



Official Gazette

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GOVERNMENT NOTICES

The following Government Notice is published by Order of the President.

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GAZETTE SUPPLEMENTS

The following Acts are published as Legal Supplements to this number of the Official Gazette.

Gazette	Description	Price
74	Digitization and Publication of Gazette Act, 2020. (Act 23 of 2020)	9.00
	Elections (Amendment) Act, 2020. (Act 24 of 2020)	12.50
	Political Parties (Registration and Regulation) (Amendment) Act, 2020. (Act 25 of 2020)	6.00
	Mental Health Care Act, 2020. (Act 26 of 2020)	28.00

**POLITICAL PARTIES (REGISTRATION AND REGULATION)
(AMENDMENT) ACT, 2020**

(Act 25 of 2020)

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title and commencement
2. Amendment of section 3 of Cap 173
3. Amendment of section 5
4. Amendment of section 7
5. Amendment of section 24
6. Amendment of section 29



POLITICAL PARTIES (REGISTRATION AND REGULATION) (AMENDMENT) ACT, 2020

(Act 25 of 2020)

I assent

A blue ink signature of Danny Faure, the President of the Republic of Seychelles.

Danny Faure
President

17th August, 2020



AN ACT to amend the Political Parties (Registration and Regulation) Act (Cap 173).

ENACTED by the President and the National Assembly..

1. This Act may be cited as the Political Parties (Registration and Regulation) (Amendment) Act, 2020 and shall come into operation on such date as the President may, by notice in the *Gazette*, appoint.

Short title and commencement

Amendment of
section 3 of
Cap 173

2. Section 3 of the Political Parties (Registration and Regulation) Act (*Cap 173*) (hereinafter referred to as the “principal Act”) is amended, in subsection (1), by repealing the words “political party”, and substituting therefor the words “political party, the symbol, logo and the acronym of the party”.

Amendment of
section 5

3. Section 5 of the principal Act is amended, by inserting after subsection (4), the following subsections —

“(5) The Electoral Commission shall acknowledge receipt of the application for registration accompanied with the documents required under subsection (2), within 7 days of such receipt.

(6) The Electoral Commission shall assess the application and the accompanying documents and verify the details of registered members of the party.

(7) The Electoral Commission shall, within a period of 30 days from the receipt of the application for registration, inform the political party in writing if any further information is required.

(8) The Electoral Commission shall, if satisfied that the application and the accompanying documents meets the requirements of this section, publish for a period of 30 days, the application for registration of the political party on its website and at all registration centres for the public to make comments or objections.

(9) Any objections may be made in writing not later than 7 days after the expiry of the period of 30 days referred to in subsection (8).

(10) If any objection is received under subsection (9), the Electoral Commission shall notify the objection to the political party and invite it to respond.

(11) If no response is received from the political party, within a period of 15 days of the notice under subsection (10), the Electoral Commission shall reject the application for registration.

(12) If a response to the objection is received, within a period of 15 days of the notice under subsection (10), and the Electoral Commission is satisfied with the response, the Electoral Commission shall within a period of 15 days from the date of the response make a decision on the application under this Act.”.

4. Section 7(1) of the principal Act is amended —

Amendment of
section 7

(a) in paragraph (b), by repealing the word “name” wherever it appears, and substituting therefor the words “name, logo or acronym”;

(b) by replacing the full stop at the end of paragraph (c) with a semicolon and inserting after paragraph (c), the following paragraph —

“(d) the name of a person has been endorsed as a registered member in the application for registration of the party without the consent or knowledge of the person.”.

5. Section 24 of the principal Act is amended —

Amendment of
section 24

(a) in subsection (3) —

(i) in paragraph (b), by repealing the word “or”, and substituting therefor the word “and”;

- (ii) in paragraph (c), by inserting after the words “expenditure was incurred”, the words “the value of which exceeds R5,000”;
- (b) by repealing subsections (3A) and (3B);
- (c) by inserting after subsection (6), the following subsections —

“(7) The Electoral Commission shall, on receipt of the statement and its review under subsection (5A), maintain the records of such statements and the review and may, from time to time, issue public reports disclosing the total funds received by each candidate or political party and the number of persons from whom such funds were received.

(8) Where the total funds received from a person exceeds R50,000, the details of the disclosure made in the statement under this section shall be made public and posted on the website of the Electoral Commission.”.

Amendment of
section 29

6. Section 29 of the principal Act is amended —

- (a) in subsection (3), by repealing the words “received immediately after the close of nomination for that election such sum out of the Fund as is equal to the lowest sum paid to a political party under subsection (2)”, and substituting therefor the words “receive, such amount to be calculated prorata on the lowest sum payable to a political party under subsection (2), from the date of nomination of its candidates to the end of the quarter in which the general election is to be held”;

- (b) by repealing subsection (4), and substituting therefor the following subsections —

“(4) The sum each political party is entitled to receive under subsection (2) or subsection (3) may be paid quarterly in advance on or before 30th January, 30th April, 31st July and 31st October or in such manner and at such times as the Commission may, in consultation with the political party, determine.

(5) Notwithstanding subsection (4), in an election year, the amount to be paid to political parties under subsection (2) shall be paid in advance for the quarter in which the general election is to be held.

(6) Following the results of the general election of the National Assembly, the amount to be paid to political parties shall be re-calculated proportionally according to the total number of valid votes cast in favour of the candidates nominated by that party for the immediately preceding general election of the National Assembly.

(7) The amount payable shall be proportional to the number of votes cast in favour of those candidates against the total number of valid votes cast at the last general election of the National Assembly.

(8) The amount payable shall be calculated prorata from the first day of the quarter after which the general election was held to 31st December of that year and any payment may be made quarterly in accordance with subsection (2).”.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 6th August, 2020.

A handwritten signature in black ink, appearing to read 'T Isaac', written in a cursive style.

Mrs. Tania Isaac
Clerk to the National Assembly

DIGITIZATION AND PUBLICATION OF GAZETTE ACT, 2020*(Act 23 of 2020)***ARRANGEMENT OF SECTIONS****SECTIONS**

1. Short title and commencement.
 2. Interpretation.
 3. Establishment of a Gazette Website.
 4. Publication and certification of Gazette.
 5. Appointment of Editor of the Gazette.
 6. Power to authorize publication in the Gazette.
 7. Publication of consolidated indexes of Acts, subsidiary legislations and Bills.
 8. Status of matters published in the Gazette.
 9. Past and future publication of the Gazette.
 10. President may authorize revised reprints of written laws.
 11. Status of revised reprints of written laws.
 12. Offences and penalties.
 13. Regulations.
 14. Consequential amendments.
- Schedule 1



**DIGITIZATION AND PUBLICATION OF GAZETTE
ACT, 2020**

(Act 23 of 2020)



I assent

A blue ink signature of Danny Faure.

Danny Faure
President

12th August, 2020

**AN ACT to provide for the digitization and publication of
the Gazette; and to provide for matters incidental thereto.**

ENACTED by the President and the National Assembly.

1.(1) This Act may be cited as the Digitization and
Publication of Gazette Act, 2020.

Short title and
commencement

(2) This Act comes into operation on such date as the
Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“Act” means —

- (a) an Act made under article 86 of the Constitution; and
- (b) any Act, Decree or Order in Council having effect as part of the laws of Seychelles by virtue of section 15 of the Constitution of the Republic of Seychelles Decree, 1979, or any other written law;

“Bill” means a Bill for an Act that is intended to be introduced into the National Assembly for consideration and possible enactment;

“Clerk” means the Clerk to the National Assembly;

“Editor” means the person appointed under section 5 to be editor of the Gazette;

“Gazette” has the meaning assigned to it under Schedule 2 of the Constitution and includes the Official Gazette, Supplement to the Official Gazette and Extraordinary Gazette published under the authority of the Government in printed form or in digital form;

“Government Printer” means any printer, for the time being, authorized by the Minister to print the Gazette;

“Law Revision Commissioner” means the Commissioner appointed under the Statute Law Revision Act, Cap. 231;

“Minister” means the Minister responsible for legal affairs;

“Standing Orders” mean the rules of practice and procedure of the National Assembly made under article 101 of the Constitution;

“statutory document” means a notice, report or any other document issued under an Act or subsidiary legislation to give notice, notification or general information of an executive character but which does not form part of the laws of Seychelles;

“subsidiary legislation” means any legislative or statutory instrument made in exercise of any power conferred by the National Assembly on a person or an authority by an Act to make subsidiary legislation, by way of proclamation, regulation, rule, order, rule of court, by-law, notification, resolution, notice or other instrument having the force of law;

“website” means a website of the Government established under section 3 for the purposes of publishing the Gazette.

3.(1) For the purposes of the digitization and publication of the Gazette, the Minister shall establish a website where the Gazette shall be published.

Establishment
of a Gazette
Website

(2) A publication of the Gazette on the website established under subsection (1) is a publication of the Gazette under the authority of the Government.

4.(1) Every publication of the Gazette shall be published by the Government Printer in digital format on the website.

Publication and
certification of
Gazette

(2) A printed form of the Gazette may be published by the Government Printer as directed by the Attorney General.

(3) The Attorney General or the Editor may, on a request made by any person who has paid the prescribed fee,

certify whether a printed form of a Gazette was published under the authority of the Government.

Appointment
of Editor of
the Gazette

5.(1) The Attorney General shall appoint an Editor of the Gazette, who shall be responsible for the preparation and management of the Gazette.

(2) The Attorney General shall appoint such other officers as are considered necessary to assist the Editor in the performance of the Editor's duties.

(3) The Editor shall work under the direction and control of the Attorney General.

Power to
authorize
publication in
the Gazette

6.(1) The Vice-President, a Minister or a member of the National Assembly shall cause a Bill to be published in Gazette pursuant to the Standing Orders.

(2) The President shall, as soon as practicable, cause a Bill which has been passed by the National Assembly and assented to by the President, or an Act deemed to have been assented to by the President in accordance with the Constitution, to be published in the Gazette, whereupon it shall become law, on the date of publication or such other date as may be prescribed in the Act.

(3) Where an Act confers power on a person or an authority to make subsidiary legislation, that person or authority may forward a signed physical copy and a digital copy of the subsidiary legislation to the Attorney General, and the Attorney General may instruct the Editor to publish the subsidiary legislation in the Gazette.

(4) Where any law in force in Seychelles requires the publication of any statutory document such statutory document shall be published in the Gazette, and such publication is deemed to be due publication and shall be judicially noticed.

(5) The Attorney General may cause any notice, document, paper, agreement, international convention or such other written material which, in the opinion of the Cabinet, is in the public interest, to be published in the Gazette.

7. As soon as practicable after 1 January in every year, the Attorney General, on the advice of the Law Revision Commissioner and the Clerk, shall direct the Editor to publish in the Gazette an annual index of all Bills, Acts and subsidiary legislation published in the Gazette between the period 1 January and 31 December of the preceding year.

Publication of consolidated indexes of Acts, subsidiary legislations and Bills

8. Every copy of the Gazette, whether published on the website or printed by the Editor, shall be judicially noticed and is admissible in evidence in legal proceedings without any proof being given that the copy was so published until the contrary is shown.

Status of matters published in the Gazette

9.(1) All printed copies of the Gazette, printed before the coming into operation of this Act are declared to have been and are deemed to be issues of the Gazette legally printed and published, and shall have effect and be receivable in evidence accordingly.

Past and future publication of the Gazette

(2) The Editor may publish any Gazette, Bill, Act, subsidiary legislation or statutory document printed prior to the commencement of this Act on the website.

10. Whenever it is necessary to publish a reprint of any Gazette, the President may, by Order published in the Gazette, authorize the Attorney General —

President may authorize revised reprints of written laws

- (a) to reprint any Gazette on the website and include in that reprint any alteration, amendment or modification made in any Bill, Act, subsidiary legislation or statutory document; and

- (b) to correct in that reprint any grammatical or typographical error and similar errors in a written law or statutory document and, for that purpose, to make additions, omissions or alterations not affecting the meaning of a written law.

Status of
reprints of
written laws

11. Every copy of any published reprint of any written law which has been revised for reprinting pursuant to an Order of the President under section 10 is deemed to be an authentic and a correct copy of that written law in force in Seychelles on the date of such reprinting provided that such date is printed on each copy and provided further that each such copy purports to be printed by the Government Printer by authority of an Order of the President made under this Act.

Offences
and
penalties

12. Any person who —

- (a) prints any paper which falsely purports to be a duly authorized copy of the Gazette;
- (b) wilfully causes to be published in the Gazette any false or inaccurate matter;
- (c) tenders in evidence any such paper falsely purporting to be the Gazette, knowing that the paper was not duly printed or published by the Editor;
- (d) contravenes any regulation made under this Act,

commits an offence and is liable on conviction to a fine not exceeding SCR 50, 000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

Regulations

13. The Minister may by regulations —

- (a) determine the manner, form, times and occasions in and or which the Gazette is published;
- (b) prescribe the fees and charges for a subscription to the Gazette;
- (c) prescribe the charges for publication of statutory documents, notices, advertisement and other documents;
- (d) prescribe fees for the certification of Gazette publications;
- (e) prescribe any other matter necessary for the due administration of this Act.

14. The Interpretation and General Provisions Act, Cap. 103, is amended to the extent specified in Schedule 1.

Consequential
amendments.
Cap 103

SCHEDULE 1

(Section 14)

CONSEQUENTIAL AMENDMENTS

1. The Interpretation and General Provisions Act, Cap. 103, is amended as follows —
 - (a) by repealing the words “People's Assembly”, wherever they appear in the Act, and substituting therefor the words “National Assembly”;
 - (b) in section 22 —
 - (i) by repealing the word “Act” and its definition, and substituting therefor the following —
““Act” means —

-
- (a) an Act made under article 86 of the Constitution; and
- (b) any Act, Decree or Order in Council having effect as part of the laws of Seychelles by virtue of section 15 of the Constitution of the Republic of Seychelles Decree, 1979, or any other written law;”
- (ii) by repealing the terms “Assembly” or “People's Assembly” and their definition, and substituting therefor the following in the proper alphabetical order —
- ““National Assembly” means the National Assembly established under article 77 of the Constitution;”
- (iii) by repealing the word “Gazette” and its definition, and substituting therefor the following —
- ““Gazette” has the meaning assigned to it under Schedule 2 of the Constitution and includes the Official Gazette, Supplement to the Official Gazette and Extraordinary Gazette published under the authority of the Government in printed or in digital form;”
- (iv) by repealing the word the term “statutory instrument” and its definition, and substituting therefor the following —
- ““statutory instrument” or “subsidiary legislation” means any legislative or statutory instrument made in exercise of any power conferred by the National Assembly on a

person or an authority by an Act to make subsidiary legislation, by way of proclamation, regulation, rule, order, rule of court, by-law, notification, resolution, notice or other instrument having the force of law;”

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 22nd July, 2020.



Mrs. Tania Isaac
Clerk to the National Assembly

ELECTIONS (AMENDMENT) ACT, 2020*(Act 24 of 2020)***ARRANGEMENT OF SECTIONS****SECTIONS**

1. Short title and commencement
2. Amendment of section 2 of Cap 262
3. Amendment of section 3
4. Amendment of section 5
5. Amendment of section 7
6. Insertion of new section 7A
7. Amendment of section 9
8. Amendment of section 15
9. Substitution of new section for section 15A
10. Amendment of section 20
11. Amendment of section 21
12. Amendment of section 23
13. Amendment of section 25
14. Amendment of section 29
15. Amendment of section 34
16. Amendment of section 51
17. Amendment of section 94
18. Insertion of new section 94A
19. Insertion of new section 97A



ELECTIONS (AMENDMENT) ACT, 2020

(Act 24 of 2020)

I assent

A handwritten signature in blue ink, appearing to read "Danny Faure".

Danny Faure
President

17th August, 2020



AN ACT to amend the Elections Act (*Cap 262*).

ENACTED by the President and the National Assembly..

1. This Act may be cited as the Elections (Amendment) Act, 2020 and shall come into operation on such date as the President may, by notice in the *Gazette*, appoint.

Short title and commencement

Amendment of
section 2 of
Cap 262

2. Section 2 of the Elections Act (*Cap 262*) (hereinafter referred to as the “principal Act”) is amended —

(a) by inserting after the definition of “Presidential Election”, the following definition —

‘ “rejected ballot paper” means a ballot paper rejected under section 34(2);’;

(b) by inserting after the definition of “Reside”, the following definitions —

‘ “spoiled ballot paper” means a ballot paper which on polling day has not been deposited into the ballot box but has been found by the Electoral Officer to be spoiled, improperly printed or has been spoiled by the voter and handed back to the Electoral Officer in exchange for another ballot paper;

“total votes cast” or “total votes polled” means the total number of ballot papers found in the ballot box at the time of an election or referendum;

“valid votes cast” means the total number of ballot papers found in the ballot box, minus those ballot papers that are unmarked or so improperly marked that in the opinion of the Electoral Officer they cannot be counted and which are classified as rejected ballot papers;

“votes cast in favour of a candidate” means all valid votes cast in favour of a candidate, found in the ballot box at the time of an election.’.

Amendment of
section 3

3. Section 3 of the principal Act is amended —

(a) in subsection (1)(d), by repealing the words “Assistant Electoral Officers”, and substituting

therefor the words “Deputy Electoral Officers and Assistant Electoral Officers”;

- (b) by inserting after subsection (8), the following subsection —

“(9) Every person appointed to the Electoral Commission shall be of proven integrity and shall not demonstrate partisanship to any person or political party.”.

4. Section 5(1) of the principal Act is amended, by inserting after the words “resides in an electoral area”, the words “and possesses a National Identity Card issued in the person's favour under the National Identity Cards Act (*Cap 294*)”.

Amendment of
section 5

5. Section 7 of the principal Act is amended, by inserting after subsection (4), the following subsection —

Amendment of
section 7

“(4A) For the purpose of subsection (4)(a), —

- (a) the Chief Registration Officer shall, on 31st December in every year, prepare, from the register of voters, a list of all voters attaining the age of 100, on or before that date, for each electoral area;
- (b) the list prepared under paragraph (a) shall be checked and a verification of residence and presence of all such voters shall be carried out in accordance with paragraphs 7 and 8 of Chapter I of Schedule 3;
- (c) if, during the verification under paragraph (b), the voter is found, no action shall be taken and the name of the voter shall remain on the register of voters;

- (d) if, during the verification under paragraph (b), any such voter is not found, a list of all such voters, containing their identity numbers, names and surnames, date of birth and the page and serial number as they appear in the register of voters, shall be prepared for each electoral area and kept at every administrative district and at such other places as may be considered necessary by the Electoral Commission for public reference;
- (e) a list of voters prepared under paragraph (d) shall be published in a local newspaper, and a copy thereof shall be provided to every political party, indicating that the name of persons referred to in this subsection shall be deleted from the register unless it is ascertained that they are not yet deceased;
- (f) any person who is aware that any of the persons listed on the list of voters prepared under paragraph (d) is still alive may make an objection against the deletion within 14 working days from the date of the first publication;
- (g) if any voter in the list prepared under paragraph (d) is not found by 31st March, the entry of such voter shall be removed from the register of voters and the register shall be certified in accordance with section 9(1);
- (h) any person whose name is deleted under this section and who, it later transpires, is still alive, shall be reinstated upon a written application made to the Commission and upon the Commission being satisfied that the person is qualified to be registered.”.

6. The principal Act is amended, by inserting after section 7, the following section —

Insertion of new section 7A

Voters' census

“7A.(1) The Electoral Commission shall cause to be conducted a voters' census at five-year intervals.

(2) A notice for voters' census under subsection (1) shall be published in the *Gazette*, containing the date and the period during which the voters' census shall be held.”.

7. Section 9 of the principal Act is amended, by inserting after subsection (2), the following subsections —

Amendment of section 9

“(2A) For the purposes of facilitating the voting process in an election or referendum in alphabetical groupings, the copy of the register of voters as certified under subsection (1) may be divided into such parts as the Electoral Commission deems fit and each section shall be certified.

(2B) In case of any discrepancy in the register of voters divided into different parts under subsection (2A), the register of voters as certified under subsection (1) shall prevail.”.

8. Section 15 of the principal Act is amended —

Amendment of section 15

(a) in subsection (3), after paragraph (b), by inserting the following proviso —

“Provided that where the name of a voter has been entered in the nomination paper as an endorsement for a candidate to stand for election without the consent or knowledge of the voter, the onus of which shall lie on the voter to prove to the criminal standard, the nomination paper of the candidate shall be rejected.”;

For the purposes of this subsection, there shall be a presumption that the name of a voter in the nomination paper of a candidate was made by the voter with the voter's consent.

- (b) in subsection (4), by repealing the word “and” appearing at the end in paragraph (b) and inserting the word “and” at the end of paragraph (c); and thereafter by inserting the following paragraph —

“(d) a copy of the National Identity Card of each person endorsing the candidate to stand for election;”.

Substitution of
new section for
section 15A

9. Section 15A of the principal Act is amended by repealing it and substituting therefor the following section —

Adjournment of
nomination day
due to force
majeure

“**15A.**(1) Where proceedings on a nomination day are interrupted or obstructed by *force majeure*, the Chief Electoral Officer or the Electoral Officer, as the case may be —

- (a) may adjourn the proceedings until the following day;
- (b) shall affix a notice to that effect in a conspicuous place at the place appointed in the notice under section 14; and
- (c) shall forthwith notify the Electoral Commission and the Chief Electoral Officer of the adjournment.

(2) Where proceedings are adjourned on a nomination day under subsection (1), the hours of submission of nomination papers on the

following day shall be the same as those specified for the nomination day originally scheduled to take place.”.

10. Section 20 of the principal Act is amended, by repealing subsection (6), and substituting therefor the following subsection —

Amendment of
section 20

“(6) A candidate may appoint more than one person as a polling agent but not more than one such person shall, at any one time, be posted at a voting facility in a polling station as the polling agent of the candidate.”.

11. Section 21 of the principal Act is amended by inserting after subsection (3) the following subsection —

Amendment of
section 21

“(4) The Electoral Officer shall make special arrangements in the polling station for the aged, pregnant women and voters requiring assistance to vote.”.

12. Section 23 of the principal Act is amended —

Amendment of
section 23

(a) by renumbering the section (1), and adding a new subsection to read —

“(2) The ballot paper shall be perforated to facilitate removal from the stub and each stub shall have a serial number.”.

13. Section 25 of the principal Act is amended —

Amendment of
section 25

(a) in subsection (1) —

(i) in paragraph (a) —

(A) by inserting in subparagraph (i), after the words “polling station”, the words “and follow the instructions of the Electoral Officer”;

(B) by inserting after subparagraph (ii), the following subparagraph —

“(iii) follow the queue according to the designated alphabetical grouping in which the voter's surname appears or as instructed by the Electoral Officer;”;

(ii) by repealing in paragraph (b), subparagraph (i) and substituting therefor the following subparagraph —

“(i) call out the full name of the voter and page number and line number where the voter's particulars appear in the copy of the register of voters at the polling station;”;

(b) by repealing in subsection (3), the words “incapacitated by blindness or other physical cause or otherwise or is illiterate, the voter” and substituting therefor the words “an incapacitated voter”;

(c) by inserting after subsection (3), the following subsections —

(3A) No person shall be selected under subsection (3) to assist an incapacitated voter —

(a) unless the person has attained the age of 18 years and makes a declaration in the form prescribed by the Electoral Commission;

(b) if the person is a candidate or a polling or counting agent

in the electoral area where the incapacitated voter is a voter;

- (c) for more than 2 incapacitated voters at an election.

(3B) Where an incapacitated voter is not assisted by a person, an Assistant Electoral Officer shall, at the request of the voter and with the authorisation of the Electoral Officer or the designated Assistant Electoral Officer, as the case may be, and in the presence of another Assistant Electoral Officer, cast the vote as directed by the incapacitated voter in accordance with subsection (3).

(3C) For the purposes of subsections (3), (3A) and (3B), the expression “incapacitated voter” means a registered voter who is unable, by reason of any physical or mental condition or blindness or being illiterate, to receive and evaluate information or make or communicate decisions to such an extent that the voter lacks capacity to vote without assistance.’.

14. Section 29 of the principal Act is amended —

Amendment of section 29

(i) in subsection (1), by inserting after paragraph (e), the following paragraphs —

“(f) require each Assistant Electoral Officer to count the number of marks made in the section of the register of voters under his or her control and the number of marks counted for each section of the register of voters used shall be recorded on the last page of that section and also entered in the occurrence book;

- (g) reconcile the total tally of all marks against the tally-sheet and the number of ballot papers issued for voting, excluding spoiled ballots, and make an entry in the occurrence book.”;
- (ii) by inserting after subsection (2), the following subsections —
- “(2A) In the case of a National Assembly election, the Electoral Officer shall in complying with subsection (1)(b) —
- (a) count the unused ballot papers received from the Electoral Commission and record the serial numbers;
 - (b) count the unused ballot papers received from any other polling station;
 - (c) count the ballot papers (in envelopes) received from any other polling station;
 - (d) count the spoiled unstamped ballot papers received from any other polling station;
 - (e) count the spoiled stamped ballot papers received from any other polling station;
 - (f) tally the total number of ballot papers received against the number of printed ballot papers received from the Electoral Commission; and
 - (g) send a certified statement to that effect for each electoral

area to the Chief Electoral Officer.

(2B) In the case of a Presidential election or a referendum, the Electoral Officer shall in complying with subsection (1)(b) —

- (a) count the unused ballot papers received from the Electoral Commission and record the serial numbers;
- (b) count the unused ballot papers received from other any polling station;
- (c) count the ballot papers (in envelopes) received from any other polling station;
- (d) count the spoiled unstamped ballot papers received from any other polling station;
- (e) count the spoilt stamped ballot papers received from any other polling station; and
- (f) send a certified statement to that effect for each electoral area to the Chief Electoral Officer who shall tally and reconcile the ballot papers distributed to all electoral areas against the number of printed ballot papers received from the Electoral Commission.”.

15. Section 34 of the principal Act is amended by inserting, after subsection (1), the following subsections —

Amendment of
section 34

“(1A) The Chief Electoral Officer shall, at the time of delivery of the ballot papers, explain and give, in a sealed envelope, the security features of the ballot papers to all Electoral Officers.

(1B) The Electoral Officer or the Designated Electoral Officer shall, before opening of the first ballot box for sorting and counting, disclose to candidates, if they are present, and the counting agents of candidates and enumerators who may be present, the security features of the ballot papers in the sealed envelope.

(1C) No person shall be allowed to copy or photograph the security features of the ballot papers in the envelope.

(1D) A candidate or a counting agent of the candidate may request the Electoral Officer or the Designated Electoral Officer to verify the security features of a ballot paper and the Electoral Officer or the Designated Electoral Officer upon such request shall verify such ballot paper from the security features in the envelope and record the finding of the verification, which shall be signed by the candidate or counting agent, as the case may be, in the occurrence book.”.

Amendment of
section 51

16. Section 51(1) of the principal Act is amended, by inserting after paragraph (c), the following paragraph —

“(ca) uses the name of voter without the consent or knowledge of the voter to support the person's nomination on the nomination paper;”.

Amendment of
section 94

17. Section 94 of the principal Act is amended —

(a) by repealing subsection (1);

(b) in subsection (2), by repealing the words “statement of the funds received”, and

substituting therefor the words “statement of the number of persons and the amount of funds received”;

- (c) in subsection (3A), by repealing the words “(1 or”;
- (d) by repealing subsections (3B) and (3C) and substituting therefor the following subsections —

“(3B) The Electoral Commission shall, on receipt of the consolidated statement under subsection (2), maintain the records of such statements and may, from time to time, issue public reports disclosing the total funds received by each candidate or political party and the number of persons from whom such funds have been received.

(3C) Where the total funds received from a person exceed R50,000, the details of the disclosure made in the statement under subsection (2) shall be made public and posted on the website of the Electoral Commission.”.

18. The principal Act is amended, by inserting after section 94, the following section —

Insertion of
new section
94A

Limits on
expenditure
by
candidates
and political
parties

“**94A.**(1) Where a registered political party contests the Presidential Election or the National Assembly Election in one or more electoral areas, or referendum or a by-election, no registered political party shall incur expenses exceeding R250,000 multiplied by the number of electoral areas contested by the party during the electioneering period.

(2) Where an independent candidate contests the Presidential Election, the candidate shall not incur expenses exceeding R250,000 multiplied by the number of electoral areas contested by the candidate during the electioneering period.

(3) Where at an election a candidate stands in National Assembly election or by-election in an electoral area, being a candidate on behalf of a registered political party or as an independent candidate, the candidate shall not incur expenses exceeding R250,000, during the electioneering period.”;

Insertion of
new section
97A

19. The principal Act is amended, by inserting after section 97, the following section —

Voting
records
analysis by
Electoral
Commission

“**97A.**(1) The Electoral Commission shall, at any time after the expiry of 6 months but not later than 24 months following an election, publish in such manner as it considers appropriate, a report on voting records analysis.

(2) For the purposes of an analysis under subsection (1), the Electoral Commission shall examine the registers of voters and the voting data captured.

(3) The analysis report shall be shared with all registered political parties and candidates to the election and shall be posted on the website of the Electoral Commission.

(4) Any data published in the analysis report shall be restricted to issues such as gender and age analysis, and nationally according to electoral areas.

(5) No individual information is to be published in the analysis report.”.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 5th August, 2020.



Mrs. Tania Isaac
Clerk to the National Assembly

MENTAL HEALTH CARE ACT, 2020

(Act 26 of 2020)

ARRANGEMENT OF SECTIONS

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MENTAL HEALTH CARE ACT, 2020

(Act 26 of 2020)



I assent

A handwritten signature in blue ink, appearing to read "Danny Faure".

Danny Faure
President

19th August, 2020

AN ACT to provide mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Mental Health Care Act, 2020 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title and
commencement

Interpretation

- 2.** In this Act, unless the context otherwise requires, —
- “advance directive” means a directive made by a person under section 5;
- “Board” means the Mental Health Care Board established under section 36;
- “care-giver” means a person who resides with the person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function;
- “Consultant-in-charge” means a specialist psychiatrist or physician appointed to be in charge of one or more mental health facilities;
- “mental health care or mental health treatment” includes biological and psychological treatments, social care for mental illness and curative and rehabilitative services, provided either in a health or mental health facility or in the community;
- “mental health facility” means a mental health hospital or a part of a hospital or a psycho-geriatric home for mentally ill elderly persons or a clinic or health centre or other place for in-patient or out-patient treatment of individuals with mental illness;
- “mental health professional” means any health professional trained in mental health care or mental health treatment and registered with the respective regulatory authority or council;
- “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary

demands of life, including mental conditions associated with alcohol and drugs but does not include solely intellectual disability;

“Minister” means the Minister responsible for health and the term “Ministry” shall be construed accordingly;

“nominated representative” means a person nominated or appointed under section 12 or 13;

“prescribed” means prescribed by regulation made under the Act; and

“Tribunal” means the Mental Health Care Tribunal established under section 43;

PART II - MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTH CARE AND TREATMENT DECISIONS

3.(1) Mental illness shall be diagnosed in accordance with nationally or internationally accepted medical standards, including the latest edition of the International Classification of Diseases of the World Health Organization, or as may be prescribed.

Determination
of mental
illness

(2) The mental illness of a person shall not be diagnosed or determined on the basis of —

- (a) the political, economic, social status or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status of the person; or
- (b) nonconformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(3) Past treatment or hospitalisation in a mental health facility shall not by itself justify any present or future diagnosis or determination of a person's mental illness.

(4) The mental illness of a person shall be determined by a mental health professional and shall only be diagnosed by a qualified medical practitioner with expertise in mental health.

(5) The determination or diagnosis of a mental illness under this Act shall not be taken to mean that the person is of unsound mind unless he or she has been declared to be of unsound mind by a competent Court.

Capacity to
make mental
health care
or treatment
decision

4.(1) Every person, including a person with mental illness, is deemed to have capacity to make decisions regarding his or her mental health care or treatment unless the person is unable to —

- (a) understand the information that is relevant to make a decision on the person's treatment, admission or personal assistance; or
- (b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the person's treatment, admission or personal assistance; or
- (c) communicate the decision under subsection (a) by means of speech, gesture or any other manner.

(2) The information referred to under subsection (1) shall be given to a person using simple language which such person understands or by sign language, visual aids, or any other means to enable the person to understand the information.

(3) Where a person makes a decision regarding his or her mental health care or treatment which is perceived by

others as inappropriate or wrong, it shall not automatically follow that the person does not have the capacity to make a mental health care or treatment decision, so long as the person has the capacity to make the mental health care or treatment decision under subsection (1).

PART III - ADVANCE DIRECTIVE AND NOMINATED REPRESENTATIVE

5.(1) Every person, who is not a minor, shall have a right to make an advance directive in such manner as may be prescribed, specifying any or all of the following —

Advance
directive

- (a) the manner in which the person wishes to be cared for or treated for a future mental illness;
- (b) the manner in which the person wishes not to be cared for or treated for a future mental illness;
- (c) the individual or individuals, in order of precedence, the person wants to appoint as his or her nominated representative as provided for under section 12.

(2) The person nominated under subsection (1) (c) shall be an adult and shall consent to act as such representative.

(3) An advance directive under subsection (1) may be made by a person irrespective of his or her past mental illness or treatment for mental illness.

(4) An advance directive made under subsection (1) shall be invoked only when such person ceases to have capacity to make mental health care or treatment decisions and shall remain effective until such person regains the capacity to make mental health care or treatment decisions.

(5) Any decisions made by a person while he or she has the capacity to make mental health care decisions shall override any previously written advance directive by such person.

(6) Any advance directive made contrary to any written law shall be *ab initio* void.

(7) A person making an advance directive shall, until it is proved otherwise, be presumed to have the capacity to do so.

(8) An advance directive made under subsection (1) may be revoked, amended or cancelled at any time subject to section 8 or in such manner as may be prescribed, by the person who made it.

Maintenance of
online register

6. Any advance directives given under section 5 shall be registered and maintained by the Board and shall be made available in the form and manner as may be prescribed.

Advance directive
not to apply to
emergency
treatment

7. An advance directive under section 5 shall not apply to any emergency treatment given under section 29.

Reviewing
altering,
modifying or
cancelling the
advance directive

8.(1) Where a mental health professional, a relative, or a care-giver of a person desires not to follow an advance directive whilst a person with mental illness is being treated, such mental health professional, relative or care-giver of the person shall make an application to the Tribunal to review, alter, modify or cancel the advance directive.

(2) Upon receipt of the application under subsection (1), the Tribunal shall, after giving an opportunity to be heard to all concerned parties, including the person whose advance directive is in question, either uphold, modify, alter or cancel the advance directive after taking into consideration the following —

- (a) whether the advance directive was made by the person of his or her own free will and free from force, undue influence or coercion;
- (b) whether the person intended the advance directive to apply in the circumstances prompting the application;

- (c) whether the person was sufficiently well informed to make the advance directive;
- (d) whether the person had capacity to make decisions relating to his or her mental health care or treatment when such advanced directive was made; and
- (e) whether the content of the advance directive contravened any written law or any provision of the Constitution.

9. The person making the advance directive and his or her nominated representative shall have a duty to ensure that the Consultant-in-charge or a medical practitioner, or a mental health professional, as the case may be, has access to the advance directive when required.

Access to
the advance
directive

10. The parent or legal guardian shall have the right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, *mutatis mutandis*, shall apply to such minor until such time he or she attains the age of majority.

Advance
directive for
minor

11. A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences —

Liability of
mental health
professional in
relation to
advance
directive

- (a) on following a valid advance directive; or
- (b) not following a valid advance directive if the advance directive is not available to the medical practitioner or mental health professional.

12.(1) Notwithstanding section 5(1) (c) every person who is not a minor, shall have a right to appoint a nominated representative.

Appointment
of nominated
representative

(2) The nomination under subsection (1) shall be made in writing with the person's signature or thumb impression or mark and be witnessed by two persons.

(3) The person appointed as the nominated representative shall not be a minor and shall be competent to discharge the duties or perform the functions assigned to him or her under this Act, and give his or her consent in writing to the mental health professional to discharge his or her duties and perform the functions assigned to him or her under this Act.

(4) Where no nominated representative is appointed by a person under subsection (1), the following persons for the purposes of this Act in order of precedence shall be deemed to be the nominated representative of a person with mental illness—

- (a) up to a second degree relative;
- (b) a care-giver;
- (c) a suitable person appointed as such by the Tribunal; or
- (d) if no such person is available to be appointed as a nominated representative, the Tribunal shall appoint the Director of Social Services as the nominated representative of the person with mental illness.

(5) A person who has appointed any person as his or his nominated representative under this section may revoke or alter such appointment at any time in the same manner provided under section 12(2).

(6) The Tribunal may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(7) The appointment of a nominated representative, or the non appointment of a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his or her mental health care or treatment.

(8) All persons with mental illness shall have capacity to make mental health care or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

13.(1) Notwithstanding section 12, in case of minors, the parent or person having custody of a minor shall be the minor's nominated representative unless the Family Tribunal orders otherwise under subsection (2).

Nominated
representative
for minor

(2) Where on an application is made to the Family Tribunal under the Children Act (Cap 28), by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it and the Tribunal is of the opinion that —

- (a) the parent or guardian or the person having custody of the minor is not acting in the best interests of the minor; or
- (b) the parent or guardian or the person having custody of the minor is otherwise not fit to act as the nominated representative,

the Family Tribunal may appoint, any suitable individual who is willing to act, as the nominated representative of the minor with mental illness and in the case that no such individual is available for appointment as a nominated representative, the Family Tribunal shall appoint the person acting in the capacity or performing the functions of Principal Secretary in the department or ministry responsible for children's affairs as the nominated representative of the minor with mental illness.

Duty of
nominated
representative

14. A nominated representative shall while fulfilling his or her duties under this Act —

- (a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;
- (b) give particular credence to the views of the person with mental illness;
- (c) provide support to the person with mental illness in making treatment decisions;
- (d) have the right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;
- (e) be involved in discharge planning;
- (f) apply to the mental health facility for facilitated admission;
- (g) apply to the Tribunal on behalf of the person with mental illness for discharge;
- (h) apply to the Tribunal against violation of rights of the person with mental illness.

PART IV - RIGHTS OF PERSONS WITH MENTAL ILLNESS

Rights and
duties with
respect to
persons with
mental illness

15.(1) The rights and duties of persons, bodies or institutions set out in this Part are in addition to any rights and duties that they may have under any other written law.

(2) Whosoever is performing the duties set out in this

Part shall have regard to the will and preference of the person with mental illness.

16.(1) The dignity and privacy of every person with mental illness shall be respected.

Respect
human dignity
and privacy

(2) The care, treatment and rehabilitation services administered to a person with mental illness shall be based on the principle of the least restrictive alternative.

(3) The principle of least restrictive alternative in subsection (2) means offering an option for treatment or the setting of such treatment which —

- (a) meets the person's treatment needs; and
- (b) imposes the least restriction on the person's rights.

17.(1) A person with mental illness has a right to live in, be part of, and not be segregated from the community.

Respect
of right to
live in
community

(2) Every person with mental illness shall, in so far as practicable, be provided with care, treatment and rehabilitation services and community-based programs that improve the mental capacity of that person to develop to full potential and to facilitate his or her integration into community life.

(3) Admission to a mental health facility shall not amount to segregation from the community.

18.(1) A person with mental illness shall not be subject to discrimination on the grounds of his or her mental health status.

Non -
Discrimination

(2) Every person with mental illness shall receive care, treatment and rehabilitation services according to standards equivalent to those applicable to any other health care user.

Exploitation
and abuse

19. Every person, body, organisation or health facility providing care, treatment and rehabilitation services to a person with mental illness shall take steps to ensure that —

- (a) the person is protected from exploitation, abuse or any degrading treatment;
- (b) the person is not subjected to forced labour; and
- (c) care, treatment and rehabilitation services are not used as punishment or for the convenience of other people.

Duty to
inform of
individual
rights

20.(1) Subject to subsection (2), every health care provider shall, before initiating or administering any care, treatment or rehabilitation services, inform the person with mental illness in an appropriate manner of his or her rights.

(2) Where a person has been admitted under circumstances referred to in section 24 or 29, the nominated representative shall be given the information immediately and the person shall be given the information when the person has recovered mental capacity.

PART V - CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS

Admission
of persons
with mental
illness

21.(1) A person with mental illness may be treated, as far as possible, at their home or near to their home without requiring care and treatment in a mental health facility.

(2) Where a person with mental illness requires treatment in a mental health facility, it shall be provided on a basis of voluntary admission:

Provided that in the circumstances stated in subsection (3) such person may be cared for and treated on facilitated admission.

(3) Where a person lacks capacity to make decisions for the person's mental health care, he or she may be provided care and treatment at a mental health facility.

22.(1) All admissions in the mental health facility shall, as far as possible, be voluntary admissions except where conditions for a facilitated admission exist.

Voluntary
admission

(2) Any person, who is not a minor and who considers himself or herself to have mental illness and desires to be admitted in any mental health facility for care and treatment may make a request to the Consultant-in-charge for admission.

(3) Where an application is received under subsection (2), the medical officer or a psychiatrist shall examine the person and make a report to the Consultant-in-charge.

(4) The Consultant-in-charge shall admit the person to the mental health facility if he or she is satisfied that —

- (a) the person has a mental illness of a severity requiring admission to a mental health facility;
- (b) the person is likely to benefit from admission and treatment to the mental health facility; and
- (c) the person has understood the nature and purpose of admission to and treatment in the mental health facility and has made the request for admission of his or her own free will, without any duress or undue influence and has the capacity to make mental health care and treatment decisions without support or requires minimal support from others in making such decisions.

(5) If a person is unable to understand the purpose, nature or likely effects of the proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support in making decisions, he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted under this section.

(6) A person who is voluntarily admitted under this section shall not be treated without his or her informed consent.

(7) A person voluntarily admitted under this section has a right to discharge himself or herself from the mental health facility:

Provided that if the Consultant-in-charge of the mental health facility or his or her designated representative is of the opinion that the person meets the criteria for a facilitated admission under section 24, the Consultant-in-charge may prevent self-discharge for a period not exceeding 24 hours to allow for assessment as required under section 24.

Discharge
reports

23. The Consultant-in-charge of a mental health facility shall, in a prescribed form, issue a discharge report to the person with mental illness who was admitted for the purpose of receiving care, treatment and rehabilitation services.

Facilitated
admission

24.(1) In cases where a person with mental illness lacks capacity to make mental health care decisions, that person may be admitted to a mental health facility as a facilitated admission.

(2) An application for a facilitated admission shall be made by a nominated representative.

(3) The Consultant-in-charge of the mental health facility shall admit the person with mental illness upon application under subsection (2) if—

-
- (a) the person has been independently examined on the day of admission or in the preceding seven days, by two professionals, of which one is a psychiatrist or medical practitioner with mental health expertise and the other being any mental health professional, and both independently conclude, based on the examination and, if appropriate, on the information provided by others, that the person has a mental illness of such severity that the person —
- (i) has recently threatened or attempted or is attempting to cause bodily harm to himself or herself;
 - (ii) has recently behaved or is behaving violently toward another person or has caused or is causing another person to fear bodily harm from him or her; or
 - (iii) has recently shown or is showing an inability to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;
- (b) the psychiatrist or the mental health professional or medical practitioner, as the case may be, certify, after taking into account the advance directive, if any, that admission to the mental health facility is the least restrictive care option possible; and
- (c) the person is not eligible to receive care and treatment as a voluntarily admitted person under section 22.

(4) The psychiatrist or the mental health professional or medical practitioner as the case may be, shall not be related by

blood (first degree relative) or marriage to or in a common law relationship with, the person who is being assessed for facilitated admission.

Treatment on facilitated admission and further steps

25.(1) A facilitated admission of a person to a mental health facility under section 24 is limited to a period of 14 days.

(2) Any person admitted under section 24 shall receive treatment as prescribed by the mental health professional with the consent of the nominated representative or on advance directive, if any.

(3) Where the Consultant-in-charge is of the opinion, on the expiry of the 14 days referred to in subsection (1) or earlier, that the person admitted under section 24 no longer meets the criteria for admission under that section, he or she may discharge the person or may continue the admission under section 22.

(4) If, on the expiry of 14 days specified in subsection (1), the Consultant-in-charge is of the opinion that the criteria for facilitated admission continues, the Consultant-in-charge shall apply to the Tribunal for the continuance of the person in the mental health facility under section 24.

(5) Where an application under subsection (4) is made, the Tribunal shall —

- (a) hold a hearing;
- (b) ensure that the person himself or herself and his or her representative attend the hearing;
- (c) hear evidence from the mental health professionals; and
- (d) make an order either to discharge the person or extend the facilitated admission.

(6) The order of the Tribunal for extension of the facilitated admission shall be for a period of 90 days for the first time and any subsequent extension, on application may be up to 120 days at a time.

(7) The Consultant-in-charge shall discharge the person, if he or she is of the opinion that during the extended period, the person with mental illness no longer meets the criteria for facilitated admission and inform the Tribunal of the same.

26.(1) Admission of a minor with mental illness shall be made on application of the parent or guardian or the person having custody of the minor.

Admission of
minor

(2) The procedure for facilitated admission under section 24 shall *mutatis mutandis* apply to admission of minors.

(3) Minors admitted to the mental health facility shall be accommodated separately from adults.

(4) The parent or guardian or the person having custody of the minor or a person appointed by the parent or legal guardian shall stay with the minor in the mental health facility for the period of their treatment in the mental health facility.

(5) Minors shall be treated only with the consent of the parent or guardian or the person having custody of the minor.

27.(1) Where a person at home is suffering from mental illness of such a degree that in the opinion of the nominated representative warrants care and treatment and that person is not willing to go to a mental health facility for that purpose, the nominated representative may make a request to the nearest health facility for an assessment at home.

Person with
mental
illness at
home

(2) Where a request is received under subsection (1), a health professional from the health facility shall visit the person with mental illness and make an assessment.

(3) If the mental health professional on assessment is of the opinion that the person is suffering from mental illness and is neglecting himself or herself to an extent which puts their own lives or the safety of others at risk, the mental health professional may request a police officer for assistance in moving the person to the nearest mental health facility.

(4) A police officer to whom a request is made under subsection (3), shall give all the necessary assistance to the health professional for moving the person to the nearest mental health facility.

Person with
mental illness
wandering
on streets

28. A police officer shall, on being informed by a member of the public or on seeing a person suspected of having mental illness wandering in a public place, convey such person to the nearest mental health facility for assessment.

Emergency
treatment

29.(1) Notwithstanding other provisions of this Act, any treatment for mental illness may be provided by any registered medical practitioner to a person with mental illness either at a mental health facility or in the community with or without the consent of the person with mental illness if it is immediately necessary to prevent —

- (a) death or irreversible harm to the health of the person; or
- (b) the person from inflicting serious harm to self or others.

(2) Emergency treatment under subsection (1) includes transportation of the person with mental illness to the nearest mental health facility for assessment.

(3) Any emergency treatment under this section shall be limited to 24 hours.

Seclusion
and
restraints

30.(1) A person with mental illness shall not be subjected to seclusion.

(2) A person with mental illness shall not be subjected to physical restraint unless it is the only means available to prevent immediate or imminent harm to the person concerned or to others.

(3) Physical restraint —

- (a) shall be done in an accredited mental health facility;
- (b) shall be authorised by a psychiatrist or medical practitioner with expertise in mental health;
- (c) shall not be used as a means of punishment or for the convenience of the staff; and
- (d) reasons and duration of each shall be recorded in a data base and made available to the Board on a regular basis;

(4) Physical restraint in each instance shall be restricted to a maximum period of three hours.

(5) The family members, care giver or nominated representatives shall immediately be informed, when the person with mental illness is physically restrained.

31.(1) Nominated representatives, relatives and care-givers of a person with mental illness shall have the right —

Rights of
relatives and
care givers

- (a) to visit the person with mental illness in the mental health facility;
- (b) to provide feedback to the mental health facility including complaints about any deficiency in services;

- (c) to support from mental health services to enable them to effectively perform their care-giving role; and
- (d) to social assistance on an equal basis as provided to care-givers of persons with physical illness.

(2) Nominated representatives, relatives and care-givers as the case may be, shall be involved in setting treatment goals, planning for treatment, discharge, care and treatment after discharge from the mental health facility.

(3) The involvement of nominated representatives, relatives and care-givers under subsection (2) in the case of voluntarily admitted person, shall be done with the consent of the person with mental illness and in the case of persons under facilitated admission with the consent of the person making application under section 24 (2).

Leave to persons admitted as facilitated admission

32.(1) The Consultant-in-charge of the mental health facility may grant leave to a person admitted as a facilitated admission in a mental health facility for a period not exceeding seven days at a time.

(2) The Consultant-in-charge of the mental health facility may, at any time revoke the leave if he or she is satisfied that it is necessary for the improvement of, or to prevent deterioration of the mental health of the person.

(3) Where a person with mental illness who has been granted leave under subsection (1) refuses on revocation of the leave or on the expiry of the leave to come back to the mental health facility, the Consultant-in-charge may follow the procedures specified in section 33 for his or her return to the mental health facility.

Absence without leave of persons admitted as facilitated admission

33.(1) Where a person with mental illness admitted as a facilitated admission is missing from the mental health facility without being granted leave, the Consultant-in-charge of the

mental health facility shall inform the police and the person who had made the application for admission of that person.

(2) The police shall have the responsibility to convey the person back to the mental health facility.

34.(1) An order under section 136 or section 138 or section 275 of the Criminal Procedure Code, made by the appropriate Court directing the admission of a person with mental illness into any suitable mental health facility, shall be sufficient authority for the admission of such person in such facility to which such person may be lawfully transferred for care and treatment.

Admission of person with mental illness under Court order

(2) The admission of a person referred to in subsection (1) to a mental health facility will be regarded as if it is a facilitated admission and the Director of Social Services or his or her representative will be the person's nominated representative.

(3) The consultant-in-charge of a mental health facility wherein any person referred to in subsection (1) is detained, shall at a frequency decided by the appropriate Court but not less than once in every six months, make a report regarding the mental and physical condition of such person to the Tribunal.

(4) On receipt of a report referred to in subsection (3), the Tribunal shall hold a hearing and ensure that the person and his or her legal representative attend the hearing and hear evidence from the mental health professionals concerned.

(5) Following the hearing referred to in subsection (4), the Tribunal shall make recommendations to the appropriate court or the President as the case may be for further treatment or further detention or release from the mental health facility of the person, from the mental health facility.

(6) The person referred to under subsection (1) may not

be discharged from the mental health facility except as ordered by the appropriate Court or the President as the case may be.

Prisoners
with mental
illness

35.(1) Where an officer in charge of a prison is of the opinion that a prisoner is suffering from mental illness, the officer shall make an application to the Consultant-in-charge of a mental health facility for transfer of the prisoner to the mental health facility for assessment by a psychiatrist.

(2) On the directions of the Consultant-in-charge of the mental health facility, the psychiatrist shall assess the person and may recommend —

- (a) outpatient treatment and send the prisoner back to prison; or
- (b) admission to the mental health facility either as a voluntary admission or a facilitated admission, as the case may be.

(3) Where a prisoner is admitted to the mental health facility under subsection (2), the time spent by the prisoner at the mental health facility shall be treated as time spent in prison.

(4) When a prisoner is discharged after treatment in the mental health facility, he or she shall be sent back to prison for continuation of his or her sentence or shall be discharged by the prison service if the sentence has been served.

PART VI - MENTAL HEALTH CARE BOARD

Establishment
of the Mental
Health Care
Board

36. There is established a Board to be known as the Mental Health Care Board.

Functions of
the Board

37. The functions of the Board are —

- (a) to oversee the planning and management of

mental health care and treatment in the Seychelles;

- (b) to promote standards of best practice and efficiency of mental health care services;
- (c) to set standards for accreditation of mental health care facilities;
- (d) to set criteria and standards for specific mental health care services, interventions, and treatments as necessary;
- (e) to inspect with sufficient frequency every mental health care facility to ensure that the conditions, treatment and care of patients comply with the provisions of this Act;
- (f) to review the use of restraints in mental health care facilities; and
- (g) to advise and assist the Government on other matters related to mental health care and treatment in the Seychelles.

38.(1) The Board shall consist of the following members —

- (a) the Principal Secretary, Ministry responsible for Health (*ex-officio*);
- (b) the Chief Medical Officer, Ministry responsible for Health (*ex-officio*);
- (c) the Consultant-in-charge of Mental Health Services, Ministry responsible for Health (*ex-officio*);
- (d) the Director of Social Services, Ministry responsible for Social Affairs (*ex-officio*);

Membership
of the Mental
Health Care
Board

- (e) the Chairperson, National Council for the Disabled (*ex-officio*);
- (f) the Chief Nursing Officer (*ex-officio*);
- (g) the Chief Allied Health Officer (*ex-officio*);
- (h) a user of mental health services;
- (i) a family member or care-giver of a person with mental illness; and
- (j) two representatives from civil society with an interest and knowledge of mental health issues.

(2) The Minister shall appoint the members of the Board on such terms and conditions and such allowances and remuneration as may be prescribed.

(3) The Minister shall appoint one of the members of the Board as Chairperson of the Board.

(4) The appointment of the Chairperson and members of the Board shall be published by notice in the Gazette.

(5) The members of the Board who are not *ex-officio* members shall hold office for three years and are eligible for reappointment for a maximum of two consecutive terms.

(6) A member, except an *ex-officio* member, may resign from office by letter addressed to the Minister for Health.

(7) Where a person is appointed to replace another person under subsection (6) on the person so appointed shall serve as a member for the remaining period of office of the person replaced.

39.(1) There shall be a Secretary appointed by the Board.

Secretary to
the Mental
Health Care
Board

(2) The Secretary shall be responsible for the convening of all meetings of the Board, maintaining records of the Board, implementing the decisions of the Board, and do all such things as the Board or the Chairperson may lawfully require the Secretary to do.

40.(1) The Board shall meet at least six times a year but otherwise —

Meeting of
the Board

(a) as the Chairperson may direct; or

(b) as may be requested in writing to the Chairperson by not less than six members of the Board.

(2) The time and place of a meeting of the Board shall be determined by the Chairperson.

(3) Seven members of the Board shall constitute a quorum for a meeting.

(4) A meeting of the Board shall be presided over by the Chairperson but in the absence of the Chairperson the members present at the meeting shall elect a member to preside over the meeting and that member shall have all the powers of the Chairperson at the meeting.

(5) All matters for determination by the Board at a meeting shall be decided by a simple majority of votes of the members present and voting thereon.

(6) Each member has one vote and in the event of an equality of votes the member presiding at the meeting shall have a casting vote.

(7) A member who has a direct interest in a matter that falls to be decided at a meeting of the Board shall notify the of

Chairperson or, if the member is the Chairperson, the Secretary, of the interest and shall not be present or vote at the meeting where the matter is considered or decided unless the Board authorises otherwise.

(8) The Board shall, through the Chairperson, submit an annual report of its activities to the Minister and the Minister shall cause a report to be tabled before the National Assembly.

Decision by
circulation
of paper

41. Where a matter requires a decision of the Board and it is not convenient or possible for the Board to meet to determine the matter, the Secretary shall, on the instructions of the Chairperson, circulate papers regarding the matter to all members for consideration and decision or approval and if the members unanimously approve a decision or resolution by signing it, the decision or resolution shall have the same effect as a decision or resolution passed at a meeting of the Board.

Members to
continue till
new members
appointed

42. Notwithstanding section 38(5) where at the end of the period specified in that section, all the members of the Board vacate office and the new members of the Board have not been appointed, the persons vacating as members shall continue until the appointment of the new members of the Board or for a further period of three months, whichever occurs first.

PART VII - MENTAL HEALTH CARE TRIBUNAL

Establishment
of the Mental
Health Care
Tribunal

43. There is hereby established a Tribunal to be known the Mental Health Care Tribunal.

Membership
of the
Tribunal

44.(1) The Chairperson of the Tribunal shall be a Magistrate nominated by the Chief Justice.

(2) The Minister shall appoint four other members who shall serve on the Tribunal, which shall consist of the following —

(a) a consultant psychiatrist or a medical

practitioner with training and experience in mental health of at least ten years;

- (b) a representative from the Attorney General's Chambers;
- (c) a representative from the Ministry of Health;
- (d) a civil society representative with an interest or special expertise in mental health care and treatment.

(3) The name of the Chairperson and members shall be published in the *Gazette*.

(4) A member shall hold office for a term of three years and may be reappointed for one further term.

(5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct interest.

(6) A member of the Tribunal or any other person acting under the direction of the Tribunal shall not be under any civil or criminal liability in respect of anything done or purported to be done in good faith in pursuance of this Act.

45. Members shall be appointed on such terms and conditions and such allowances and remuneration as may be prescribed by regulations.

Terms and
conditions of
members

46.(1) The Tribunal shall have exclusive jurisdiction to hear and determine mental health matters.

Jurisdiction

(2) Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine —

- (a) appeals by persons with mental illness against facilitated admission;

- (b) appeals on renewal or extension of facilitated admission;
- (c) complaints regarding violation of rights of persons with mental illness in mental health care facilities.

Appeals

47. Any person aggrieved by a decision of the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.

Powers of
the Tribunal

48. The Tribunal shall have powers to —

- (a) summon any person to appear before it;
- (b) examine on oath, affirmation or otherwise a witness or any person appearing before it; and
- (c) require any person to produce any document which the Tribunal considers relevant.

Proceedings
before the
Tribunal

49.(1) The Tribunal shall sit as and when there is a matter for the Tribunal to adjudicate upon and laws relating to evidence shall be applicable to witnesses or persons appearing before the Tribunal.

(2) Three members of the Tribunal, of whom one shall be the Chairperson, shall constitute the quorum.

(3) Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote and in the event of equality of votes the Chairperson shall have a casting vote.

(4) A decision of the Tribunal shall have the same force and shall be executed in the same manner as a judgment or order of the Supreme Court under the Seychelles Code of Civil Procedure Act.

(5) A party before the Tribunal may be represented by an attorney-at-law or by a representative of the party or any other person as the case may be.

(6) The Tribunal shall, before making a decision —

- (a) afford the parties the opportunity to be heard; and
- (b) observe the rules of natural justice.

(7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.

50. At the conclusion of the proceedings, the Tribunal shall prepare and deliver its decision together with the reasons for such decision.

Reasons for
decisions

51. The Minister shall appoint a Secretary to the Tribunal who shall be responsible for —

Secretary to
the Tribunal

- (a) ensuring the overall smooth running of the Tribunal;
- (b) convening the sittings of the Tribunal after consultation with the Chairperson and members;
- (c) the issuing of summonses and notices on behalf of the Tribunal;
- (d) the implementation of decisions made by the Tribunal;
- (e) taking appropriate steps to enable the Tribunal to enforce its orders; and
- (f) ensuring that orders or directions given by the Tribunal are complied with.

PART VIII - OFFENCES AND PENALTIES

Offences and penalties

52.(1) Any person who willfully falsifies an advance directive or falsifies an appointment of an appointed representative shall be guilty of an offence and liable on conviction to imprisonment for a term of 5 years or a fine not exceeding SCR50,000 or with both such imprisonment and fine.

(2) Any person who commits any act of cruelty to, or abuse or willful neglect of any patient with mental illness shall be guilty of an offence and liable on conviction to imprisonment for a term of 15 years or a fine not exceeding SCR50,000 or with both such imprisonment and fine.

PART IX - MISCELLANEOUS

Regulations

53.(1) The Minister may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provision of subsection (1), regulations may provide for —

- (a) standards for determination of illness;
- (b) manner of making an advance directive;
- (c) manner of revoking, amending, or cancelling an advance directive; and
- (d) form of discharge report under section 23.

(3) Regulations made under this section may provide for offences punishable with a fine not exceeding SCR50,000 and imprisonment not exceeding 2 years or with both such fine or imprisonment.

Savings and transitional

54. All acts done under the Mental Health Act (Cap 127), decisions taken prior to the date of commencement of

this Act, shall continue to have effect until it is amended, annulled or withdrawn in accordance with the provisions of this Act.

55. The Mental Health Act, 2006 (Cap 127), is hereby Repeal
repealed.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 22nd July, 2020.



Mrs. Tania Isaac
Clerk to the National Assembly