of or any person employed at a mental health facility to take the steps he considers necessary to prevent'<br>**Rationale**<br>This section of the law is ambiguous and leaves room for the use of force or other inhumane methods against MH patients, as it absolves caregivers or any layperson of criminality regardless of their actions towards a MH patient 'as long as they consider them necessary'. It contradicts other sections of this bill that protect MH patients from force, inhumanity and abuse of their rights. | The offending provision in the act was reviewed and the exception was removed. | **Rejected** |
| 82. | **General concerns** | **KNCHR and Others** | **Proposal**<br>It is not clear the extent to which individuals who do not have family members (e.g some homeless persons) can access services under the Bill. The definition of representative under Clause 3 assumes that all persons needing mental health services will have a spouse or a child or parent or relative or be under the care or charge of another person.<br>**Rationale** | Committee proposes that the government takes responsibility etc-see US provisions for guidance including family members who cant be traced...see social services provisions | |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| 83. | | **Emerging Leaders Foundation** | **Proposal**<br>The Bill should decriminalise suicide | The Penal Code criminalises attempted suicide under section and 226.<br><br>The Committee may make a policy decision on this matter.<br><br>Committee to hold a public engagement on the decriminalisation of suicide. | |
| 84. | | | **Proposal**<br>Students should be taught mental health, what happens to someone who is affected with mental illness and how do we live with those who are affected as part of life skills | Part of the roles of the National government required to implement programmes and strategies to guarantee students access information on mental health, mental health care and treatment.(see clause 2C (j) | **Rejected** |
| 85. | | | **Proposal**<br>County and National Governments should work on subsidising the prices of antipsychotics, antidepressants and anxiolytic.<br><br>**Rationale**<br>Antipsychotics, antidepressants and anxiolytics are way too expensive. | Committee will explores options to<br>(a) include medicines in essential drugs list or<br>(b) Declare national disaster in order to have the drugs | |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | | available at subsidised rates. | |
| 86. | | **VOB HTBP** | **Proposal**<br>Include persons with mental health conditions in the disability assessment.<br><br>National and private health insurers should be included a mental health benefits package. This should be extended to the UHC Benefit package as well.<br><br>**Rationale**<br>The intention is to eliminate ambiguity and make it very clear that persons living with mental health conditions also fall under the bracket of persons living with disabilities and therefore are entitled to all the resulting benefits as a right | The Persons with Disabilities Act covers the provisions relating to disabilities while the Mental Health Act cover the provisions relating to provision of mental health services. | **Rejected** |
| 87. | | **Mr. Njoka** | **Proposal**<br>The county government hospitals that are mixed with the mental unit should be suspended immediately from admission of the mental ill patients and allowed take care of the outpatients only, those found severely mental ill should be sent to mathari hospital and regional or counties psychiatric hospitals that government set to build soon.<br><br>**Rationale**<br>That shall avoid and end inferiority treatments and human rights violations. Some psychiatric wards are used by healthcare workers as a punishment place, deliberately cruelty & abusive! | The sponsor sought to ensure that mental health care is offered in the mainstream health facilities. | **Rejected** |
| 88. | | **Mr. Njoka** | **Proposal**<br>People who has tortured as well as defamed, let them compensated and healthcare workers involved be punished. | The Bill provides for punishment for ill treatment of persons with mental illness (see clause 47). The proposal on compensation will be retrospective in nature. The | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | | Committee may make a policy decision on this matter. | |
| 89. | | **Mr. Njoka** | **Proposal**<br>The establishment of mental health disciplinary commission will strengthen the quality mental healthcare in the country. | The Bill only proposes the restructuring of the current Kenya Mental Health Board. It does not establish a Commission. | **Rejected** |

**MIN. NO. SCH 5/135/2021: ANY OTHER BUSINESS &ADJOURNMENT**

There being no other business, the meeting adjourned at 8.55am.

**SIGNED:** ..... ..... .....

**(CHAIRPERSON)**

**DATE:** .....24th May, 2021.....

**TWELFTH PARLIAMENT |FOURTH SESSION**

**MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ON MONDAY, 24TH MAY, 2021, AT 2:30 P.M. ON THE ZOOM ONLINE CONSIDERATION OF THE COMMITTEE REPORT AND AMENDMENTS TO THE MENTAL HEALTH (AMENDMENT) BILL, 2020.**

**PRESENT**

1) Sen. (Dr.) Michael Mbito, MP - **Chairperson**
2) Sen. Mary Seneta, MP
3) Sen. Millicent Omanga, MP
4) Sen. (Prof) Samson Ongeri, EGH, MP
5) Sen. Fred Outa, MP
6) Sen. Beatrice Kwamboka, MP
7) Sen. Ledama Olekina, MP
8) Sen. Beth Mugo, EGH, MP

**APOLOGY**

1) Sen. (Dr) Abdullahi Ali Ibrahim, CBS, MP

**SECRETARIAT**

1) Ms. Emmy Chepkwony - Principal Clerk Assistant 1
2) Ms. Sombe Toona -Legal Counsel
3) Mr. Robert Rop -Audio Officer
4) Ms. Fahriya Ibrahim -SAA
5) Ms. Lynn Aseka - Parliamentary Intern, Committees

**MIN. NO. SCH5/140/2021: PRELIMINARIES**

The Chairperson called the meeting to order at 2.45 p.m and the meeting commenced with a word of prayer.

**MIN. NO. SCH5/141/2021: ADOPTION OF THE AGENDA**

The committee adopted the agenda of the sitting, as set out below, having been proposed by **Sen. Mary Senata, MP** and seconded by **Sen. Prof. Sam Ongeri, EGH,** MP: -

1. Preliminaries

*a) Prayer*

*b) Adoption of the Agenda*

2. ***Consideration and adoption of the Committee Report on the Mental Health (Amendment) Bill, 2020***
3. Any other business.
4. Date of the Next Meeting.
5. Adjournment

**MIN. NO. SCH5/142/2021: CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE MENTAL HEALTH BILL, 2020**

The Committee considered and adopted its report on the Mental Health (Amendment) Bill, 2020 with the following Observations, Recommendations and amendments having been proposed by Sen. (Dr.) Sam Ongeri EGH, MP and Seconded by Sen. Mary Seneta as follows-

**COMMITTEE OBSERVATIONS**

The Committee adopted its recommendation with the following observations-

1. The Mental Health Act was enacted in 1989 and needs to be aligned to the Constitution of Kenya in respect to functional delineation between the county and national government. In addition, the Bill aligns itself to the provisions in the Convention on the Rights of Persons with Disabilities (CRPD) which Kenya ratified in on 19th May, 2008.
2. The Committee commends the sponsor for approaching the Bill through the human rights lens. In particular the Committee commends the safeguard to legal capacity within the Bill that allows adult persons with mental health illness to make decisions that affect them.
3. In addition, the Committee notes that the Bill is progressive as it recognises supportive decision making agreements which will allow persons with mental health illness to appoint a supporter to make decisions on the basis of the person with mental illness' will and preference should the person with mental illness be unable to make decisions themselves due to the illness.
4. The Bill provides for incorporation of mental health services within the mainstream health services provision framework by ensuring mental health services are provided from tier one to six in the classification of health care. This seeks to ensure the reduction of stigmatization related to mental illness.
5. The Bill seeks to further reduce stigmatization in relation to mental health by changing the word "disorder" to "illness". The Committee is of the view that the change will ensure a paradigm shift by changing mindsets of the citizenry and encouraging them to believe and know that mental illness are treatable just like any other illness.
6. The Committee recognises that various vulnerable groups are susceptible to mental illness and commends the recognition of this in the Bill. In particular the Committee commends the recognition of maternal mental health and hopes that this will ensure that mothers who suffer from post-partum depression, post-delivery psychosis, anxiety etc are given due recognition and given the care they need.

7. The Committee applauds the Sponsor for recognizing the place of community and family -based care in the promotion of mental health.
8. The Committee noted that removal on the basis of mental incapacity or infirmity should not be done summarily.
9. The Committee recognizes that the persons who commit suicide need medical intervention and that it may be important to have a discussion on the decriminalization of attempted suicide under the Penal Code.
10. As currently drafted, the Bill may not have taken into account the evolved nature of communication and cites only communication through letters. Communication has evolved to include other means that should also be facilitated without censorship, and taking into account the right to privacy of persons with mental health conditions.
11. The Committee observed that statistical reports on various types of admissions were important to ensure planning and also oversight of provision of mental health services. In this respect the committee proposed an amendment to the reports to be filed in respect to emergency admission of persons with mental health illness.
12. The Committee recognised that treatment of patients with mental health illness may require more time than is provided in the emergency admission proposal and therefore it was important to allow the mental health practitioner to seek consent from the representative or the supporter to extend the time should the need arise.

**COMMITTEE RECOMMENDATIONS**

The Committee adopted its recommendation with the following recommendations-

1. information on the side effects of proposed treatment plans is disclosed to the patients;

2. that removal from the Board and the council on the grounds of mental infirmity is only implemented after an investigation is carried out.

3. the reports on admissions, discharge and death of patients should include reports relating to patients who admitted on the basis of emergency admission

4. that patients be allowed access to communication through letters, telephone calls and emails where practicable.

5. The Cabinet secretary in consultation with the council of county governors and the Board prescribe the form of the supportive decision making agreement.

**The Committee proposed the following amendments to the Bill-**

**CLAUSE 5**

**THAT** clause 5 of the Bill be amended in the proposed new section 2E (5) by—

(a) deleting paragraph (e) and substituting therefore the following new paragraph—

(e) is removed by the county executive committee member for being unable to perform the functions of the office by reason of mental or physical infirmity.

(b) inserting the following new subclause immediately after subclause (5)

(5A) Before the removal of a member under subsection (5)(e), the county executive committee member shall request the Council to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

**CLAUSE 8**

**THAT** clause 8 of the Bill be amended by deleting the proposed new section 4B and substituting therefor the following new section—

Removal of member of Board from office.

**4B.** (1) A member of the Board may be removed from office for —

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct;

(c) incompetence or negligence of duty; or

(d) any other ground that would justify removal from office under any written law.

(2) Before the removal of a member of the Board under subsection (1)(a), the Cabinet Secretary shall request the Board to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

**CLAUSE 15**

**THAT** clause 15 of the Bill be amended -

(a) in the proposed new section 9D by inserting the following new paragraph immediately after paragraph (e)—

(ea) the number of mental health patients admitted on an emergency basis that the mental health facility or unit has discharged, are still under its care or have died in the course of treatment;

(b) in the proposed new section 9F(2) by inserting the words "side effects" immediately after the words "likely duration" in paragraph (b).

**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 (b) —

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

**CLAUSE 33**

**THAT** clause 33 of the Bill be amended in the proposed new section 21 by inserting the words "A person" immediately before the word "with mental illness" in subsection (2).

**CLAUSE 38**

**THAT** clause 38 of the Bill be amended 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 enable communication by the patient through letters, telephone calls and emails to the recipients where practicable.

**CLAUSE 50**

**THAT** the Bill be amended by deleting clause 50 and substituting therefor the following new clause—

Amendment of section 54 of Cap. 248.

**50.** The Principal Act is amended by deleting section 54 and substituting therefor the following section—

Regulations.

**54.** The Cabinet Secretary shall, in consultation with the Board and the Council of County Governors, make regulations—

(a) prescribing the form of the supportive decision making agreement;

(b) generally regulating the equiping, administration, control and management of mental health units;

(c) for the care, treatment and rehabilitation of person with mental illness;

(d) prescribing the procedure of admission of out-patient patients; and

(e) for the better carrying out of the provisions of this Act.

**MIN. NO. 5/143/2021: ANY OTHER BUSINESS &ADJOURNMENT**

There being no other business, the meeting adjourned at 4.45pm.

**SIGNED:** .....

**(CHAIRPERSON)**

**DATE:** .....**24th May, 2021**.....

## STANDING COMMITTEE ON HEALTH

## STAKEHOLDER VIEWS ON THE MENTAL HEALTH (AMENDMENT) (SENATE BILLS NO. 32 OF 2018)

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| 1. | **Title** | **CPS-K** | **Proposal**<br><br>Amend the title to read:<br><br>Mental Health and **Happiness** (Amendment) Bill, 2020<br><br>**Rationale**<br><br>To align to the recommendations by the Mental Health and Wellness Taskforce . That National and County governments design inclusive mental health care services to cater for all ages and demographic groups, including the children and adolescents, pregnant and lactating mothers, youth and the elderly. | The Committee may make a policy decision on this matter. | **Rejected** |
| 2. | **Long title** | **NGEC** | **Proposal**<br>Replace mental illness with mental disorder.<br><br>**Rationale**<br><br>The parent Act as noted above and the Mental Health Policy 2015-2030 make reference to Mental Disorder and so we advise that the title should be aligned to what the parent Act states. In addition, section 73 of the Health Act, 2017 provides that, "There shall be established by an Act of Parliament, | The Taskforce on Mental Health in Kenya was formed in November 2019 through a Cabinet directive. According to the Report of the Taskforce on Mental Health in Kenya titled Mental Health and | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | legislation to— protect the rights of any individual suffering from any mental disorder or condition...<br><br>Illness as interpreted is limiting and tactfully locks out many persons with Mental disabilities. It also leans more on the biomedical model than Social or Rights Based Model. | Wellbeing: Towards Happiness and National Prosperity the term "mental illness" also refers to "mental disorders" (pg 15).<br><br>Patients with mental illness can be treated and get better. Therefore maintain the term illness | |
| 3. | | **CPS-K** | **Proposal**<br><br>AN ACT of Parliament to amend the Mental Health and **Happiness** Act; and for connected purposes<br><br>**Rationale**<br><br>To align to the recommendations by the Mental Health and Wellness Taskforce | The Committee may make a policy decision on this matter. | **Rejected** |
| 4. | **2** | **AWSC** | **Proposal**<br><br>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. | The comma is already in the Bill. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | **Rationale** | | |
| 5. | **3** | **KEMSWA** | **Proposal**<br>Include the medical social workers under the definition of "mental health practitioners<br>**Rationale**<br>Locally and internationally medical social workers are critical in delivering community based mental health services as well as at level 2, 3, 4, 5, and 6 health facilities.<br>In the Mental Health and Wellbeing: Towards Happiness and National Prosperity (2020) report has on page 56 and 97 cited the important role of medical social workers.<br>In addition, the Director General for Health in a letter dated 24th March, 2021 Ref No. MOH/DPPH/DMH/VOL.1 (109) to the Chief Officers of Health identifies medical social workers as one of the human resource for mental health.<br>In 2020 the Ministry of Health directed all counties to establish mental health and psychosocial support teams inclusive of medical social workers in COVID-19 pandemic response.<br>In the Post rape Care form Part B medical social workers are among the health workers to offer mental health services to the survivors and help the victims through trauma and other assist them in social functioning with reintegration. In to family and community. | The Committee may make a policy decision on this matter. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| 6. | | **NGEC** | **Proposal**<br><br>The Commission proposes an amendment to consider interpreting what "Mental disorders are" instead of interpreting "the person" and which is essentially describing the symptoms in line with the long title. A schedule of the disorders and protocols on management of each category which will include Autism, schizophrenia, cerebral palsy, learning disorders, dementia, Alzheimer's etc.be included<br><br>**Rationale**<br><br>The definition of "Person with mental illness "is quite limiting. This automatically locks out all the other categories of illnesses and disorders and especially the disorders children and the older members of society suffer from". | The law should be fairly flexible. To define the various types of mental illness may not be ideal since the field of mental medicine continues to grow. Amending legislation is cumbersome and therefore it may be better for the illnesses to be defined in clinical practice manuals. | **Rejected** |
| 7. | | **Emerging Leaders Foundation** | **Proposal**<br>Amend from "person with mental illness" to person suffering from a mental illness or disorder | The sponsor of the Bill aimed to review terminology by replacing disorder with illness. | **Rejected** |
| 8. | | **AWSC** | **Proposal**<br><br>"person with mental illness" means a person who has been found to be so suffering under this Act and includes— | The Bill first gives a general definition indicating that a person must be diagnosed with mental illness then emphasises mental | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | (a) **A woman suffering from postpartum depression** ~~a person suffering from maternal mental illness~~; and<br><br>(b) a person diagnosed with mental impairment due to alcohol or substance abuse;<br><br>(c) **a person suffering from autism**<br><br>(d) **a person suffering from depression**<br><br>**Rationale**<br><br>This section identifies only two categories of mental health illnesses<br><br>It is important to also recognize other mental health challenges which are as a result of conditions such as depression or conditions such as autism | health conditions that arise from being a mother or that are associated with alcohol and substance abuse. | |
| 9. | | **JAAJI** | **Proposal**<br>Amend the definition of person with mental illness to read "person with mental illness" means a person who has been found to be so suffering under this Act and includes—<br>(a) a person suffering from maternal mental illness;<br>And<br>(b) a person diagnosed with mental impairment due to alcohol or substance abuse;<br>(c) **a persons with lived experiences of mental health illness.** | The definition is too. broad.<br>The Committee may make a policy decision on this matter. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | **Rationale** | | |
| 10. | | **JAAJI** | **Proposal**<br>We propose a new sub-clause to define " a persons with lived experiences of mental health illness'.To read as follows:<br>' a person with first-hand personal experience with mental health illness, includes youth, intersex, women, transgender, persons living with disabilities.' | | **Rejected** |
| 11. | | **KNCHR and others** | **Proposal**<br>Amend the definition "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 **but does not include:**<br>**(a) Intellectual / developmental disability which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence;**<br>**(b) Dementia**<br><br>**Rationale**<br>To create greater clarity and do away with outdated language. Scientific developments in psychiatry has progressed to other terms including 'antisocial personality disorder. | | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| 12. | **3** | **KAIH** | **Proposal**<br>Amend the definition of 'person with mental illness to add the following words immediately after the word 'abuse':<br><br>'but does not include:<br>intellectual/developmental disability which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence<br><br>**Rationale**<br>This is because we have ratified the UN Convention on Persons with Disabilities and we have started to apply the CRPD for years in Kenya. Part of the definitions of disability is the term intellectual disability which is more suitable that mental retardation. | The Committee may make a policy decision. | **Rejected** |
| 13. | **Part 1A** | **NGEC** | **Proposal**<br>The Commission proposes the establishment of "Inter Agency Committee" instead of a County Health Council which will comprise representation from the National Government at the County, the County Governments, NCPWD, NHIF private practitioners, special schools, care givers etc..<br><br>**Rationale**<br><br>PART 3 of the policy recognizes that the implementation of the policy can only be successful with the collaboration of state and non-state actors. The policy also recognizes the role of the following non- state Actors<br>1. The non-state actors shall expand coverage and improve access to mental health care as well as participate in | Clause 7 of the Bill proposes an amendment to section 4 of the principal Act in respect to the membership of the Kenya Mental Health Board. The Board has representation of both state and nonstate actors. The following persons will represent nonstate actors-<br>-Organisations that advocate for the rights | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | formulation, financing, implementation, monitoring and evaluation of mental health programmes • The non- state actors shall actively participate in advocacy for promotion of mental health and mental health care.<br>2. Media -The mass media will play a key role in positive advocacy and creation of awareness on matters related to mental health.<br>3. Individuals, families, and communities• The individual, family and community will play a key role in the promotion of mental Health, prevention, treatment and rehabilitation of persons affected by MNS disorders. • They will also advocate for and participate in Community-based mental health programmes.<br>4. Role and Responsibilities of Development and Implementation partners• They will support Mental Health Policy implementation through the Health Sector Partnerships and Coordination Framework with emphasis on mental health priorities and plans.• They will be involved in resource mobilization and technical assistance.<br>5. Roles and Responsibilities of Training and Research Institutions• The universities and colleges training in health shall include mental health in their training curricula that conforms to the national and international standards.• The institutions shall provide evidence-based approaches and practices to mental health issues and shall conduct scientific mental health research and share information to inform the policy implementation.<br>6. Roles and Responsibilities of Professional Bodies<br>• They offer technical advice and professional expertise.• They ensure and facilitate professional growth and look into the | of persons with mental illness are represented by one person.<br>-In addition, the council of governors have been given the opportunity to appoint two persons with knowledge and experience in mental health to the Board. Section 4 (4) of the Mental Health Act, allows the Board to coopt membership to advise it<br>The Mwongozo code of governance limits the number of people who may be appointed to the Board. | |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
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| | | | welfare of the members.• They maintain professional and ethical standards<br><br>The policy also envisages a Multi-Sectoral approach to maximizing achievement of mental health goals whose approach is based on the recognition that mental health cannot be improved by interventions relating to mental health services alone, but that other related sectors are equally important in attaining the overall health goals. A focus of 'Mental Health in all Sectors' should be applied in attaining the objectives of this policy. Such related sectors include: Education, labour, security, correctional services, children services, planning, finance, legal justice system, industrialization, agriculture. | | |
| 14. | **2A** | **CPS-K** | **Proposal**<br><br>Propose to add to this section 2A (f) and (g) to read as follows:<br><br>**(f) Invest in early intervention, adopt a holistic approach to the community health services**<br><br>**(g) strengthen integrated mental health and reproductive health especially at Primary Health Care facilities**<br><br>**Rationale** | The Bill relates to mental health. There are other Bills that relate to community health and reproductive health.<br><br>The proposal seeks to entrench community mental health service counsellors. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | MOH has structures already in place that can be utilized for intervention and mental health services through the CHS personnel for holistic approach.<br><br>To encourage and support postpartum Family planning for perinatal services in primary health care facilities hence imperative to have this framework in the reproductive health counseling services to adolescent mothers among others. Specialized training in health counseling course/curriculum existing in the KMTC | | |
| 15. | | **AWSC** | **Proposal**<br><br>**2A.** The purpose of this Act is to provide a framework to—<br>(d) promote recovery from mental illness and enhance rehabilitation and integration of **a** person with mental illness into the community;<br><br>**Rationale** | This typographical error and the Committee may recommend it correction. | **Clean up at vellum preparation.** |
| 16. | **2B** | **AWSC** | **Proposal**<br><br>All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles —<br><br>(c) the fair and equitable treatment of persons with mental illness **and conditions**; | When we include conditions, it creates ambiguity as to whether this is something additional. | **Rejected** |

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| | | | **Rationale**<br><br>Persons with autism have conditions since autism is a condition and so this provision should also incorporate persons with such conditions | | |
| 17. | **2C (a)** | **AWSC** | **Proposal**<br><br>The National Government shall—(a) provide the necessary resources for the provision of mental health care and treatment at ~~National referral~~ health facilities<br><br>**Rationale**<br><br>Majority of those who have mental illnesses/challenges seek medical services at the devolves health facilities, therefore, it is important that the National Government provide resources for mental care and treatment at such facilities | The Constitution delineates health service provision between the two levels of government. The National government manages National referral facilities and the county governments manage the county health system that is comprised of the tier 1 to 5 health infrastructure. | **Rejected** |
| 18. | **2C (b) (iii)** | **CPS-K** | **Proposal**<br><br>Propose to add to this section<br>2C. (b)(iii) expanding and strengthening community and family-based<br>care and support systems for youth, street, prison population | The provision relates to collaboration between the national and county governments. In addition the proposal seeks to ensure that the community and family | **Rejected** |

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| | | | **Rationale**<br><br>Utilize the Community health services structure to offer home based counseling services and psychoeducation to alleviate stigma and discrimination.<br><br>CHS and Nyumba kumi initiatives shall be strengthened to address stigma and discrimination related issues | based care and support is available to all persons with mental illness.<br><br>This proposal seeks to elevate different groups which may not necessarily be persons with mental illness. | |
| 19. | **2C (e) (i)** | **KEMSWA** | **Proposal**<br>Replace allied health workers with medical social workers.<br><br>**Rationale**<br>Medical social workers qualify through a diploma from Kenya Medical Training College or A degree from Jomo Kenyatta University of Agriculture and Technology. In addition, the University of Nairobi offers Psychiatric Social Work geared towards mental health service provision. | The Committee may make a policy decision on this matter.<br><br>. | **Rejected** |
| 20. | **2C (e) (iv)** | **CPS-K** | **Proposal**<br><br>2C. (e)(iv) to read as follows:<br><br>Put in place mechanisms for **outpatient comprehensive cover** for mental health **care,** treatment and rehabilitation of substance use disorders to promote prevention as well as continued care for mental illnesses. | The universal health coverage is a policy plan for the National Government.<br><br>The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | **Rationale**<br><br>The practice with regards to provision of Mental Health cover under NHIF is discriminatory, while it is not explicit under the law on the insurance cover. Current practices do not cover for outpatient services.<br><br>This will go well with the UHC Objectives and mission | | |
| 21. | **2C (f)** | **CPS-K** | **Proposal**<br><br>In 2C(f) to read:<br><br>(f) develop **community based mental health service** programs for **the continued counseling care**, rehabilitation of persons with mental illness;<br><br>**Rationale**<br><br>This will help in establishing human resource capacity in counseling from the community health strategy for quality services. Utilize the specialized course in KMTC Health counseling and mental health wellness curriculum in KMTC by CHS personnel | The Committee may make a policy decision on this matter. | **Rejected** |
| 22. | **Insert new 2C (i)** | **CPS-K** | **Proposal** | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | (i) establish the directorate of mental health and substance use to coordinate implementation of policies on mental health.<br><br>**Rationale**<br><br>To align to the key recommendations by the Mental Health and Wellness Taskforce on governance and leadership in Mental Health and Happiness. To implement and coordination of the mental health policies, data and research as per this Act. | This is generally an administrative decision that is made by the CS or entity concerned. The Bill could impose the function of coordination but leave it to the entities to determine whether a directorate is required for this purpose. | |
| 23. | **2D (1) (b)** | **CPS-K** | **Proposal**<br>Amend in the following manner—<br><br>(b) provide community-based care and **treatment in community health services level 1** for persons with mental illness including initiating and organizing community or family based programs for the care of persons suffering from mental illness;<br><br>**Rationale**<br><br>This would help to create need for the deployment of the counseling and psychologists in the community health services as it is in the scheme of service and recent UHC Staff qualification by PSC | The Committee may make a policy decision on this matter | **Rejected** |

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| | | | | | |
| 24. | **Insert 2D (1) (g ) and (h)** | **CPS-K** | **Proposal**<br><br>(g) support and organize community-based dialogues and action days programs on mental health.<br><br>(h) ensure and support the mental health services counseling unit and well equipped as per laid procedures by global health authorities<br><br>**Rationale**<br><br>To achieve the goal in psychoeducation and psychological first aid to the community. Insert this part to qualify the CHS Personnel in level 1 to undertake the tasks in mental health. To align the bill with the suggested title.<br><br>Creating awareness and youth friendly centres in the community | The proposal seeks to entrench community mental health counseling. The Committee may make a policy decision on the matter. | **Rejected** |
| 25. | **2D (1)(h)(ii)** | **KNCHR and others**<br><br>**KAIH** | **Proposal**<br>Insert the word 'intersex' after 'women'.<br>Insert 'persons with intellectual/developmental disabilities' and 'persons with dementia' after 'children'<br><br>**Rationale** | The Committee may consider the following amendment—<br><br>target persons at risk of developing mental illness including | **Rejected** |

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| | | | Intersex persons and their families are particularly at risk of developing mental health conditions as noted in the report of the Task force on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya. The Taskforce noted that 'the immense emotional turmoil, stress and disagreement in the families caused by the birth and life of an intersex child, in a number of cases leads to mental breakdown of (usually) the mother'. The Taskforce recommended that the Ministry of Health in consultation with Medical Practitioners and Dentists Board make provision for psychosocial support to both the intersex child and their family. Intersex persons were also featured in the 2019 publication on mental health in Kenya featuring Senators inter alia and dubbed 'The many faces of mental health in Kenya'.<br><br>While persons with an intellectual/developmental disability and persons with dementia may not have mental illness, these individuals are more prone to mental health problems due to the societal, attitudinal, systemic and structural biases and barriers they face in our society. Therefore, including persons with intellectual/developmental disabilities in the bill will acknowledge the immense mental health supports that persons with intellectual disabilities require but do not receive because of their perceived 'immaturity' and biased society beliefs to the effect that persons with intellectual disabilities are too 'childish' to have mental health problems and 'do not understand' what is going on in their lives, (which is untrue and makes mental health supports inaccessible). | children, women, **intersex persons**, youth, and elderly persons<br><br>Since persons with intellectual or developmental disabilities are not considered to suffer from mental illness perhaps the protections sought should be made in the Persons with Disabilities Act whose objective is "to provide for the rights and rehabilitation of persons with disabilities; to achieve equalisation of opportunities for persons with disabilities"<br>Dementia is also not considered a mental illness. | |

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| | | | Similarly, persons with dementia face societal, attitudinal, systemic and structural biases and barriers that make it difficult to access mental health services when needed. | | |
| 26. | | | **Proposal**<br>Insert an additional clause (j) requiring county governments to develop and implement programmes on protection of children from abuse including community protection networks that tackle child abuse as well as addressing other violence at domestic and community levels.<br>**Rationale**<br>Adverse childhood experiences have been demonstrated to be critical predictors for future difficulties with mental health. | Protection of children from abuse is provided for under the Children Act. Section 13 of the Children Act provides<br><br>13 (1) A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.<br><br>(2). Any child who becomes the victim of abuse, in the terms of subsection (1), shall be accorded appropriate treatment and rehabilitation in accordance with such | **Rejected** |

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| | | | | regulations as the Minister may make.<br><br>It may therefore be neater to strengthen the provisions of the Children's Act instead. | |
| 27. | **2D (1) (h) (ii)** | **JAAJI** | **Proposal**<br>Insert the words 'intersex' and 'transgender' after women and "persons with lived experiences of mental health illness' at the end.<br>To read as follows:<br>Target persons at risk of developing mental illness including children, women, intersex, transgender youth, elderly persons and persons with lived experiences of mental health illness;<br>**Rationale** | Transgender refers to gender identity opposite from assigned sex.<br><br>Intersex refers to a person who is born with reproductive anatomy that does not seem to fit the definitions of female or male.<br><br>The Committee may opt to end at the word "illness"…it is aimed at every person at risk so not sure what purpose the subsequent distinction serves | **Rejected** |

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| | | | | The Committee may make a policy decision on this matter. | |
| 28. | **2D** | **Emerging Leaders Foundation** | **Proposal**<br>The counties should create a kitty to help very needy cases with mental health problems. In addition, counties in conjunction with schools, religious leaders and the leadership at the grassroot levels should develop a support system for those affected (patients and families)<br>**Rationale** | Counties should have leeway to determine how counties spend on the health function. | **Rejected** |
| 29. | **2D (2) (c)** | **KNCHR and others** | **Proposal**<br>(2) In ensuring that the county governments meet their obligations under subsection (1), the county executive committee member in each county shall<br>(c) monitor and evaluate, **in collaboration with the Kenya National Commission on Human Rights and the National Gender and Equality Commission**, the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;<br>**Rationale**<br>To recognize that the mandate of monitoring the rights of persons with disabilities (including those with mental disabilities) in the country is conducted by independent commissions (Kenya National Commission on Human Rights in collaboration with National Gender and Equality Commission). These bodies have been appointed by the Attorney General to carry out this mandate, in line with Article | What is proposed in clause 2D (2) (c) is self evaluation.<br><br>The KNCHR and NGEC have an independent oversight role. | **Rejected** |

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| | | | 33(2) of the UN Convention on the Rights of Persons with Disabilities.<br>It is not good practice for the implementer (County Executive Committee member) to also monitor and evaluate his/her own work. | | |
| 30. | | **VOB**<br>**HTBP** | **Proposal**<br><br>**In collaboration with the public and their representatives** monitor and evaluate the progress by the county in ensuring that Article 43 (1) (a) of the Constitution is realized;<br><br>**Rationale**<br>It is important to ensure that the role of monitoring services is not only left to the implementers of policies but to the users too. | | **Rejected** |
| 31. | **2D (3)** | **CPS-K** | **Proposal**<br>Amend to read:<br><br>The county executive committee member may delegate some or all the<br>functions under this section, to a committee or an officer within the county public service with a **prerequisite qualification in mental health and wellness.**<br><br>**Rationale**<br><br>This would help to create need for the deployment of the counseling and psychologists in the community health services as it is in the scheme of service and recent UHC | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | Staff qualification by PSC (social work, psychology, counseling, community health qualifications) | | |
| 32. | **2E (3)(a)** | **KNCHR and others** | **Proposal**<br>Amend the following—<br>(3) The county executive committee member when making appointments under subsection 2 (c) shall ensure—<br>(a) that one person is nominated from each of the following organisations—<br>(i) a body representing caregivers of persons with mental illness in the county;<br>(ii) a body representing the mental health practitioners in the county; and<br>**(iii) a body representing persons with mental health conditions or users of mental health services**; and<br>**Rationale**<br>Under 2E 3(a) on the formation of County Mental Health Councils: There is no representative for persons with lived experience which is discriminatory (in contravention of Article 27(4) of the Constitution), considering that the Council is set up to represent their interests. The exclusion also denies persons with psychosocial disabilities the right to participate fully in matters that affect them, including self – representation.<br>Including a person with lived experience of mental health conditions in the Council will ensure that perspectives from users of mental health services are properly represented in the Council and its deliberations. This will also be in line with article 4(3) of the Convention on the Rights of Persons with | The county mental health council carries out the functions delegated by the CEC. Lived experiences may enrich the decisions reached by the mental health council. This may be achieved by imposing a requirement on the Council to consult with persons with lived experience<br><br>The Council may coopt a person with mental illness. | **Reject** |

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| | | | Disabilities (CRPD), which provides for the close consultation and active involvement of persons with disabilities in decision-making processes that concern issues related to them. While it is commendable to have representative of caregivers, omitting self representation by persons with mental health conditions from this Board is contrary to article 4(3) of the CRPD. | | |
| 33. | | **VOB**<br>**HTBP** | **Proposal**<br>Include persons with lived mental health experience in the County Mental Health Councils<br>**Rationale**<br>Elimination of persons with lived mental health experience in the councils is discriminatory and denies persons of psychosocial, cognitive and intellectual disabilities to participate fully when it comes to representation which is also in contravention of Article 27(4) of the Constitution | | **Rejected** |
| 34. | | **KEMSWA** | **Proposal**<br>Include the Medical Social workers in the county mental health council<br>**Rationale**<br>The Medical Social workers will be unable to realise their role in delivering mental health services when left out of such an instrumental organ in the devolved health service delivery system. | The Committee may make a policy decision on this matter. | **Rejected** |
| 35. | **2E** | **ILA** | **Proposal**<br>It is proposed that in addition to the 7 members to make up the County Mental Health Councils there be representative(s) from some independent institutions or groups including | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | religious groups, Civil Society, Kenya Board of mental Health, Women's/Youth Group representatives in the county<br><br>**Rationale**<br>This will enhance representation of various groups with interest in mental health affairs while also helping to check decisions of the council to ensure the same are made in good faith | | |
| 36. | **2E (5)(e)** | **KNCHR and others** | **Proposal**<br>Replace with the following<br>(5) A member of the county mental health council shall cease to be member if that person—<br>(e) ~~is unable to perform the functions of his office by reason of mental or physical infirmity~~<br>**Rationale**<br>As drafted, the clauses are potentially discriminatory against persons with mental health conditions (whom the Bill is meant to serve), who have a right to legal capacity, which entails continuing to perform the functions of office with support in line with article 12 of the UN Convention on the Rights of Persons with Disabilities | The proposal is too wide.<br><br>The committee proposed--<br><br>(e) is removed by the CS or CEC after it is determined by the relevant medical practitioner that the person is unable to perform the functions of his office by reason of mental or physical infirmity. | **Adopted subject to amendment** |
| 37. | | **VOB**<br>**HTBP** | **Proposal**<br>Delete 'by reason of physical or mental infirmity' and 'arising out of physical or mental incapacity', and replace by:<br>5) A member of the county mental health council shall cease to be member if that person—<br>(e) ~~is unable to perform the functions of his office by reason of mental or physical infirmity~~**is unable to perform the functions of office for any reason** | | |

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| | | | **Rationale**<br>The Bill intends to protect and promote the rights of persons with mental health conditions yet the clause goes against the intent of the Bill by introducing a discriminatory term against persons with mental health conditions | | |
| 38. | **Part II** | **NGEC** | **Proposal**<br>Provide for the following fundamental rights need to be explicitly provided for-;<br>i. Right to life;<br>ii. Right to retain their fertility;<br>iii. Right to form and belong to a family and retain their children;<br>iv. Right to independent living;<br>v. Right to living in the community;<br>vi. Right to owning and holding property including inheritance;<br>vii. Right to be free from demeaning and derogatory names;<br>viii. Right to dignity; and<br>ix. Right to quality education.<br>**Rationale**<br>The short title is misleading since the amendments entirely change the content, aim and purpose of the mental health act | The Bill provides for the following right specifically—<br>a) right to mental health services;<br>b) right to consent to treatment<br>c) right to participate in treatment planning;<br>d) right to access medical insurance<br>e) protection of person with mental illness<br>f) rights to civil political and economic rights<br>g) right to access to information<br>h) right to confidentiality | **Reject** |

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| | | | | i) right to appoint a supporter<br>The Bill proposes under clause 3K that the person with mental illness has a right to recognition before the law and enjoys legal rights on an equal basis with other persons in all aspects of life. The effect of this provision is that all the provisions under the Bill of rights apply equally to persons with mental illness. In addition, Article 27 (4) also forbids discrimination on the basis of health status, disability etc. In this regard clause 3K will buttress the provisions of Article 26 which guarantees the right to life to all persons, Article 43 which guarantees the right to education to every | |

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| | | | | person., Article 28 which guarantees Human dignity to every one.<br>The right to human dignity encompasses the freedom from demeaning and derogatory names.<br>In regard to forming and belonging to a family and retaining their children-<br>Article 45 (2) of the Constitution guarantees the right of every adult to marry a person of the opposite sex and guarantees both parties equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. However, section 11 (2) (c) of the marriage Act provides –<br>Consent is not freely given where the party who purports to give it | |

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| | | | | is suffering from any mental condition whether permanent or temporary, or is intoxicated, or is under the influence of drugs, so as not to appreciate the nature or purport of the ceremony.<br>Section 12 (a) (ii)<br>Subject to section 50, a marriage is voidable if—<br>(a) at the date of the marriage either party was and has ever since remained subject to recurrent attacks of insanity.<br>Retention of children is considered under the Children's Act. | |

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| 39. | **3A** | **CPS-K** | **Proposal**<br><br>(5) A ~~person~~ **Psychotherapist** in charge shall ensure mental health services are provided in a manner that— ''<br><br>**Rationale**<br><br>This gives onus and responsibility to the psychotherapist in charge (counselor or psychologist) to give the clients all the available conditions of worth and not to expressly harm the client thus give the right of respect to the clients<br><br>In the Kenya constitution, Article 43 (1)(a) provides that, "*every person has the right to the highest attainable standard of health, which includes the right to healthcare services.*" It is the responsibility of the officer in charge to give the conditions conducive for the psychotherapy but not any other profession that may negate the rights of the clients in matters of mental illness. | The Bill proposes to integrate mental health services in to mainstream health care. As such a person in charge of a facility may not always be a psychotherapist. | **Rejected** |
| 40. | **3 C (4)** | **KNCHR and others** | **Proposal**<br>The clause binds the supporter to 'comply with the will and preference of the person with mental illness' in treatment planning. We propose to add the word 'and representative' after the word 'supporter'— | According to Black Laws Dictionary representative, means One who stands for or acts on behalf of another. | **Rejected** |

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| | | | (4) A supporter and **representative,** 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.<br><br>**Rationale**<br>Sub-clause 3B allows a representative to participate in developing treatment plans. When participating in treatment planning, a representative should also comply with the will and preference of the person with a mental health condition. | The effect implies that the representative is not bound to the will or preference of the person with disability. | |
| 41. | **3 E (4)** | **KNCHR and others** | **Proposal**<br>The clause places a duty of reporting on a person who witnesses abuse against a person with a mental health condition. We recommend that the clause should provide a sanction for failing to report.<br>**Rationale**<br>To provide an incentive for compliance of the law. | The Committee may make a policy decision on the request. | **Rejected** |
| 42. | **3 H (2) (g)** | **KNCHR and others** | **Proposal**<br>The clause provides exceptions for when the person in charge may disclose confidential information. We propose deletion of the ground that disclosure 'is in the best interest of the person with mental illness'.<br><br>(2) A person in charge or a mental health practitioner shall not disclose any confidential information, except where such disclosure—<br><br>(a) is required by law; | The Committee may make a policy decision on the request. | **Rejected** |

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| | | | (b) ordered by a court;<br>(c) is in the public interest;<br>(d) is necessary to prevent the likelihood of serious harm to the person with mental illness or to others;<br>(e) is necessary for purposes of treating the person with mental illness;<br>(f) is authorised by the person with mental illness under a duly executed supportive decision- making agreement; or<br>~~(g) is in the best interest of the person with mental illness.~~<br><br>**Rationale**<br>This is too vague, considering that the aim is to limit the right to confidentiality. The preceding provisos (which include the prevention of harm to the person with a mental health condition or others) are sufficient to cover the exceptions. | | |
| 43. | **3I** | **KNCHR and others** | **Proposal**<br>Provide a form/template of a supportive decision making agreement, since many people may not be aware about how to make one. We have provided a sample at the end of this advisory that could be customized accordingly.<br><br>**Rationale**<br>It is critical that the Bill provides a sample to demonstrate what a supportive decision-making agreement looks like, since this is a new concept. | The Committee may consider making it a requirement for the Cabinet Secretary to develop the form when making regulations. This will allow for greater stakeholder engagement in the process. | **Allow see to prepare while drafting regulations** |

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| 44. | **3I (3) (d)** | **KNCHR and others**<br><br>**VOB**<br>**HTBP** | **Proposal**<br>The clause provides that a supportive decision making agreement shall be attested by the doctor of the person with a mental health condition. We propose to replace the word 'doctor' with 'mental health practitioner' as defined under clause 3 of the Bill-<br><br>(3) A supportive decision-making agreement shall be in writing and shall only be valid if —<br><br>(a) at the time of making of the agreement, the person with mental illness was aware of their actions,<br>(b) the person with mental illness has signed or affixed their mark to the agreement;<br>(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;<br>(d) the agreement is attested by two or more competent witnesses, one of whom shall be the ~~doctor~~ **mental health practitioner** of the person with mental illness;<br>(e) the person with mental illness signs or affixes their mark to the agreement in the presence of the witnesses; and<br>(f) each of the witnesses signs the agreement in the presence of the person with mental illness.<br><br>**Rationale**<br>To make it possible for more people with mental health conditions to appoint supporters. Considering the limited | The Committee may give policy direction on this matter. | **Rejected** |

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| | | | number of doctors in the country, it is important that other licensed cadres be able to competently witness supportive decision-making agreements. | | |
| 45. | **Clause 7 4(2) (g)** | **JAAJI** | **Proposal**<br>(2) The Board shall consist of—<br>(a) the Director who shall be the chairperson;<br>(i) a psychiatrist, in active practice in a mental health care set up, nominated by the Medical Practitioners and Dentists Board;<br>(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board ;<br>(iii) a psychiatric nurse, in active practice in a mental health care set up, nominated by the Nursing Council of Kenya;<br>(iv) a clinical officer, in active practice in a mental health care set up, nominated by the Clinical Officers Council;<br>(c) one person nominated by such organisations that advocate for the rights of persons with mental illness as the Cabinet Secretary may determine<br>(d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;<br>(e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;<br>(f) the Director of Mental Health, who shall be the secretary to the Board an ex officio member of the Board<br><br>**Rationale** | The Clause being referred to does not exist. The Committee may give policy direction on whether to include the additional clause. | **Rejected** |

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| | | | Persons with lived experiences of mental health illnesses is an all inclusive phrase that provides for persons predisposed to mental illness but otherwise excluded in the groups of persons listed under clause 2D (h) (ii). For instance intersex and transgender who are in dire need of mental health services.<br><br>Gender identity distress predisposes both intersex and transgender persons to the risks of developing mental health illnesses in a society where most of the social-economic and cultural activities are gendered. Mental stress is enhanced at every gendered social space such as schools, bathrooms, names in official and public documents or where gender identity is a requirement, security searches, employment spaces, dressing.<br><br>While the mental health risks of the intersex persons is well documented by the report of the Taskforce on Policy, Legal Institutional and Administrative Reforms Regarding Intersex Persons in Kenya, Kenyan Courts have had a chance to highlight the mental suffering that transgender persons go through in their daily lives. In the Judicial Review Case 147 of 2013, the Applicant, a transgender woman was deeply and mentally stressed by the masculine name appearing on her academic certificate. Most, if not all transgender persons desire to change their names to match their gender identities, and it can be extremely stressful if they are not able to do so. This is the first point of mental stress in a society where names are gendered.<br>Excerpts from the above case illustrate the potential risk of developing mental health conditions by transgender persons; | | |

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| | | | "AM was born in 1984 and named A M I. She was identified in the records at birth as male child. However from as long as she could remember she felt more inclined to be female. She had an increasing urge to live as a woman rather than as a man. Along the way she become increasingly uncomfortable and depressed which led her to attempt to commit suicide. She was taken to hospital, and first consulted psychiatrist at Mathari Hospital in 2008. She was diagnosed with Gender Identity Disorder, hitherto a rare medical condition in Kenya."<br>Further, "The aentiology of this condition remains uncertain. It is now generally recognized as a Psychiatric disorder, often known as gender identity dysphoria or gender identity disorder. It can result in a cute psychological distress."<br>In this case AM was treated at Mathari Hospital and an excerpt from a letter from the doctor who treated her, Dr. Catherine Syengo Mutisya, a Deputy Medical Superintendent at the hospital wrote;<br>"She has been treated for gender identity disorder and depression. She was evaluated by a panel of psychiatrists (Medical Board) from the Hospital and the Board confirmed that she has gender identity disorder (trans-sexual)" In this case, the High court accepted the doctor's expert opinion.<br>In the Court of Appeal case Civil Appeal Case no. 355 of 2014 between KNEC and A M & Others, a panel of 3 judges unanimously accepted the diagnosis of Dr. Syengo that, "On examination today she is still distressed by the challenges she is encountering as a result of having her referred to as a male even though she has partly | | |

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| | | | transitioned to female. This distress (sic) perpetuated her depression and she has had to be on treatment for depression for longer period."<br>In concluding the judgment the Judges had this to say,<br>"Before we pen off, there is the contention that the lower court waded into a policy and legislative arena and that the judges failed to keep his mind active to the cultural realities of the Kenyan Society. There is of course, need for government, and Parliament in particular to address in holistic manner the interests of minorities such as transgender persons. Other jurisdictions have taken the approach. There is for instance the Gender Recognition Act in UK that deals with gender reassignment. It cannot be the case that until there is a policy and legislative frame work in place , persons like AM are without recourse to secure their dignity."<br>This case was relied on in the Taskforce Report on Intersex Person in Kenya at page 126<br>"In the Judicial Review Case 147 of 2013, the court dealt with the question of requirement of a gender marker on a KCSE Certificate and whether it interfered with the Petitioner's right to human dignity through humiliation or degradation. This judgment raised awareness of existence of intersex (transgender) in the school system and the challenges they likely encounter in going through registration for examinations and other school activities such as sports which all require one to identify as male or female." Reading these judgments and the Taskforce Report on Intersex Persons in Kenya, leads only to one conclusion that transgender person, just like intersex persons, are people at | | |

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| | | | risk of developing mental health conditions. Hence the recommendation to amend Clause 2D (1)(h) (ii) by inserting the words 'intersex, and transgender' immediately after 'women' so that it reads "target persons at risk of developing mental illness including children, women, intersex, transgender, youth and elderly persons." This is will go a long way to secure their dignity. | | |
| 46. | 7 | **AWSC** | **Proposal**<br><br>Add a new clause **(ca)** ***one person nominated by such caretakers organisations for autistic persons***<br><br>**Rationale**<br><br>It is important to include among the board members a caretaker of autistic persons since autism is a mental challenges the proposed team may not have broad experience | | **Rejected** |
| 47. | | **CPS-K** | **Proposal**<br><br>Insert in the part as follows:<br>(f) the Director of Mental Health **and Happiness** who shall be the secretary to the Board an *ex officio* member of the Board.<br><br>**Rationale**<br><br>To align to the recommendations by the taskforce on the report on the key findings of establishing the Mental Health | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | and Happiness Commission with a Directorate of Mental Health and Happiness | | |
| 48. | | **KEMSWA** | **Proposal**<br>Include the medical social worker in the Board<br>**Rational**<br>Medical social workers are involved in the social diagnosis and treatment of patients illness; offer psychosocial support to index clients, their supporters, families and communities; participate in patient reintegration and placement in families and institutions; facilitation of psychosocial support groups for patients with chronic health conditions to enhance adherence to treatment in line with promotive , preventive and curative health practices just to mention a few of their work roles. | The Committee may make a policy decision on this matter. | **Rejected** |
| 49. | | **CPS-K** | **Proposal**<br>Insert a new paragraph (g)<br><br>(g) lecturer nominated by universities/KMTC training Counseling Psychology<br><br>**Rationale**<br><br>To bring the input of institutions of higher learning into the profession and council. To advice and promote the professional ethics in the profession and professional development for quality services. | The Board in the Bill is made up of the following persons—<br><br>(2) The Board shall consist of—<br>(a) the Director who shall be the chairperson;<br><br>(i) a psychiatrist, in active practice in a | **Rejected**<br>**The Board may coopt** |

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| | | | | mental health care set up, nominated by the Medical Practitioners and Dentists Board;<br><br>(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board ;<br><br>(iii) a psychiatric nurse, in active practice in a mental health care set up, nominated by the Nursing Council of Kenya;<br><br>(iv) a clinical officer, in active practice in a mental health care set up, nominated by the Clinical Officers Council;<br><br>(c) one person nominated by such organisations that | |

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| | | | | advocate for the rights of persons with mental illness as the Cabinet Secretary may determine;<br><br>(d) two persons nominated by the Council of County Governors with knowledge and experience in matters related to mental health;<br><br>(e) one county director of health nominated from amongst the forty-seven county directors of health by the Council of Governors;<br><br>(f) the Director of Mental Health, who shall be the secretary to the Board an *ex officio* member of the Board. | |

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| | | | | The Board has a total of nine voting members.<br><br>The Committee may make a policy decision on this matter. | |
| 50. | **Clause 6 3B and 3C and 3I (4)** | **AWSC** | **Proposal**<br><br>1) Every health care provider shall, where the person with mental illness has attained the age of ~~majority~~ **maturity**—<br><br>**Rationale**<br><br>There seems to be an editorial error there is need of clarification because not all persons with mental illness or challenges such as autism will be able to make informed decisions even though they have reached the age of maturity | The age of majority is a term of art coined from the Age of Majority Act when referring to someone above the age of 18. The Age of Majority Act states-<br>A person shall be of full age and cease to be under any disability by reason of age on attaining the age of eighteen years. In addition the Children Act provides "child" means any human being under the age of eighteen. | **Rejected** |

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| 51. | **Clause 8 4B** | **NGEC** | **Proposal**<br>Qualify the requirement to remove members of the Board for inability to perform the functions of the office arising out of physical or mental incapacity.<br>Ensure that the determination is arrived at following a report of a panel or qualified personnel.<br><br>**Rationale**<br><br>This is the law that is proposed to protect the rights of persons with mental illnesses and so it should not contain a provision that limits those rights without a qualification or a proviso | The Committee may consider inserting a subsection that provides—<br><br>(a) where it is determined by the relevant medical practitioner that the person is unable to perform the functions of his office by reason of mental or physical infirmity. | **As above.** |
| 52. | **Clause 10** | **CPS-K** | (1B) A person shall be eligible for appointment as the Director of Mental Health if that person—<br><br>insert the words ''or counseling psychology'' to read:<br><br>(a) holds a degree in medicine **or counseling psychology** from a university recognized in Kenya;<br><br>(b) is – | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | **(i)** registered by the Medical Practitioners and Dentists Board as a mental health practitioner; or<br><br>**(ii)** is registered by the Counselors and Psychologists Board<br><br>**Rationale**<br><br>To align the professional practice in mental health and happiness dispensation | | |
| 53. | **9D** | **KNCHR and Others** | **Proposal**<br>Clause 9 D (d) of the Bill proposes that a report be made to the Board and the relevant County Executive Committee (CEC) member on the number of voluntary and involuntary patients who have died in the course of treatment.<br>We propose the addition of the words 'emergency patients' immediately after the words 'voluntary patients'.<br><br>Death of a patient admitted under emergency that occurs within a mental health facility should also be notified.<br><br>We also propose that a report also be made to the National Coroner Service established under the National Coroners Act in addition to reports being made to the Mental Health Board and the relevant CEC. | The committee may consider adopting this | **Adopted** |

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| | | | **Rationale**<br>Death of a patient admitted under emergency that occurs within a mental health facility should also be notified.<br><br>Death in mental health facility would likely satisfy conditions for investigation that are stipulated under Sections 24 and 25 of the National Coroners Services Act. | | |
| 54. | **9E** | **NGEC** | **Proposal**<br>The Commission proposes establishment of a committee of qualified officers, by the facility, which will handle such ad hoc matters and once a decision is made, the same to be communicated to either the family, supporter or guardian immediately and not within the 24 hours proposed in sub-clause (6).<br>**Rationale**<br>A lot of violations of rights and abuse takes place in the name of seclusion and restraint. It is appreciated that at times that is the last option by the facility but then who determines that the same is devoid of abuse and violations and that the patient has been kept in humane conditions during the seclusion or restraint. | The term "immediate" is not quantifiable. Therefore, the Committee should consider retaining the 24 hour limit.<br><br>The Bill currently provides that the decision to restrain is authorised by the mental health practitioner. The Committee may make a policy decision on the establishment of an ad hoc Committee if it considers it necessary.This power may be discretionary | **Rejected** |

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| 55. | | **VOB**<br>**HTBP** | **Proposal**<br>Delete clause 9E<br>**Rationale**<br>The Bill has taken a human rights approach and should therefore not advocate for the seclusion and restraint of persons with lived mental health experiences as this is a violation of their rights that the Bill stands to protect. | Committee may make a policy decision on this matter. | **Rejected** |
| 56. | | **KNCHR and Others** | **Proposal**<br>We propose deletion of Clause 9 E that provides for use of seclusion and restraint.<br>If the provisions on seclusion and restraints are retained (which we strongly recommend against), then we propose that safeguards be introduced as follows:<br>• The mental health practitioner who authorises the use of a restrictive intervention must ensure that the person's needs are met and the person's dignity is protected by the provision of appropriate facilities and supplies, including bedding and clothing appropriate to the circumstances, food and drink and adequate hygiene and toilet arrangements.<br>• A registered mental health practitioner must examine a person in seclusion or being bodily restrained as frequently as the mental health practitioner is satisfied is appropriate in the circumstances to do so, but not less frequently than every four hours.<br>• A registered mental health practitioner must provide a written report of the use of seclusion | The Committee may make a policy decision on the matter.<br><br>Should the committee consider the alternative provided, the Committee should note that the processes contained therein seem clinical in nature and should be contained in a policy documents and not legislation. | **Rejected** |

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| | | | and restraints to the person in charge of the mental health facility or unit, for onward transmission to the mental health Board (Clause 9D f).<br><br>**Rationale**<br>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 we strongly recommend removal of proposed clause 9E and recommend the absolute ban of the use of seclusion and restraint. | | |
| 57. | **9F** | **Emerging Leaders Foundation** | **Proposal**<br>The Bill should insist on appointing qualified supporters preferably psychologists.<br>**Rationale**<br>Appointing a person, say a family member, could breach the privacy of the patient | The supporter is appointed by the person with mental illness and they have lee-way to decide who | **Rejected** |

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| | | | | they want to act on their behalf. | |
| 58. | **9F (2)** | **KNCHR and Others** | **Proposal**<br>The Clause contains the circumstances under which consent shall be valid. We recommend that disclosure of relevant information relating to treatment should include not just benefits of treatment but also possible side effects of the treatment.<br>(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 and **side effects** of the treatment;<br><br>**Rationale**<br>Section 8 of the Health Act offers comprehensive guidance on information to be provided to render consent effective. This includes information on benefits, risks, costs and consequences generally associated with each option (Section 8(1)(c) of the Health Act. | The proposal is more inclusive. | **Adopted** |
| 59. | **17(2)** | **KNCHR and Others** | **Proposal**<br>Clause 17(2) requires that where the person to be admitted voluntarily is a minor, their guardian shall fill a prescribed form in the required manner before admission. We propose the inclusion of a statement to the effect that support to fill such form shall be provided.<br>**Rationale**<br>No provision is made for guardians who cannot read/write. This should be done. Further the requirement should not be mandatory, but rather admission should be on similar | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | grounds as with admission of patients requiring general/physical health treatment in regular hospitals. The Bill indicates that those with mental health conditions have similar rights as everyone else and thus they should access services with similar ease. | | |
| 60. | | **ILA** | **Proposal**<br>There is a requirement that where the person with mental illness to be admitted voluntarily is a minor, their guardian shall need to fill a prescribed form in the required manner before admission.<br>No provision is made for guardians who cannot read/write. This should be done.<br>**Rationale**<br>The requirement should not be mandatory rather admission should be on similar grounds as with admission of normal patients in regular hospitals. It has been indicated earlier that mentally ill persons have similar rights to normal persons thus they should get similar treatment. | The Committee may make a policy decision on this matter. | **Rejected** |
| 61. | **17(3)** | **ILA** | **Proposal**<br>It is provided that a review of the person with mental illness be done in the blanket period of 72 hours. We propose that this be changed so the said time (72hrs) does not apply for all cases of illness since patients may respond differently given the many varying conditions.<br>**Rationale**<br>It would be unfair to detain others longer than necessary without review if their condition improves. | The Committee may make a policy decision on this matter. | **Rejected** |

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| 62. | **17 (4)** | **KNCHR and Others** | **Proposal**<br>Clause 17(4) provides that the Cabinet Secretary shall, in consultation with the Board and the Council of County Governors formulate Guidelines as required under the section. We propose an additional sub-clause to the effect that in the development of the guidelines, the principles of public participation shall apply.<br><br>**Rationale**<br>Article 10(2) (a) of the Constitution on national values and principles of governance, and more particularly on 'participation of the people' should apply also in the development of guidelines. This will provide room for broader engagement, including with providers and users of mental health services. | Public participation is a constitutional requirement. The Committee may make a policy decision on the matter. | **Rejected** |
| 63. | | **ILA** | **Proposal**<br>It is provided that the CS shall in consultation with the Board and the Council of County Governors formulate Guidelines as required under the section.<br>**Rationale**<br>We propose that representatives of staff or owners of the mental health institutions be included in devising the guidelines. Their voice is significant in this exercise as they deal with the patients on a daily basis thus would give valuable input in formulating these guidelines. There should | | |

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| | | | also be provisions for patients who are able to check themselves out of the facility. | | |
| 64. | **17 (10)** | **KNCHR and Others** | **Proposal**<br>Clause 17(10) 4 provides for retention of a voluntary patient beyond 42 days. We propose to delete this sub-clause.<br><br>**Rationale**<br>A patient who is admitted under voluntary provisions should be able to leave the facility on an equal basis with patients requiring general/physical health treatment in regular hospitals (unless it can be proven that the patient qualifies for emergency admission). | The Committee may make a policy decision on this matter. | **Rejected** |
| 65. | **22** | **KNCHR and Others** | **Proposal**<br>Delete Clause 22 on involuntary treatment. We propose the deletion of 'involuntary' throughout the Bill, including Clauses: 9D (reports by mental health facilities); 21, 22 (1C); 22 (6); 26(3)(a); 28 17 6;<br><br>**Rationale**<br>To ensure compliance with the UN Convention on the Rights of Persons with Disabilities (CRPD). Article 14(1) b of the CRPD states that the existence of a disability shall in no case justify the deprivation of liberty. Article 25 (d) of the CRPD requires health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent. Article 12 of the CRPD provides for the right of persons with disabilities to | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | exercise legal capacity in all spheres of life. 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. | | |
| 66. | **22** | **ILA** | **Proposal**<br>Admission is also conditioned upon application via filling a prescribed form<br>**Rationale**<br>We propose that there be situations where this is not mandatory as it may hinder admission of certain patients that may be in dire need of treatment services. | The Committee may make a policy decision on this matter. | **Rejected** |
| 67. | **25**<br><br>**15A** | **KNCHR and Others**<br><br>**VOB**<br>**HTBP** | **Proposal**<br>We propose a new sub-clause 6 to the effect that: 'A patient shall not be detained under Emergency treatment provisions for a duration that is longer than 30 days'.<br><br>**Rationale**<br>A necessary safeguard, given the UN Convention on the Rights of Persons with disabilities (Article 14 (1)(b)) which states that existence of a disability shall in no case justify a deprivation of liberty. | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | Within 72 hours, a facility should have established the nature of treatment to be given based on client's treatment plan as well as conducting medical assessments | | |
| 68. | 26 | **NGEC** | **Proposal**<br>Replace the word "illness" with "disorder"<br>**Rationale**<br><br>There is no rationale in the memoranda of objects and reasons to explain the replacement of the word "disorder" with "illness" | The Taskforce on Mental Health in Kenya was formed in November 2019 through a Cabinet directive. According to the Report of the Taskforce on Mental Health in Kenya titled Mental Health and Wellbeing: Towards Happiness and National Prosperity the term "mental illness" also refers to "mental disorders" (pg 15). | **Rejected** |
| 69. | | **KNCHR and Others** | **Proposal**<br>Delete Clause 26(a) and replace with the following: 'The principal Act is amended by deleting sections 16 (1) a, b and c.'<br>According the section 16 of the principal Act, emergency admission may be initiated by: a police officer of or above the rank of inspector; the officer in charge of a police station; an administrative officer; a chief or an assistant chief. A | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | police officer of or above the rank of inspector, an officer in charge of a police station, an administrative officer, a chief or assistant chief may take or cause to be taken into his custody the following persons:<br>~~a) any person whom he believes to be suffering from mental disorder and who is found within the limits of his jurisdiction; and b) any person within the limits of his jurisdiction whom he believes is dangerous to himself or to others, or who, because of the mental disorder acts or is likely to act in a manner offensive to public decency; and c) any person whom he believes to be suffering from mental disorder and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having charge of him~~<br><br>**Rationale**<br>The provisions on emergency admission and treatment under Clause 25 (15) A are sufficient. The grounds for emergency admission under section 16(1) of the Mental Health Act 1989 are too wide, and not limited to 'emergency'. For example, the basis upon which the police officer, administrative officer, chief or assistant chief (who are not medical professionals) decide that a person is suffering from a mental disorder is not defined. In addition, the manner in which the police officer, administrative officer, chief or assistant chief objectively would reach a conclusion that a person is 'likely to act in a manner offensive to public decency' is also not defined. It is also not clear what universally agreed standards of 'public decency' may be. Furthermore, it seems that the fact that a person is being treated cruelly by his relatives | | |

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| | | | should be cause for prosecution of the offending relatives and not the emergency admission of the person to a mental hospital. | | |
| 70. | **32 20A** | **KNCHR and Others**<br><br>**HTBP** | **Proposal**<br>The clause provides for persons who may initiate the review of the mental health status of a person with a mental health condition.<br>We propose to add a new (d) '**a supporter of the person with a mental health condition**'<br><br>**Rationale**<br>In addition to the parties listed, a supporter should also be able to initiate review of the mental health status of the person with a mental health condition. | The Committee may make a policy decision on this matter. | **Adopted** |
| 71. | **33** | **KEMSWA** | **Proposal**<br>Include medical social workers under the definition of mental health practitioner.<br>**Rationale**<br>Medical social workers work directly with the persons with mental illness. However, the Bill is blind to their existence and if a complaint were to arise then both the patient and the medical social worker will be prejudiced since the medical social worker is not recognised in the Bill. | The Committee may make a policy decision on this matter. | **Rejected** |
| 72. | **33 21(2)** | **KNCHR and Others** | **Proposal**<br>Add the words 'A person' before the words 'with mental ...'<br><br>**Rationale** | There was an error during publication and this amendment will ensure coherence. | **Adopted** |

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| | | | Grammar/for coherence | | |
| 73. | **34**<br><br>**22 (2)** | **KNCHR and Others.** | **Proposal**<br>The clause provides that interim discharge shall be applied for 'in the prescribed form' but no such form is provided in the Bill. We propose the provision of a template/sample as part of the schedule to the amendment Bill or that a duty be placed on the in charge to develop the 'prescribed form'.<br><br>**Rationale**<br>To enhance enforceability | The form should be developed as part of the regulations that the CS is to develop. | **As above** |
| 74. | **New subclause** | **KNCHR and Others.** | **Proposal**<br>The Clause has a gap in that it is not clear what happens when a supporter or a representative is unable or unwilling to continue caring for the person with a mental health condition and returns such person for re-admission at the hospital. We propose to add sub-clause 6 and 7: (6) The person in charge shall report the readmission under subsection (3) to the Board. (7) The person in charge of a mental hospital from which a person has been taken into the custody and care under subsection (3) shall within seventy hours recommend review of the mental health status of the person by the medical practitioner in charge of the person's treatment in the mental hospital, and if recovered, order that the person be discharged as having recovered from the mental condition.<br><br>**Rationale** | The Committee may make a policy decision on this matter. | **Rejected** |

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| | | | The two proposed subsections are drawn from CAP 248 (Section 22 (4) & (6)). If left as is in the amendment bill, the clause is hanging, as it does not: a) clarify the status of the person upon readmission – is the person being re-admitted as a voluntary patient? Or is it emergency admission? b) provide for what happens if the individual has recovered. If left as is, the Clause would provide legitimacy for the practice where people remain for long durations in mental health facilities because their relatives are unwilling to claim them. | | |
| 75. | **Clause 35 (a)** | **KNCHR and Others** | **Proposal**<br>The Clause addresses the transfer of patients in government hospitals, but does not envisage transfer from county to referral hospitals. We propose that after the word 'be' appearing at the end of the subclause, add the words 'or from a county health facility mental health unit to a national referral hospital mental health unit'<br><br>**Rationale**<br>To take care of the situation where an individual may require specialized care that may not be present at county health facility mental health units. | The Committee may make a policy decision on this matter. | **Rejected** |
| 76. | **Clause 37 26 (6)** | **KNCHR and Others** | **Proposal**<br>The clause provides for the court OR a mental health practitioner to examine a person in order for the court to reach a decision on the mental capacity and condition of the person. We propose that the 'or' be changed to 'and' so that | The Committee may make a policy decision on this matter. | **Reject** |

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| | | | BOTH the court and a mental health practitioner are required to examine the individual.<br><br>**Rationale**<br>As a safeguarding measure, given that the right to control one's own property and finances is at stake. This will comprise higher protection against arbitrary deprivation of property of persons with mental health conditions. | | |
| 77. | **Clause 37 28 (4)** | **KNCHR and Others** | **Proposal**<br>The Clause places a duty on the manager to perform his duties taking into account the best interests of the person with a mental health condition. We propose the insertion of the words 'will and preferences of the person' before the words 'best interests.'<br><br>**Rationale**<br>General Comment No. 1 on Article 12 of the CRPD on equal recognition before the law states that: '[t]he "best interests" principle is not a safeguard which complies with article 12 in relation to adults. The "will and preferences" paradigm must replace the "best interests" paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others'. | The Committee may make a policy decision on this matter. | **Rejected** |
| 78. | **Clause 37 31 (1)** | **KNCHR and Others** | **Proposal**<br>The Clause provides for removal of a manager by the Court. We propose to insert a new sub-clause (c) 'Revoke | The Bill already provides for the removal of a manager. | **Rejected** |

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| | | | appointment of manager and restore financial control to the person upon proof that the person has recovered'<br><br>**Rationale**<br>Mental health conditions tend to be episodic in nature. It would be unjust to lose financial control of one's estate forever just because an application for another person to manage one's property was made when a person was unwell. The Bill should retain a provision that enables a person to take charge of his/her property again upon recovery/ restoration of legal capacity in relation to managing one's finances. General Comment No. 1 on Article 12 of the CRPD on equal recognition before the law states that: '[a]ccess to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. That approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property, neither may disability' | | |
| 79. | **Clause 38** | **KNCHR and Others** | **Proposal**<br>Clause 38 addresses letters of patients. We propose to insert a new sub-clause (2) 'The person in charge or a mental health practitioner in charge of any patient shall enable communication through telephones, email and other appropriate modes of communication where practicable' | The Committee may make a policy decision on this matter. | **Adopted** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | **Rationale**<br>The Bill only provides for communication through letters. However, communication has evolved to include other means that should also be facilitated without censorship, and taking into account the right to privacy of persons with mental health conditions. | | |
| 80. | **40** | **VOB**<br>**HTBP** | **Proposal**<br>Remove the time frame for reporting of complaints<br>**Rationale**<br>Recovery from Mental Health conditions is not limited to certain amount of time. Abuse to MH patients during their non-lucid intervals is present and rampant. Limiting the time for lodging of complaints to 6 months denies justice to patients that recover lucidity after the said period and denies them the chance to report and bring to justice their abusers at a time when they are well and able to defend themselves. | The provision does not seek to limit the time within which a complaint may be brought it just seeks to ensure that the Director of Public Prosecution is informed of any criminal proceedings when they begin. | **Rejected** |
| 81. | **47** | **VOB**<br>**HTBP** | **Proposal**<br>Delete the clause<br>The clause states that 'Nothing in this section shall be deemed to make it an offence for the person in charge of or any person employed at a mental health facility to take the steps he considers necessary to prevent'<br>**Rationale**<br>This section of the law is ambiguous and leaves room for the use of force or other inhumane methods against MH patients, as it absolves caregivers or any layperson of criminality regardless of their actions towards a MH patient 'as long as they consider them necessary'. It contradicts other sections of | The offending provision in the act was reviewed and the exception was removed. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | this bill that protect MH patients from force, inhumanity and abuse of their rights. | | |
| 82. | **General concerns** | **KNCHR and Others** | **Proposal**<br>It is not clear the extent to which individuals who do not have family members (e.g some homeless persons) can access services under the Bill. The definition of representative under Clause 3 assumes that all persons needing mental health services will have a spouse or a child or parent or relative or be under the care or charge of another person.<br>**Rationale** | Committee proposes that the government takes responsibility etc-see US provisions for guidance including family members who cant be traced...see social services provisions | |
| 83. | | **Emerging Leaders Foundation** | **Proposal**<br>The Bill should decriminalise suicide | The Penal Code criminalises attempted suicide under section and 226.<br><br>The Committee may make a policy decision on this matter.<br><br>Committee to hold a public engagement on the decriminalisation of suicide. | |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| 84. | | | **Proposal**<br>Students should be taught mental health, what happens to someone who is affected with mental illness and how do we live with those who are affected as part of life skills | Part of the roles of the National government required to implement programmes and strategies to guarantee students access information on mental health, mental health care and treatment.(see clause 2C (j) | **Rejected** |
| 85. | | | **Proposal**<br>County and National Governments should work on subsidising the prices of antipsychotics, antidepressants and anxiolytic.<br><br>**Rationale**<br>Antipsychotics, antidepressants and anxiolytics are way too expensive. | Committee will explores options to<br>(a) include medicines in essential drugs list<br>or<br>(b) Declare national disaster in order to have the drugs available at subsidised rates. | |
| 86. | | **VOB**<br>**HTBP** | **Proposal**<br>Include persons with mental health conditions in the disability assessment.<br><br>National and private health insurers should be included a mental health benefits package. This should be extended to the UHC Benefit package as well.<br><br>**Rationale** | The Persons with Disabilities Act covers the provisions relating to disabilities while the Mental Health Act cover the provisions relating to provision of mental health services. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| | | | The intention is to eliminate ambiguity and make it very clear that persons living with mental health conditions also fall under the bracket of persons living with disabilities and therefore are entitled to all the resulting benefits as a right | | |
| 87. | | **Mr. Njoka** | **Proposal**<br>The county government hospitals that are mixed with the mental unit should be suspended immediately from admission of the mental ill patients and allowed take care of the outpatients only, those found severely mental ill should be sent to mathari hospital and regional or counties psychiatric hospitals that government set to build soon.<br><br>**Rationale**<br>That shall avoid and end inferiority treatments and human rights violations. Some psychiatric wards are used by healthcare workers as a punishment place, deliberately cruelty & abusive! | The sponsor sought to ensure that mental health care is offered in the mainstream health facilities. | **Rejected** |
| 88. | | **Mr. Njoka** | **Proposal**<br>People who has tortured as well as defamed, let them compensated and healthcare workers involved be punished. | The Bill provides for punishment for ill treatment of persons with mental illness (see clause 47).<br>The proposal on compensation will be retrospective in nature. The Committee may make a policy decision on this matter. | **Rejected** |

| | Clause | Stakeholder | Proposed Amendment and Rationale | Observations/ Comments | Resolution |
|---|---|---|---|---|---|
| 89. | | **Mr. Njoka** | **Proposal**<br>The establishment of mental health disciplinary commission will strengthen the quality mental healthcare in the country. | The Bill only proposes the restructuring of the current Kenya Mental Health Board. It does not establish a Commission. | **Rejected** |

**Stakeholders**

1. National Gender and Equality Commission (NGEC)
2. Kenya National Commission on Human Rights, Kenya Parliamentary Caucus on SDGs and Business, Adan Foundation, Alzheimer's and Dementia Organisation – Kenya, Amka Africa Justice Initiative, Arthur's Dream Autism Trust, Bipolar Heroes, Centre for Mental Health and Wellness, Coalition for Preventative Mental Health (CAMPH), Edge Consultants, Goinghome.com, Health Rights Advocacy Forum, Hoymas Kenya, Institute of Legislative Affairs, Jinsiangu Transgender Kenya, Kamili Organisation, Kenya Association for the Intellectually Handicapped, Mental 360, Mental Health Alliance Kenya, Mental Health Network Society, New Dawn, PDO Kenya (Psychiatric Disability Organisation Kenya), People Like Us CBO, Shamiri Institute, The Wellness Tribe, TINADA Youth Organisation Kenya, Tizi Talks, Tunawiri CBO, Users and Survivors of Psychiatry – Kenya, Validity Foundation, Watu Health Innovation Foundation Africa, Women for Dementia – Africa (KNCHR and others)
3. Jinsiangu and Amka Africa Justice Initiative (JAAJI)
4. International Institute for Legislative Affairs (ILA)
5. Emerging Leaders Foundation
6. Kenya Medical Social Workers Association (KEMSWA)
7. Voice of Bungoma CSO network (VOB)
8. Kenya Association for the Intellectually Handicapped (KAIH)
9. Society of Kenya (CPS-K)
10. Health Rights Advocacy Forum, Tinada, Basic Needs Basic Rights, Physicians For Health (HTBP)
11. Mr. David Gitari Njoka
12. The African Women Studies Centre (AWSC)

16th March 2021

# REPUBLIC OF KENYA

# TWELFTH PARLIAMENT | FIFTH SESSION
# THE SENATE

## INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 4th March, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Standing Orders of the Senate, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: csenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Wednesday, 31st March, 2021 at 5.00pm**.

| | Bill | Committee Referred To | Email Address |
|---|---|---|---|
| a) | The Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020 | Standing Committee on Health | senatekehealth@gmail.com |
| b) | The Persons with Disabilities (Amendment) Bill (Senate Bill No. 29 of 2020) | Standing Committee on Labour and Social Welfare | senatecommittee.labour@parliament.go.ke |
| c) | The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 30 of 2020) | Standing Committee on Land, Environment and Natural Resources | senlandenviron@gmail.com |
| d) | The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020) | Standing Committee on Finance and Budget | scfinanceandbudget@gmail.com |
| e) | The County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020) | Standing Committee on Tourism, Trade and Industrialization | senatetourismandtrade@gmail.com |
| f) | The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020) | Standing Committee on Justice, Legal Affairs and Human Rights | senatejlahrc@gmail.com |
| g) | The Community Health Services Bill (Senate Bills No. 34 of 2020) | Standing Committee on Health | senatekehealth@gmail.com |
| h) | The Political Parties Primaries Bill (Senate Bills No. 35 of 2020) | Standing Committee on Justice, Legal Affairs and Human Rights | senatejlahrc@gmail.com |

The Bills may be found on the Parliament website at **http://www.parliament.go.ke/the-senate/senate-bills.**

**J.M. NYEGENYE, CBS,**
**CLERK OF THE SENATE.**