

Users and Survivors of Psychiatry-Kenya

**Report to the Committee on Rights of Persons with Disabilities on the
Review of Kenya's Initial Report on Implementation of the Provisions of the UN
Convention on Rights of Persons with Disabilities: Responses to Kenya's list of issues**

August 2015

Users and Survivors of Psychiatry

12th Floor, Hazina Towers

P.O. Box 10071-0010

NAIROBI, KENYA

Tel: +254722 884 563

Website: www.uspkenya.com

INTRODUCTION

Users and Survivors of Psychiatry- Kenya

1. Users and Survivors of Psychiatry in Kenya (USP-Kenya) is a non-governmental organization that was established and registered in Kenya in the year 2007.
2. It is a membership organization whose major objective is to promote and advocate for the rights of persons with psychosocial disabilities (mental health conditions) in Kenya. The organization is affiliated with the World Network of Users and Survivors of Psychiatry and its African affiliate the Pan-African Network of People with Psychosocial Disabilities.
3. USP-Kenya has been operating in Kenya for the past 7 years and has transformed the lives of persons with psychosocial disabilities in Kenya especially through influencing policy and legislation, rights-based advocacy and also through participatory public education programs using different media such as TV, radio, newspapers, magazines and internet on mental health issues. The organization has also participated in international conferences and other forums.
4. USP-Kenya submits this brief to the CRPD committee in relation to the upcoming review of initial reports of States Parties report in line with article 35 of the UNCPRD during which Kenya will be reviewed in August 2015. To this end, USP-Kenya submits the following information on implementation of the rights of persons with psychosocial disability in Kenya in light of the List of Issues to the initial report of Kenya 2015. In its submission, USP Kenya recognizes that all rights are equally paramount as provided for in the UN Convention on Rights of Persons with Disabilities (UNCPRD), indivisible and interdependent. The organization however wishes to lay emphasis on key issues that affects persons with psychosocial disabilities disproportionately and responds to those particular issues in the list of issues. This brief therefore focuses on Paragraph 1, 11, 14, 27 and 23 of the List of the Issues
5. We would like to appreciate the Technical support of Ms Miriam Nthenge from the National University of Ireland Galway in the preparation of this brief.

Information on Implementation of the UNCRPD at the national Level

A. Purpose and general obligations (arts. 1–4)

Paragraph 1 of the list of issues

6. The CRPD committee requested for information on harmonization of laws specifically on the concept of disability, removal of derogatory terms referring to persons with disabilities such as ‘unsound mind’, mental incapacity’ and “mental infirmity” specifically in the Constitution, Local Government Act 2010, the Election Act 2011 and the Marriage Act 2014.
7. Article 260 of the Constitution of Kenya 2010 and Section 2 of the Persons with Disabilities Act 2003 defines disability to include those with mental or psychological impairment. However due to lack of awareness, psychosocial disability or mental disability is still interpreted as a medical condition especially when it comes to tax exemption. Initially people with psychosocial disability were denied tax exemption forcing them to appeal to Kenya Revenue Authority with the support of Kenya National Commission on Human Rights (KNCHR) and National Council for Persons with Disabilities (NCPWD). Currently, positive progress has been recorded and so far no tax exemptions have been denied. This can be attributed to the interventions by KNCHR, NCPWD, USP-K and the National Gender and Equality Commission on Equality (NGEC) which is currently creating awareness and harmonising tax exemptions.
8. Regarding harmonisation of legislation and removal of derogatory terms, the Constitution and subsidiary legislations enacted 2011-2015 continues to use derogatory terms. Positive progress can only be reported on the Persons with Disabilities Amendment Bill 2015 which if passed will repeal the Persons with Disabilities Act, 2003. The Bill has proposed use of neutral language for removal of public officers from office. Section 12 (viii) provides that a member of the Council shall be removed from the Office ‘if one is unable or unfit to discharge his or her functions’. Positive change can also be reported with appointment of the first person with psychosocial disability as a member of the National Council for Persons with Disabilities.

The Committee should however take cognizance of the fact that these positive strides are only in disability specific legislations or practices in organization requiring appointment

of persons with disabilities and not the mainstream legislations which are the majority. The ongoing trend of use of derogatory language in mainstream legislations which in most cases are used in clauses related to appointment of members of board of public bodies is worrying. Article 54 (2) of the Constitution provides for 5% of members of elective and appointive bodies be persons with disabilities. Use of such derogatory terms disproportionately marginalizes persons with psychosocial disability for such appointments which is inconsistent with article 27 on work and employment of the UNCRPD.

Recommendations to CRPD committee

We urge the Committee to recommend to the State to increase awareness raising programmes to both state and non-state actors on rights of persons with psychosocial disability.

We also urge the Committee to recommend to State to initiate amendment measures of all legislations that uses derogatory terms.

B. Specific rights

Paragraph 11, Paragraph 14 and Paragraph 27 of the List of Issues

9. The Committee requested for information on steps being taken to repeal legislation and practices that restrict legal capacity on the basis of impairment and to establish supported decision making regimes. The committee also requested for information on steps to repeal laws and practices that permit the detention of persons based on actual or perceived impairment/disability, including “unsound mind”.
10. To this end, a number of initiatives have been realized. The Kenya National Commission on Human Rights (KNCHR) which is the national human institution in Kenya in 2012 with support of the Open Society Initiative for East Africa, conducted a research on *‘how to implement article 12 of the UNCRPD in Kenya- A briefing Paper (2013)’* in which among other Disabled People Organizations, USP- Kenya participated as a member of the technical committee. The briefing paper provides details on existing laws which contravene article 12 and enabling legislations as well. Laws that introduce deprivation of legal capacity and require amendment or repeal include: Constitution of Kenya 2010, Art 83 (1) b, 99 (2) e, 193 (2) d; Matrimonial Causes Act, Section 8; Criminal Procedure Act,

Section 162, 163, 164, 280; Evidence Act, section 125; Marriage Act 2014, Section 11; HIV and AIDs and Control, Section 22 and the Law of Succession Act, Section 5.

11. The research also documented on- going good practices at the national level such as the peer groups that USP-Kenya runs as forms of support. It also highlighted local models of supported decision making which involves peers, networks of friends and also families.
12. The initiative by KNCHR on article 12 also includes joint and separate activities to create awareness on article 12 to members of the justice system including judges, police and local administration. USP-K has been involved in advocacy initiatives towards raising the right to legal capacity for example by training staff in the Judicial Training Institute. These initiatives are mainly aimed at promoting positive attitude in society and enhancing the capacity of members of the justice system to understand the concept of legal capacity. From these programmes, progressive judgements are being realised. In a recent judgement HCCR APPEAL No. 17 OF 2014 Wilson Morara Siringi v. Republic of Kenya, one of the judges who participated in the awareness programmes made reference to article 12 of the UNCRPD.
13. The Committee should however note that while there are positive promotional initiatives, initiatives to repeal and amend laws that allow deprivation of legal capacity and deprivation of liberty are yet to be realised. The Mental Health Bill 2014 which is the law meant to repeal the current mental health act 1989 remains a draft to date. The Bill has enabling provisions in relation to implementation of article 12. It recognizes people with psychosocial disability as having legal capacity, the need for provision of support for free, prohibits exploitation, abuse, torture and degrading treatment and prohibits chemical constraint.
14. These provisions are however contradicted by other clauses that are inconsistent with article 12. Section 16 (3) and 16 (4) of the proposed bill introduces guardianship by allowing court to determine when one can loses legal capacity and appointment of legal representative to makes decision on behalf of. Section 31 on involuntary admission allows deprivation of liberty. The section also adopts broad threshold for involuntary admission based on severity of a mental illness, likelihood of imminent harm to oneself or others and when treatment can only be given by way of admission to the health facility. This is very subjective and open to abuse and is inconsistent with both article 12 and 13. Part IX introduces guardianship in management of property by authorising a spouse,

relative or any person of age to apply for management of property of a person with mental illness. This is inconsistent with article 5 (2) of article 12.

Recommendations to CRPD Committee

The Committee should recommend the following to the state:

- **Hasten the process of repealing and amending laws that contravene article 12 including the Constitution of Kenya, Marriage Act 2014, Evidence Act, Law of Succession Act, HIV & AIDS and Control Act and the Matrimonial Causes Act**
- **Hasten the process of finalizing the Mental Health Bill 2014 taking in to cognizance the concerns raised on contradicting provisions including section 16 (3), 16 (4), Section 31 and Part IX.**
- **To allocate specific funding to Disabled Person Organization of persons with psychosocial disabilities to implement article 12 related activities specifically the technical and financial support to enhance the establishment of peer support groups.**
- **To support the on-going initiatives on article 12 by the Kenya National Commission on Human Rights by enhancing its financial capacity.**

Paragraph 23 of the List of Issues

15. The Committee requested for more information on the plans by the Health Services Sector to scale up mental and psychosocial health care and treatment services across the country.

16. Community based services and alternatives to mental health services are yet to be introduced in Kenya despite several studies by KNCHR *'Silenced Minds: The systemic neglect of the mental health system in Kenya'* (2011) and the Independent Legal Medical Unit (IMLU) *'The State of Mental Health in Kenya; Victimization and Torture Among Persons with Mental Disabilities'* (2013) calling for introduction of such services by the government. According to the research by KNCHR in 2013 on article 12, lack of choices or alternatives has forced many persons with psychosocial disability to accept forced treatment as the only available alternative. Kenya lacks enough mental health facilities and alternative to medical facilities. The only specialised referral hospital is the Mathari hospital which is ill equipped. Level 5 hospitals which mainly have mental health

facilities at the County level have similar inadequacies. Part 2 of the Fourth Schedule of the Constitution of Kenya 2010 on functions of the counties devolves primary health care. This obliges County government to ensure health facilities and services are provided efficiently and sufficiently within each county. This can be used as one of way of introducing community based services. However, current health reforms at the County level have not been realigned to include mental health services. Recent reports by media indicate that persons with psychosocial disability continue to be inhumanely treated in hospitals, lacking basic amenities within the hospital such as bedding and remain locked up.¹

Recommendations to the CRPD Committee

The Committee should recommend the following to the State:

- **Ensure that County governments allocate funds for community based mental health services and alternatives in the on-going health reforms.**
- **Facilitate and ensure that health professionals are trained on rights of persons with psychosocial disability including on access to highest attainable standards of health and right to free and informed consent.**
- **Ensure regular monitoring of mental health institutions by the National Gender and Equality Commission with the participation and inclusion of representative organisations of persons with psychosocial disabilities.**

¹ Winnie Atieno, For Mentally ill patients in Kisumu, it's a hard life available at <http://www.nation.co.ke/counties/kisumu/For-mentally-ill-patients-in-Kisumu/-/1954182/2814030/-/n9jxid/-/index.html>

