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THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION

REPORT OF THE DEPARTMENTAL COMMITTEE ON SOCIAL
PROTECTION ON ITS CONSIDERATION OF
THE PERSONS WITH DISABILITIES BILL
(SENATE BILL NO. 7 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
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PARLIAMENT BUILDINGS
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December 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

ACEPA	African Centre for Parliamentary Affairs
CBM	Christian Blind Mission
KEDIPA	Kenya Disability Parliamentary Association
KHPC	Kenya Housing and Population Census
KNAD	Kenya National Association for the Deaf
NDI	National Democratic Institute
NYS	National Youth Service
NDF	Nairobi Disability Forum
NGEC	National Gender and Equality Commission
NONDO	Northern Nomadic Disabled Persons Organization
ODP	Open Door Programme
SEC	Special Employment Credit
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities.
UDPK	United Disabled Persons of Kenya
WHO	World Health Organization

LIST OF ANNEXURES

1. Report Adoption Schedule
2. Committee Minutes
3. Copy of the newspaper advertisement on public participation
- 4 Letters inviting stakeholders to meetings with the Committee
- 5 Stakeholders' submissions

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Social Protection on its consideration of the Persons with Disabilities Bill (Senate Bill No. 7 of 2023). The Bill underwent First Reading in the National Assembly on 28th February 2024 and was thereafter committed to the Departmental Committee on Social Protection for consideration and reporting to the House pursuant to the provision of Standing Order 127(1).

The Bill contains seven Parts comprised of 86 clauses and two schedules. The Bill seeks to give effect to Article 54 of the Constitution, restructure the National Council for Persons with Disabilities, provide for its functions and powers, provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities, to provide for incentives and reliefs and for connected purposes. The Bill repeals the Persons with Disabilities Act, 2003.

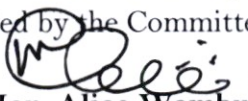
Following placement of advertisements in the print media on 8th March 2024 seeking public and stakeholder views on the Bill pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committee on Social Protection received memoranda from the Ministry of Labour and Social Protection (State Department for Social Protection and Senior Citizens Affairs), the National Council for Persons with Disabilities, the Kenya Disability Parliamentary Association (KEDIPA) and the Nairobi Disability Forum.

The Committee also invited stakeholders vide letter Reference No. NA/DCC/SP/BILL/2024/091 dated 11th June 2024, as well letter Reference No. NA/DDC/SP/CORR/2024/122 dated 20th November, 2024 for stakeholders' engagement meetings on the Bill which was held in several meetings venues within the precincts of Parliament on 15th August, 2024 and 29th November, 2024. The Mover of the Bill, Sen. Crystal Asige, additionally made presentations before the Committee and provided written submissions on the Bill.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the Mover of the Bill, Sen. Crystal Asige and all stakeholders who made their respective submissions on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made valuable input during consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Social Protection and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of The Persons with Disabilities Bill (*Senate Bill No. 7 of 2023*).

I thus wish to table this Report on **The Persons with Disabilities Bill (*Senate Bill No. 7 of 2023*)** in this Honourable House, with the recommendation that the Bill be **approved with amendments** as reported by the Committee, which are contained in the Schedule of Amendments of this Report.


The Hon. Alice Wambui Ng'ang'a, CBS, M.P.
Chairperson, Departmental Committee on Social Protection

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Social Protection is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation,*
 - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. ***To study and review all the legislation referred to it;***
 - v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments),*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation,*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider, social welfare and security, pension matters, gender affairs, equality and affirmative action, affairs of children, youth, persons with disability and senior citizens
3. In executing its mandate, the Committee oversees the following State departments and Commission,
 - i The State Department for Social Protection and Senior Citizen Affairs
 - ii The State Department for Gender and Affirmative Action
 - iii The State Department for Youth Affairs and Creative Economy
 - iv The State Department for Public Service (NYS)
 - v. The National Gender and Equality Commission (NGEC)

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Social Protection was constituted by the House on 27th October 2022 and comprises of the following Honourable Members:

Chairperson

Hon. Alice Wambui Ng'ang'a, CBS, MP
Thika Town Constituency
UDA Party

Vice-Chairperson

Hon. Hillary Kiplang'at Koskei, MP
Kipkelion West Constituency
UDA Party

Hon. (Dr.) James Wambura Nyikal, MP
Seme Constituency
ODM Party

Hon. Timothy Wanyonyi Wetangula, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Lilian Achieng Gogo, MP
Rangwe Constituency
ODM Party

Hon. Mark Ogolla Nyamita, MP
Uriri Constituency
ODM Party

Hon. Edith Vethi Nyenze, MP
Kitui West Constituency
WDM-K PARTY

Hon. Betty Njeri Maina, MP
Murang'a County
UDA PARTY

Hon. Michael Wambugu Wainaina, MP
Othaya Constituency
UDA Party

Hon. Sulekha Hulbale Harun, MP
Nominated Member
UDM Party

Hon. Amina Abdullahi Dika, MP
Tana River County
KANU PARTY

Hon. Hussein Abdi Barre, MP
Tarbaj Constituency
UDA Party

Hon. Susan Nduyo Ngugi, MP
Tharaka Nithi County
TSP PARTY

Hon. Agnes Mantaine Pareiyo, MP
Narok North Constituency
JUBILEE PARTY

Hon. Linet Chepkorir, MP
Bomet County
UDA PARTY

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Parliamentary staff

Mr. Finlay Muriuki
Lead Clerk/ Head of Secretariat

Mr Ahmednoor Hassan
Clerk Assistant III

Ms Jemimah Waigwa
Legal Counsel

Mr. Adan Ahmed Abdi
Fiscal Analyst II

Ms Grace Maneno
Research Officer III

Mr Benjamin Ochutsi
Hansard Officer III

Ms Naomi Onsomu
Public Communications Officer

Mr. Derrick Kathurima
Media Relations Officer

Mr Cosmas Akhonya
Audio Recording Officer

Ms Eva Kaare
Serjeant-at-Arms

Ms. Fiona Musili
Research Officer

PART TWO

2. BACKGROUND OF LEGISLATIONS OF PERSONS WITH DISABILITIES IN KENYA

2.1 INTRODUCTION

6. During implementation of the Persons with Disabilities Act (No. 14 of 2003) following its enactment in 2003, gaps were observed including the lack of express provision of the obligations of the County Governments to the rights and welfare of persons with disabilities. The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) thus seeks to address this and other gaps in order to align the law to Article 54 of the Constitution.

2.2 SITUATIONAL ANALYSIS

7. According to World Health Organization (WHO), at least 1.3 billion people in the world, live with a disability forming the world's largest Minority group at 16% of the global population. The 2019 Kenya Housing and Population Census estimated that there are 0.9 million persons living with disabilities, which translates to 2.2% of Kenya's population. The majority of the disabled population, who make up 66% of the disabled population live in the rural areas. Children between the ages of 0-14 years constitute the highest number of people with disabilities at 43.4% while those above the age of 55 make up 6.7%.

8. In Kenya, the rights and fundamental freedoms of the persons with disabilities are provided for under the Constitution, the Persons with Disabilities Act, 2003, and the UN Convention on the Rights of Persons with Disabilities.

9. Despite the progress made so far, the country currently has no legal framework in place that sets out obligations of the County Governments with regards to persons with disabilities. The proposed Bill is cognizant of the devolved government and has set out functions of both the national and county governments in regards to Persons with Disabilities.

2.3 COMPARATIVE ANALYSIS

Ghana

10. In Ghana, the rights of persons with disabilities are promoted and protected under the Persons with Disability Act (Act 715), which was enacted in 2006. The Act provides for rights such as education, employment, accessibility, and social welfare for persons with disabilities. As well as the establishment of a National Council of Persons with Disabilities.

11. The main function of the Council as provided in the Act, is to propose and evolve policies and strategies to enable persons with disability enter and participate in the mainstream of the national developments process.

12. The Act also provides for employment rights and opportunities for persons with disabilities. This includes provisions on access to public buildings, transportation, and information. The Act seeks to ensure the needs of the Persons with Disabilities are taken into account in designing, construction and operation of the transportation network, including importation of non-conventional vehicles and parking for Persons with Disabilities.

13. There are notable similarities between the proposed Bill and Ghana's Act 715 which include the establishment of the National Council for Persons with Disabilities and some of the functions and the right to free medical care and treatment. On the contrary, the proposed Bill provides for tax incentives to encourage employers to participate in the inclusion of PWDs, while the Ghana's Act does not.

Singapore

14. The Constitution of the Republic of Singapore, the Enabling Masterplan and the UNCRPD (in full) form the legal structure that underpins the rights and freedoms for persons with disabilities in Singapore.
15. The Enabling Masterplan, which outlines Singapore's strategies and initiatives for disability rights and inclusion, defines Persons with disability as "those whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory, intellectual and developmental impairments".
16. Article 12 of the Constitution of the Republic of Singapore states that "all persons are equal before the law and entitled to the equal protection of the law". Further, Singapore ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2013.
17. Some of the initiatives by the Singapore Government to ensure disability mainstreaming include —
 - i. Special Employment Credit (SEC) offered as an incentive for companies to hire Singaporean workers with disabilities.
 - ii. The Code on Accessibility in the Built Environment 2013 is a set of guidelines and requirements for improving accessibility in Singapore. The Code only applies to buildings that are constructed after the Code came into effect. There is no legislation to ensure older buildings are accessible.
 - iii. Schemes that provide funding support to companies to make their workplace and buildings more accessible to persons with disabilities. The two schemes are as follows—
 - a) Open Door Programme (ODP) provides up to 90% subsidy of workplace modification.
 - b) Accessibility Fund subsidises up to 80% of the construction cost of basic accessibility features such as ramps, lifts, accessible toilets and signage.
18. Singapore has been able to formulate programmes to implement the provisions of its Constitution which ensure that the Persons with Disabilities are catered for by ensuring accessibility, funding and support to companies that make their workplaces accessible to Workers with Disabilities.
19. Similar to the proposals in the proposed Bill, Singapore offers employment incentives and wage offsets for employers of Persons with Disabilities, as well as subsidies of the cost of construction of accessibility features.

Australia

20. Australia's Disability Discrimination Act of 1992 prohibits discrimination against Persons with Disabilities in various aspects of public life including employment, education, access to goods and services, renting or buying a house and accessing public places. The Act covers people who have temporary and permanent disabilities; physical, intellectual, sensory, neurological, learning and

psychosocial disabilities, diseases or illnesses, physical disfigurement, medical conditions and work-related injuries.

21. To ensure disability mainstreaming, Australia has various accessibility standards and regulations, including—

- i) the Disability (Access to Premises - Buildings) Standards 2010, which specify requirements for accessible building design;
- ii) the Disability Standards for Accessible Public Transport 2002 to ensure accessibility in public transportation;
- iii) the Disability Discrimination Act 1992, together with the Disability Standards for Education 2005 to promote inclusive education. The educational institutions are required to provide reasonable adjustments and support for students with disabilities.

PART THREE

3 OVERVIEW OF THE PERSONS WITH DISABILITIES BILL (SENATE BILL NO. 7 OF 2023)

3.1 INTRODUCTION

22. The Persons with Disabilities Bill (Senate Bill No. 7 of 2023) is a Bill sponsored by Sen. Crystal Asige that was forwarded to the National Assembly for consideration having been passed by the Senate.
23. The Bill seeks to give effect to Article 54 of the Constitution, restructure the National Council for Persons with Disabilities, provide for the Council's functions and powers, provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities, to provide for incentives and reliefs and for connected purposes. The Bill repeals the Persons with Disabilities Act, 2003.
24. The Bill is divided into seven Parts comprised of 86 clauses and two schedules. The following are the key highlights of the Bill:

Part 1-Preliminary Provisions

25. Part 1 of the Bill provides for the preliminary provisions which are the short title, definition of terms as used in the Bill and the guiding values and principles.

Part 2- Obligations of the National and County Governments

26. Part 2 of the Bill prescribes the obligations of the national and county governments. Clause 4 provides that the national government shall be responsible for among other things developing policies on the protection and promotion of the welfare of persons with disabilities. Clause 5 provides for the obligations of every county government which is to implement the national policies for the protection and promotion of the welfare of persons with disabilities.

Part 3- Rights of Persons with Disabilities

27. Part 3 of the Bill provides for the rights of persons with disabilities which are:
 - a) Clause 6-Right to equality and non-discrimination;
 - b) Clause 7-Right to legal capacity;
 - c) Clause 8-Right to marry and form a family;
 - d) Clause 9-Right to privacy;
 - e) Clause 10-Rights of women with disabilities;
 - f) Clause 11-Rights of children with disabilities;
 - g) Clause 12-Rights of youth with disabilities;
 - h) Clause 13-Rights of older members of society;
 - i) Clause 14-Right to documents of registration and identification;
 - j) Clause 15-Right to physical and mental integrity;
 - k) Clause 16-Right to human dignity;
 - l) Clause 17-Right to be protected from abuse, exploitation and violence;

- m) Clause 18-Protection and safety of persons with disabilities in situations of risk and humanitarian emergencies;
- n) Clause 19-Specific measures for persons with disabilities;
- o) Clause 20-Right to education;
- p) Clause 21-Right to work and employment for persons with disabilities;
- q) Clause 22-No dismissal of employee with disability;
- r) Clause 23-Incentives for private employers who engages a person with disability as an employee. The employer shall enjoy a deduction from taxable income of 25% of the total amount paid as salaries for such employees and where they have modified physical structures to provide reasonable accommodation for employees with disabilities, the employer shall be entitled to additional deductions of 50% of the direct costs of the improvements.
- s) Clause 24-Right to health. Persons with disabilities shall be entitled to free medical care and treatment in public health institutions;
- t) Clause 26-Right of access to ICT services;
- u) Clause 27- Access to financial and banking services;
- v) Clause 28-Access to justice;
- w) Clause 29-Right to take part on an equal basis with others in sports, recreation, leisure and cultural activities;
- x) Clause 30-Right to a barrier free and disability friendly environment to enable them to have access to buildings, roads and other social amenities and assistive devices;
- y) Clause 32-Civic and political rights for persons with disabilities;
- z) Clause 33- Right to independent living.

28. This Part also provides for the enforcement of the rights specified in the Bill through application to the High Court.

Part IV-Establishment of the National Council of Persons with Disabilities.

29. Part IV of the Bill provides for the establishment of the National Council of Persons with Disabilities, its functions and powers.
30. Clause 37 provides that the functions of the Council shall include to advise on formulation and development of policy and advise on, and enforce accessibility, reasonable accommodation and non-discrimination for persons with disabilities.
31. Clause 40 of the Bill provides for the composition of the Council which shall consist of:
- a. Chairperson draw from organizations of persons with disabilities who shall be appointed by the President;
 - b. Principal Secretary responsible for matters relating to disabilities;
 - c. Principal Secretary for finance;
 - d. One person nominated by Council of Governors;
 - e. Three persons nominated by organizations of persons with disabilities representing different categories of disabilities appointed by the Cabinet Secretary;
 - f. Two persons nominated by the organization of persons with disabilities, one of whom shall be from organizations of parents and guardians of persons with mental disabilities who cannot represent themselves, appointed by the Cabinet Secretary; and

- g. The Executive Director of the Council.
32. This Part further provides for the powers of the Council; qualifications for appointment of the chairperson and members of the Council; the funds of the Council and the tenure of the Members of the Council which shall be five years renewable once.

Part V-Reliefs and Incentives

33. Part V of the Bill provides for reliefs and incentives for persons with disabilities which are:
- a. Clause 55-All persons with disabilities who are in receipt of income may apply to the Cabinet Secretary for finance for exemption from income tax;
 - b. Clause 56- A parent or guardian of a person certified with severe disability and incapable of catering of their basic need may apply to the Cabinet Secretary for finance for a tax exemption of Kshs 150, 000.
 - c. Additionally, the Cabinet Secretary on social protection may on application of a parent or guardian who is indigent and is responsible for the care of a person certified with severe disability, grant a long-term social assistance monthly cash transfer of not less than Kshs. 10, 000 in accordance with the Social Assistance Act.
 - d. Clause 57-Any donations to organizations dealing with persons with disabilities shall be allowed deductions in computing taxable income.
 - e. Local manufacturers of assistive devices may also be provided with incentives on raw materials, inputs and imported capital equipment.
 - f. Clause 58 of the Bill provides that the Cabinet Secretary responsible for matters relating to cooperatives and other lending institutions may develop guidelines to ensure persons with disabilities have equal access to bank loans, mortgages and other form of financial credit.
 - g. Clause 59 provides for exemption from taxable income of employers of persons with disabilities.
 - h. Clause 60 provides for exemption from postal charges for materials and devices used by persons with disabilities.

Part VI-Offences and Penalties

34. Part VI of the Bill provides for the following offences among others:
- a. Clause 61 creates the offence against discrimination of persons with disabilities.
 - b. Clause 62 prescribes the offence against abuse, exploitation or violence of person with disabilities.
 - c. Clause 63 creates the offence against concealment of persons with disabilities.
 - d. Clause 64 provides for the offence against perpetrating harmful practices against persons with disabilities which is punishable with life imprisonment.
 - e. Clause 65 provides for the offence against denial of food and fluids of persons with disabilities.
 - f. Clause 66 creates the offence against the degrading treatment of persons with disabilities.
 - g. Clause 67 provides for the offence against negligence by medical practitioners and care givers.
 - h. Clause 70 provides for the offence against torture and cruel treatment of persons with disabilities.

Part VII-Miscellaneous

35. Part VII of the Bill provides for miscellaneous provisions which include provisions on protection of roads users with disabilities; obligations and incentives of owners of public service transport;

provisions against denial or admission into premises; and establishment of disability mainstreaming units in all government ministries and county public offices.

36. This Part also provides for the general penalty, regulations making authority of the Council, repeal, transitional and saving provisions.

37. The First Schedule provides for the conduct of business and affairs of the Council and the Second Schedule provides for access to public buildings.