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ELEVENTH PARLIAMENT – THIRD SESSION 2015

REPORT OF THE
JOINT COMMITTEE ON NATIONAL COHESION AND EQUAL OPPORTUNITY
ON

THE 14TH SESSION OF THE CONVENTION ON RIGHTS OF PEOPLE WITH
DISABILITY CONFERENCE HELD ON 18-19 AUGUST, 2015 IN GENEVA,
SWITZERLAND

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2015

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Preface

On behalf of the Joint Committee on National Cohesion and Equal Opportunity and pursuant to the provisions of standing order no 199, it is my pleasure and duty to present to this house the committee's report on the 14th Session on the Convention on the Rights of People with Disability (CRPD).

Mandate of the Committee

The Joint Committee on National Cohesion and Equal Opportunity is established under the Standing Orders of the two (2) Houses of Parliament in order to, among others

- a) monitor and promote measures relating to policy and program initiatives in pursuit of peace and national cohesion;
- b) investigate, inquire into and report on all matters relating to inter community cohesion;
- c) monitor and promote measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all persons, including persons who are marginalized on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground;
- d) investigate, inquire into and report on all matters relating to discrimination and or marginalization of persons referred to under sub-paragraph (c) ; and examine the activities and administration of all Ministries, departments and statutory bodies in so far as they relate to the rights and welfare of the groups referred to under paragraph (c).

Committee Membership

The Joint Committee comprises of the following Members: -

1. Hon. Sakaja, Johnson MP - **Chairperson**
2. Sen. Hargura Godana, MP - **Vice Chairperson**
3. Sen. Abdirahman Hassan, MP
4. Sen. Christopher M. Obure, MP
5. Sen. Karue Muriuki, MP
6. Sen. Moses Kajwang', MP
7. Hon. James Gordon Rege, MP
8. Hon. Mohamed Elmi, MP
9. Hon. Maison Leshoomo, MP

10. Sen. Peter Mositet, MP
11. Sen. Emma G. Mbura, MP
12. Sen. Mike Mbuvi Sonko, MP
13. Hon. Kimani Ngunjiri, MP
14. Sen. Stephen Sang, MP
15. Hon. Roba Duba, MP
16. Sen. Ali Bulle, MP
17. Hon. Francis Mwangangi, MP
18. Hon. Moses Injendi, MP
19. Sen. Beatrice Elachi, MP
20. Sen. Isaac Melly, MP
21. Hon. Zipporah Jesang, MP
22. Hon. Grace Kipchoim, MP
23. Sen. Agnes Zani, MP
24. Hon. Mohamed Diriye, MP
25. Sen. Henry Tiolo Ndiema, MP
26. Hon. Rose Museo Mumo, MP
27. Sen. Godliver Omondi, MP
28. Hon. George Omondi Mallan, MP
29. Hon. Peris Tobiko, M.P.

THE DELEGATION

The 14th session of the CRPD Convention was held in Geneva, Switzerland, and was which was chaired by Klaus Lachwitz, President of Inclusion International, also Maureen Piggot, President of Inclusion Europe; Osamu Nagase, regional representative for the Asian-Pacific region of Inclusion International; Fatma Wangare, Chief Executive Officer of the Association for the Intellectually Handicapped (KAIH) in Kenya; and Diane Richler former President of Inclusion International; intervened.

The Government of Kenya sent a delegation to submit the required Report to the CRPD and was led by the Attorney General Prof. Githu Muigai. The delegation was drawn from Parliament: - the Departmental Committees on Labour and Social Welfare, Justice and Legal Affairs, the Joint Committee on National Cohesion and Equal Opportunities and, the Select Committee on Labour from the Senate, the Ministry of Labour, Social Security and Services, Ministry of Foreign Affairs, National Gender and Equality Commission, the Kenya National Human Rights Commission.

Members of the Joint Committee on National Cohesion and Equal Opportunity that formed part of the delegation were:

1. Hon. Johnson Sakaja, MP - **Chairperson and Leader of Delegation**
2. Hon. Moses Malulu Injendi, MP
3. Hon. Rose Mumo Museu, MP
4. Hon. Zipporah Jesang Kering, MP
5. Mr. Oscar Namulanda Wesonga - **Secretary of the delegation**

Committee Observations and Recommendations

Having held meetings with the different organizations, and considered the presentations and submissions presented the Committee made the following general observations and recommendations:-

Committee Observations

The Delegation made the following observations that: -

1. Kenya ratified the CRPD in 2008, and 7 years later Kenyan laws are yet to be amended to align them to the CRPD. The Persons with Disabilities Act 2003 has been under review for a long time but the actual Amendment of the Act has not been achieved. Kenyan laws still contain derogatory terms despite the CRPD and the Kenyan Constitution indicating that Persons with Disabilities should be treated with dignity.
2. Women with disabilities' sexual and reproductive health rights are violated. E.g. KNCHR recorded cases of women who were sterilized without their consent or were taken through hysterectomy without consent or informed consent.
3. Accessibility of the built environment and transportation is a big challenge in Kenya. Both public and private buildings are largely inaccessible to persons with disabilities. There are some efforts that have been made to modify existing facilities like hospitals but a lot needs to be done. Public transportation is not accessible to PWDs. Hitherto the State has focused on reasonable accommodation, which on its own may not achieve the desired goal of accessibility.
4. There is lack of adequate data on the number of PWDs in Kenya. Some surveys have been conducted to gather data. However, the need for disaggregated data on PWDs in Kenya is very important for proper planning of programs to improve service provision to PWDs.

Committee Recommendations

The Delegation made the following Recommendations: -

1. The State should take steps to stem out practices that violate sexual and reproductive health of women with disabilities by amending Sexual and Reproductive Act 2013.
2. The State should implement the principle of universal design alongside that of reasonable accommodation in order to realize the right of accessibility for PWDs.
3. The State should ensure that there is disaggregated data on PWDs. This can be realized through budgetary allocation to carry out the census.
4. There should be commitment in implementing the existing legislative and policy frameworks of Kenya. They should be translated into tangible practice thus a fundamental shift from Commitment to practice.
5. There is need for review of the implementation of Article 33 of the CRPD. This should be undertaken as a matter of priority by the relevant organs of the Government of Kenya.
6. Efforts and resources be directed towards packaging the Conventions into alternative languages and formats that are easily understood by the majority of Kenyans.

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1.1 Adoption of the Report.

We the Members of the Departmental Committee on Labour and Social Welfare have pursuant to Standing Order 199 adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today on.....,2015.

1.2 Acknowledgement.

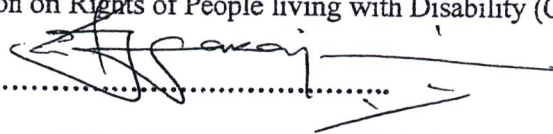
The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled the Committee to complete the task within the stipulated period.

The Committee wishes to record its appreciation for services rendered by the staff of the Parliament attached to the Committee, their efforts and input made the work of the Committee and compilation of this Report possible.

On behalf of the Departmental Committee on Labour and Social Welfare it is my pleasure and duty to present the Committee's observations and recommendations on the 14th Session of the Convention on Rights of People living with Disability (CRPD).

SIGNED.....



HON. JOHNSON SAKAJA, MP - CHAIRPERSON

DATE.....

SIGNED.....

SEN. HARGURA GODANA, MP - VICE CHAIRPERSON

DATE.....

1.0 BACKGROUND

The Convention on the Rights of Persons with Disabilities (CRPD) (GA resolution A/RES/61/106) is an international human rights treaty adopted by the United Nations General Assembly (UNGA) on 13th December 2006; it opened to signatures on 30th March 2007 and came into force on 3rd May 2008 following ratification by the 20th State Party.

As of February 2011, the Convention had 98 State Parties and was the first Human Rights Treaty to be ratified by a regional integration organization, the European Union. It has 147 signatories.

The Convention adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptation have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

All States Parties have to submit regular reports to the Committee on how the rights enshrined in the Convention are being implemented. States must report initially within two years of ratifying the Convention and, thereafter, every four years. The Committee examines each report and makes suggestions and general recommendations on the report. It forwards these recommendations, in the form of concluding observations, to the State Party concerned.

The Committee normally meets in Geneva and holds two sessions per year. The Delegation left Nairobi for Geneva on 15th August 2015 and arrived in Nairobi on 23rd August 2015.

2.1 THE KENYA GOVERNMENT REPORT IN THE 14TH SESSION TO THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The Kenya government report was ably presented by the Attorney General Prof. Githu Muigai who responded to the list of issues in relation to the initial report of Kenya under the convention on the rights of persons with disabilities as follows:

A. Purpose and general obligations (articles. 1–4)

1. The Government of Kenya was required to indicate what measures that are being adopted for comprehensive legal harmonization, including on the concept of disability, and to remove from it derogatory terms to refer to persons with disabilities, such as “unsound mind”, “mental incapacity” and “mental infirmity”, present in its legislation, in particular the 2010 Constitution Article 83(1)(b), the Local Government Act 2010 Part V, paragraph 53(c), and the Election Act 2011 section 9, Marriage Act 2014 sections 11(2); where derogatory terms are found.

Harmonization

The Constitution is the overarching standard for the protection of the rights of persons with disabilities and secures significant gains for them. Article 54 of the Constitution recognizes and specifically details rights of Persons with Disabilities (PWD) with specific emphasis on the right to be treated with dignity, equal access to educational facilities, reasonable access to all places, and use of sign language, Braille or other communication. It is noteworthy that Schedule 6(Art 7) commands that all laws existing before the constitution and which have not been aligned to it must read and be construed as though they were aligned. This means that all laws in Kenya are interpreted in conformity with the constitutional provisions, which protect and enhance the dignity and respect of PWD.

Kenya is in the process of harmonizing all its laws and policies with regard to disability rights to ensure that they conform to the Constitution, general rules of international laws and any treaty or convention ratified by Kenya as per Article 2(5) & 2(6). In this regard, all commendable efforts are being made where there is relevancy to mainstream concerns of PWD in all laws and policies in Kenya. Notable legislation in this regard which have so far been reviewed and are in the process of being enacted, include:

- (a) The Evidence Amendment Bill 2011,
- (b) Law of succession Act Amendment Bill, 2015
- (c) The Children Act Amendment Bill 2015,
- (d) The Five Labour Relations Legislation:
 - i) Employment Amendment Bill 2015,
 - ii) The Labour Institutions Bill, 2014,
 - iii) The Labour Relations Bill, 2015,
 - iv) The Occupational Safety and Health Draft Bill, 2015,

- v) Work Injury Compensation Bill, 2015,
- (e) The Sexual Offences Amendment Bill 2015
- (f) Borstal Institutions Amendment Bill 2015, Independent Electoral Commission and Boundaries Act, 2011,
- (g) Persons with Disability Education Bill, 2015
- (h) The Access To Communication Bill, 2015,
- (i) Person Deprived of Liberty Act, 2014
- (j) Elections Act 2011, Political Parties Act 2011,
- (k) Prisons Amendment Bill, 2015
- (l) The Judicial Service Commission Act,
- (m) The Public Service Commission Act
- (n) The Salaries & Remuneration Commission Act,
- (o) The Teachers Service Commission Act,
- (p) The National Police Service Commission Act

The Person with Disability (Amendment) Bill 2015 seeks to re-enact the Persons with Disabilities Act, No.14 of 2003 to align it with constitutional provisions and the Convention. It further enhances equalization of opportunities, habitation and rehabilitation of Persons with Disabilities. The Bill adopts a broader definition of disability by including those with developmental impairments and albinism.

Derogatory language

The Constitution of Kenya 2010 (art. 54) outlaws derogatory language in respect of PWDS. The Government has undertaken to audit all laws passed since the promulgation of the 2010 Constitution; to rectify any anomalies in the laws, thus ensuring their concurrence with inter alia the Convention. While the exercise is ongoing measures have already been taken to remove from some of the laws derogatory terms used to refer to persons with disabilities. These legislations include:

1. The Local Government Act repealed and replaced by the County Government Act
- Article 83(1) (b), the Constitution**

There are procedures provided for in the Constitution on general amendment of the Constitution and the factors to be taken into consideration. However, this is to be taken up by the government through the legislative drafting sectors during the process of auditing all existing legislation both prior to and after the promulgation of the new Constitution.

2. The Government of Kenya was required to provide information about the situation of persons with disabilities who belong to minority communities and indigenous groups and indicate what measures have been taken to ensure that Kenyan disability legislation and policies include and protect them. Please inform whether there is a translation of the Convention into Swahili language.

The Constitution of Kenya has a robust bill of rights, which provides for equal protection and equal benefit before the law in Article 27(1). Article 56 on specific application of rights of the Constitution emphasizes protection of PWDs who belong to minorities and marginalized.

The Government is working with disability sector through the National Gender and Equality Commission and the Disabled Persons organizations to promote the rights of marginalized persons with disabilities.

An equal opportunity policy is being developed to protect and promote representation of all categories of groups including minorities and marginalized. The County Governments are also developing laws to take care of special needs of persons with disabilities. The government through NGEN has developed county guidelines to entrench inclusion of PWDs, minority and marginalized groups.

Further, through Public Procurement Oversight Authority the Government is implementing the 30% reservation of all Government procurement to Persons with Disabilities, Women and Youth. This provides great opportunity for inclusion purposes. Further, Persons with disabilities have been allocated at least 2%¹ which has been ring fenced out of the 30%. No category of the three target groups is allowed to get more than 50% of the 30%.

In addition, through the recently devolved county system of government, each county is expected to address the concerns of persons with disabilities within their jurisdiction. This will be done through the county assemblies in which persons with disabilities are represented and expected to raise concerns of persons with disabilities within the county be they from the marginalized, minority or indigenous. Monitoring of this is being put into place through the representation of the National Council of Persons with Disabilities in each of the counties.

Kenya has not yet translated the convention into Swahili language but it has recognised that a considerable percentage of its population communicates in Swahili. The State through the languages of Kenya Bill 2015 will make efforts to translate the Convention into Swahili and other local languages avail the same in braille format to ensure its access to persons with visual impairment.

3. The Government of Kenya was required to provide information on mechanisms to consult with organizations of persons with disabilities.

Article 10 of the Constitution underpins national values and principles on participation of people where Persons with Disabilities are included. The Government works closely with Disabled Persons Organizations (DPOs) and involves them directly to ensure systematic communication. DPOs are directly involved in all National undertakings on disability including on programme and policy matters where they also work closely with the National Council for Persons with Disabilities (NCPWDs), a semi autonomous state agency responsible for implementing disability programmes. The Government funds DPOs to implement disability programmes including awareness raising and humanitarian programmes targeting persons with disabilities.

In addition, the preparations of reports for the regional and International meetings and Conferences are done in consultation with persons with disabilities through their disabled Persons organizations. Further, the Government has employed regional coordinators for disability under the NCPWD to reach out to the DPOs at the lowest level of Governance.

Further, the process of consultation of Persons with disabilities through the Constitution Implementation Commission on the Persons with Disability Amendment Bill is a great platform for reaching Persons with disabilities. With regards to fulfilling obligations at the domestic level, the NGEAC monitors implementation of the Convention. In addition, KNCHR, which is a **national human rights institution** with the status of category 'A' Paris Principles (an independent institution with capacity to promote, monitor and investigate) is facilitated by the Government of Kenya and also consults DPOs at length.

B. Specific rights Equality and non-discrimination (art. 5)

4. The Government of Kenya was required to clarify whether the provisions against discrimination on the basis of disability are applicable to all persons with disabilities including persons with intellectual and/or psychosocial disabilities. Please explain the measures taken to ensure non-discrimination of persons with disabilities by private actors, including within families, and to address cultural practices, which are discriminatory of persons with disabilities.

Article 27 (4) of the Constitution protects persons with disabilities against discrimination. There are still some challenges especially in tax exemption for persons with psychosocial disabilities and consultation are ongoing spearheaded by National Gender and Equality Commission (NGEC) together with relevant organizations to ensure all disabilities are treated the same and not as a medical condition. For private organization, the ongoing persons with disabilities amendment Bill 2012 include private actors. Further, the constitution under article 20 provides for the rights applies to all law and binds all state organs and all persons.

The government through relevant institutions including National Gender and Equality Commission (NGEC) the United Disabled Persons of Kenya (UDPK), The National Treasury, Kenya Revenue Authority, National Council for Persons with disabilities and the Ministry of Labour, Social Security and Services continue to hold discussions towards an objective criterion within the spirit of persons with disabilities (2003) Act and the constitution on tax relieve as a means to address marginalization of PWDs.

Joint effort between the government and disability organizations continue to be stepped up to enforce equal treatment of psychosocial disability through both the implementation of the law and systematic awareness to ensure no discrimination of persons with disabilities of any type including those with psychosocial disability.

Women with disabilities (art. 6)

5. The Government of Kenya was required to inform on concrete measures taken to mainstream the rights of women and girls with disabilities into the work of the National Gender and Equality Commission.

The Constitution 2010 contains specific provisions on how the inclusion and participation of all is to be achieved. At Article 10, of the Constitution contains the national values and principles of governance which bind all State organs, State officers, public officers and all persons.

I. Political participation

The Constitution 2010 holds dear rights of women and girls with disabilities who have been historically marginalized. **Article 27** requires not only equality and freedom from discrimination but affirmative action to remedy these historical wrongs. The duty of the State to ensure full participation of these groups of persons is also emphasized in **Articles 54 and 56** that elaborate the rights of people with disabilities and minorities and marginalized persons respectively.

The Kenyan Supreme Court in **Advisory Opinion No. 2 of 2012 [2013]**, noted “[47] The distinct social imperfection which led to the adoption of Articles 27(8) and 81(b) of the Constitution; that in elective or other public bodies, the participation of women including those with disabilities have, for decades, been held at bare nominal levels, on account of discriminatory practices, or gender-indifferent laws, policies and regulations.” These sentiments equally reflect the position of girls and women with disabilities.

II. Monitoring

Women with disabilities continue to be singled out as a special group among the Persons with disabilities. The government through the National Gender and Equality Commission (NGEC) has been paying attention to this group especially in such discussions as political participation. Women have historically been marginalised in all spheres especially political participation, decision-making, land succession matters among others. Women with disabilities however suffer more marginalisation than their able counterparts. The operationalization of the NGEC Act 2011 has made tremendous achievement in promoting inclusion of women with disabilities in decision-making.

The High Court Constitutional Petition case No 147 of 2013, Court directed that IEBC develop a program, in conjunction with constitutional and statutory commissions and political parties, policies and measures geared towards increasing the participation of women, youth, persons with disabilities, marginalized groups and other vulnerable

Persons to effectively participate in political processes. The Petition resulted in immediately realisation of representation of women with disabilities through gender top-up of forty four women. The women nominated have been instrumental in advancing the interests of women and girls with disabilities in the county governance structures.

The Commission has been monitoring the presidential call on 30% women recruitment and promotions. The Commission has particularly developed advisories to the president whenever there are state appointments to ensure gender equality.

Although the number of women with disabilities in senior state offices is still negligible, the government has made significant effort by appointing a Principal Secretary who continues to influence and serve as a role model for women with disabilities.

The President of the Republic recognised that women, youth and persons with disabilities are the most vulnerable groups and needed empowerment. Consequently preferences and reservations regulations have been developed in subsidiary legislation to enable them participate in government procurement and enterprise development funds. The women include women with disabilities without discrimination. The Commission has developed tools to assess the impact of the same on women, which includes women with disabilities. The women representatives are the patrons of the Uwezo fund.

The Commission has also played a critical role in the realisation or repeals and development of various laws including, the Persons with Disabilities Bill 2015, the Sexual and Gender Based Violence Laws, the Marriage Act and, the legal amendments to persons with disabilities tax exemptions order 2010. The repealed PWD Bill 2014 provides for the right to reproductive health, participation in decision making, the right to custody of their children and prohibits deprivation of a child on parental care on the ground of disability.

Through the on-going discussions on two thirds gender rule provided for in the constitution of Kenya, the principle of inclusivity, a Commission's guiding principle has been adopted to ensure women with disabilities make five per cent (5%) of the total number of reserved seats in achieving the constitutional provision. The Commission is currently developing a database to regularly collect and disseminate statistics on minimum gender indicators and the core set of violence against women indicators developed by UN statistical Commission in 2013. The database is a comprehensive and robust on gender inequalities and will inform the government in its planning together with the consistent and annual gender response budgeting measures inculcated in government planning through the Commission works.

The Commission is also developing standards and indicators to measure gender inclusion at the county level and it specifically mentions women with disabilities.

Moreover, the Commission runs a youth mentorship program funded through a development partner to capacity building young women among them women with disabilities. Internally in addition to exposing them to work learning situations and the Commission has been linking them to employers and has called on other employers to emulate in duplicating such programs in a bid to mainstream the rights of women with disabilities.

The Commission has been able to carry out audits on children's homes and institutions with special focus on children with disabilities, which includes the *girl child*. *The report is ready for publishing and in it various recommendations are made to improve the welfare, which includes special arrangements and provision of assistive devices.*

Children with disabilities (art. 7)

6. The Government of Kenya was required to report on measures taken to guarantee full respect for the views of children with disabilities, including from children living in rural areas and children who belong to minority communities, in accordance with article 7.3 of the Convention.

Articles 73 and 53 of the Constitution 2010 adequately address the issues of children both with disabilities and those without. Sessional paper no.6 of 2014 on the National Children Policy provides for participation of all Children including children with disabilities. Further, the government has developed Children participation guidelines and operation guidelines, standing orders and the Charter for Children Assemblies. According to Kenya Social Protection Sector Review 2012, there are 349,086 children with disabilities. Considering the stigma associated with disability, the real figure could be much higher. There are inadequate institutions and expertise countrywide to address the needs of children with disabilities. The Government has developed Guidelines on Identification and Referral of Children with Disability and Special Needs. The guidelines are aimed at health workers, as well as caregivers. A training manual for health workers on prevention, early identification and intervention on disability is in use. There are also in place National Plan of Action and Strategic Plans for Children in Kenya and Partnership Strategy for the policy formulation, programming, coordination and mobilization of resources for the implementation, realization and safeguarding the rights and welfare of the Child in Kenya.

Based on the Children Policy, the Government has constituted Forty-seven County Children Assemblies where representatives are drawn up to the National level Assembly with the mandate to allow children to meet at least twice a year at county level and once at National level to deliberate on matters that concern them. Children with disabilities are well represented at both levels by a 15% representation. Further, the sergeant at arms of the Kenya National Children Assembly is a child with disability as provided by the guidelines. The children with disabilities elect one of their own to this position.

In 2014, a child with disability at county level represented the children of Kenya to the Post 2015 development Agenda forum in London, UK. The Government officers working with children (Children Department) have been trained to handle issues of children with disabilities including communicating with Children with Disabilities and also reporting on the same. Recently the National Council for Persons with disabilities has recruited officers and posted them to all Counties to ensure issues of disabilities including those concerns of children in all regions in the country can be addressed.

Further, National efforts towards improving provision of educational services, assistive devices and rehabilitation and medical facilities / services are seen in the funding of the devices for schools through the National Council for persons with disabilities.

All children inclusive those with disability have a right to the highest level of standards of health care. Parents and guardians have the first obligation to ensure that the children's health is assured. In addition, under the Government support, all children below 5 years of age are managed free of charge in public facilities. Preventive measures such as immunisation are free in public facilities and highly subsidised in private facilities. Clinics for those with disability are provided in every health facility.

Awareness-raising (art. 8)

7. The Government of Kenya was required to indicate whether there are awareness raising trainings and campaigns on disability in civil service, schools, media, and cultural and religious-run institutions and initiatives aimed at general public, including the private sector.

The Government has established a team of officers both at the Ministry of Labour, social Security and Services and the National Council for Persons with Disabilities (NCPWD) who go around public institutions (Ministries, Departments and Agencies) to train and sensitize staff on disability mainstreaming. The officers also provide the services to colleges, Media

houses and religious institutions. Regional disability officers utilize the public forums organized by the Provincial Administration (**Chief's Barazas**) to pass disability messages to the public. Plans are underway to reach out to the private sector as well in the near future.

Training of Trainers have been trained on disability mainstreaming and many other organizations including DPOs and consultancy institutions have taken on this positively and a larger percentage of staff in public institutions are highly informed on the rights of persons with disabilities. Since May 2013, the Kenya Broadcasting Corporation TV Station has been running "**Abled Differently programme**" on a weekly basis with a view to enlighten communities and change attitudinal barriers on disability issues.

Further, the National Council for persons with disabilities in collaboration with Ministry of Labour, social Security and Services which is responsible for disability and disabled people's organization have been working on a CRPD plan of action which among other things include awareness raising with specific focus on National Accessibility. The plan is about to be launched and this will mobilize all stakeholders in the area of awareness. New employees in ministry of education are sensitized on disability as part of induction.

During annual forum for head teachers, a session is dedicated on disability mainstreaming sensitization. The government has sensitized mainstream religious organizations on disability. The government has developed Code of Practice on Mainstreaming Disability in public service. The general objective of the Code is to serve as a practical guideline towards mainstreaming disability in the public service.

The specific objectives of this Code include –

- a) To ensure that persons with disabilities have equal opportunities in the Public service;
- b) To improve employment prospects in the public service for persons with disabilities by facilitating recruitment, return to work, job retention and opportunities for advancement;
- c) To promote a safe, accessible and healthy workplace conducive to the needs of persons with disabilities;
- d) To maximize the contributions which public officers with disabilities can make to the Government;

- e) To facilitate persons with disabilities including learners with special educational needs to access the workplace in the public service for the purpose of internship and attachment; and
- f) To assure that the needs of persons with disabilities are catered for in the discharge of human resource functions and management in the public service.

The Persons with Disabilities Bill 2015 provides for media houses to set aside at least all media houses with television and radio shall dedicate at least one-hour free airtime every month to educate the public on issues of disability. The NCPWD shall co-ordinate the production of at least one column in the print media every month.

In the Division of Child health under the ministry of health, certain policy documents have been developed both to mainstream childhood disability and its management in to the health services. This is with the view to preventing childhood disabilities, early identification and disability intervention as appropriate. These policy documents are:

- a) The MCH mother and child health booklet which in the identification of disabilities, impairments and developmental milestones in children immediately after birth and thereafter (before the 5th birthday).
- b) A manual and guideline on the identification and referral of children with disabilities and special needs.
- c) Training manual for health workers and stakeholders on disability intervention.

These policies and implementation documents on childhood disability helps to raise awareness on childhood disability and the intervention mechanism amongst health workers, stakeholders at all levels of service provision. This is done in collaboration with partners, communities and parents through training conducted from county, sub-county and community levels.

Accessibility (art. 9)

8. The Government of Kenya was required to provide concrete information on outcomes of the implementation of the comprehensive legal and policy framework on accessibility, including information on the accessibility to health care facilities

There is in place a National Action Plan on Accessibility and Disabilities Rights. The National Action Plan is a concrete implementation framework document that sets out commitments to achieve a comprehensive set of PWDs rights provide for in the Constitution

2010; CRPD and Persons with Disabilities Act 2003. The plan identifies thirteen strategic objectives to increase access for PWDs. These objectives are to:

1. Promote equality and eliminate discrimination on ground of disability
2. Ensure that PWDs effectively & fully participate in political and public life on an equal basis with other citizens in the society.
3. Reduce obstacles and barriers to built environment
4. Ensure that public transport is accessible to different categories of PWDs
5. Ensure reservation of at least 5% employment opportunities for PWDs in public and private sectors.
6. Promote and ensure access to justice by PWDs on equal basis with others
7. Provide continuous reliable data on PWDs for policy formulation, planning and service delivery
8. Improve PWDs participation and inclusion in public life,
9. Increase PWDs access to inclusive education.
10. Foster and improve PWDs equal access to basic health care services and related facilities
11. Increase PWDs access and use of information, communication and technology
12. Advocate for the best interest of children with disabilities on an equal basis with others
13. Promote PWDs decent living conditions and social protection

On 30th April, 2015, the National Council for Persons with Disabilities published and publicized in the Kenya Gazette Notice No. 2998 public notice to issue appropriate adjustment orders to owners of built environment and providers of services or amenities to the general public to make their services disability compliant. The response to the public notice is positive and there is a follow up to ensure that its full compliance is adhered to. The NCPWDs intends to take court actions under sections 21,22,23,24 and 26 of the Persons with Disabilities to seek redress in circumstances where the notice is not fully complied.

Further, in the Health Sector, over hundred (100) Nurses have been trained in sign language to ensure increased access to health services by deaf patients. Most health facilities have erected ramps where there were none or ensured new buildings in hospitals are accessible

The PWDs Act and its proposed amendment give major consideration to issue of accessibility bearing in mind the Convention on Rights of Persons with Disabilities and the constitution of Kenya 2010 section 54.

Thirty two (32) more health workers, these being rehabilitation officers have completed training leading to a diploma in sign language at the University of Nairobi (FY 2014/2015). The Ministry of Health has allocated Kshs. 52 million for modification of toilets to make them inclusive and accessible and construct a ramp in the Ministry Headquarters (Afya House).

PUBLIC BUILDINGS

A number of health facilities were constructed before the enactment of Disability Act 2003 and before ratification of UN Convention on the rights of PWDs. This is due to lack of disability awareness in training curriculum of Health Workers. Architectural designs are being considered and adhered to. However, appropriate measures are being taken to modify gradually these structures to be accessible:

- A number of health facilities have in place ramps, accessible paths of travels to all places within the facility amongst others.
- Monitor and evaluate the implementation of accessibility rules, policies and standards.
- Impress on health professional bodies and institutions to introduce accessibility as a component in training curricula design.
- Improve the supervisory and monitoring tool and data collection measures, progress in improving accessibility.
- Introduce case management reform systems and electronic record keeping to co-ordinate and integrate service provision.
- Ensure PWDs are informed of their rights and mechanisms of complaints.
- Strengthen community-based rehabilitation for PWDs under community strategy.
- Train community health extension workers (CHEWS) and community based rehabilitation workers (CBRWS) on accessibility concepts.
- Adopt a national disability strategy and plan of action; consolidate a comprehensive team with vision for improving the well being of PWDs.
- PWDS play a key role in service delivery and should be consulted and involved in all stages of program implementation.

- Improve human resource capacity.
- Provide adequate funding
- Increase public awareness and understanding of disability.
- Improve disability data collection.
- Strengthen and support research on disability.
- To conduct audit of hospital environment
- Holding workshops on accessibility and policy on disability to health workers.
- Stage and organize community and public events highlighting what has been done, is required to be done to improve access “access benefits all”.
- Develop and increase the capacity of rehabilitation professionals.
- Designate and provide accessible parking spaces, ramps and lift (available signs)
- Install and build accessible toilets.
- Adjust counter heights in all health service delivery sites.
- Provide tactile maps and improve signage.
- Internet channel for conveying information about health services to ease any potential physical barrier (especially those with hearing, visual or autistic spectrum conditions by redesigning our website.
- Redesigning ICT devices and systems to ensure the device can connect with wide range of use interface devices (done with stakeholders).
- Procurement rehabilitation equipment specifications are reviewed and compatible with disability accessibility principle and policies.
- Collaborate with organizations to ensure essential telephones and telephones manufactured in or imported into the country are to be hearing aid compatible (provide inductive and acoustic connection allowing individuals with hearing aid cochlear implants to communicate by telephone.
- Challenge ignorance and prejudice in disability to health workers by training HWS to treat PWDs as customers and clients on equal basis and with respect.

Right to life (art. 10)

9. The Government of Kenya was required to report on measures taken to protect persons with albinism from abduction and murder, and other discriminatory practices, in particular please inform about prosecutions and convictions against perpetrators, on training for the police and on awareness raising and education campaigns for the public to eliminate this practice.

The Constitution 2010 has provided for protection of the security for all citizens including persons with albinism. Abduction and murder are criminal offences under penal code. The Penal Code Chapter 63 Laws of Kenya provides a comprehensive legal framework to protect life and health of another person including a person in charge of another. The jurisdictions of Kenyan Courts under the Penal Code in relation to offences prescribed in the Code and any other written law extends to every place in Kenya including territorial waters. This in effect ensures that perpetrators of abduction and murder of Persons with Albinisms are effectively dealt with.

Threats to kill, conspiracy to murder, endangering life and health of another person including Persons with Albinism are outlawed.

In 2013, the government carried out a survey for persons with albinism, which indicated that there are approximately four thousand Persons with Albinism in Kenya.

The government through NCPWD has established rapid response mechanisms to rescue persons with Albinism in distress. The NCPWD county representatives work closely with police and other state agencies to ensure that persons with albinism are rescued and placed in safe institutions.

Kenya is working on improving systems that address threatening cases targeting Persons with albinism. However, given their recent targeting, the government has taken it upon itself to enforce the protection of the lives of Persons with albinism.

The government continuously supports efforts towards awareness rising on issues of albinism. Three National Albinism Organizations have been financially supported through government funding to undertake awareness activities. The government has since 2012 appropriated funds through the NCPWD to support Persons with Albinism (PWA). To date, about USD 4M has been allocated. The money has been used for provision of sunscreen lotion, eye care surgical operations, and protective clothing and awareness creation.

The Government and Albinism organizations have also been working together with the Media to educate the public on the rights of Persons with Albinism. A continuous campaign by government and Persons with Albinism organizations has raised awareness to a relatively higher level.

Persons with Albinism who are professionals and are employed near border with Tanzania, which is known to be highly risky have been given a chance to transfer and move to the interior of the Country, Kenya. The Country observed for the first time the International Albinism Awareness day on 13th June 2015. The day will henceforth be observed annually.

Situations of risks and humanitarian emergencies (art. 11)

10. The Government of Kenya was required to elaborate on measures taken in order to protect the rights of persons with disabilities who are victims of internal displacement, in particular those living in refugee camps and throughout the envisaged repatriation process.

The PWDs Bill 2015 provides that all duty bearers shall register Persons with disabilities within their areas of operation and provide their details for purposes of rescue during situations of risks and emergencies. The bill also places specific responsibilities on the Kenya Defence Forces and Police service to give priority to PWDs when conducting rescue services in situation of risk and disasters.

Kenya has been working very closely with non-state actors such refugee consortium of Kenya to address issues of persons with disabilities during risky situations including in refugee camps. The Government of Kenya in collaboration with civil society organizations has developed a **manual for mainstreaming disability in Disaster and Emergency Response: A guide for field workers 2014**. The guide provides guidance on the design of an inclusive emergency response.

Kenya actively participated in the 3rd World conference on disaster Risk reduction held in Sendai Japan in March, 2015. Kenya alongside other UN member States endorsed the Sendai Framework for Disaster Risk Reduction 2015 – 2030. Kenya also committed to implement plans to mainstream disaster risk reduction in all its plans, programmes and budgets and other processes.

Equal recognition before the law (art. 12)

11. The Government of Kenya was required to indicate what steps are being taken to repeal legislation and practices that restrict legal capacity on the basis of impairment

and to establish supported decision-making regimes to secure the right to exercise legal capacity, including the right to decide in all areas of life.

In 2013 under the leadership of the KNCHR a technical Committee was set up to develop a briefing Paper on the implementation of the rights of PWD, including those suffering from mental impairment to exercise legal capacity. The Briefing provides extensive information on the meaning and practice of legal capacity, identifies gaps and opportunities with regard to the right to legal capacity, and establishes a framework, which may be used to prepare policy, law and administrative procedures for implementing Article 12 of the CRPD.

The PWD bill 2015 has proposed a new section on the recognition of legal capacity of all categories of Persons with disabilities on equal basis with others before the law. This in effect appreciates that persons with mental disabilities have a right to exercise their legal capacity through supported decision making process in exercising of the right to legal capacity.

The National Action plan on Accessibility Rights 2015 has specific objectives to train and raise awareness on the concept of legal capacity among the Judges, lawyers, police and those who work in the justice administration process to educate them and make them appreciate the concept of legal capacity.

A huge challenge in this area is culture. A lot of persons with mentally disability are hidden away by the parents or guardians. A society develops its laws based on its values. The Government of Kenya thus recognizes the importance of awareness rising since it was apparent that many persons with disabilities, the duty bearers and even professionals were not aware of the existence of this right to exercise legal capacity. The government is working to change the peoples' mindsets with regard to mental disability.

Access to justice (art. 13)

12. The Government of Kenya was required to report on measures taken to ensure that all persons with disabilities benefit from access to justice, including legal aid, procedural accommodations, information and communication in accessible formats, including the Kenyan sign language.

In order to ensure that a large number of Kenyans are able to access justice the Government has in its economic blueprint -Vision 2030 committed itself to the provision of equal justice for all. The Government embarked on substantial and outreaching reforms aimed at enhancing access to justice to the poor, marginalized and vulnerable.

With regard to constitutional imperatives Article 48 guarantee the right of access to justice by all. The Article obligates the State to ensure that if any fee is required, the same shall be reasonable. Article 22 guarantees the right to petition the Court and seek redress for any alleged breach of one's fundamental rights and freedoms. The Article dispenses with formal documentation and allows representation by intermediaries or non-state agencies. This ensures that *persons with disabilities* are able to access judicial services either in person or through their authorized representatives. Finally, Article 47 of the Constitution guarantees fair administrative action. This is in addition to the equality and non-discrimination guarantees in Article 27. Article 35 Guarantees the right of access to information in accessible format.

Legislative

In addition, the *Persons with disabilities* Act, 2003 provides for free legal services. The person with disabilities act and consequent amendments provides that there shall be no legal fees on cases touching on the rights of persons with disabilities. The Regulations made under the Act provides for the right of PWDs to seek judicial intervention in cases where any of the rights protected under the Act is violated or threatened. To facilitate physical and other access, the judiciary has embarked on a scheme:

- a) to ensure that all judicial stations and buildings are accessible FOR THE USE of wheel chairs and that PWDs secure assistance to access court rooms; and
- b) Court stations are obligated as an administrative procedure to ensure that *persons with disabilities* in need of sign language interpretation are accorded this service.
- c) (c)The judiciary is in the process of recruiting Kenya sign language interpreters to provide services at the high court and in Magistrates courts. An advert was put up in July to recruit 41 Kenya sign language interpreters and the recruitment process is ongoing.
- d) The Judiciary has developed a policy on disability

Two Bills are pending in Parliament designed to make provision for freedom of information and data protection. The National Action Plan on Accessibility Rights about to be rolled out

as mentioned elsewhere has expressed activities to be undertaken in respect to access to justice by persons with disabilities. Under the new constitution the provision of legal counsel for an arrested person is mandatory, if substantial injuries would otherwise result. While the court in Kenya has reaffirmed this right it has noted the substantial human and finance resources needed to provide this right effectively. In Kenya the ratio of lawyers to people is 1: 40,000, which is way below accepted international standards and thus impacts negatively on the provision of this right. However several universities have established law faculties and it is hoped that in the coming years the number of lawyers in the country will increase.

Government embarked on substantial and outreaching reforms aimed at establishing legal and institutional reforms to enhance access to justice to the poor, marginalized and vulnerable. Some of these reforms include:

The Government has fully operationalized a National Legal Aid (and Awareness) Programme to provide legal aid, advice, awareness, and representation mainly to the poor, the marginalized, and the vulnerable in society. The Programme was established in 2007 on a pilot basis, providing legal aid in Nakuru, Eldoret, Kisumu, Nairobi and Mombasa. It is the policy of the institution to fast track the provision of legal aid clients with disabilities. All officers who offer legal aid are trained on kenyan sign language and thus retain confidentiality between lawyer and client. Other measures taken include:

The National Legal Aid Bill: seeks to give effect to Articles 19 (2), 48, 50 (2)(g) and (h) of the Constitution and to facilitate access to justice and social justice. The National Legal Aid Bill, which currently before Parliament provides a legislative framework for the provision of free legal aid to a person or group of persons who need assistance in a legal matter but who, due to social, economic, political or cultural circumstances cannot afford the expense or expenses of having the matter dealt with. Some of the support provided include provision of legal advice and representation, legal awareness, paralegal work and ADR methods. The Bill establishes a National legal aid Service that shall be the successor to the National Legal Aid and Awareness Program. The Service shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

The Draft National Legal Aid and Awareness Policy

The Draft National Legal Aid and Awareness Policy is geared towards access to justice for all and takes into account the differences in context, characteristics and profile of different special interest groups.

The Persons with Disabilities Bill, 2015 entrenches the right to access to justice for Person with disability including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, at investigative and other preliminary stages.

The PWDs Bill places obligations on the Chief Justice, the Attorney General, the Director of Public Prosecutions and other law enforcement agencies working in the administration of justice shall ensure effective access to justice for persons with disabilities, by promoting appropriate training, including training for judges, magistrates, prosecutors, police officers and prison staff.

Liberty and security of the person (art. 14)

13. The Government of Kenya was required to explain steps that are being taken to repeal laws and practices, which permit the detention of persons, based on actual or perceived impairment/disability including “unsound mind”?

Kenya is undertaking policy and legislative audit of the Constitution, existing laws and practises with a view to identify offending provisions against PWDs and make amendments thereof. This in effect will address actual or perceived derogatory terms like “unsound mind” that is found within these laws.

As to confinement of persons with “unsound Mind”, the government is advocating for home based care rather than institutional confinement.

Freedom of torture or cruel, inhuman or degrading treatment or punishment (art. 15)

14. The Government of Kenya was required to provide information on measures aimed at supporting victims of forced medical treatment. Please describe how the safeguards against forced medical treatment apply to persons with disabilities and how the right to free and informed consent is upheld in the law and practice for individuals and to prohibit substituted consent by a guardian or career.

Medical treatment is governed under the proposed *Health Act 2014* which sets out rules and regulations that must be adhered to by all medical practitioners for the progressive realization of the right to the highest attainable standard of health, which includes the right to healthcare

services including reproductive health. All health practitioners are expected to adhere to the code of ethics that are relevant to them. *Section 9 of the proposed Health Act provides that no specified health service may be provided to a patient without the patient's informed consent unless the patient is unable to give informed consent, in which case a person must be mandated by the patient or by the law, or court order to grant consent on his or her behalf.*

The Medical Practitioners and Dentist Act is the legislative framework, which covers medical care in Kenya. The Act establishes the Board of Medical Practitioner and Dentists, which takes up disciplinary procedures against doctors and dentists who fail to adhere to the code of regulation. The Code of Professional Conduct and Discipline for medical practitioners and dentists elaborated in January 2012 sets out strict guidelines to ensure professional honor and dignity encapsulated in the Hippocratic Oath. The practitioner must always respect the patient's right to free and informed consent at all times except in specific areas where supported consent may be given. The Board has the mandate to refer cases of indiscipline to the Office of The Director of Public Prosecution for prosecutions.

Freedom from exploitation, violence and abuse (art. 16)

15. The Government of Kenya was required to inform the CRPD about measures taken to address the heightened risks for children with disabilities, girls and women with disabilities of becoming victims of violence and abuse, including refugee women and girls with disabilities. What measures are being adopted to ensure that both services (including shelters) and helplines information for victims are made accessible to women and girls with disabilities?

The penal code chapter 63 Laws of Kenya and sexual offences Act of 2007 outlaws' exploitation, violence and abuse directed at girls and women with disabilities. The perpetrators of the exploitation, violence and abuse against girls and women with disabilities are investigated, prosecuted and if found guilty are punished according to the law. In the case of *KATET NCHOE & another v REPUBLIC* [2011]

The offence for which the accused were charged, convicted and sentenced arose out of a practice of circumcision of both men and women, and now commonly referred as female genital mutilation (FGM). The accused carried out the rite of passage on a sixteen year old girl. The rite of such passage in the Maasai Community is not taking out of two, four or six

teeth as some communities do, but rather removal of the clitoris of the teenage girl. In the process of performing FGM, the girl passed on.

The punishment for the offence of manslaughter under Section 205 of the Penal Code is life imprisonment. Instead the accused were sentenced to ten (10) years imprisonment. Further Court noted that following a custom which causes both physical and psychological harm to the victim is not a custom to be adhered to anymore.

The government in collaboration with civil society has established gender based violence rescue centers where victims of exploitation, violence and abuse receive counseling and support services. There are Gender based violence desks in every police station to report incidences of exploitation, abuse and violence directed at girls and women, including those with disabilities. Officers are trained on good communication skills and humane attitudes to help them provide support to victims. Hotlines for reporting cases of abuse against children have been established. There are initiatives to set up modified detention facilities to address issues of accessibility.

Protecting the integrity of the person (art. 17)

16. The Government of Kenya was required to indicate what measures are being taken to prohibit and prevent forced sterilization and genital mutilation of women and girls with disabilities in law and in practice.

The Constitution of Kenya contains several safeguards for the protection of women, children and all persons from all forms of violence. Besides embracing the principle of the inherent dignity of the person, the Constitution also safeguards the fundamental freedom and security of the person. It explicitly outlaws any form of violence from either private or public sources. Freedom from torture and cruel, inhuman and degrading treatment or punishment and freedom from slavery and servitude are some of the non-derogable rights in the constitution.

Female Genital Mutilation is outlawed in Kenya by a parliamentary legislation for all women including persons with disabilities. To this effect the Prohibition of Female Genital Act of 2011 is in place and being implemented by an established Anti-FGM Board. Government and partners to create awareness on prevention and mitigation on the effect of FGM on girls have

done a lot. The Kenya Demographic Housing Survey of 2014 indicates that the rate of FGM has reduced from 27% to 21% in the last 2 years.

The National Gender and Equality Commission, an Agency of government conducts periodic audits to ensure that special interest groups including women, minorities, and marginalized groups, persons with disabilities, the youth and children are protected from discrimination. The National School Health Policy (2009) also addresses issues relating to FGM and early / forced marriage to students in schools. In April 2010 the Witness Protection (Amendment) Act was passed. This legislation encourages women who are victims of sexual abuse, domestic violence and other abuses and who fear reprisals to come forward and seek legal redress.

Prosecution: In April 2014, the Director of Public Prosecutions created a 20 member Anti-FGM prosecution unit to track cases, educate communities about the law and accelerate prosecutions, particularly in high prevalence areas. Within its first few weeks, the unit brought several cases to court involving parents, circumcisers and a local administrator who failed to report FGM. It is expected that the investigations, prosecutions and community awareness-raising efforts will act as a deterrent to the practice. Additionally, County governments are increasingly receptive to working with civil society organizations to address the issue.

Further, Courts have noted that following / abiding by a custom which causes both physical and psychological harm to the victim is not a custom to be adhered to anymore.

Forced Sterilization

The government of Kenya does not sanction sterilization without informed consent or under coercion. *Any allegations are comprehensively investigated and prosecuted. While the law in Kenya is not specific on the subject of forced sterilization* -The penal code 2009 provides that any person who unlawfully does grievous harm to another is guilty of felony, involuntary sterilization is prohibited.

The Penal Code Chapter 63 Laws of Kenya places duty on every person to protect girls and women with disabilities from acts and omissions, which endanger their life or health. Forced sterilization and genital mutilation are offenses endangering life and health of girls and women with disabilities.

It amounts to criminal recklessness and negligence. They are considered offences against the person under the Penal Code Chapter 63 Laws of Kenya.

The persons with disabilities bill 2015 has provided for the protection of the right and dignity of girls and women because of their double jeopardy as women and persons with disabilities.

Liberty of movement and nationality (art. 18)

17. The Government of Kenya was required to inform on measures taken to ensure that every person with a disability be registered upon birth or at the time that they choose it, and given a name and a nationality.

Article 53 of the Constitution of Kenya provides that every child including children with disabilities has a right to a name and nationality from birth; this includes a national registration document. The Children's Act 2001 emphasizes on the acquisition of the registration document and name of a child born in Kenya. This has further been entrenched in the PWD Bill 2015, which requires registration of children at birth and on a continuous basis, to be issued with birth certificates and other national registration documents.

The NCPWDs registers persons with disabilities including children and those whose condition requires constant medical attention for purposes of availing subsidized medical services, for policy, legislation and programming. The challenge however is that occasionally; parents or guardians do not disclose the birth of a child with disabilities when the child is born at home. To deter this, the Government makes deliberate efforts including through the Area Advisory Councils to create awareness during community meetings to ensure that parents have their children registered. In addition, the Government has established a cash transfer programme for orphaned and vulnerable children, where one of the requirements of being registered is a birth certificate.

Living independently and being included in the community (art. 19)

18. The Government of Kenya was required to report on measures to prevent institutionalization of children with disabilities and to monitor the conditions of children in institutions. Please elaborate on the actual community based services available for persons with disabilities to live independently in the community.

Article 54 of the CoK 2010 provides that Children with Disabilities will enjoy their Rights to Education and other services, under the conditions that are as near normal to their ordinary communities as possible. Thus it is desired that, for instance, children with disabilities will

attend school in ordinary schools, and that special schools will only be used where they are most suitable because of nature and severity of disability, terrain and other physical considerations. Thus through an integrated education programme, children with disabilities are assisted to attend ordinary schools by being provided with specialised equipment and other professional support. In the health sector, children with disabilities access health services through community based rehabilitation programmes that also enable them to receive the services within their communities.

Article 27 buttresses this through prohibition of discrimination on account of disability among other things. Legislation, both before and after promulgation of the Constitution, provided for non-institutionalization of services for children with disabilities except under extreme circumstances. (CPWDA, Education Act 2011, for illustration).

The Children's department monitors all services intended for children. Government also uses the services of non-state actors such as the Child Welfare Society of Kenya to monitor the welfare of children. Courts also give special attention to child offenders (including those with disabilities) in detention facilities. The press has also increasingly given coverage to issues of welfare of children with disabilities who may have been abused or molested. Thus monitoring of the welfare of children with disabilities is achieved as part of general protection of all children.

On Actual Services available, Government through the National Council of Persons with Disabilities, in collaboration with non-state actors such as the Association for the Physically Disabled of Kenya has developed a nationwide programme to supply assistive mobility and other aids to children with disabilities in and out of school. This programme is expanding rapidly because of increased capacity of service providers to acquire and distribute the said aids and increased funding, through the national budget. The budget allocations for 2015-16 are approximately KSH 1.5B USD, which doubles 2014-15). Through sectoral and national policies such as vision 2030, National Education Policy and Disability Policy, Government Plans to expand the scope and reach of community-based support services to children with disabilities throughout the country. For instance, children with albinism are now receiving protective creams and other preventive items required to enhance their health and comfort

Personal mobility (art. 20)

19. The Government of Kenya was required to explain whether persons with disabilities living in rural areas have benefited from the assistive devices being distributed. Please also inform on measures to ensure access to transportation for the public.

The Government through the NCPWDs in association with other partners provides assistive devices, appliances and other equipment to persons with disabilities throughout the country. So far 40,542 assorted assistive devices; appliances and other equipment have been issued to deserving PWDs. 900 PWDs have been recommended and granted tax exemption on importation of motor vehicles to ease their mobility.

In the current financial year (2015/2016) 100 wheelchairs will be provided per county. The Government has employed 47 county regional officers to oversee inter alia the identification and distribution of wheelchairs, including rural areas that will serve persons with disabilities. The government has made deliberate efforts to ensure that persons with disabilities are not isolated or segregated due to lack of access to mobility aids. These efforts include: Tax exemption on assistive devices including modified cars, Collaboration with partners including the private sector to ensure PWDs access assistive devices and are not isolated or segregated in the community.

The National Transport and Safety Authority (NTSA) has taken up the issue of accessible public transport to ensure public transport vehicles are accessible and inclusive. The persons with disabilities Act 2003 also provides for adjustment orders to be issued to service providers both in public and private sectors. On 30th April 2015 NCPWD through Kenya Gazette Notice No. 2998 gave a 45 days compliance notice to owners of public vehicles to make them compliant with provisions of the PWD Act 2003. In the Judicial Review Case No. 124 of 2014 Republic v Cabinet Secretary for Transport and Infrastructure, the Court directed that National Transport and Safety Authority (Operation of Public Services Vehicles) Regulations, 2014 numbers 11 and 15 banning overhead careers were negating the National Transport and Safety Authority Act and the Persons with Disabilities Regulations, 2009. The Court found out that said regulation amount to subtle discrimination.

The Persons with Disabilities Bill, 2015 expands and strengthens Persons with Disabilities right of accessibility to enable them have access to roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Every person with disability has a right to accessibility as an essential pre-condition to enable him or her to live independently and participate fully in all aspects of life and shall have the right to be provided with such accessibility to the physical environment, transportation and other facilities and services including emergency services open or provided to the public.

The Bill once passed into law shall require public and private institutions to implement minimum standards and guidelines for the accessibility of facilities and services open or provided to the public to accommodate all aspects of accessibility for persons with disabilities.

Respect for private and family life (art. 23)

20. The Government of Kenya was required to report on measures taken to ensure that children with disabilities currently in orphanages are returned to a family setting, and are included in the community. Please also inform on the type of support and services that are available to families with children with disabilities to ensure they can be brought up within their families and are enabled to participate in the community.

The Government of Kenya through the National Council of Persons with Disabilities is stepping up the process of registration of all children with disabilities in orphanages to enable Statistics of such children and therefore plan for them including returning them to family setting.

The Government has a policy on child adoption and foster care services. Kenya just launched in March 2015 guidelines for alternative family care in Kenya and also the National standards for best practices for charitable children institutions. The documents emphasize the need for children including those with disabilities to explore alternative family as the best option and also the best interest of the child. Admission in orphanages is done as a last resort. Those in institutions should be around for the shortest time possible, maximum period of three years.

The government has developed standards for exit from orphanages institutions to be implemented by institution managers to ensure that children exit and live in communities. The standards also provide for the criteria for admission of orphans and vulnerable children into orphanages. The Government is supporting such children who exit through the cash transfer

programme targeting persons with severe disabilities. The aim of the programme is to cushion households from slipping further into poverty. Through the OVC programme, children with disabilities who are orphans are financially supported to cushion them from poverty, which could lead them into orphanages. The support is expected to meet their educational needs in addition to food, clothing and any other basic necessities.

The adoption rate for children with disabilities is negligible as compared to children without disabilities because of stigma and added cost associated with disability. In addition, attitudinal barriers that exist among prospective adopters also make them shy away from adopting children with disabilities.

21. The Government of Kenya was required to explain what measures are being adopted to respect the right to marriage and found a family by persons with disabilities, especially persons with psychosocial and/or intellectual disabilities.

Article 45(2) of the Constitution provides for the right of every adult to marry a person of the opposite sex based on free consent of the parties.

In Kenya, whilst there is no prohibition in law against marriage by PWDs. There are challenges concerning parents who are reluctant to allow their children with disabilities to get married. There are also attitudinal barriers to marriage for PWDs.

The PWDs Bill 2015 provides criminalization of dissuading PWDs from getting married, conceiving and also spacing children while in a marriage. It also criminalizes separating parents with disabilities from their own children.

Education (art. 24)

22. The Government of Kenya was required to explain in detail how the State party is working towards inclusive education, in particular for children with high-level support needs. Please also inform on the current status of the education policy for inclusive education.

The Government is doing the following regarding implementation of Inclusive Education in the country, including for learners with high level support needs:

In the COK 2010, education is recognized as a fundamental right to all and is included in the Bill of rights. Parliament Passed the Basic Education Act in 2013 which affirmed that basic education is free and compulsory for all (COK 2010 and Basic Education Act 2013) Further,

the National Special Needs Education policy framework recognizes Inclusive Education as a core component of the policy. Sessional Paper number 14 of 2012 also devotes a sizable section towards the implementation and promotion of inclusive education in Kenya. As a consequence of its efforts in implementing inclusive education, the Government has Managed to place 75% of enrolled learners with disabilities in mainstream schools and units, unlike 10 years ago when less than 30% were in mainstream schools. The Government has scaled up its in-service teacher-training programme at the Kenya Institute of Special Education. For instance, it provided in-service diploma training to more than 11,000 teachers in inclusive education at the Institute over the last 10 years.

Every year, the Government provides **USD22** for every learner with a disability to supplement the procurement of instructional materials wherever they may be. This is in addition to the FPE grants sent to schools and the amount totalled **USD2.06** million in the FY 2014/15. This figure will rise to more than **USD2.15** million in the current FY. The Government also allocates grants to pay salaries for auxiliary personnel in identified institutions and programmes who support learners with high level needs. Grants have been increased to USD 4.4 million in FY2015/16, an increment of USD 0.9 million.

The Government has also expanded the reach of Education Assessment and Resource Centres (EARCs) centres over the years, now totalling more than 210 across the country from an initial 17. In the current FY, for the first time, USD 0.9 million has been allocated for operations in 48 EARCs. Their capacity is to be enhanced to support inclusive education in mainstream schools across the country and play a vital role in advocacy and sensitization within the community.

The Kenya Institute of Curriculum Development (KICD), a Government Agency responsible for development curriculums, continuously engages with stakeholders (especially classroom teachers) in the formulation and adaptation of curriculum and learning materials to suit learners with disability. In addition to the syllabuses that have been adapted for learners who have visual, hearing and physical disability, curriculum has been developed for learners with mental disabilities and autistic tendencies.

The Kenya National Examination Council has established a special needs education section to deal with issues of curriculum evaluation of learners with special needs and disabilities.

Currently, discussions are on going about alternative formats of evaluation such as portfolio assessment that are believed to be suitable for certain categories of learners.

The Ministry of Education supports infrastructural initiatives ensuring that school buildings are accessible to students with disabilities. Ministry of Education, Science and Technology allocate infrastructural grants to schools, setting aside 10% of the total allocation to schools with learners with disabilities. In 2008, the Government allocated about USD100 to each school in the country for physical access so that all schools could accommodate earners with disabilities.

The National Development Fund for PWDs managed by the National Council for Persons with Disabilities, includes assistance in terms of school fees for both Primary / Vocational Education. The Children also get assistance in terms of Assistive Devices like wheel chairs; calipers etc. under the same fund, the Institutions/Organizations/Units supporting children with disabilities are also funded

With regard to the status of the Inclusive Education policy, the following describes the progress so far: A draft working document giving guidelines was developed by the Government in 2010 in conjunction with stakeholders before the idea of reviewing the Special Needs Education policy was considered as the better alternative. Today, the current Ministry's National Education Sector Plan (NESP) has targeted and included in its negotiations with UNICEF the National Special Needs Education Policy Framework for review particularly to capture issues of Inclusive Education. This should be completed within the next two years. The National Gender and Equality Commission (NGEC) and the MOEST are working on a Parliamentary bill to address any gaps existing in the provision of education services for learners with disabilities. In this process, the resultant act is expected to be strong on inclusive education. The Government is committed to the full implementation of inclusive education and is undertaking the following as the way forward in inclusive education

Health (art. 25)

23. The Government of Kenya was required to explain the plans by the Heath Services Sector to scale up mental and psychosocial health care and treatment services across the country.

The measures include:

Implementation of policies to ensure that healthcare is provided without discrimination on the basis of one's disability particularly as relates to services for HIV & AIDS, sexual and reproductive health. Training of healthcare professionals at all levels to ensure informed and respectful treatment of persons with disabilities seeking medical care, including training in basic sign language. Amendment of the National HIV/AIDS strategic plan to explicitly address the ways Persons with disabilities who can be vulnerable to the virus, get informed and share information in the correct format, content and communicate appropriately. Constructive engagements and partnering with organizations that works to meet the health needs of persons with disabilities.

The Government is supporting research in the specific health needs of persons with disabilities, including with respect to HIV/AIDS, and incorporating the findings into National health plans and policy, both from State and Non State actors. Monitoring implementation and ensuring that there is no form of discrimination by health insurance providers on the basis of disability more so people with long term mental health impairments.

Mental and Psychosocial health care continue to be under the ministry of Health. Recently, a Disabled Persons Organization made up of, and targeting particularly Persons with psychosocial disability has come into place and has been sensitizing the community on related problems.

24. The Government of Kenya was required to provide programmes that are currently in place across urban and rural areas for persons with disabilities, including women and girls, young persons and refugees, concerning sexual and reproductive health, HIV/AIDS and Sexually Transmissible Infections (STIs)?

The National Aids Council has developed a strategy to address disability issues among women, girls, and young persons with disabilities. The strategy also addresses itself to reproductive health issues including HIV/ AIDs and sexually Transmissible Infections among Persons with disabilities. All facilities in the country provide Sexual and reproductive health, HIV and STI's care and treatment to all Kenyans including persons with disabilities. Adequate available services are spread out at different levels. In case of reproductive health, family planning services are offered in all facilities including post rape care.

Health facilities have incorporated inclusive and accessible testing for HIV/AIDS including for the blind. Women with disability are especially vulnerable of HIV infection from intimate partner relationship due to their dependence and vulnerability. However, any partner who deliberately infects their partner or fails to disclose their status is likely to be penalised. Condoms are made available to all. HIV and AIDS Prevention and Control Act 2006 at section 25 establish HIV and AIDS Tribunal. The Tribunal seeks to advance human rights and access to justice for HIV and AIDS response in Kenya. The tribunal seeks to eliminate all forms of discrimination, stigmatization, bastardisation and right violations that result either directly or indirectly from HIV/AIDS.

Right to work and employment (art. 27)

25. The Government of Kenya was required to provide information on the employment rate of persons with disabilities in the open labor market, and on the implementation of the 5% quota. Please also inform on measures to protect against employment-based discrimination of persons with disabilities.

The Employment Act 2007 recognises disability and outlaws discrimination on grounds of disability in employment both in public and private sectors. The Public Officers' Ethics Act 2003 expressly provides that Persons with Disabilities should not be discriminated in employment in public services.

Further, in the Public Procurement and Disposal Act of 2005 and Regulations made there under (2006), the Government reserves thirty percent of public procurement for women, youth and persons with disabilities as a means of empowering these categories of marginalised sections of society. The code on mainstreaming disability in Public Service obligates Public entities to reasonably accommodate the needs of Persons with Disabilities in public service by retaining, retraining and deploying Public servants who acquire disabilities in the course of duty. The Government has an affirmative action policy on employment of PWDs, which is an annual performance target in the public service. All public sectors are required to ensure that 5% of all annual recruitments go to PWDs. With this the rate of employment of Persons with disabilities in the open labour market has increased steadily from the previous figure of about 0.01% to about 1.5% with the public sector accounting for about 1% according to the public service commission report of 2015 though this is still below the targeted 5%. This low level score could be explained by low levels of education among PWDs due to historical

marginalization of PWDs. The Government has put in place special measures including affirmative action to ensure that they acquire necessary skills that make them competitive in the job market.

The Persons with disability amendment Bill of 2015 proposes mandatory employment of PWDs for employers with more than 20 employees, failure to which there is a contribution to be made to NCPWD to provide for equalization opportunities for unemployed PWDs. The Bill also proposes that employment bureaus should provide information to Parliament and NCPWD on the number of PWDs they have employed. It also required having policies on non-discrimination in the workplace.

To protect Persons with disabilities from discrimination, continuous awareness creation on rights of Persons with disabilities to employment has been mounted in all Ministries, Departments and Agencies and Counties. Online advertising for jobs has been encouraged and positively embraced by employers given its accessibility to all.

Promotion of vocational and professional rehabilitation skills for self-employment and entrepreneurship development is availed to Persons with disabilities through Vocational Rehabilitation Centres under the Ministry of Labour, social security and services and other training institutions including in the private sector. Further, the National Youth service continues to recruit and train persons with disabilities where they get trained in technical skills for employment. NYS was previously categorized as a institution reserved for those seen to be 'fit'.

Adequate standard of living and social protection (art. 28)

26. The Government of Kenya was required to inform on plans to expand the National Development Fund to benefit all persons with disabilities, and especially people with psychosocial and/or intellectual disabilities in particular from rural areas.

Kenya has developed a national social protection policy 2012 to guide on issues of social protection. The policy identifies PWDs as a vulnerable group requiring social protection. The Social Protection Act also accompanies this policy.

The national development fund for persons with disabilities is one of the country flagship projects within the perspective of vision 2030 and from the trend already experienced, Government allocation has been growing and will continue to do so. Through the National Development Fund for Persons with disabilities, the Government has established a cash

transfer program for persons with disabilities. In the current financial year (2015/2016), the Government has increased funding for the program and the number benefiting from the program is going to increase from 27,000 to 47,000 beneficiary households by September 2015. Persons with psychosocial disabilities shall be the major beneficiaries.

The programme is being implemented in all constituencies hence the rural areas are well included.

Participation in political and public life (art. 29)

27. The Government of Kenya was required to provide information on any steps taken to repeal restrictions to be elected and to vote in the Constitution, in particular sections 83(1) (b) and 99(2) (e), which state that a person can be disqualified from voting and being elected as a Member of Parliament if the person is of “unsound mind”.

Article 83(1) (b), the Constitution

There are procedures provided for in the Constitution particularly Chapter Sixteen Article 255, 256 and 257 on general amendment of the Constitution and the factors to be taken into consideration. However, this is to be taken up by the government through the legislative drafting sectors during the process of auditing all existing legislation both prior to and after the promulgation of the new Constitution.

Kenya is undertaking audit of the Constitution, existing laws and practises with a view to identify offending provisions against PWDs and make amendments thereof. This in effect will address actual or perceived derogatory terms like “unsound mind” that is found within these laws. As to confinement of persons with “unsound Mind”, the government is advocating for home-based-care rather than institutional.

28. The Government of Kenya was required to explain in detail what the government is doing to improve physical access to polling stations as well as ensuring access to election related information for persons with disabilities.

Independent Electoral and Boundaries Commission (IEBC) is conducting a study to improve access of Persons with various disabilities to elections and results. The recommendations there from will be helpful when the study report is ready. Polling stations are generally situated in schools, where rooms that are accessible are preferred to ensure wheelchair users have no challenges of access. Accessible voting booths are provided in each polling station

which are low and friendly for wheel chair users. Election officials assist those voters with disability who experience challenges in using these booths. Blind voters are provided with brailled ballot papers for voting. Deaf voters have little challenges if any at polling stations. Voters with disabilities are generally assisted to vote without queuing so that they don't take long at polling stations.

The Office of Attorney General and Department of Justice is facilitating the review of the electoral and political processes with a view to ensuring inclusive electoral process.

C. *Special obligations*

Statistics and data collection (art. 31)

29. The Government of Kenya was required to *report on any attempts to update the data collection system in accordance with the Convention and with the involvement of organizations of persons with disabilities.*

The Government of Kenya has continued focusing on identifying various gaps in programmes targeting PWDs by comparing what various policies provide for, particularly the convention provisions and what is actually being implemented and is in support of the bridging the gap programme. This will be done directly and through partnerships with various stakeholders. This was launched in Nairobi on 29th May 2015. Kenya is one of the target Countries to provide data. The study results will inform the gaps to be filled as we move into future on disability including on data on disability.

The Kenya National survey for persons with disabilities 2007 focused on estimation of the number of PWDs, their distribution, demographic, socio-economic and cultural characteristics; the nature, types and causes of disabilities; coping mechanisms; and the nature of services available to them. The most common forms of disabilities in Kenya are associated with chronic respiratory diseases, cancer, diabetes, malnutrition, HIV/AIDS, other infectious diseases, and injuries such as those from road accidents, falls, land mines and violence. The survey indicated that about 4.6% of Kenyans had some form of disabilities, which translates to 1.7 Million people. The study also established that there are more persons with disabilities residing in rural areas (80%) than urban areas (20%). The study also established that there are more persons with visual impairment followed closely by hearing and physical disabilities.

The 2009 census had a module or set of questions on disability and aimed at capturing the prevalence and types of disabilities. It provided disaggregated data by sex

The fact is that available data is inadequate, as many more persons with disabilities and their organizations remain unregistered. This is due to the cumbersome nature of the registration process, which is centralized, involves other collaborating agencies, which have capacity challenges, costly and time consuming. This scenario implies that it is difficult to ascertain the prevalence of or extent of disability, distribution by type, sex, age, and geography. This poses a challenge in programme design and implementation. It also hampers Kenya's international obligation of reporting under the UNCRPD. Efforts are ongoing at initial stages to develop data on disability between the government, DPOs and development partners. However, data on disability remains a priority area for government and has been included in the 2015/2016 financial year work plan.

Population of Persons with Disabilities by Sex and Type of Disability in Kenya, 2009

	visual	hearing	speech	Physical/self care	mental	others	Percent with disability
Male	153,783	89,840	86,783	198,071	75,139	44,073	3.4
Female	177,811	97,978	75,020	215,627	60,954	55,233	3.5
total	331,594	187,818	161,803	413,698	136,093	99,306	3.5

Total: 1,330,312: Source: Kenya Population Census, 2009, Volume 2.

International cooperation (art. 32)

30. The Government of Kenya was required to *inform on the mechanisms to consult and involve, with organizations of persons with disabilities in the design of international cooperation projects and programmes.*

There has been a measure of involvement of persons with disabilities especially through the umbrella body, United Disabled Persons of Kenya (UDPK), including on international reporting such as developing reports for the UN Conference of state parties to the Convention

on the rights of persons with disabilities among others. The government generally participates in activities organized by DPOs on disability programmes in the Country and beyond.

Further, the government consults DPOs in development of programmes funded through external resources department depending on the strengths of the relevant organization. Vivid illustrations of the activities and the engagements of the State party at the international level include mechanisms such as the Universal Periodic Review which Kenya utilizes to make recommendations to other States regarding the promotion and protection of human rights; the Human Rights Council, and the UN General Assembly, where Kenya is actively co-sponsoring and/or supporting resolutions on the subject. Other organizations where resolutions and outcomes that could impact on those rights could include, e.g. WHO, ILO. Further, with regard to housing, the Kenya Slum Upgrading Project in Nairobi has taken into consideration the challenges that face persons with disabilities. This project was implemented by the Ministry of Housing and is supported by Habitat for Humanity. Recently the newly constructed Thika High way and improvements on Mombasa road have flay-avers which are accessible to wheelchair users

In addition, Kenya has also actively lobbied for the inclusion of the rights of persons with disabilities to be a part of the sustainable development goals with regards to social development.

National implementation and monitoring (art. 33)

31. The Government of Kenya was required to report on steps taken to establish a national implementation and monitoring mechanism.

The Government has established an implementation and monitoring mechanism where the Ministry of labor, social security and Services has overall policy responsibilities hence it provides the overall coordination and focal point. The National Council for Persons with disabilities has some implementation and advisory responsibilities on the convention while the National Gender and Equality Commission plays the monitoring role.

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) REPORT

The Kenya Commission on Human Rights highlighted the following in its report;

That;

1. The Kenya National Commission on Human Rights (KNCHR) is a Constitutional body established under Article 59 of the Constitution of Kenya, 2010 and the Kenya National Commission on Human Rights Act, 2011; with the primary responsibility of promoting and protecting the respect of human rights in Kenya.
2. KNCHR monitored the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in Kenya between 2011 and 2014 and published a report of its findings. The monitoring report is the basis of the assertions and recommendations KNCHR is making to the CRPD Committee.

Specific Issues

3. Kenya ratified the CRPD in 2008. It is now 7 years since ratification and Kenyan laws are yet to be amended to align them to the CRPD. The Persons with Disabilities Act 2003 has been under review for a long time but the actual Amendment of the Act has not been done. Kenyan laws still contain derogatory terms despite the CRPD and the Kenyan Constitution indicating that Persons with Disabilities should be treated with dignity. The Committee should recommend that the State commit with specific timelines, concerning the review of all relevant national legislation to bring it in compliance with the Constitution of Kenya 2010 and to review all provisions that are derogatory and demeaning to persons with disabilities.
4. Women with disabilities go through double jeopardy with regards to violation of their rights. One of the issues that women face regards sexual and reproductive health rights. During its inquiry on sexual and reproductive health rights in 2011, KNCHR recorded cases of women who were sterilized without their consent or were taken through hysterectomy without consent or informed consent. These cases were still being reported in Kenya in recent years. The Committee should recommend that the State should take steps to stem out these practices.
5. Accessibility of the built environment and transportation is a big challenge in Kenya. Both public and private buildings are largely inaccessible to persons with disabilities. There are some efforts that have been made to modify existing facilities like hospitals but a lot needs to be done. Public transportation is not accessible to PWDs. The Committee should recommend that the State should implement the principle of universal design alongside that of reasonable accommodation in order to realize the right of accessibility for PWDs. Hitherto the State has focused on reasonable accommodation which on its own may not achieve the desired goal of accessibility.

6. KNCHR notes that there is lack of adequate data on the number of PWDs in Kenya. Some surveys have been conducted to gather data. However, the need for disaggregated data on PWDs in Kenya is very important for proper planning of programs to improve service provision to PWDs. The Committee should recommend that the State ensure that disaggregated data on PWDs is captured during the next national census that is coming up in 2019.
7. KNCHR is hopeful that the respect and protection of the rights of persons with disabilities will continue to be enhanced in Kenya as levels of awareness are raised in both public and private spheres. The State's engagement in this review process is itself a positive step in the right direction.

**THE COMMITTEE ON RIGHTS WITH PERSONS WITH DISABILITY
RAPORTEUR REPORT ON THE GOVERNMENT OF THE REPUBLIC OF
KENYA**

The CRPD rapporteur Mr Mwesigwa Martin Babu from Uganda reported the following on the commitment of the government of Kenya to adhering to the convention. There have been a number of positive developments before and after the ratification of the UNCRPD by the Government of Kenya. Among them include:

1. Introduction of Social Protection Programme for Persons with Disabilities. This is a commendable step in the right direction.
2. The participation of PWDs in the governance structures at national and county governments which is in line with Article 29 (a) of the UNCRPD
3. Introduction of the Performance Contracting Practice which is intended to promote mainstreaming disability both in terms of employment and service provision for PWDs. Very commendable effort.
4. A host of many other pieces of legislation and policies in favour of people with Disabilities.

However he noted that a number of issues have come up that needs to be addressed as follows;

1. National implementation and monitoring Frame.

Article 33 (1 and 2) compel States Parties to designate 'one or more focal points on matters relating to the implementation of the UNCRPD...' Information so far deduced from various reports and interactions indicate that there is no clear implementation and monitoring

mechanism for the CRPD in Kenya. Currently, the Kenya Gender and Equality Commission has been appointed to play the role of monitoring the implementation of the CRPD, but this is a government structure and could possibly hinge on a conflict of interest. Secondly, disability issues should not be viewed as only 'equality' matters, but cross-cutting issues in the entire socio-economic and political spectrum of Kenya. In other words, disability being a preserve of the Kenya Gender and Equality Commission is not enough.

2. Meaningful and effective participation of PWDs in decision making processes at National and local levels. There is lack of adequate mechanisms for consultation with persons with disability and their organisations on decisions made by government and other departments that affect PWDs in Kenya. The practice currently is ad-hoc and spontaneous. There is need therefore to institutionalize and streamline consultation processes in order to promote and enhance effective participation of PWDs for purposes of promoting all-inclusive and disability sensitive policies and programmes in Kenya.
3. Further to the foregoing in as much as PWDs are represented in the National Parliament and the County Governments, the methodology used at arriving at who represents PWDs in the mentioned forums has been found to be lacking as there are no adequate processes that promote consultations and decision making by those represented (PWDs) to decide on who should represent them.

4. Incorporation of the CRPD in the domestic legislation of the Republic of Kenya.

The Government of Kenya should initiate the necessary steps to ensure that local governments honour international legislation and amend their local policies and laws to be in harmony with international conventions. The first step towards this endeavour would be to encourage the County governments to align their legislation to the international obligations and commitments of the Republic of Kenya and not a preserve of the national government alone

5. Absence of Data and statistics on persons with disabilities in Kenya : from the reports and interactions with CSO representatives from Kenya, it emerged that there was no clear plans by the Government of Kenya to collect, collate and disaggregate data of persons with disabilities in the country by age, gender and disability category. The incidence and prevalence of disability in Kenya is therefore not known. This makes planning, budgeting and development of programmes targeting and or including PWDs very difficult.
6. The efforts of the Government of Kenya in as far as universal primary education for all school going age citizens are highly commendable. But the same efforts it was observed

to not equally promote the ability of young people with disabilities and or intellectual disabilities to go through the entire education system from primary to university without undue strain like their non-disabled counterparts. There is need for targeted efforts to promote the education of PWDs in Kenya as is stated in Article 24 of the CRPD

7. Development and Use of Kenyan Sign Language: Most academic institutions do not use or even develop the use of sign language. No efforts have been undertaken to consult with the National Deaf Association of Kenya in the promotion and development of sign language as enshrined in the Constitution of Kenya. Further still, costs related to the provision of Sign Language Interpretation services need be borne by the State and not the beneficiaries of the service – people with hearing impairments. This affects the ability of the beneficiaries of the service not only to consume the service, but also afford it – thus encumbering the ability to access all social related services such as education, health and other vital community related livelihoods programmes.
8. Accessibility to the built and physical environment by persons with disabilities: Provisions do exist in the legislative and policy frameworks of the Republic of Kenya that are designed to promote access to public spaces and information by Persons with Disabilities. However, there is visible absence of the necessary and relevant guidelines to ensure implementation of the same provisions under the law. Most development and construction programmes do not take care of the accessibility needs of PWDs. There is need to come up with clear guidelines indicative of timeframe for ensuring the enforcement of implementing disability specific legislation in relationship to accessibility to the built and physical environment and information with clear indicators and results.

DELEGATION OBSERVATIONS

The Delegation made the following observations that: -

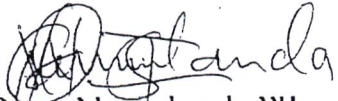
1. Kenya ratified the CRPD in 2008, and 7 years later Kenyan laws are yet to be amended to align them to the CRPD. The Persons with Disabilities Act 2003 has been under review for a long time but the actual Amendment of the Act has not been achieved. Kenyan laws still contain derogatory terms despite the CRPD and the Kenyan Constitution indicating that Persons with Disabilities should be treated with dignity.
2. Women with disabilities' sexual and reproductive health rights are violated. E.g. KNCHR recorded cases of women who were sterilized without their consent or were taken through hysterectomy without consent or informed consent.
3. Accessibility of the built environment and transportation is a big challenge in Kenya. Both public and private buildings are largely inaccessible to persons with disabilities. There are some efforts that have been made to modify existing facilities like hospitals but a lot needs to be done. Public transportation is not accessible to PWDs. Hitherto the State has focused on reasonable accommodation, which on its own may not achieve the desired goal of accessibility.
4. There is lack of adequate data on the number of PWDs in Kenya. Some surveys have been conducted to gather data. However, the need for disaggregated data on PWDs in Kenya is very important for proper planning of programs to improve service provision to PWDs.

RECOMMENDATIONS

The Delegation made the following Recommendations: -

1. The State should take steps to stem out practices that violate sexual and reproductive health of women with disabilities by amending Sexual and Reproductive Act 2013.
2. The State should implement the principle of universal design alongside that of reasonable accommodation in order to realize the right of accessibility for PWDs.
3. The State should ensure that there is disaggregated data on PWDs. This can be realized through budgetary allocation to carry out the census.
4. There should be commitment in implementing the existing legislative and policy frameworks of Kenya. They should be translated into tangible practice thus a fundamental shift from Commitment to practice.
5. There is need for review of the implementation of Article 33 of the CRPD. This should be undertaken as a matter of priority by the relevant organs of the Government of Kenya.
6. Efforts and resources be directed towards packaging the Conventions into alternative languages and formats that are easily understood by the majority of Kenyans.

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