COUNSELLING PSYCHOLOGY LEGAL REGULATORY FRAMEWORK IN KENYA

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Abstract

Counselling psychology in Kenya as well as everywhere in the world must operate within the established legal and policy framework. Specialised counselling psychologists will be increasingly aware that they are required to acquaint themselves with the existing laws and regulations that govern counselling as well as other professions and fields of specialisation. Besides counsellors, clinical psychologists, psychiatrist, psychotherapists and psychologists, other professionals making use of counselling skills in the course of their work will adhere to set standards stipulated in their area of specialisation. Kenya has experienced a period of policy positioning in line with the new Constitution that encompasses democratic changes, health and human rights. These broad policy perspectives will impact on both the public and private sectors to improve quality and increase efficiency to transform the lives of the people in all aspects. This paper discusses some of the pertinent legal policies in Kenya and their implications in counselling psychology.

Keywords: Counselling Psychology, standards, regulations, legal framework.

Introduction

An enabling legal and regulatory environment is desirable for effecting counselling service delivery in the Kenyan and International context. The overall objective of the legal and regulatory policy is to ensure that the needs and concerns of males and females, boys and girls, children and adults including the elderly, persons with disability, patients and clients are safeguarded even in the context of health care such as counselling. The Constitution of Kenya 2010, in article 43. (1a) provides that “every person has the right to the highest attainable
standard of health, which includes the right to healthcare services”. This includes mental health. The World Health Organization (2003) defines health as the state of complete physical, mental and social well-being and not merely the absence of disease or any infirmity. Subsequently, the Ministry of Health will institute policies that seek to address the systemic challenges and emerging trends including mental health problems and disorders. Counselling as helping is an essential part of health and an intervention strategy (Corey, 2005; Department of Health, 2001; Feltham & Horton, 2010; Geldrad, 2009).

Mental health is defined as the state of well-being whereby individuals recognize and realize their abilities, are able to cope with the normal stresses of life, work productively and fruitfully, and make a contribution to their communities (Friedli, 2009; WHO, 2003). Positive mental health includes emotion, cognition, and social functioning and coherence. Mental health is a key determinant of overall health as well as socio-economic development. This is because it influences a variety of outcomes for both individuals and communities (Friedli, 2009). This includes healthy lifestyle, physical health, employment and earnings, and improved recovery from illness. Mental health influences daily living and activities of daily living and a fundamental element of resilience and adaptation to life (Friedli, 2009; Wango, In Press) as well as higher attainment in education, career; greater productivity at work and earnings as well as relationships with others (friends, family, colleagues). Mental health influences our social relations, cohesion and engagement and improved quality of life. Psychological approaches such as counselling are vital components of health (American Psychiatric Association, 1994; Department of Health, 2001).

There are a number of statutes that can be used and apply in professional counselling practice, especially in the context of the existing legal and justice system in Kenya. Emphasis for psychological care will adhere to international standards and not necessarily confined to our region and must in turn respect personality and behaviour in context (Brown & Lent, 2008; Feltham & Horton, 2010; Geldard, 2009; Geldard & Geldrad, 2010; Gibson & Mitchell, 2010). The counsellor has a responsibility to practice in a professional manner within the ethical guidelines established by the profession and within the law (American Counselling Association,
This focus on acceptance of personal responsibility does not imply that we can do anything that we want. We need to recognize that social, environment, cultural and biological realities limit or freedom of choice. It is crucial to learn how to cope with the external and internal forces that limit our decisions and behaviour.

Kenya as a sovereign state is also a signatory to several international conventions on health and safety, human rights, labour laws and others. Counselling operationalization framework will be guided by strategies for implementing individual and community concerns and programmes, sectoral needs such as counselling in the workplace, medical regulations, counselling in other contexts such as school, as well as prescribed implementation mechanisms in various sectors such as: education (Republic of Kenya, 1999), sports (Thatcher, Jones & Lavallee, 2011); environment, church (Collins, 2007), health (Republic of Kenya, 2008a; 2009a; World Health Organisation, 2003; 2011), information communication technology, law and administration of justice (Jenkins, 2002; 2009; Republic of Kenya, 2009b; 2010).

It is apparent that counselling psychologists, clinical psychologists, psychiatrists, psychotherapists, social workers, persons trained in palliative care and others providing help in form of counselling and therapy will adopt and adhere to statutory regulation. Counselling in this paper will be confined to interaction between a professional and a client that leads to change from a less adaptive state to improved adjustment in the client’s thoughts, feelings, and behaviours (American Counselling Association, 2005; British Association for counselling, 1991; Corey, 2005; Williamson, 2008). The purpose and aims of counselling is to enable the client live a more fulfilling life.

International Context

The operational framework for professional counselling in Kenya is based on international laws and conventions, so that it upholds the sanctity of human life, does not discriminate against anyone and embraces human rights values. These conventions are supported by enacted laws that protect special groups vulnerable to discrimination such as people living with HIV and AIDS (PLWHA), children, girls, women, people with disabilities, displaced persons and refugees,
lesbians, gay and bisexuals, the rich and famous, prisoners of war, and other special groups (Republic of Kenya, 2005a; 2005b; 2006). The recent upsurge in ‘affirmative psychotherapy’, for instance, affirms the rights of lesbian, gay and bisexual clients, despite the idiosyncratic meaning that each of these labels might have on the client (Young, 2001; Zagelbaum & Carlson, 2010). It is essential to re-evaluate various categories of people including personality and gender identity disorders and uphold the rights of all persons (Republic of Kenya, 2010).

Practitioners in counselling will adhere to statutory regulation such as the following:

1. **Workers with Family Responsibilities Recommendations, 1981**: This convention encourages provision of vocational guidance and counselling, information and placement services to employees and training of counsellors to respond to the special needs of workers with family responsibilities. This is demonstrated in several policy documents (Republic of Kenya, 2007; 2008b; 2009c).

2. **Code of conduct on HIV/AIDS and the World of Work, 2001**: The code provides for the encouragement of counselling services to assist workers cope with HIV and AIDS. This includes the need to make use of expertise and assistance outside their organisation for counselling, or in workplace programmes, if specialised and further counselling is required. Counselling psychological services adapted to the different needs and circumstances of females and males should also be made accessible. Workers should further be informed of their rights and benefits in relation to counselling programmes and others, including life skills programmes and occupational schemes that may assist workers with HIV and AIDS. Various policy documents on human rights, health and HIV and AIDS are pertinent in this endeavour (Republic of Kenya, 2005a; 2005b; 205c; 2005d; 2008a; 2008b; 2009a; 2010).

3. **Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983**: This convention stipulates that vocational guidance should be offered to persons with disabilities to help them retain and advance in employment. This convention also provides for support, and recognition of people vulnerable to discrimination. It must be accepted that persons with special needs and other exceptional persons too require provision of guidance and counselling and other support services. The Constitution of Kenya upholds the rights of all persons (Republic of Kenya, 2010).
Drug abuse and trafficking, rape and child abuse are national, regional and international concerns and have been incorporated in several policy documents (Republic of Kenya, 2011). Principles of the counselling profession must be within the legal framework though aligned to promote the rights of all persons and the principles of counselling (American Counselling Association, 2005; British Association for Counselling, 1991). Practitioners must be careful that they do not violate the Constitution or the Penal Code (Republic of Kenya, 2009b, 2010). For instance, what the law says on suicide, assisted suicide and euthanasia. Psychiatrists may prescribe medication for depression such as anti-depressants drugs. The standard reference is the Diagnostic and Statistical Manual for mental disorders (DSM) published by the American Psychiatric Association (APA, 1994) and the International Statistical Classification of Diseases and Related Health Problems (ICD) (WHO, 2011). DSM and ICD classify and list a set of disorders and provide detailed descriptions on what constitutes a disorder. Health care classification systems are designed to promote international comparability in the collection, processing, classification, and presentation of statistics on health care issues. The American Psychological Association (2010) in turn sets standards on research and publications including referencing. Standards of conduct (Caroll, 2006; Conte, 2009) and research (McLeod, 2003; 2009) will be the hallmark of excellence. These and other quality standards must be upheld at all times.

**Kenyan Context**

There has been an upsurge of counselling services in Kenya including the need to apply counselling in various contexts (McGuiness, Alred, Cohen, Hunt & Robson, 2001; Wango, 2003, Wango & Mungai, 2007). Counselling should be implemented within the framework of the Constitution, and other relevant legislation as outlined in Kenya and within International conventions. They include the following:

1) *The Constitution of Kenya, 2010:* The Constitution is the supreme law of Kenya, and other laws must comply with it. The Constitution stipulates the fundamental rights and freedom of the individual (Republic of Kenya, 2010). These include: the right to life, liberty, security of person and property, the right to fair trial, freedom of conscience, freedom of movement, freedom of association and assembly, freedom from inhuman treatment, freedom from slavery and freedom from being treated in any discriminatory manner. In addition, there are the consumer rights.
2) **Mental Health Act (Cap 248):** The Mental Act provides for the care, management and control of persons suffering from mental health illness (Republic of Kenya, 1989). A person suffering from mental disorder is a person diagnosed with psychopathic mental illness, and other persons suffering from mental impairment due to alcohol or substance abuse. Persons who may be diagnosed with health problems may be referred for psychological counselling as part of the management of the problem. The counsellor will liaise with relevant authorities for support and referral. In the case of a patient suffering from mental health problems but who may be unwilling to present themselves for treatment as stipulated, the counsellor will liaise with others who may include the police and relatives to ensure the affected person attends and receives treatment under the provision on emergency admission and involuntary treatment.

3) **HIV and AIDS Prevention and Control Act, 2006:** The HIV and AIDS Prevention and Control Act make specific reference to issues of HIV and AIDS, counselling and confidentiality. It provides measures for the prevention, management and control of HIV and AIDS, the protection and promotion of public health and for the appropriate treatment, counselling, support and care of persons infected or at risk of HIV and AIDS infection, and for connected purposes. The Act makes specific reference to HIV and AIDS in relation to discrimination, privacy, confidentially and personal rights.

Specifically the Act:

- Provides that no person shall compel another to undergo an HIV test save where a person is charged with an offence of a sexual nature under Sexual Offences Act, 2006;
- Prohibits the disclosure of an HIV test result of another person without written consent; and,
- Makes it an offence for any person to be discriminated against on the grounds of actual, perceived or suspected HIV status, in relation to employment, access to education, credit insurance, healthcare, travel, habitation or seeking public office.

In health, there are programmes including Voluntary Medically Assisted Adult Male Circumcision (VMMC). It is equally significant that the practitioner make reference to other Health programmes such as the National AIDS Strategic Plan (Republic of Kenya,
2008a; 2009a) and guidelines for antiretroviral drugs and therapy in Kenya for instance (Republic of Kenya, 2005a; 2005b).

4) **Public Officer Ethics Act:** The ethos of the Public Service is to offer services to members of the public and support successful governments of the Republic of Kenya with loyalty, impartiality, honesty and integrity, and to facilitate enhancing peace and social-economic development. The Public Officer Ethics code contains rules of conduct and ethics to be observed by public officers so as to maintain the integrity and neutrality of the public service and that all duties are conducted in accordance with the law. It also prohibits an officer from sexually harassing a member of the public or a fellow officer. This will also apply to counselling and other social services.

Counsellors working in the public service, or with such officers, would need to be well acquainted with such provisions especially when inducting new officers into the service. For example, the public officers’ code provides that a public officer shall ensure that confidential or secret information and documents entrusted in their care are adequately protected from improper and inadvertent disclosure, and where there is a breach of this code, appropriate action will be taken in accordance with the Act and other applicable laws. On professionalism, the code stipulates that an officer will seek to improve the standards of performance and level of professionalism in the organisation and if a member of a professional body, observe the ethical and professional requirements of that body. So will the counsellor. In addition, an officer is expected to avoid situations where personal interests conflict with official duties and in such cases, declare own personal interests and refrain from deliberations with respect to the matter.

5) **The Proposed Counselling Psychological Bill:** The proposed Kenya Counselling Psychologists Bill will provide for the training, registration and licensing of psychological practitioners, to provide for their practice and standards, and to ensure their effective participation in matters relating to guidance, counselling and the offering of therapeutic services in the community and for connected services. Among the proposals include the registration of psychological practitioners including qualifications, a certificate of registration, counselling supervision, and other matters to enhance professional conduct. In the same way, there is need for a coherent and comprehensive overall framework for guiding counselling within the different and diverse society.
6) **Health and Safety**: Government policies aim at improving the health status of all persons including women and men, boys and girls, and health services to groups with special needs such as the youth, rape victims, people with disabilities, and particularly with HIV and AIDS persons engaged in high-risk behaviour such as Commercial Sex Workers (CSW), Injecting Drug Users (IDU) and men have sex with men (MSM). Existing laws in health for instance stipulate that abortion is illegal. However, the law provides for exceptional circumstances, where the life of the mother is at risk. Terrorism poses an international threat and it is crucial that counsellors are aware of such laws on safety that seek to protect others from any waywardness and ill-conceived motives. Health awareness for counsellors must include the incorporation of Provider - Initiated HIV Testing and Counselling (PITC) and Anti Retroviral Therapy (ART) as part of routine health care to all patients and clients. Other essential legal aspects include the Medical Laboratory and Public Health Acts.

Clinical psychologists, psychiatrists, doctors, clinical officers and nurses will be acquainted with health issues, and also harmonize specific policy issues from other health guidelines such as the National guidelines for the Prevention of Mother-to-child HIV/AIDS Transmission (PMCT), National Tuberculosis (TB) and Leprosy Guidelines for TB and HIV collaborative activities, the National Guidelines on Blood Transfusion, and the National Quality Assurance Strategy for Voluntary Counselling and Testing (VCT). These health policies will make reference to international policy documents including the UNAIDS and WHO guidance on provider-initiated HTC in health facilities, WHO and CDC guidelines for assuring the accuracy and reliability of HIV rapid testing, WHO guidance on the early detection of HIV infection in infants and children, and UNAIDS and WHO guidance on encouraging beneficial disclosure, ethical partner counselling and appropriate use of HIV case-reporting. Professional counselling practitioners and others working in several settings must be familiar with some of these regulations in their practice as well as refer clients as appropriate.

7) **Education**: The Ministry of Education implementation of guidance and counselling services and programmes in educational institutions has been based on recommendations contained in various Education Commission Reports and Government Policy documents.
Counselling Regulatory Framework in Kenya

(Republic of Kenya, 1964; 1976; 1988; 1999; 2005c; 2005d; 2009c). In 1971, a guidance and counselling section was set up in the Ministry of Education. This was on the realization that academic work alone is inadequate in producing an all round person useful to the self and to the community s/he serves. The Ministry of Education recognizes guidance and counselling as an essential service that must be provided to every child in the school for personal development as well as career development (Republic of Kenya, 2009c). Notwithstanding, the implementation of guidance and counselling in schools has been hampered by a weak policy as argued by Wango (2006b; 2006c). Wango (2003; 2006b; 2006c) and Wango and Mungai (2007) further propose the need to enhance a more professional approach to counselling in the school. Overall, it is important to understand how certain aspects such as education are applicable in the new constitution.

8) **Legal and Justice System:** Aspects of the counsellor’s role and function are governed by existing judicial and legislative system including the Penal Code (Republic of Kenya, 2009c). Counsellors must understand the law and be aware of the legal implications and restrictions within the professional conscience. These include: child abuse (CA); drug abuse; marriage and family; mental illness and the severely disturbed persons; and, criminal and civil liability. There are several of these that have counselling and legal implications. These are briefly described below:

9) **The Sexual Offences Act, 2006:** The Sexual offences Act make provision on sexual offences, their definition, prevention and the protection of all persons from harm, from unlawful sexual acts, and/or for connected purposes (Republic of Kenya, 2006). Counsellors have a responsibility to counsel and safe guard clients from the following:

- **Rape:** Rape occurs when the other person does not consent, or the consent is obtained by force or by means of threats or intimidation of any kind.
- **Defilement:** A person who commits an act, which causes penetration with a child, is guilty of an offence termed defilement.
- **Deliberate transmission of HIV:** Any person who, having actual knowledge that he or she is infected with HIV or any other life threatening sexually transmitted disease intentionally, knowingly and wilfully does anything or permits the doing of anything which he or she knows or ought to reasonably know:
a) Will infect another person with HIV or any other life threatening sexually transmitted disease;
b) Is likely to lead to another person being infected with HIV or any other life threatening sexually transmitted disease; and,
c) Will infect another person with any other sexually transmitted disease, shall be guilty of an offence.

- **Administering a substance with intent:** Any person commits an offence if s/he intentionally administers a substance to, or causes a substance to be administered to or taken by, another person with the intent of:
  a) Stupefying; or,
  b) Overpowering that person,

So as to enable any person engage in a sexual activity with that person.

10) **The Children’s Act, 2001:** The Children’s Act stipulates that every child is entitled to education and puts the responsibility on the government and the parent. ‘Education’ means the giving of intellectual, moral, spiritual instruction or other training to a child. By a ‘child’ means any human being under the age of eighteen years, and a ‘child of tender age’ is a child under the age of ten years. The Act protects children from child abuse and prohibits early marriage. ‘Child abuse’ includes physical, sexual, psychological and mental injury. ‘Early marriage’ means marriage or cohabitation with a child or any arrangement made for such marriage or cohabitation. Those working with children will find the Children’s Act, Sexual Offences Act and others such as the Disabled Persons Act vital (Republic of Kenya, 2001; 2006; Wango, 2007). In addition, children counselling is a highly specialised area that requires advanced training (Gibson & Mitchell, 2010) including aspects that apply to children (Jenkins & Polat, 2006).

11) **Drug Acts.** The Government has enacted several laws to govern the manufacture, sale and consumption of certain legal drugs. Some of these laws include the Pharmacy and Poison’s Act that control the importation, exportation, local manufacturing, trade and safe keeping of drugs and the Dangerous Drugs Act (DDA) on import and/ or export of narcotic drugs. Registration includes alcohol and drug control (Republic of Kenya, 2011).

12) **Data Protection Act:** The Data Protection Act has significant impact and implications, and this is likely to increase again when the transition period begins to apply to all
manual (paper) records as well as computer held data. Personal data includes both facts and opinions about an individual. In that case, processing of data has a much wider definition than before and incorporates the concepts of obtaining, holding and disclosing information in whatever format. Data subject refers to the individual on whom data is held. An *Access to Health Records Act* may stipulate standards that support members of the health care team, such as doctors, nurses, counsellors, care-givers, psychologists and psychiatrists, involved in the care and treatment of an individual to share records or make entries in a single record in accordance with an agreed local protocol. The ability to obtain and share information whilst respecting client confidentiality is essential. The practitioner’s contribution to such records must be seen as of equal importance. This reflects the wider value of collaborative work within inter-professional health care team.

The period for which records including client record may be kept depends largely upon legislation including health service policy. Counsellors, psychologists, psychiatrists and psychotherapists need to be acquainted with such legal requirements. For instance, this may require the maintenance of records for at least 8 - 10 years and, in the case of a child, at least to the date of the child’s 18\textsuperscript{th} birthday (this depends largely on the definition of a child). Whether the counsellor is self-employed or working in an organisation, s/he should ensure that no record made relating to the client is destroyed within the stipulated period. All persons including counsellors and staff working in records will have a general duty to comply with the Act. The Act includes transmission of data in whatever form, and disclosure. Individuals can face criminal charges under certain conditions, if, without consent, they knowingly or recklessly, obtain or disclose personal data. Whilst the primary responsibility for counselling records lies with the counsellor, all staff inevitably have a duty to comply with record regulations.

13) *Media, Information and Technology*: The media in Kenya is becoming more diverse, flourishing and competitive. There has been a lot of mushrooming of publications ranging from political and business weekly to social, cultural and health magazines. The electronic media, through the radio and television, and Internet services is increasingly becoming more competitive particularly with the licensing of more radios and television
It is important that the counsellor comprehends laws that deal with the media and information especially when these involve or affect the client.

14) **Counselling Act and Code of Conduct:** The proposed Counselling and Psychologist Act and a Code of Conduct for counsellors should spells out a professional approach to counselling. It is imperative that practitioners be acquitted with a professional conduct of conduct and the services charter which should be displayed prominently in the premises. Professional associations such as Kenya Counsellors Association (KCA), Association of Counsellors in Education (ACE) and Kenya Guidance, Counselling and Psychological Association (KGCPA) should come up with a counselling code of conduct, ethical principles and guidelines. In that case, though a code of ethics is obligatory, counsellors may not strictly adhere to specific regulations but the individual practitioner will make various considerations in unique circumstances.

These and other regulations are outlined in the Table below.

**Table 1. Reference to International Conventions, National Laws, Policies, Guidelines and Regulations**

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<th>The following statutes are key in counselling:</th>
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<tr>
<td>The Constitution of Kenya, 2010</td>
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<td>The Alcohol and Beverages Act, 2010</td>
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<td>The proposed Counsellors and Psychologist Act</td>
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<td>The Children’s’ Act, 2001</td>
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<td>International Conventions, including: Health and Safety; HIV and AIDS; Convention on Elimination of all forms of Discrimination Against Women (CEDAW); and, International Labour Laws</td>
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<td>Persons with Disabilities Act</td>
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<td>The Employment Act (Labour Laws)</td>
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<td>The Marriage Act</td>
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<td>Federation of Kenya Employers Policy Documents</td>
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<td>The Sexual Offences Act, 2006 (Revised 2007)</td>
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<td>Public Officer Ethics Act, 2003</td>
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<td>Public Health Act</td>
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<td>Mental Health Act</td>
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<td>Persons with Disability Act</td>
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<td>Medical Laboratory Act</td>
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<td>Counselling Policies (for example, policy on guidance and counselling in the public service, guidance and counselling in schools)</td>
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Other existing agencies and regulations. For instance, the Dentist Board, the Pharmacist and Medical Dentist Board and Drugs Acts.

- Policies governing various sectors such as Education (The Education Act, Science and Technology), Health (Medical Training and Nursing, Clinical Officers), Prison (The Prisons Act), Publications and Media (Books and Newspaper and The Copyright Acts), Kenya Revenue Authority and relevant regulations applicable in area of work such as Banking, Accounting and Office Practice.
- Professional regulations set up by various professionals / associations such as Accountants, Bankers, Dentists, Law Society of Kenya (LSK), Architects and Quantity Surveyors, Pharmacists and others relevant at the time and place or on issue.

The government also has a constitutional obligation to address the needs of the vulnerable groups (Republic of Kenya, 2010). These include women, older members of society, persons with disabilities, children and youth, members of minority or marginalised communities, and members of particular ethnic and religious or cultural communities.

**Professionalism: Accreditation and Accreditation Standards**

Accreditation is a voluntary process whose major purpose is to ensure quality in a programme. All professionals including counselling will have an accredited programme and persons who qualify and are accredited are expected to meet or exceed the standards of accreditation. Accreditation standards are regarded as minimal requirements for quality of training and standards of practice. An accredited programme can include other (additional) requirements, which they deem necessary and contribute to the overall quality of the programme and for the purpose of licensure. Counselling in Kenya must therefore strive towards accreditation.

Accreditation has quality of standards that include five components:

1. **Qualification and training.** A programme requires a person to have certain minimum qualifications for admission. Training is through a structured coherent programme, in this case counselling or psychotherapy, so that qualifications are outlined. This is because training is fundamental and critical to the process of accreditation. The training programme leads to certification. All training programmes (both pre-and in-service training) and institutions must continuously obtain accreditation.
(2) **Certification.** This is the process by which an institution or agency grants recognition to a person who has met predetermined qualifications specified by that agency or institution in a valid programme of training.

(3) **Registration.** A person who is qualified and accredited is registered. This person should be competent including knowledge, skills and techniques, and professional ethics.

(4) **Licensure.** A person who is qualified is accredited to practice, that is, authorized or licensed. A license is only granted if the person is qualified. Qualification includes two aspects, that is, (a) the integrity of the training programme; and, (2) Institution offering the programme.

(5) **Standards of practice.** Only persons who are qualified can practice in the profession. In addition, they must maintain quality of standards in practice throughout their period of accreditation. For counselling, this includes adherence to a code of ethics.

Counselling training must include accreditation, the accreditation process and the standards of practice. In addition, all practitioners must be registered. The Register of practitioners (Counsellors, Psychotherapists, Clinical Psychologists, Psychiatrists, Psychologists, Social Workers) is a list of members who have met the requirements for registration. The Register is an important quality mark of accreditation of the professionals. All registrants are bound by the ethical framework for practice. Subsequently, all registrants are required have the following:

(a) Qualification and training (accreditation)

(b) Certification (licensure)

(c) Standards of practice (adherence to a code of ethics including Continuing Professional Development (CPD))

Professionals ensure high levels of quality assurance in practice and the Commission for University Education (formerly Commission for Higher Education, 2008) has issued strict guidelines on programme accreditation. Professionalism in counselling should include licensing (and hence registration) of all accredited counsellors. Counsellors and other persons in the formal helping profession will then acquire formal recognition of professional competence designated by certification, licensure, and registration. The training programmes and institutions will also be systematically accredited for quality audit.
Counselling Psychology and Law: Professionalism Practice and Legal Application

Societies are governed by the rule of law. There will be various legislations on corruption, fraud, drug trafficking, customer protection, stalking, money laundering and other financial improprieties and these will not just be frowned upon, but criminalised and severely punished. The Communications Commission of Kenya (CCK) for example prohibits sending of alarming and hateful messages. Thus counselling and law is an intersection zone and a functional zone, a professional intersection meeting point for lawyers and counsellors. In addition, counselling psychologists as experts are sometimes summoned in court by the bar and the bench to give expert evidence and assist the court in dispensation of justice. This enhanced law enforcement will also be incorporated in the Kenyan scene.

Counselling psychology expertise arises in several instances. This includes cases of murder, suicide and self harm, assault and accidents, rape and disputed antics where experts assist the court to reach the right conclusion. Because of the high rate of incidents, the bulk of psychological expert practice concerns assessment of both permanent and temporary disabilities and challenges. This may also include claims of compensation from insurance companies who prefer a condition of psychological nature to be verified by a counselling psychologist, psychiatrist or medical practitioner. The assessment provides insight into human nature. The justice system and other including insurance companies require a fair and honest assessment of the condition of the person.

Counselling psychologists as professionals must establish a reputation for assessing mental illness, depression, trauma and other personality disorders without fear or favour. They must uphold the Constitution and the law and irrespective of who has engaged them effectively make an assessment and report. That way, practitioners will ascertain a common consent on various condition and terms. In addition, counselling is a helping process and practitioners will assist various clients in need. Consequently, help offered by a therapist must take cognisance of the law (Jenkins, 2002; 2009). This paper provides few fast examples.

Credit-card debt is increasing and there are new offers of credit cards every week. So how are some people dealing with their debts? Simple, they have adopted the risk practice of rolling over
or flipping where they routinely transfer their debts to a new card offering a temporary low
interest rate. I have had some clients in the same way borrowing a loan from a bank with a better
offer to buy off the loan in the other and then proceed to pay the new loan. This flip-over to a
new card or loan does not mean the loan is over, it is a transfer and if the person is not careful,
they may end up moving the debt around rather than paying it down. Of course, it is a lot easier
to switch banks and credit cards than to pay a loan! How then does the practitioner assist such a
client, or better still, a manager in a bank with counselling skills enable the customer-cum-client
handle the enormous debt of failure to make minimum payments? Of course, they would require
being genuine and empathetic with the client and also realistic about the current economic
realities. But refusing to honour debts such as giving a bouncing cheque constitutes a crime.

Some clients will claim that they have a habit of following someone and may attribute this to
love and affection, but that may be equivalent to stalking. Stalking is unwanted and obsessive
attention such as repeated following, watching, calling someone, emailing, messaging, sending
gifts and/ or harassing of another person by an individual or group of people (Wango, In Press).
Stalking is a series of actions that occur over a period of time and are thus associated with
harassment and intimidation and may include following the victim in person and/or monitoring
them and is a criminal offence. Many celebrities are stalked by strangers who are obsessed with
them. Stalking is illegal as it is tormenting to the person being watched or followed. However,
some of the actions that can contribute to stalking are initially legal, such as gathering
information, calling someone on the phone, communication through face book or twitter, sending
gifts, emailing or instant messaging. The action/s become illegal when they breach on the rights
of another and are tantamount to harassment. For example, sending an initial text is not usually
illegal, but is illicit when frequently repeated to an unwilling recipient. Also, the victim may feel
they have been the victim of a stalking after a major incident such as being followed home.
Counsellors too have to assist people who are preoccupied and infatuated with others, often at
times in an unhealthy way.

Same sex relations may be shunned in several traditional societies, including in Kenya. The
Lesbian, Gay, Bisexual, Trans-gender and Intersexed (LGBTI) may express sentiments that they
are routinely unfairly and indirectly punished by being denied access to health care, social
services, jobs, housing and general acceptance. The Constitution of Kenya includes the Bill of
Rights and Article 27(4) states: “The state shall not discriminate directly or indirectly any person
on any good” (Republic of Kenya, 2010). Article 162 (1) of the Panel Code states: “Any person
who has carnal knowledge of any person against the order of nature is guilty of a felony and is
liable to imprisonment for fourteen year” (Republic of Kenya, 2010). This violation is a highly
contentious issue since the ‘order of nature’ may be highly litigious. Further, the LGBTI
community may require changing people’s attitude (negative or bias) towards the gay
community. This may include certain sections of the law as well as changing people’s perception
to avoid backlash. Clients coming for therapy may thus feel estranged and discriminated and the
counsellor though perhaps at crossroads certainly cannot be part of bigotry.

The community is, and will continue to be increasingly framed by the requirements of among
others the Children Act, Sexual Offences Act, Labour Laws and Persons with Disability Act to
safeguard and promote children rights, human values and general welfare. There is also the
counsellor or psychologist who can be called to act as an intermediary, for example, in a court of
law on account of their expertise of experience. In that case, there seems a strong possibility that
counsellors will be encouraged, or required, to limit undertakings of confidentiality for instance
and to adopt more of a proactive role in assessing and reporting perceived risk and acts of child
abuse and sexual exploitation. It is imperative that counselling psychology has a structured
policy development. This is to flagship counselling services under the three pillars: client
concerns; counsellor professional development; and, counselling research. To begin with, the
alignment of the Constitution with various legal requirements in Kenya for instance will
ultimately enable a consolidation of several legislations. For counselling psychology a policy
co-ordination department will, as a matter of course, be created to coordinate the development
and harmonization of the procedural regulations in counselling psychology.

Conclusion
Psychological counselling services must be in the context of international and national
conventions and legislation. For example, a counsellor who suggests arbitration to a client must
be aware that negotiation creates certainty and security which gives confidence to all the
participants involved and thus may have a natural healing as it enables sustain and retain the
relationship. The arbitration is a relationship as well as a consensus process and parties submit to arbitration only when they have agreed to do so. Arbitration is final, confidential, cost-effective, faster and cost-effective. In addition, arbitration as well as other legal processes must be seen within the global context of increasing human rights and the need to uphold justice, especially for the marginalized and vulnerable groups such as girls and women, refugees, persons with special needs and the aged.

A major issue in Kenya and counselling, that is typical of developing countries in various facets of life is policy implementation. Effective policy implementation is a highly contentious issue in developing countries where several legislation and policies can be, and are developed but functioning is a major challenge. This is because of various factors, including the social political environment, lack of good will, resources (including finance and personnel), ignorance or lack of strict adherence of general rules and principles, corruption and other factors. Counselling psychology as a profession in turn has to contend with the growing formalised legal environment such as the enactment of a new Constitution in Kenya as well as the upholding of human rights including the rights of children, girls and women, persons with disabilities and other special groups including persons who are undergoing correction or rehabilitation. All these must lead to an enhanced move towards policies clearly aligned to national and international laws as well as operationalized strategies.

References


