**Annex VII**

**EXTRACTS FROM THE MENTAL HEALTH CARE ACT**

Section 2 of the Mental Health Care Act provides inter alia for the following definitions:

*“informed consent” means consent obtained freely, without threat or improper inducement, after disclosure to the patient or his next of kin of adequate and understandable information in a form and language understood by the patient or his next of kin on—*

*(a) the diagnostic assessment;*

*(b) the purpose, method, likely duration and expected benefit of the proposed treatment;*

*(c) alternative modes of treatment, including those less intrusive; and*

*(d) possible pain or discomfort, risks and side-effects of the proposed treatment;*

 *“security patient” means a patient who—*

*(a) is unfit to stand trial by reason of mental disorder;*

*(b) has been found not to be guilty by reason of mental disorder;*

*(c) is suspected of having committed a criminal offence; or*

*(d) is in the custody of the police or is a detainee in a reform institution referred to in the Reform Institutions Act;*

Other relevant extracts are as follows-

 *5. Mental Health Commission*

1. *There shall be for the purposes of this Act a Mental Health Commission.*

*[…]*

***6. Functions of Commission***

1. *The Commission shall be responsible for matters specified in sections 15, 17, 18, 21 and 22 and shall, in addition –*
2. *deal with complaints received from patients, their relatives and members of the public;*
3. *investigate any breach or suspected breach of discipline, professional misconduct and violation of human rights or patients’ rights;*
4. *determine, on the basis of evidence, whether the complaints and charges against a medical officer or psychiatrist, any other officer, or any other person, have been proved;*
5. *refer to the police any suspected criminal offence under this Act;*
6. *refer any matter under paragraphs (a) to (d) and (g) to the Ministry;*
7. *notify the Board, after an enquiry, of any breach or violation of human rights;*
8. *review matters relating to admission, treatment, leave, discharge and continued treatment of security patients who are unfit to stand trial by reason of mental disorder or who have been found not to be guilty by reason of mental disorder; and*
9. *oversee the proper functioning of the Accounts Committee.*
10. *Where the Commission receives a complaint that a patient is being admitted or kept at a centre against his will, the Commission shall inquire into it immediately.*
11. *The law of evidence shall apply to the proceedings before the Commission.*
12. *The Commission may –*

*(a) require, in writing, any person to appear before it to give evidence or produce such document or article as it may require;*

*(b) take evidence on oath and, for that purpose, administer an oath.*

1. *The Commission shall, after conducting an enquiry, forward to the Board, not later than 14 days after completion of the proceedings, its report and a copy of the proceedings, including any document or exhibit produced.*
2. *The Commission shall –*

*(a) keep a record of all its proceedings and decisions;*

*(b) every 6 months, furnish to the Board a report of all its decisions and such other information as the Board may require.*

***6A. Managerial Committee***

1. *There shall be for the purposes of this Act a Managerial Committee.*

*[…]*

***6B. Functions of Managerial Committee***

*The Managerial Committee shall –*

1. *subject to section 6, review matters relating to –*

*(i) the admission and discharge of security patients who are suspected of having committed a criminal offence or who are in the custody of the police or are detainees in a reform institution referred to in the Reform Institutions Act;*

*(ii) the involuntary admissions, treatment, leave, discharge and continued treatment of patients;*

1. *refer to the Commission complaints of patients, relatives and visitors;*
2. *bring to the notice of the Commission any breach or suspected breach of discipline, professional misconduct or violation of patients’ rights.*

*7.   Examination of patient*

*(1)  A medical officer or a psychiatrist shall examine a person where—*

 *(a) he appears to be suffering from a mental disorder;*

 *(b) his case necessitates an examination; and*

 *(c) he or his next of kin consents to an examination.*

*(2)  Where the medical officer or the psychiatrist is informed, or has sufficient reason to believe, that a person has been brought to a centre coercively or against his will, he shall not admit or treat the person in a centre unless he has reasonable ground to believe that the person constitutes a danger for the safety of himself or other persons as a consequence of a mental disorder.*

*8.   Admission of patient*

*No person shall be admitted in a centre unless—*

 *(a) he suffers from a mental disorder requiring admission; and*

 *(b) he or his next of kin consents to the admission.*

*13.   Procedure following admission*

*(1)  Subject to subsection (3), the Superintendent shall, in respect of—*

 *(a) a security patient, within 48 hours of his admission;*

 *(b) a patient other than a voluntary patient, within 24 hours of his admission,*

*forward to the Magistrate of the District where that patient ordinarily resides a copy of the admission report with a request for validation of the admission in the form specified in the Second Schedule.*

*(2)  The Superintendent shall, in respect of every patient, enter the name, date of birth and such other particulars as the Superintendent deems appropriate in a register kept for that purpose.*

*(3)  Subsection (1) shall not apply to—*

 *(a) a person ordered by a Court to be confined under section 74 or 115 of the Criminal Procedure Act;*

 *(b) a person discharged under section 12.*

(4) In this section –

*“voluntary patient” –*

1. *means a patient who, in the opinion of the medical officer or psychiatrist examining him at a centre –*
2. *requires treatment in a centre;*
3. *is capable of consenting to, and consents to, his admission and treatment; and*

*(b) includes a minor patient whose legal guardian may consent to his admission.*

*14.   Validation by Magistrate*

*(1)  Where a District Magistrate is satisfied that a request for validation of admission under section 13 is in order, the District Magistrate shall issue an order for validation of the admission in the form specified in the Third Schedule.*

*(2)  A copy of an order issued under subsection (1) shall be forwarded to the Superintendent.*

*(3)  (a)  Where the Magistrate is not satisfied that the procedure under this Act has been followed or where he is in presence of information that the detention of a patient is contrary to section 7 or 8, he may make such inquiry as he thinks fit and for this purpose require the production of such further evidence as he considers necessary.*

*(b)  After making an inquiry under subsection (3) (a), the Magistrate may validate or refuse to validate the admission.*

*(4)  The Clerk of the Court in which the Magistrate sits to consider a request for validation of admission under section 13 shall keep the original of the proceedings and documents produced in a separate file.*

*15.   Automatic review*

*(1)  The Commission shall review the case of every patient—*

 *(a) at its first meeting after the admission;*

 *(b) every fortnight thereafter for 3 months;*

 *(c) every 4 months thereafter for 3 years;*

 *(d) once a year subsequently.*

*(2)  On a review, the Commission shall determine whether—*

 *(a) the continued stay of the patient is necessary;*

 *(b) the treatment and living conditions of the patient are satisfactory.*

*(3)  The Superintendent shall communicate the result of the review to the patient or his next of kin.*

*PART IV – TREATMENT, LEAVE AND DISCHARGE*

*16.   Treatment of patients*

*(1)  No person shall be administered treatment at a centre unless—*

 *(a) he suffers from a mental disorder; and*

 *(b) he or his next of kin consents to treatment.*

*(2)  Where a person is unable to give his consent and his next of kin cannot be traced or refuses to give consent, the treating psychiatrist shall submit the treatment plan specified in section 18 forthwith to the Commission for approval before any treatment is given.*

*17.   Consent of security patients*

*(1)  A security patient may be administered treatment with his consent or the consent of his next of kin.*

*(2)  Where the security patient is unable to give his consent and his next of kin cannot be traced or refuses to give consent, a treatment plan shall be submitted to the Commission or the Managerial Committee, as the case may be, for approval before any treatment is given.*

*18.   Plan of treatment*

*(1)  The Superintendent shall assign responsibility for a patient or security patient to a psychiatrist.*

*(2)  The psychiatrist shall draw up an individual treatment plan in respect of every patient or security patient, as soon as practicable after his admission, for submission to the Commission or the Managerial Committee, as the case may be, for approval.*

 *(3)  The patient or security patient or his next of kin may participate in the formulation of the treatment plan.*

*(4)  The plan shall include—*

 *(a) the nature, side effects and expected duration of the treatment proposed and any alternative treatment;*

 *(b) the nature and duration of any other non-psychiatric treatment that may be required.*

*(5)  Where a treating psychiatrist considers that it is urgently necessary to administer treatment to a patient under section 16 (2) or a security patient under section 17 (2) in order to prevent immediate or imminent harm to the person or patient or any other person, as the case may be, he may administer such treatment prior to the submission of a treatment plan under this section.*

*19.   Special treatment*

*(1)  No treatment by way of psychosurgery or electroconvulsive therapy or any non-psychiatric treatment shall be administered to any person without—*

 *(a) the informed consent of the person and the consent of his next of kin; and*

 *(b) the advice of the treating psychiatrist.*

*(2)  Where a person is under the age of 18, the informed consent of his next of kin shall be sufficient for the purpose of the treatment specified in subsection (1).*

*(3)  Where the person is unable to give informed consent and his next of kin cannot be traced or refuses to give informed consent, the treatment plan shall be submitted to the Commission for approval before any treatment is administered.*

*(4)  Any treatment administered under this section and the details of any informed consent shall be explicitly recorded in the record of the person receiving the treatment.*