

Position Statement: The Mental Health Bill, 2014, and the Report of the Sectoral Committee on Health

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Addressed to: Honourable Members of Parliament, Uganda

Summary

This position, which has been adopted by a coalition of organisations of persons with disabilities (OPDs), representatives of civil society and persons with mental disabilities in Uganda, responds to the Report of the Ugandan Parliamentary Sectoral Committee on Health on the Mental Health Bill, 2014.

This coalition believes that the Bill and recommendations of the Sectoral Committee would result in passage of a fundamentally flawed piece of legislation which would result in human rights violations, failure to ensure access to mental health treatment on the basis of consent for the majority of the population, and undermines dignity, social inclusion and equality.

The Bill does not command the support of civil society. It does not command the support of persons with mental disabilities, nor organisations of persons with disabilities. It is a missed opportunity to fundamentally reform mental health service provision in the country. As such, it should not be passed in its current form.

The Bill requires fundamental reform with the close participation of persons with disabilities, their representative organisations and wider civil society. We therefore call for:

- (i) the Bill to be returned to the Sectoral Committee on Health;
- (ii) the Bill to be reviewed by the Standing Committees on Human Rights and Equal Opportunities, and the Sectoral Committee on Gender, Labour and Social Development;
- (iii) a national consultation exercise on reform of mental health to be launched; and
- (iv) the Government of Uganda to request technical assistance from the United Nations Committee on the Rights of Persons with Disabilities under Article 36 of the Convention on the Rights of Persons with Disabilities, with a view to amending the proposed legislation in line with international human rights law.

The Mental Health Bill, 2014

We believe that the Mental Health Bill, 2014:

- (1) Is replete with discriminatory and derogatory language which attacks the dignity of persons with mental disabilities as citizens of Uganda;
- (2) Would legalise abusive practices which breach the human rights of persons with mental disabilities including involuntary detention, forced treatment, seclusion, restraint, electro-convulsive therapy (ECT), and denial of the right to provide informed consent to treatment on the basis of a flawed notion of “best interests”;
- (3) Fails to legislate for the development of community-based mental health and other services for persons with mental disabilities, insufficiently addressing the “mental health gap” which affects persons with mental disabilities across the country and denies their right to health enshrined in the Constitution (Article XIV § b);
- (4) Conflicts with National Objectives and Directive Principles of State Policy enshrined in the Constitution, notably protection of human rights and other fundamental rights (Article V) and recognition of the dignity of persons with disabilities (Article XVI);
- (5) Is based on an outdated biomedical model of disability which neglects the fact that persons with mental disabilities are equal members of society, breaching the rights to equality and freedom from discrimination under the Constitution (Articles 21 and 35); and
- (6) Conflicts with Uganda’s obligations under international human rights law, notably the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), and specifically the rights to equality and non-discrimination (Article 5), liberty and security of person (Article 14), freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15), freedom from exploitation, violence and abuse (Article 16) and integrity of the person (Article 17).

The Report of the Sectoral Committee on Health

Whereas aspects of the Sectoral Committee’s Report are welcomed, notably the need to ensure sensitisation of the public (section 4.3), regulation of alternative treatments (section 4.4), the need to integrate mental health care at the primary level, and the recognition of the concept of legal capacity (Clause 44 as proposed by the Sectoral Committee), the Report:

- (a) Correctly notes that the Mental Treatment Act, 1964, is fundamentally flawed in that it is based on confinement and fails to protect the human rights of persons with mental disabilities (section 2.0);
- (b) Fails to address the fact that the Mental Health Bill, 2014, maintains a highly coercive model of mental health “care” which will continue to allow for confinement, coercion, forced detention and forced treatment; and that the Bill is in fact premised upon a biomedical model of mental health which conflicts with international human rights standards including the CRPD;

- (c) Refers to the World Health Organization’s (WHO) *Quality Rights Tool Kit on assessing and improving quality and human rights in mental health and social care facilities*, yet ignores the fact that the Tool Kit states that mental health care must abide by human rights standards set out in the CRPD; and further that the Tool Kit states the official position of the WHO that “psychiatric and other long-stay inpatient facilities have long been associated with poor-quality care and human rights violations [...] For this reason, the World Health Organization (WHO) recommends that countries progressively close down this type of facility and instead establish community-based services and integrate mental health into primary care services and the services offered by general hospitals”¹;
- (d) Wrongly advances the position that “mental illness” should be the term used in legislation, incorrectly distinguishing between persons regarded as “mentally ill” and those with disabilities, a position which conflicts with the jurisprudence of the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) and which deeply stigmatises persons with mental disabilities;
- (e) Correctly recognises that stigma and discrimination have severe consequences for people with mental disabilities throughout Uganda (section 4.5), yet fails to recognise that such forms of stigma and discrimination underpin the proposed Mental Health Bill, 2014, rendering the Bill fatally flawed;
- (f) Correctly advocates for the development of Community Mental Health Service Delivery (CMHSD), yet fails to address the fact that the Mental Health Bill, 2014, undermines this objective as it is almost purely focused on institutional psychiatric care;
- (g) Wrongly advocates in favour of the detention and compulsory admission of persons with mental disabilities in psychiatric facilities, in violation of the rights to equality and liberty; therefore, wrongly argues for increased funding for the police to exercise such powers; and appears to criminalise persons with mental disabilities; and appears to criminalise self-discharge from hospital by terming it as “escape”;
- (h) Fails to acknowledge that deprivation of liberty on the grounds of actual or perceived mental illness is unjustified, a position which has been authoritatively stated by the UN Special Rapporteur on Torture, Inhuman and Degrading Treatment or Punishment,² the CRPD Committee,³ and more recently in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities;

¹ Available online at

http://apps.who.int/iris/bitstream/handle/10665/70927/9789241548410_eng.pdf;jsessionid=27EF4CE366CB4DD6D887F66548B1987A?sequence=3, page 3.

² United Nations, General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53* (1 February 2013), available from https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf, para. 69.

³ United Nations, Committee on the Rights of Persons with Disabilities, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities* (September 2015), available from <https://www.ohchr.org/Documents/HRBodies/CRPD/14thsession/GuidelinesOnArticle14.doc>, ‘Chapter III: The absolute prohibition of detention on the basis of impairment’.

- (i) Wrongly advocates in favour of electroconvulsive therapy (ECT), which can be applied without the voluntary consent of the person concerned, a position which represents a grave violation of human rights potentially amounting to torture;
- (j) Incorrectly calls for seclusion and restraints in psychiatric facilities to be regulated rather than banned, a position which contradicts clear recommendations of the UN CRPD Committee to the Government of Uganda to “ban forced hospitalization and forced treatment and other non-consensual practices” and to “ensure that the Mental Health Bill, 2014, is in compliance with the Convention [on the Rights of Persons with Disabilities]”⁴;
- (k) Wrongly proposes the insertion of Clause 9 on involuntary admission and treatment, despite the fact that both of these violate international human rights law; and
- (l) Has failed to address the serious concerns raised by persons with mental disabilities, organisations of persons with disabilities (OPDs) and other civil society organisations in the preparation of this Bill, which has lacked proper consultation.

Explanation

This coalition is led by Mental Health Uganda (MHU), a user-led organisation that advocates for the rights of persons with mental disabilities in Uganda and is a member of the National Union of Disabled Persons of Uganda (NUDIPU). MHU has long advocated for the reform of mental health care in Uganda to ensure respect for the rights of persons with mental disabilities, particularly those set out under the United Nations (UN) Convention of the Rights of Persons with Disabilities (CRPD), which Uganda ratified in 2009.

Since 2009, MHU and other organisations of persons with disabilities (OPDs) under the umbrella of NUDIPU have continuously provided information, advice and guidance on the development of a new legislative framework, including through mobilising the input of persons with mental disabilities. In addition, MHU has been at the forefront of investigating human rights violations perpetrated against persons with mental disabilities in Uganda, both in psychiatric facilities and at the community level.⁵

Despite extensive evidence of serious human rights violations, including at Butabika National Mental Referral Hospital as recently as last year,⁶ and the urgent need for legislation to be amended, we believe that the Mental Health Bill as proposed will do little to ameliorate the situation. It must be noted that the Bill was drafted with minimal involvement from civil society under the Ministry of Health. While the

⁴ United Nations, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Uganda*, CRPD/C/UGA/CO/1 (12 May 2016), available from <http://undocs.org/CRPD/C/UGA/CO/1>, paras. 29(b), (c).

⁵ MHU and MDAC, *Psychiatric hospitals in Uganda: A human rights investigation* (2014), available from http://www.mdac.org/sites/mdac.info/files/psychiatric_hospitals_in_uganda_human_rights_investigation.pdf; MHU and MDAC, *“They don’t consider me as a person”: Mental health and human rights in Ugandan communities* (2014), available from <http://bit.ly/1wfpYPR>.

⁶ MDAC, *Breaking Point: Findings from a visit to Butabika National Mental Referral Hospital, Uganda* (2017), available from http://mdac.org/sites/mdac.info/files/breaking_point_butabika_-_mdac_june_2017.pdf.

Sectoral Committee on Health has taken evidence from some representatives of civil society, this is not reflected in the Report which has now been laid before Parliament.

The Bill has now gone through the First and Second readings, and the Report of the Sectoral Committee on Health will be presented at Committee stage on 11 September 2018. Unfortunately, the Report fails to acknowledge serious concerns advanced by persons with disabilities and their representative organisations, including: (i) the lack of a framework for the development of community-based mental health services; (ii) the acceptance of seclusion, restraints and other abusive practices which must be banned; (iii) the proposal to allow the continued forced admission and forced treatment of persons with disabilities, and the application of dubious practices such as electroconvulsive therapy (ECT) without consent; and (iv) the derogatory and discriminatory terminology used throughout the Bill, along with proposals to increase the powers of police which will have the effect of further stigmatising people with mental disabilities.

The well-documented human rights violations faced by persons with mental disabilities flow from the failure to invest in developing a framework of community-based services. Instead of this, there has been a significant bias towards investment in institutional forms of psychiatry based on the application of treatment without consent, which denies dignity, autonomy and the right to health on the basis of informed consent. It also violates the right to legal capacity, which means the rights of people to make legally-effective choices in their lives, including in respect of health treatment decisions. The result is that practices such as seclusion, restraints and forced medication are commonplace in psychiatric hospitals.

Beyond breaching human rights, these practices also lack therapeutic effect, and we believe that they actually stand in the way of supporting the recovery of persons with mental disabilities.

Key to this is the widespread discrimination and stigma faced by persons with mental disabilities. We welcome the Sectoral Committee's recommendations to increase sensitisation in society, as well as promoting increased understanding of the human rights of all Ugandans with mental disabilities.

But ending stigma and discrimination cannot be achieved when the law itself adopts discriminatory language and denies people their autonomy. Unfortunately, this is precisely what the Mental Health Bill, 2014, does and it is therefore unfit for purpose.

We are deeply shocked that the Committee has recommended that increased funding should be made to the police to allow them to arrest a person who they think has a mental illness and take them to hospital. We are aware of several reports of the police harassing persons with mental disabilities and forcefully taking them to hospital.

Expanding the powers of the police reinforces the notion that people with mental health issues are criminals and violent people; which is simply untrue. This is criminalisation of disability and amounts to discrimination. In fact, people with mental disabilities are significantly more likely to be victims of abuse, crime, exploitation and violence, than to be perpetrators.

The World Health Organization (WHO) in its *Mental Health Legislation and Human Rights Guidelines* has stated that seclusion and any form of restraint cannot be regarded as 'treatment' and their use should be discouraged. Further, ECT can only be used in its modified form and after clear informed consent from the person who is to undergo this form of treatment. There is no room for any form of treatment to be applied against a person's will. It is therefore unacceptable that the Bill proposes to allow these abusive practices.

The Sectoral Committee on Health has further recommended that involuntary treatment should be allowed in the "best interest" of the persons. This both undermines the right to provide informed consent to health treatments and undermines the good practices which already exist in the country to provide treatment voluntarily. An example can be found in Mbarara where even persons in acute crisis are admitted voluntarily through negotiation with the person concerned, where they are provided with information and are encouraged to provide their informed consent. The Regional Mental Health Referral Unit at Mbarara Hospital has no seclusion rooms and staff seek consent before treating persons with mental disabilities. A person with mental disability should be allowed to voluntarily walk into a hospital and leave when they want. Instead of involuntary admission, support should be provided to enable the person make a decision to be admitted and given care according to his or her will and preference. This is in line with the World Health Organization's Guidelines.

Conclusion

At the present time, the Mental Health Bill, 2014, is fatally flawed.

While the Sectoral Committee on Health has pointed to some important weaknesses, its Report fails to address the fundamental concerns addressed by Ugandan civil society which relate to equality, human rights, dignity and social inclusion for persons with mental disabilities.

The Bill does not command the support of civil society. It does not command the support of persons with mental disabilities, nor organisations of persons with disabilities. It is a missed opportunity to fundamentally reform mental health service provision in the country. As such, it should not be passed in its current form.

We therefore call on Honourable Members of Parliament to:

- (i) Return the Mental Health Bill, 2014, to the Sectoral Committee on Health, with a recommendation that the concerns raised in this Position Paper are fully addressed, and that a further Report be tabled before the House;
- (ii) Send the Mental Health Bill, 2014, to the Standing Committees on Human Rights and Equal Opportunities, and the Sectoral Committee on Gender, Labour and Social Development, requesting that they review the Bill, and table Reports to the House;

- (iii) Resolve that there should be a national consultation on reforming mental health in Uganda seeking the input of persons with mental disabilities, their representative organisations and wider civil society, under the auspices of the Ministry of Gender, Labour and Social Development, and that a Report on the outcomes of this should be tabled before the House; and
- (iv) Resolve that technical assistance on the reform of mental health legislation should be sought by the Government from the United Nations Committee on the Rights of Persons with Disabilities under the United Nations Convention on the Rights of Persons with Disabilities.

Signed by:

- Mental Health Uganda (MHU)
- Validity Foundation – Mental Disability Advocacy Centre (MDAC)
- National Union of Disabled Persons of Uganda (NUDIPU)
- National Union of Women with Disabilities of Uganda (NUWODU)
- Uganda Parents of Persons with Intellectual Disabilities (UPID)
- East Africa Centre for Disability Law and Policy (EA-CDLP)
- Epilepsy Support Association Uganda (ESAU)