Mental Health Laws and Policies in Kenya

Background

Despite Kenya having a vibrant constitution that recognizes health as a fundamental human right - 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", people with mental disorders are yet to fully leap the benefit of this Constitution.

There are concerns that some of the existing health policies including mental health legislations are not in tandem with the Constitution and their implementation has not been successful. Therefore, contributing to the sorry state of mental health in Kenya.

The purpose of the study was to establish the legal frame work informing mental health programmes and services in Kenya.

Policies Guiding Mental Health Programmes and Services in Kenya

1. The Constitution

The constitution recognizes right to health as fundamental economic social and cultural right. All persons including most vulnerable groups in the society such as people with mental disabilities must enjoy. Like all other citizens, persons with mental disabilities should enjoy the right to equality and freedom from discrimination. Among the rights, a person with disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning.

People with mental health disabilities have inherent dignity and the right to have that dignity protected, they have the right to freedom and security. For instance, while accessing health services people with mental disabilities should not be denied their freedom through confinement without a just cause, treated in cruel or inhumane manner.

To ensure health services are available and enjoyed even at the grassroots levels, the Constitution created a devolved system of government, in which both the national and county governments have responsibility for health care. The county governments are required to provide health services at the county level including promotion of primary health care.

The constitution mandates each county government to plan, budget, implement, monitor, and evaluate county level health care services, including mental health care. County government are therefore required by the Constitution to provide mental health services at the community, primary, general hospital, and at county referral hospital levels. The national government on its part is mandated to operate national referral health facilities. So far, Kenya has only one national hospital that offers mental health services; the Mathari National Teaching and Referral Hospital.

2. Mental Health Act no 10 of 1989

Kenya's mental health services are guided by the Mental Health Act no 10 of 1989. The Act was never implemented fully since its pass due to lack of political will and budgetary allocations. For example, Section 7, which provides for the appointment of district mental health councils was not operationalized.

The Act has now been overtaken by the 2010 Constitution and requires a total overhaul in order to conform to the aspirations of the new constitutional order especially the rights based framework which is the opposite of the bio-medical model perpetuated by the 1989 Act. It now requires a total overhaul in order to conform to the aspirations of the current constitutional order especially the rights based framework which is the opposite of the bio-medical model perpetuated by the 1989 Act.

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There are other similar legislations that have complicated mental healthcare services in Kenya as they all have clauses touching on mental health. Some of these legislations include the Criminal and Procedures Code, Cap 75 of 2018, the Prisons Act 2017, the Children's Act 2017, Sexual Offences Act 2014, The Marriage Act, 2014 and the Female Genital Mutilation Act, 2012.

Despite the existence of these numerous legislations patients with mental health challenges have continued to experience human rights violations. Examples of these violations include; being restrained and isolated in hospitals, discrimination and stigma, allocation of little resources to mental health care, inadequate investment in research, training, recruitment and retention of mental health workers and general poor mental health infrastructural development in the country.

3. The Kenya Mental Health Policy 2015-2030

Kenya's Mental Health Policy was launched in 2016 and is currently under implementation albeit in a slow manner. It recognizes mental health as a key determinant of overall health and socio-economic development in the country.

The policy seeks to address the systematic challenges, emerging trends and mitigate the burden of mental health problems and disorders. This includes; addressing mental health issues in relation to leadership and governance, health services, human resources, health financing, infrastructure, health products and technologies, health information system and research, advocacy and partnerships.

Though the policy is comprehensive, it lacks sufficient financial commitments from the government. The policy has neither stated the amounts nor has there been increased budget allocation for mental health in the last five financial years. In an effort to develop adequate human expertise in the mental health sector, the policy recommends training community health workers and general staff in hospitals on mental health.

The Ministry of Health at the time of the study had begun to draft the Mental Health Plan 2017 – 2021. This plan is still at draft level as explained by the mental health directorate. The Ministry of Health was also to begin integration of mental health into the Health Information System (HIS), mental health tools development, and monitoring and evaluation framework for mental health services.

The policy has also called on the government to develop guidelines and standards on promotion, prevention, care, treatment and rehabilitation of persons with mental neurological and substance abuse disorders. By conclusion of the study none of these policy issues had been concluded.

4. The Kenya Health Act, 2017

The Health Act, 2017 was signed into law June 22, 2017 and its operationalization commenced henceforth. The purpose was to establish a unified health system, coordinate the interrelationship between the national government and the county government health systems, to provide for regulation of health care service, and health care service providers, health products and health technologies and for connected purposes.

The Health Act, 2017 recognized the need for development of a separate Mental Health Law. This was advocated by the Directorate of Mental Health, Ministry of Health in order to provide an opportunity to develop an all-encompassing mental health law.

According to the Directorate of Mental Health, Ministry of Health, a Technical Working Group has been put in place and is working to fulfill the requirement of the health Act. The Technical Working Group however, is yet to commence the discussions on whether the Ministry of Health should amend, develop several laws or repeal the existing Mental Health law.

Data from civil society organisations nonetheless, showed that, over the last five years there have been attempts to develop a new mental health law. In deed the process went further culminating with development of Mental Health Bill, 2014.The mental Health Bill, 2014 could not be enacted into a law as the health law had not been passed in order to give the basis for enactment of other health laws such as the Mental Health Law. The mental health services and programs will largely continue to be guided by the moribund mental health Act of 1989 until Parliament enact a new mental health law.

5. International Human Rights Instruments

The Constitution of Kenya under Article (2) (5) and (6) recognizes the general rules of the international law as part of Kenya law and any treaty or convention ratified by Kenya as part of law in Kenya. One of the key international instruments that safeguard the right to mental health is United Nations Convention on the Rights of Persons with Disabilities (CRPD). It seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by people with disabilities and to promote respect for their inherent dignity.

The government has the duty to meet all the obligations as provided by CRPD including costed mental health plans and allocate resources including financial, technical, and human and infrastructure for mental health care services.

Mental and neurological disorders were recognized during the United Nations General Assembly of September 2011 as important causes of morbidity and that they contribute to the global non communicable diseases burden. Governments including Kenya's were called upon to intensify their efforts towards reducing risk factors and creating health promoting environments, strengthen national policies and health systems among others to prevent and control non-communicable diseases including mental health disorders.

Further, in 2015, Kenya joined global community in endorsing the 2030 Sustainable Development Goals (SDGs). SDGs obligate the states to reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being and strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol.

Nonetheless, mental health services in Kenya are lagging behind with inadequate awareness, stigma and discriminations, inadequate investments and policy frameworks despite existent of this high level political commitment.

Recommendations

a) **Mental health policies and legislations**: Although Kenya has some polices and legislation supportive of mental health, the current mental health Act no 10 of 1989 is not in tandem with the supreme law (Constitution 2010) making its implementation unrealistic. There is also total lack of the full implementation of the enabling laws on mental health leading to consistent discrimination and violations of the rights of persons experiencing mental ill-health. The national government should ensure a new mental health law is enacted as provided for by the Health Act, 2017.

b) **International and regional obligations on mental health**. The need to advocate and hold the government accountable on international commitments is paramount. Civil society organizations should prepare shadow reports to make comments on progress made by State in meeting international obligations with a focus to provision of comprehensive stigma free mental health services.

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