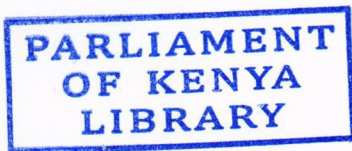


REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

DATE	16/9/2021
TABLED BY	Sen. Naomi Shyamba
COMMITTEE	Standing Comm on Labour and Social Welfare
CLERK AT THE TABLE	Kawata Mnyaka

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- FIFTH SESSION

REPORT ON THE PERSONS WITH DISABILITIES (AMENDMENT)
BILL, 2020 (SENATE BILLS NO. 29 OF 2020)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

① COS
Recommended for approval
for tabling
Eg 09/09/21

Hon. Speaker
You may approve.
9/9/21

SEPTEMBER, 2021

DC-EG
Forwarded recommended for Approval
09/09/2021
Approved
14/11/2021

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(d) right to privacy,

Under this right, a public or a private institution is expected to protect information relating to —

(i) personal health;

(ii) habitation; and

(iii) rehabilitation services for persons with disability and such information shall not be shared without express authority of the person with disability concerned.

(e) right to documents or registration

Under this right, every person with disability is entitled to be issued with a certificate of birth, national identification card, passport, and any other document of registration or identification. A disability shall not be a basis for denial of a document or registration.

(f) right to human dignity.

The right provides that in addition to respecting and protecting a person with disability's right to human dignity, a person with disability should not to be referred to by demeaning, embarrassing, derogatory and any other term that may be considered as lowering his or her human dignity

(g) right to education

Under this right, among other things—

(i) every child and person with disability has a right to admission to any institution of learning and access to an inclusive, quality and free primary and secondary education on an equal basis;

(ii) the National government shall facilitate participation of persons with disability in accessible and adaptable continuing adult education programmes on an equal basis;

(iii) the national and county governments shall ensure that persons with disability have access to inclusive education, without discrimination and on an equal basis at all levels;

- (iv) a child with disability shall not be excluded from free and compulsory early childhood, primary or secondary education, on the basis of disability;
- (v) the Council in consultation with the National and respective county government shall ensure that learning institutions take into account the needs of persons with disability with respect to the set entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations; and
- (vi) every person with a disability is entitled to receive the support services required, within the general education system, to facilitate his or her effective inclusive education.

(h) right to work

Every public service employer is expected to—

- (i) reserve at least five per cent direct employment opportunities for persons with disability to secure employment;
- (ii) formulate policies and programmes to promote basic human rights, improve working conditions and enhance employment opportunities for persons with disability;
- (iii) in the process of recruitment, not discriminate solely on account of the disability of a person;
- (iv) not conduct any test or examination to establish whether an applicant is a person with a disability or as to the nature or severity of person's disability; and
- (v) be required to carry out appropriate modifications in their work premises to accommodate the employment of persons with disability.

(i) right to health

Under this right—

- (i) every person with a disability has the right to free medical care and treatment on condition of his or her disability in public owned health institutions;
- (ii) medical assessment reports undertaken with respect to a person with disability for purposes of registration, employment or compensation shall be carried out free of charge in public-owned health facility; and

(iii) every national or referral health facility shall employ at least two Kenya Sign Language interpreters and shall take into account the need for gender balance in the hospital organizational structure.

(j) right to civil and political rights.

Under this right, the Independent Electoral and Boundaries Commission is expected to put in place measures to facilitate the realization of civic and political rights by persons with disability by —

- (i) providing voting procedures, facilities and materials which are appropriate, accessible and easy to understand and use;
- (ii) protecting the rights of persons with disability to vote by secret ballot in elections without intimidation and to offer themselves for elections; and
- (iii) putting in place measures for assistive voting by a person of their own choice, on request and facilitating the use of assistive and appropriate technologies.

The Bill makes a provision against harmful practices, torture and cruel treatment against persons living with disabilities and provides for life imprisonment on conviction.

The Bill also amends the Films and Stage Plays Act to compel makers or exhibitors of films to make such films accessible to persons with disabilities.

The Bill also contains other amendments of general nature to align the Act with the 2010 Constitution

2.2 Consequences of the Bill

The Constitution establishes two levels of government, that is the national government and county governments. These two levels of government have an obligation to ensure that persons with disabilities within their jurisdiction are protected and that the requirements of Article 54 (1) of the Constitution, which includes the right to access various social amenities and the right to be treated with dignity and respect, are met. It is in this context that this Bill proposes to impose obligations on each level of government to address the socioeconomic needs of persons with disabilities

3.0 PUBLIC PARTICIPATION/ STAKEHOLDER CONSULTATION

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 140 (5), the Committee put up an advertisement in the local dailies, the Daily Nation and the Standard to seek submissions in written form from the public, on the Persons with Disabilities (Amendment) Bill, 2020 on Tuesday, 16th March, 2021 as per the copy attached as Annex V.

The Committee scheduled a Stakeholder virtual public hearing on 10th May, 2021. Both written and oral submissions were captured in the attached matrix (see Annex II) concerning the Persons with Disabilities (Amendment) Bill, 2020 –

1. Ministry of Labour and Social Protection – State Department of Social Protection;
2. The Council of Governors;
3. The County Assemblies Forum;
4. The National Gender and Equality Commission;
5. The Kenya National Commission on Human Rights;
6. The In-Business Steering Committee in Turkana West;
7. Right to Education Organisation;
8. Westminster Foundation for Democracy, Disabled Persons Organizations and Civil Society Organizations and Consortium of Disabled Persons Organizations of Kenya.
9. Disability and Human Rights Organization;
10. Prof. Michael Ndurumo from the university of Nairobi;
11. Mr. Steve Mume;
12. Mr. David Lunalo;
13. Mr. Leah Wambetela;
14. Mr. Fred Kolele;
15. Mr. Peter Ntonjira Nahason;
16. Mr. Juliana Auma; and
17. Mr. Shem Nyagemi Bitoyo.

1. **The National Gender and Equality Commission made the following proposals -**

- (a) the penalties in the Bill should be aligned to other Acts of Parliament;
- (b) the Commission proposes the enactment of the Persons with Disabilities Education Act to provide a comprehensive legislative framework that will incorporate all the proposed provisions. There is draft Persons with Disabilities Education Bill developed by NGEC and its stakeholders for consideration;
- (c) there is need for a policy or legislation specific to the welfare and protection of persons with disabilities who are marginalized or from minority group and who need access to justice, education, economic wellbeing, physical security and health, including reproductive health issues;
- (d) there is need for programs that take care of special needs of persons with disabilities in hardship areas;
- (e) all employment and labour laws need to be amended to entrench the provisions in clause 27; and
- (f) the Commission proposes that the National and County government develop Inclusiveness and Accessibility Index to benchmark and evaluate readiness of various stakeholders for making the workplace accessible for Persons with Disabilities.

2. **The Kenya National Commission on Human Rights noted that—**

- (a) there is need to harmonise the penalties in the Bill with other laws;
- (b) there is need to clarify the kind of data to be collected by the National and county governments.

3. **The County Assemblies Forum noted that there is need—**

- (a) to clarify on the required timeline for County Governments to enact the specific legislation after this bill is passed. This will ensure a time-specific implementation at the County Governments;
- (b) to define the term “cruel treatment”;

4. Disability and human rights organizations, and individuals with interest in disability matters noted the need for—

- (a) reduction of bureaucracy in accessing services for PWDs;
- (b) ease of acquiring tax exemption certificates by ensuring that registration by the National Council for Persons with Disabilities (NCPWD) should automatically qualify one to get a tax exemption certificate from the Kenya Revenue Authority (KRA);
- (c) decentralization of registration of PWDs should be implemented, to reduce the burden experienced by PWDs currently;
- (d) accessibility audits and Adjustment orders should be done by an entity with technical expertise and resources, such as National Construction Authority, in collaboration with NCPWD;
- (e) to ensure that realization of the 5% employment of PWDs in public service, the Public Service Ministry and county service boards should keep data on the number of persons with disabilities employed, and their positions;
- (f) a larger quota to be set aside for employment of persons with disabilities NCPWD;
- (g) the tax incentives for employers who meet the 5% threshold of employment of persons with disabilities to be clear in the Bill, and should be adequate incentivize organizations to ensure that more PWDs get employment opportunities;
- (h) the government to set aside funds for DPOs to support their advocacy efforts and enhance their participation in public participation processes;
- (i) clear provisions on support to care givers;
- (j) penalties for individuals who give false information to enjoy benefits of PWDs to be stiffer than stipulated in the Bill;
- (k) provisions on how the Senate will hold the county governments accountable in implementation of the Bill;
- (l) feedback/complaints mechanism to be integrated in service delivery, particularly by NCPWD; and
- (m) a Marshall plan for implementation of the Bill.

5. **Mr. Steve Muema** noted that vetting of Applicants nearly takes 1 year after submission to the Council minding the forms from counties to the Director of Medical Services takes a year for approval, making 2 years for the PLWDs lose in the tax exemption procedure, making the applicants suffer even after several visits to the council. He requested the Committee to set the timelines for the applicants, ie once the council verifies your status they can award the exemption status unlike where they have to set a council for determination.
6. **Mr. David Lunalo (Deaf)**, Deputy Head teacher Mwikhomo special school for the Deaf, Kakamega noted that the Bill should provide for payment of disabled early childhood education teachers and provide school feeding programmes for special needs children.
7. **Ms. Leah Wambetela** requested the Committee to consider extending exemptions to parents and caregivers of those who care for those with disabilities that have rendered them totally dependent.
8. **Mr. Fred Kolele** requested the Committee to consider subsidizing motorized wheelchairs, prosthetic limbs, hearing aids, urethral catheters, urine bags, etc for registered PWD.
9. **Mr. Peter Ntonjira Nahason** requested the Committee to consider factoring in a retirement package for people with disabilities.
10. **Ms. Juliana Auma**, a mother to a special needs young adult who was born with Spina Bifida and Hydrocephalus requested the Senate to—
 - (a) consider making sure that persons with Spina Bifida and or Hydrocephalus have access to free continence materials such as intermittent catheters, bowel wash out kits, ky jelly and oxybutinin a drug that we use to expand the bladder muscles to enable the bladder to hold more urine; and
 - (b) facilitate enrollment of all persons with Spina Bifida from low income households across Kenya in the Inua Jamii cash transfer program.

11. Mr. Shem Nyagemi Bitoyo submitted as follows—

- (a) that there is need to ensure that there is equal employment opportunity either in government or private sector;
- (b) on matters education, PWDs or students living with disabilities should be exempted from school fees be either lower or upper level of education;
- (c) PLWDs should be treated free of charge in government hospitals and the government cater for the NHIF also their family should enjoy the same; and
- (d) private or government sector e.g school should ensure that it has a disability office department to tackle matters related to disability.

12. The Ministry of Labour and Social Protection noted that—

- (a) the Persons with Disabilities (Amendment) Bill (Senate Bill No. 29 of 2020) is a Private Member's Bill that has glaring conceptual & constitutional shortcomings and is of great concern to the Ministry, where the National Council for Persons with Disabilities is domiciled;
- (b) in Clause 4 of the Persons with Disabilities (Amendment) Bill, 2020, the proposal to impose obligation to the Counties in the new section 2C in Part 1 A of the Bill offends the Constitution of Kenya, 2010 and other applicable laws, in that the National Council for Persons with Disabilities is an entity within the National Government;
- (c) many County Governments have developed their legislations on how best to deliver services to persons with disabilities within the respective Counties. Nairobi City County, Meru County, Machakos County, Nakuru County and Kisii County already have enacted new legislations dealing with matters of persons with disabilities to address rights and privileges that cut across the counties;
- (d) the existing law, to wit, the Persons with Disabilities Act, 2003, is the wrong vehicle to compel counties to do matters pertaining to the persons with disabilities when counties have their own separate county laws on the same. The new Section 2C in Clause 4 of the Bill ought to be deleted in entirety since it imposes additional financial burden on the National Government;

- (e) Clause 5 of the Bill is addressed in the Government Sponsored Bill that creates a lean council of nine (9) Council members including a nominee from the Council of Governors. Clause 5 of the Senate Bill does not address the nature of the bloated membership of the Council in the current Act, which is a huge financial burden to the exchequer and contrary to Mwongozo Code of Governance for State Corporations;
- (f) Section 4B in Clause 6 of the Bill, contradicts the norms in the appointment of chairperson and members in state corporations under the State Corporations Act (CA. 446) of the laws of Kenya, in requiring in the event of a vacancy in the position of the chairperson and members of the Council, the Public Service Commission to declare and invite applications after notification. Section 4B in Clause 6 of the Bill ought to be expunged.
- (g) Clauses 9 & 14 of the Bill are adequately provided for in the proposed Government sponsored Bill; and
- (h) Clause 15 of the Bill is comprehensively addressed in the proposed Government Sponsored Bill on the advice of the National Treasury & Planning & the Office of the Attorney- General & Department of Justice, as directed by the Cabinet, in respect of tax incentives, statutory taxes and other reliefs to persons with disabilities. The new Part 1 V in Clause 15 of the Bill is contrary to the advice given by the National Treasury & Planning and as directed by the Cabinet.

4.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee made the following recommendations on the Persons with Disabilities (Amendment) Bill, 2020, (Senate Bill No. 29 of 2020) –

1. Amend Clause 4 (2B) on the obligations of National Government to provide resources to cater for training and research for PWDs and that they are provided equitably;
2. Amend Clause 4 (2) (c) to include the gender variable;
3. Amend Clause 14 (1) to align it with the Constitution;
4. Align Clause 14(1) to the Constitution by deleting the word “who is marriageable” between “Every” and “person” and inclusion of the word “**adult**”.
5. Amend Clause 14 12 (2) – Right to equality and non-discrimination - by deleting ‘reasonable accommodation’ and inserting a new sub-clause should be included which states that
‘denial of reasonable accommodation amounts to discrimination on the basis of disability’;
6. Amend Clause 27 by inserting a sub clause under Clause 27 (3) to provide for the penalty for employers who fail to submit their report on the status of employment of persons with disabilities within their establishments.
7. Amend Clause 30 by creating an offense and fine.
8. Amend Clause 30 (2), by adding the clause
‘every person with a disability has the right to access health care based on his/her free and informed consent’.

9. Amend Clause 30 (3) by inserting after the word “Facility “the following—
“and shall be signed by a designated and gazetted County Medical Officer”
10. Amend Clause 31G Amend the clause by inserting a new sub clause (3) as follows—
‘(3) All registration cards shall be issued within 30 days after medical assessment by the respective offices of the Council in the County’.
11. Insert a new Clause 50- Right to public Participation to read as follows -
 - 1) All conveners of public participation forums shall support and facilitate Persons with various categories of disabilities and age to access the location and documents and information in accessible format.
 - 2) This shall include but shall not be limited to sign language interpretation services and braille copies and accessible venues in all public participation.
 - 3) The Conveners shall also ensure that there is an integrated feedback mechanism and tracking of public views given during public participation.

Annex 1: Proposed Committee Stage Amendments

27th August, 2021

The Clerk of the Senate,

Parliament Buildings,

NAIROBI.

**RE: COMMITTEE STAGE AMENDMENTS TO THE PERSONS WITH
DISABILITIES (AMENDMENT) BILL, SENATE BILLS NO. 29 OF 2020**

NOTICE is given that Sen. Johnson Sakaja, Chairperson, Standing Committee on Labour and Social Welfare, intends to move the following amendments to the Persons with Disabilities (Amendment) Bill, Senate Bills No. 29 of 2020 at the Committee Stage —

CLAUSE 4

THAT clause 4 of the Bill be amended—

(a) in the proposed new section 2B by inserting the following new paragraphs immediately after paragraph (i)—

- (j) allocate adequate resources to programmes specifically targeting persons with disabilities;
- (k) allocate adequate resources for training on persons with disabilities;
- (l) ensure equity in the distribution of resources to all categories of disabilities; and
- (m) promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions.

(b) in the proposed new section 2C(2)(c) by inserting the following new subparagraph immediately after subparagraph (i)—

- (ia) the gender of the person;

CLAUSE 14

THAT clause 14 of the Bill be amended—

(a) in the proposed new section 12—

(i) by deleting the words “reasonable accommodation and” appearing immediately after the words “Special measures including” in subsection (2);

(ii) by inserting the following new subclause immediately after subclause (2)—

(3) Denial of reasonable accommodation on the basis of disability shall amount to discrimination.

(b) in the proposed new section 14 by deleting subsection (1) and substituting therefor the following new subsection—

(1) Every adult person with disability has the right to marry a person of the opposite sex and form a family based on free consent.

(c) in the proposed new section 30 by inserting the following new subsection immediately after subsection (3)—

(3A) A medical assessment report issued under subsection (3) shall be signed by the designated County Medical Officer.

(d) in the proposed new section 31G by inserting the following new subsection immediately after subsection (2)—

(3) The Council shall, through the respective county offices, issue disability identification cards to persons with disabilities within thirty days of the carrying out of medical assessment under subsection 30.

CLAUSE 21

THAT the Bill be amended in clause 21 by inserting the following new section immediately after the proposed new section 49I —

Public participation.

49J. The National and county governments shall put in place such measures to facilitate the participation of persons with disability in cultural, social and economic life and in

public affairs, in particular those affecting them through—

- (a) targeted public participation; and
- (b) offering information in accessible form.

Date Tuesday, 7th September, 2021



.....
Sen. Johnson Sakaja,
Chairperson,
Standing Committee on Labour and Social Welfare.

Annex 2: Matrix of the Public Participation of the Persons with Disabilities (Amendment) Bill, 2020

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2020 (SENATE BILLS NO. 29 OF 2020)

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
Long title	Council of Governors	Amend to read— AN ACT of Parliament to amend the Persons with Disabilities Act; to give effect to Article 54 of the Constitution; to provide for the functions of the national government and the county governments; and for connected purposes.	The intendment of this Bill should also be to give effect to Article 54 of the Constitution. The principal Act has not been reviewed after the Constitution 2010.	Not adopted. It is already covered under the Bill.
2	Prof. Michael M. Ndurumo	Include the definition of “sector” to mean an organization, institution, or body directly or indirectly receiving public funds.		Not adopted.
	The National Gender and Equality Commission	Include a schedule on the “assistive devices and services” in the Bill.		Not adopted.
		Substitute the word “special measures with “affirmative measures”		Not adopted. The special measures in the Bill are affirmative in nature.
		Insert the definition of the term “older member of society” to mean a person who has attained the age of sixty years.	The term has been referenced to in clause 19 but not interpreted.	Not adopted. The term is already defined in Constitution

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Insert the definition of the term “marginalised group” to mean a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4);	There is a need to interpret this term and also make provision in the Bill due to the multiple vulnerabilities faced by this group.	Not adopted. The terms is already defined in the Constitution.
	The In business Steering Committee in Turkana West	Amend the definition of a “person with disability” to include ‘any Kenyan, refugee, asylum seeker, stateless person or foreigner and removal of the word person.	The Constitution of Kenya 2010 provides for protection of every person with disability in Article 54. Kenya is a party to The Convention on the Rights of Persons with disability and Optional Protocol which it ratified in 2008. Article 5 provides for equality and non-discrimination of persons with disability. This amendment seeks to include registration of all persons with disability in Kenya including Kenyans, refugees, asylum seekers, stateless persons and foreigners.	Not adopted. There are specific laws that deal with refugees in Kenya.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	The Kenya National Commission on Human Rights.	The definition of Organizations of Persons with Disabilities under Bill be amended and expanded to read as follows— “Organizations of persons with disabilities” means associations or societies that are led, directed and governed by persons with disabilities and in which a clear majority of the membership is recruited from among persons with disabilities themselves with the collective aim of acting, promoting, pursuing, or defending rights of persons with disabilities.	The definition needs to be aligned to the General Comment No 7 (2018) of the United Nations Committee on the Rights of Persons with Disabilities on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention.	Not adopted. Provided for adequately under the Bill.
	Council of Governors	Replace the definition of “inclusive education” with the following definition— “inclusive education and training” includes educating students and learners with disabilities in chronologically age-appropriate general and inclusive education classes and training courses in the learning institutions or least restrictive environments and in regular classrooms and ensure that they	The Competency Based Curriculum provides for the provision of inclusive education and training programmes for learners and trainees with disability, beyond pre-primary, primary and secondary levels. This, therefore, implies that trainees in higher levels of education and training should be considered when deliberating on	Not adopted. Already catered for. Education covers all levels of training institutions

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		receive specialized instruction delineated by their individualized education and training programs within the context of the core curriculum and general class activities regardless of types or severity of disabilities, to the maximum extent possible;	inclusivity in education.	
4	Prof. Michael M. Ndurumo	Under clause 2B on the obligations of the National government insert the following paragraphs after (i)— (j) Provide registered professionals with disabilities and their training and research organizations with grants to undertake research, training, mentorship, printing of resource materials, and other projects that promote education, training, and welfare of persons with disabilities. (k) Allocate grants to specialized training and research non-governmental organizations and institutions focusing on persons with disabilities. (l) Ensure equity in the distribution of resources to all		Rework on provision of resources to cater for training and research for PWDs and ensure that they are provided equitably.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		categories of disability. (m) Entrench affirmative action to ensure students with disabilities are enrolled in learning institutions at all educational levels. (n) Register and ensure learners with special educational needs and those with disabilities are provided with the National Council for Persons with Disabilities Card. (o) Provide income taxes exemptions to parents of children with disability.		
	The National Gender and Equality Commission	In the data base under clause 2C (2) (c) it is important to amend to include the gender variable	Having in place sex disaggregated data would be crucial for gender responsive planning and programming. For instance, the needs for a male disabled person are different from the needs of a female disabled person	Adopted.
	The Kenya National Commission on Human Rights.	Amend clause 2C (2) (d) by inserting the words 'in collaboration with the Kenya National Commission on Human Rights and the National Gender and Equality Commission' after the word 'Constitution'.	To recognize that the mandate of monitoring the rights of persons with disabilities in the country is conducted by independent commissions (Kenya National Commission on Human Rights in collaboration with	Not adopted. The roles of the Commissions have already been provided for under the law.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			National Gender and Equality Commission). These bodies have been appointed by the Attorney General to carry out this mandate, in line with Article 33(2) of the UN Convention on the Rights of Persons with Disabilities. It is not good practice for the implementer (County Executive Committee member) to also monitor and evaluate his/her own work.	
	Council of Governors.	Amend clause 2B (e) to read as follows— (e) Promote the integration of persons with disability in all learning and training institutions	Learning occurs in several types and levels of institutions, both formal and informal. The provision of the Bill should broaden the scope of these institutions to read learning and training institutions in order to adequately capture the needs of persons with disabilities.	Not adopted.
		Insert paragraph (j) in clause 2B as follows— (j) allocate adequate resources to programmes specifically targeting persons with disability;	The National Government should allocate financial and technical support towards programmes aimed at persons with disabilities	Rework the Bill for provision of resources.
		Amend clause 2C (1) (a) to read as follows—	County Governments have already established	Not adopted. Counties implement

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		(a) implement national policies and establish county-specific policies for the protection and promotion of the welfare of persons with disability;	County legislation and policies to guide programmes for persons with disabilities. The clause should enable County Governments to develop and domesticate policies and legislation for persons with disability. Furthermore, 2C (6) provides for the enactment of County specific legislation for the appointment of a committee to handle matters affecting persons with disability in the County.	national government policies.
		Amend clause 2 C (1) (b) to read as follows— (b) allocate adequate resources to complement existing programmes by the national government for persons with disabilities;	The clause implies that only the County Governments have the mandate of allocating financial resources for programmes. Financial support should be complemented and supplemented by the County Governments.	Not adopted. It is the role of all levels of government.
		Amend Clause 2 C (2) (c) to read as follows— (c) Liaise with the Council to maintain a database of persons with disability in respective counties;	The National Council of Persons with Disability is mandated to register and maintain a national database of persons with disabilities in the country. This clause proposes the	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			establishment of a similar database which will be duplicating the existing role of the NCPWD. The proposal is to have the County Governments gain access to the database established by the Council.	
5	Council of Governors.	Amend clause 5 (a) (i) to read— (c) two persons nominated by the council of county governors with knowledge and at least three years' experience on matters relating to disabilities;	There is need for adequate representations by county governments at the Council.	Not adopted.
		Amend by deleting Clause 5 (b) (1C) and (1D).	Mwongozo Code discourages the establishment of the office of Vice Chairpersons in state corporations.	Not adopted.
6	Council of Governors	Amend clause 6 (1) Marginal note to read— Director General (1) There shall be a Director- General of the Council who shall be the chief executive of the Council.	This is to conform to Mwongozo and good practices since section 3 of the Principal Act establishes the Council has a body corporate.	Not adopted.
13- Right to Legal Capacity	Council of Governors.	Amend subclause (3) to read as follows— (3) every person with disability has equal right to own and inherit property, to control his or her own financial affairs and to have equal access	The clause provides only or bank loans and has no provision for savings facilities in financial institutions. The proposed amendment will enhance access to	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		to savings and loan facilities, mortgages and other forms of financial credit	savings and credit facilities in all financial institutions, not just banks.	
14	The In business Steering Committee in Turkana West	Amend Clause 14(1) by deleting the word “who is marriageable” between “Every” and “person” and inclusion of the word “adult”.	Article 45 (2) of Constitution of Kenya provides that every adult has the right to marry a person of the opposite sex, based on the free consent of the parties. The proposed amendment will provide uniformity with the language used in the Constitution of Kenya 2010.	Approved. Align it with the Constitution.
	The Kenya National Commission on Human Rights.	Clause 12 (2) – Right to equality and non-discrimination. The Commission recommends that (reasonable accommodation) should be deleted. A new sub-clause should be included which states that ‘denial of reasonable accommodation amounts to discrimination on the basis of disability’.	To align with General Comment No. 6 of 2018 on equality and non-discrimination, which at para 25(c) states that— “Reasonable accommodation” should also not be confused with “specific measures”, including “affirmative action measures”. While both concepts aim at achieving de facto equality, reasonable accommodation is a non-discrimination duty, whereas specific measures imply a preferential	Adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			treatment of persons with disabilities over others to address historic and/or systematic/systemic exclusion from the benefits of exercising rights. In other words, it is inaccurate to list reasonable accommodation as a 'specific measure'. Reasonable accommodation is not a specific measure (which depend on availability of resources and are to be progressively realized), but rather is a critical element of non-discrimination of persons with disabilities and is therefore immediately realizable.	
		In Clause 18 insert a new paragraph (h) to read as below— (h) ensuring that youth with disabilities have access to appropriate sexual and reproductive health education on an equal basis with others.	This will align the Bill fully with Article 29(h) of the Protocol to the African Charter on Human and Peoples' Rights which Kenya is in the process of ratifying.	Not adopted. The Bill is for all persons with disabilities.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		In Clause 27 insert a sub clause under Clause 27 (3) to provide for the penalty for employers who fail to submit their report on the status of employment of persons with disabilities within their establishments.	Provision of a penalty enhances enforceability (and it is worth noting that the general penalty under clause 49H is not applicable as it only applies to sections of the Bill that create offences – which Clause 27 does not).	Adopted for public service employers.
		In Clause 27 amend clause 27 (6) (b) of the Bill to include private sector employers. The amended Clause to read as below— “employer” means an employer in the public service or private sector	Section 13 of the Persons with Disabilities Act, 2003 provides for 5% reservation of employment in public and private sectors. The Bill therefore should not take away the gains at hand. Furthermore, the national values and the bill of rights binds all persons and all organs (this includes private bodies)- Articles 10(1), 20 Constitution of Kenya, 2010.	Not adopted.
		On Clause 30, the Commission proposes a deletion of Clause 30 (5) and (6) of the and replace with the following proposed new sub clause : (5) Persons with disabilities, including children, have the right to retain their fertility on an equal basis with others.	This is to align the Bill with Article 23(1)(c) of the CRPD on respect for home and the family. Under this Article, States Parties shall take effective and appropriate measures to eliminate discrimination against persons with	Adopted. Create an offence and fine.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			disabilities in all matters relating to marriage, family, parenthood, and relationships, on an equal basis with others, to ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.	
		On Clause 30 (2), the Commission proposes the addition of a clause to the effect that: ‘every person with a disability has the right to access health care based on his/her free and informed consent’.	To offer redress for the current situation where many persons with disabilities have medical interventions performed against their will.	Adopted.
		Delete in Clause 31 (1) (a) the words ‘prevention of occurrence’	Provisions on ‘prevention of disability’ are better suited in a health law, not in the ‘Persons with Disabilities’ law. The purpose of Persons with Disabilities Act is to address issues relating to those who already have disabilities. Prevention is a good cause – but is nevertheless misplaced in the law that addresses issues related to those people who already have disabilities. Issues of prevention	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			lean on the medical model of disability which sees disability (only) as something that is situated in the person, as opposed to also addressing the barriers that exist in society that exclude people with disabilities from full participation.	
		In Clause 31E 3 (c) delete the word 'reasonable' placed immediately before the word 'access'.	The term 'reasonable' seems to qualify the progressive provision/obligation to make amenities accessible.	Not adopted.
		The Commission recommends that a new paragraph be introduced under Clause 31E (6) providing that the Council can be moved (through complaints or petitions) by any organization or person to commence the process of issuing an adjustment order. While the Council is the primary actor, it can be assisted in identification of nonaccessible buildings by affected persons or organizations.	Private individuals/organizations should be able to lodge a complaint and trigger the adjustment orders mechanism as long as the Council is the body mandated to move the procedure forward as opposed to waiting for the Council to solely commence the process.	Not adopted. Already provided for. It can be provided for administratively.
	The County Assemblies Forum	Amend section 11 to provide a new sub clause (k) to provide— (k) take appropriate measures to prevent the discrimination of Youth	Youth with Disabilities are a marginalised group facing double discrimination and its important to recognise them under this clause.	Not adopted. It is not necessary.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		and Children with disabilities;		
26- Right to Education.	Council of Governors.	Amend paragraph 7 (c) (vi) to read as follows— (7) (c) The Council in consultation with the National and respective county government shall ensure that— (vi) Introduction of Kenya Sign language interpretation course in all learning and training institutions.	The Competency Based Curriculum provides for the inclusion of Kenya Sign Language as a means of instruction in all schools and training institutions for learners and trainees with special needs.	Not adopted.
27	Prof. Michael M. Ndurumo	27(2)(a). Delete at least and have the clause read “five per cent of direct employment opportunities and placement of persons with disabilities to secure and progress in employment at each level of an institution. ” 27(4) Amend and add (i) after (h) to read “ assigning, retiring, or using selective discrimination in retiring an employee with disabilities on the basis of inadequacies in an organization or institution whether financial, administrative, or re-organization. ” 27(5) Amend after retirement to read “ shall be five years above the mandatory retirement age in the employee’s sector. ” Add before clause 6		Not adopted. Already provided for

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		27(5)(b) “Academic staff of the rank of associate professor and above and researchers of similar rank and registered by the National Council for Persons with Disabilities shall be considered persons possessing special and rare skills and shall be eligible for employment on contract after retirement.”		
	The National Gender and Equality Commission	The Commission proposes to amend clause 276a by inserting a new sub clause iii as follows— iii) Providing appropriate support services to employees who have disabilities and need them to deliver results competitively with other employees. Insert a new clause 27A—Downsizing as follows— 27A- in the event of an employer undertaking a downsizing exercise, they shall consider the vulnerability of employees with disability and only take such a step if there are no alternative considerations.		Not adopted. Already provided for.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
28	Prof. Michael M. Ndurumo	28(1) Amend to read: "A person with disability shall not be dismissed or suffer reduction or rendered redundant in rank or be denied extension of retirement age or contract on the grounds of disability or after acquiring any disability or owing to administrative, institutional, or financial status of the employer or any consequences thereof"		Not adopted. Already provided for
30	The National Gender and Equality Commission	Sub Clause(1) to be amended to insert before the word "health" "the following "the highest attainable standard of"	This will ensure alignment with Article 43.	Not approved. already
		Amend sub-clause (2) by adding a new sub-clause c as follows-; (c) a comprehensive health insurance cover	There is need to include a provision on Universal Health Insurance as a right.	Not adopted.
		We propose to amend sub clause 3 by inserting after the word "Facility" "the following— "and shall be signed by a designated and gazetted County Medical Officer"	Such a provision will speed up the issuance of disability registration cards because there will no longer be a need to have cards signed by the Director of Medical Services in Nairobi	Adopted. This will strengthen devolution and bring services close to the people.
		We propose to amend section 30 by inserting a new sub clause (6) as follows—	This will help in early detection and prevention of some preventable or curable disabilities.	Not adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		(6)“ County Governments shall ensure that the established health care services in the community give priority to issues of disability’		
		We propose a new clause as follows— 4A- All health facilities shall endeavour to emboss in braille all the drugs prescription for persons who are print disabled.		Not adopted. It can be provided for under regulations.
31C	The National Gender and Equality Commission.	Amend to provide that both public and private learning institutions to ensure that children with disabilities have equal access with other children to participation in play, recreation, leisure and sporting activities, including all activities in the school system.		Not adopted. Already covered.
31D	The National Gender and Equality Commission.	Amend sub clause 7(f) by substituting the following words” Zebra crossings” with as “pedestrian crossing “as follows— (f) pedestrian infrastructure including pedestrian crossings, sidewalks and walkways	Sidewalks are described as a walk on the side of something, whereas walkways are specifically made for pedestrian traffic. Sidewalks are not originally designed for continuous traffic. Sidewalks are made for occasional traffic; walkways	Not adopted.

CLAU E	STAKEHOL DER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITT EE RESOLUTI ON
			are designed for perpetual traffic.	
31F	Westminster Foundation for Democracy, Disabled Persons Organizations and Civil Society Organizations and Consortium of Disabled Persons Organizations of Kenya.	Require that specifications be made for each disability as may be appropriate under section 31 (F) (2) (a)	This will ensure that all types of disabilities are effectively provided for. In its current form, it may exclude some disabilities with the silence posing a legal vulnerability.	Not adopted. It's an administrative action.
31G	The National Gender and Equality Commission.	Amend the clause by inserting a new sub clause (3) as follows— (3) All registration cards shall be issued within 30 days after medical assessment by the respective offices of the Council in the County.	This will ensure that persons with disabilities are issued with cards without unreasonable delay and that they do not incur costs travelling to Nairobi to collect the cards.	Adopted. Align with the clause on signing of certificate of disability
	The In business Steering Committee in Turkana West.	Amend Clause 31G(1)(a) by inserting the word “every” before person and inserting the words “in Kenya” between “disability” and “to” and inclusion of including but not limited to Kenyans, Refugees, stateless persons and foreigners at the of the sentence.	The Constitution of Kenya provides for protection of every person with disability in Article 54. Kenya is a party to The Convention on the Rights of Persons with disability and Optional Protocol which it ratified in 2008. Article 5 provides for equality and non-discrimination of persons with disability.	Not approved.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			This amendment seeks to include registration of all persons with disability in Kenya including Kenyans, refugees, asylum seekers, stateless persons, foreigners etc.	
NEW CLAUSES				
Proposed clause 50	The National Gender and Equality Commission.	Include a new clause as follows— 50- Right to public Participation (1) All conveners of public participation forums shall support and facilitate Persons with various categories of disabilities and age to access the location and documents and information in accessible format. (2) This shall include but shall not be limited to sign language interpretation services and braille copies and accessible venues in all public participation. (3) The Conveners shall also ensure that there is an integrated feedback mechanism and tracking of public views given during public participation.		Adopted. Include a clause on public participation

13. The National Gender and Equality Commission made the following proposals too—
- (g) the penalties in the Bill should be aligned to other Acts of Parliament;
 - (h) the Commission proposes the enactment of the Persons with Disabilities Education Act to provide a comprehensive legislative framework that will incorporate all the proposed provisions. There is draft Persons with Disabilities Education Bill developed by NGECE and its stakeholders for consideration;
 - (i) there is need for a policy or legislation specific to the welfare and protection of persons with disabilities who are marginalized or from minority group and who need access to justice, education, economic wellbeing, physical security and health, including reproductive health issues;
 - (j) there is need for programs that take care of special needs of persons with disabilities in hardship areas;
 - (k) all employment and labour laws need to be amended to entrench the provisions in clause 27;
 - (l) the Commission proposes that the National and County government develop Inclusiveness and Accessibility Index to benchmark and evaluate readiness of various stakeholders for making the workplace accessible for Persons with Disabilities;
14. The Kenya National Commission on Human Rights noted that—
- (c) there is need to harmonise the penalties in the Bill with other laws;
 - (d) there is need to clarify the kind of data to be collected by the National and county governments.
15. The County Assemblies Forum noted that there is need—
- (c) to clarify on the required timeline for County Governments to enact the specific legislation after this bill is passed. This will ensure a time-specific implementation at the County Governments;
 - (d) to define the term “cruel treatment”;
16. Disability and human rights organizations, and individuals with interest in disability matters noted the need for—
- (n) reduction of bureaucracy in accessing services for PWDs;
 - (o) ease of acquiring tax exemption certificates by ensuring that registration by the National Council for Persons with Disabilities (NCPWD) should automatically qualify one to get a tax exemption certificate from the Kenya Revenue Authority (KRA);

- (p) decentralization of registration of PWDs should be implemented, to reduce the burden experienced by PWDs currently;
- (q) accessibility audits and Adjustment orders should be done by an entity with technical expertise and resources, such as National Construction Authority, in collaboration with NCPWD;
- (r) to ensure that realization of the 5% employment of PWDs in public service, the Public Service Ministry and county service boards should keep data on the number of persons with disabilities employed, and their positions;
- (s) a larger quota to be set aside for employment of persons with disabilities NCPWD;
- (t) the tax incentives for employers who meet the 5% threshold of employment of persons with disabilities to be clear in the Bill, and should be adequate incentivize organizations to ensure that more PWDs get employment opportunities;
- (u) the government to set aside funds for DPOs to support their advocacy efforts and enhance their participation in public participation processes;
- (v) clear provisions on support to care givers;
- (w) penalties for individuals who give false information to enjoy benefits of PWDs to be stiffer than stipulated in the Bill;
- (x) provisions on how the Senate will hold the county governments accountable in implementation of the Bill;
- (y) feedback/complaints mechanism to be integrated in service delivery, particularly by NCPWD; and
- (z) a Marshall plan for implementation of the Bill.

17. Steve Muema noted that vetting of Applicants nearly takes 1 year after submission to the Council minding the forms from counties to the Director of Medical Services takes a year for approval, making 2 years for the PLWDs lose in the tax exemption procedure, making the applicants suffer even after several visits to the council. He requested the Committee to set the timelines for the applicants, ie once the council verifies your status they can award the exemption status unlike where they have to set a council for determination.
18. David Lunalo (Deaf), Deputy Head teacher Mwikhomo special school for the Deaf, Kakamega noted that the Bill should provide for payment of disabled early childhood education teachers and provide school feeding programmes for special needs children.
19. Leah Wambetela requested the Committee to consider extending exemptions to parents and caregivers of those who care for those with disabilities that have rendered them totally dependent.
20. Fred Kolele requested the Committee to consider subsidizing motorized wheelchairs, prosthetic limbs, hearing aids, urethral catheters, urine bags, etc for registered PWD.
21. Peter Ntonjira Nahason requested the Committee to consider factoring in a retirement package for people with disabilities.

22. Juliana Auma, a mother to a special needs young adult who was born with Spina Bifida and Hydrocephalus requested the Senate to—

- (c) consider making sure that persons with Spina Bifida and or Hydrocephalus have access to free continence materials such as intermittent catheters, bowel wash out kits, ky jelly and oxybutinin a drug that we use to expand the bladder muscles to enable the bladder to hold more urine; and
- (d) facilitate enrollment of all persons with Spina Bifida from low income households across Kenya in the Inua Jamii cash transfer program.

23. Shem Nyagemi Bitoyo submitted as follows—

- (e) that there is need to ensure that there is equal employment opportunity either in government or private sector;
- (f) on matters education plwd or students lwd should be exempted from school fees be either lower or upper level of education;
- (g) PLWDs should be treated free of charge in government hospitals and the government cater for the NHIF also their family should enjoy the same; and
- (h) private or government sector eg school should ensure that it has a disability office department to tackle matters related to disability.

24. The Ministry of Labour and Social Protection noted that—

- (i) the Persons with Disabilities (Amendment) Bill (Senate Bill No. 29 of 2020) is a Private Member's Bill that has glaring conceptual & constitutional shortcomings and is of great concern to the Ministry, where the National Council for Persons with Disabilities is domiciled;
- (j) in Clause 4 of the Persons with Disabilities (Amendment) Bill, 2020, the proposal to impose obligation to the Counties in the new section 2C in Part 1 A of the Bill offends the Constitution of Kenya , 2010 and other applicable laws, in that the National Council for Persons with Disabilities is an entity within the National Government;
- (k) many County Governments have developed their legislations on how best to deliver services to persons with disabilities within the respective Counties. Nairobi City County, Meru County, Machakos County, Nakuru County and Kisii County already have enacted new legislations dealing with matters of persons with disabilities to address rights and privileges that cut across the counties;
- (l) the existing law, to wit, the Persons with Disabilities Act, 2003, is the wrong vehicle to compel counties to do matters pertaining to the persons with disabilities when counties have their own separate county laws on the same. The new Section 2C in

Clause 4 of the Bill ought to be deleted in entirety since it imposes additional financial burden on the National Government;

(m) Clause 5 of the Bill is addressed in the Government Sponsored Bill that creates a lean council of nine (9) Council members including a nominee from the Council of Governors. Clause 5 of the Senate Bill does not address the nature of the bloated membership of the Council in the current Act, which is a huge financial burden to the exchequer and contrary to Mwongozo Code of Governance for State Corporations;

(n) Section 4B in Clause 6 of the Bill, contradicts the norms in the appointment of chairperson and members in state corporations under the State Corporations Act (Cap. 446) of the laws of Kenya, in requiring in the event of a vacancy in the position of the chairperson and members of the Council, the Public Service Commission to declare and invite applications after notification. Section 4B in Clause 6 of the Bill ought to be expunged.

(o) Clauses 9 & 14 of the Bill are adequately provided for in the proposed Government sponsored Bill; and

(p) Clause 15 of the Bill is comprehensively addressed in the proposed Government Sponsored Bill on the advice of the National Treasury & Planning & the Office of the Attorney- General & Department of Justice, as directed by the Cabinet, in respect of tax incentives, statutory taxes and other reliefs to persons with disabilities. The new Part 1 V in Clause 15 of the Bill is contrary to the advice given by the National Treasury & Planning and as directed by the Cabinet.

LIST OF STAKE HOLDERS

1. Council of Governors.
2. Ministry of Labour and Social Protection.
3. National Gender and Equality Commission.
4. National Council for Persons with Disability.
5. Westminster Foundation for Democracy.
6. Shem Nyagemi Bitoyo.

7. David Lunalo.
8. Seth Were.
9. Emmanuel Munyasia .
10. Peter Ntonjira Nahason.
11. Leah Wambetele.
12. Steve Muema.
13. Juliana Auma.
14. Refugee Consortium of Kenya.
15. The In business Steering Committee in Turkana West.
16. Fred Kolele.
17. Disability and Human Rights Organizations, and Individuals with Interest in Disability Matters.
18. The County Assemblies Forum.
19. The Kenya National Commission on Human Rights.
20. Disabled Persons Organizations and Civil Society Organizations.
21. Consortium of Disabled Persons Organizations of Kenya.
22. Humanity and Inclusion.
23. Norwegian Refugee Council.
24. United Nations High Commissioner for Refugees, the UN Refugee Agency.

**MINUTES OF THE 53RD (ZOOM ONLINE) MEETING OF THE
STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON
TUESDAY, 7TH SEPTEMBER, 2021, AT 9.30 AM.**

MEMBERS PRESENT

1. **Sen. (Dr.) Milgo Alice Chepkorir** - **Member (Chairing)**
2. Sen. Masitsa Naomi Shiyonga - Member
3. Sen. Madzayo Stewart Mwachiru - Member
4. Sen. Makori Beatrice Kwamboka - Member
5. Sen. Kihika Susan Wakarura - Member

ABSENT WITH APOLOGIES

1. Sen. Sakaja Johnson Arthur, CBS - Chairperson
2. Sen. Mwaruma Johnnes - Vice Chairperson
3. Sen. Mwangi Paul Githiomi - Member
4. Sen. (Dr.) Mwaura Isaac, CBS - Member

SENATE SECRETARIAT

1. Ms. Mwanate Shaban - Clerk Assistant
2. Ms. Marale Sande - Senior Research Officer
3. Mr. Jeremy Chabari - Legal Counsel
4. Mr. Kevin Kibet - Hansard Officer/ CA
5. Ms. Fatuma Abdi - Audio Officer
6. Mr. Ruben Kimosop - Senior Serjeant-at-Arms
7. Mr. Frank Mutulu - Media Relations Officer

MINUTE SEN/SCLSW/230/2021: PRELIMINARIES

The Ag. Chairperson called the meeting to order at 9.35 a.m. followed by a word of prayer.

MINUTE SEN/SCLSW/231/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Makori Beatrice Kwamboka, MP and seconded by Sen. Naomi Masitsa Shiyonga, MP as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Confirmation of Minutes 52 & 51;**
4. **Adoption of Committee Stage Amendments of the Persons with Disabilities (Amendment) Bill, 2020;**
5. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/232/2021: CONFIRMATION OF MINUTES 51 AND 52

1. The Minutes of the 52nd meeting held on Wednesday, 1st September, 2021, at 10.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Makori Beatrice Kwamboka, MP and seconded by Sen. Naomi Shiyonga, MP; and
2. The Minutes of the 51st meeting held on Wednesday, 25th August, 2021, at 10.00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr.) Alice Milgo, MP and seconded by Sen. Naomi Shiyonga, MP.

MINUTE SEN/SCLSW/233/2021: ADOPTION OF COMMITTEE STAGE AMENDMENTS OF THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2020

The Legal Counsel presented the Committee Stage Amendments of the Persons with Disabilities (Amendment Bill, 2020) that arose from the Committee Recommendations on the Bill as follows –

CLAUSE 4

THAT clause 4 of the Bill be amended—

- (c) in the proposed new section 2B by inserting the following new paragraphs immediately after paragraph (i)—
 - (n) allocate adequate resources to programmes specifically targeting persons with disabilities;
 - (o) allocate adequate resources for training on persons with disabilities;
 - (p) ensure equity in the distribution of resources to all categories of disabilities; and
 - (q) promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions.

(d) in the proposed new section 2C(2)(c) by inserting the following new subparagraph immediately after subparagraph (i)—

(ia) the gender of the person;

CLAUSE 14

THAT clause 14 of the Bill be amended—

(b) in the proposed new section 12—

(iii) by deleting the words “reasonable accommodation and” appearing immediately after the words “Special measures including” in subsection (2);

(iv) by inserting the following new subclause immediately after subclause (2)—

(3) Denial of reasonable accommodation on the basis of disability shall amount to discrimination.

(e) in the proposed new section 14 by deleting subsection (1) and substituting therefor the following new subsection—

(1) Every adult person with disability has the right to marry a person of the opposite sex and form a family based on free consent.

(f) in the proposed new section 30 by inserting the following new subsection immediately after subsection (3)—

(3A) A medical assessment report issued under subsection (3) shall be signed by the designated County Medical Officer.

(g) in the proposed new section 31G by inserting the following new subsection immediately after subsection (2)—

(3) The Council shall, through the respective county offices, issue disability identification cards to persons with disabilities within thirty days of the carrying out of medical assessment under subsection 30.

CLAUSE 21

THAT the Bill be amended in clause 21 by inserting the following new section immediately after the proposed new section 49I —

Public **49J.** The National and county governments shall participation. put in place such measures to facilitate the participation of persons with disability in cultural,

social and economic life and in public affairs, in particular those affecting them through—

(c) targeted public participation; and

(d) offering information in accessible form.

The Committee unanimously adopted the amendments.

**MINUTE SEN/SCLSW/235/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

1. The Committee acknowledged a complaint letter from Mr. Mwavoyoni Sibabu, a former employee of Postal Corporation of Kenya and resolved to deliberate further in the next meeting.
2. There being no other business, the meeting was adjourned at 10.25 a.m.

SIGNATURE:.....
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE:

**MINUTES OF THE 31ST MEETING OF THE STANDING COMMITTEE
ON LABOUR & SOCIAL WELFARE HELD ON SATURDAY, 19TH JUNE,
2021, AT 1.00 PM IN THE MEDUSA 2 CONFERENCE ROOM,
ENGLISHPOINT MARINA, MOMBASA COUNTY**

MEMBERS PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Mwaruma Johnnes | - Vice Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru | - Member |
| 4. Sen. Mwangi Paul Githiomi | - Member |
| 5. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Kihika Susan Wakarura | - Member |
| 2. Sen. Makori Beatrice Kwamboka | - Member |
| 3. Sen. Masitsa Naomi Shiyonga | - Member |
| 4. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

SENATE SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Mr. Reuben Kimosop | - SAA |
| 4. Mr. Frank Mutulu | - Media Relations Officer |
| 5. Mr. Ringera Humphrey | - Research Officer |
| 6. Ms. Alice Nanyama | - Secretary |
| 7. Ms. Fatuma Abdi | - Audio Officer |
| 8. Ms. Rita Chidi | - Office Assistant |

MINUTE SEN/SCLSW/128/2021: PRELIMINARIES

The Chairperson called the meeting to order at 1.00 pm followed by a word of prayer.

MINUTE SEN/SCLSW/129/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Madzayo and seconded by Sen. Githiomi as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. Consideration and Adoption of the Report of the County Hall of Fame Bill, 2021;
4. Consideration and Adoption of the Report on the Persons with Disabilities (Amendment) 2020, Bill; and
5. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/130/2021: CONSIDERATION AND ADOPTION OF THE REPORT OF THE COUNTY HALL OF FAME BILL, 2021;

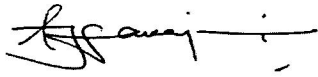
The Committee considered the report on the County hall of Fame Bill, 2021 and adopted it after it was confirmed by Sen. Stewart Madzayo, MP. and seconded by Sen. (Dr.) Alice Milgo, MP.

MINUTE SEN/SCLSW/131/2021: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PERSONS WITH DISABILITIES (AMENDMENT) 2020, BILL;

The Committee considered the report on the Persons with Disabilities (Amendment) Bill, 2020 and adopted it after it was confirmed by Sen. Mwaruma Johnes, MP. and seconded by Sen. Paul M. Githiomi, MP.

MINUTE SEN/SCLSW/132/2021: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 1.45 pm.


SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: **Wednesday, 14th July, 2021**

MINUTES OF THE 27TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON FRIDAY, 18TH JUNE, 2021, AT 11.00 AM IN THE MEDUSA 2 CONFERENCE ROOM, ENGLISHPOINT MARINA, MOMBASA COUNTY.

MEMBERS PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Mwaruma Johnnes | - Vice Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru | - Member |
| 4. Sen. Mwangi Paul Githiomi | - Member |
| 5. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Kihika Susan Wakarura | - Member |
| 2. Sen. Makori Beatrice Kwamboka | - Member |
| 3. Sen. Masitsa Naomi Shiyonga | - Member |
| 4. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

SENATE SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Mr. Reuben Kimosop | - SAA |
| 4. Mr. Frank Mutulu | - Media Relations Officer |
| 5. Mr. Ringera Humphrey | - Research Officer |
| 6. Ms. Alice Nanyama | - Secretary |
| 7. Ms. Fatuma Abdi | - Audio Officer |
| 8. Ms. Rita Chidi | - Office Assistant |

MINUTE SEN/SCLSW/110/2021: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 am followed by a word of prayer.

MINUTE SEN/SCLSW/111/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Githiomi and seconded by Sen. (Dr.) Milgo as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Consideration of Public Hearing Submissions of the Persons with Disabilities (Amendment), 2020; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/112/2021:

**CONSIDERATION OF PUBLIC
HEARING SUBMISSIONS OF
THE PERSONS WITH
DISABILITIES
(AMENDMENT), 2020**

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
Long title	Council of Governors	Amend to read— AN ACT of Parliament to amend the Persons with Disabilities Act; to give effect to Article 54 of the Constitution; to provide for the functions of the national government and the county governments; and for connected purposes.	The intendment of this Bill should also be to give effect to Article 54 of the Constitution. The principal Act has not been reviewed after the Constitution 2010.	Not adopted. It is already covered under the Bill.
2	Prof. Michael M. Ndurumo	Include the definition of “sector” to mean an organization, institution, or body directly or indirectly receiving public funds.		Not adopted.
	The National Gender and Equality Commission	Include a schedule on the “assistive devices and services” in the Bill.		Not adopted.
		Substitute the word “special measures with “ affirmative measures”		Not adopted. The special measures in the Bill are affirmative in nature.
		Insert the definition of the term “older member of society” to mean a person who has attained the age of sixty years.	The term has been referenced to in clause 19 but not interpreted.	Not adopted. The term is already defined in Constitution
		Insert the definition of the term “marginalised group” to mean a group of people who, because of laws or practices before, on, or after the effective date, were or are	There is a need to interpret this term and also make provision in the Bill due to the multiple vulnerabilities faced by this group.	Not adopted. The terms is already defined in the Constitution.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		disadvantaged by discrimination on one or more of the grounds in Article 27(4);		
	The In business Steering Committee in Turkana West	Amend the definition of a “person with disability” to include ‘any Kenyan, refugee, asylum seeker, stateless person or foreigner and removal of the word person.	The Constitution of Kenya 2010 provides for protection of every person with disability in Article 54. Kenya is a party to The Convention on the Rights of Persons with disability and Optional Protocol which it ratified in 2008. Article 5 provides for equality and non-discrimination of persons with disability. This amendment seeks to include registration of all persons with disability in Kenya including Kenyans, refugees, asylum seekers, stateless persons and foreigners.	Not adopted. There are specific laws that deal with refugees in Kenya.
	The Kenya National Commission on Human Rights.	The definition of Organizations of Persons with Disabilities under Bill be amended and expanded to read as follows— “Organizations of persons with disabilities” means associations or societies that are led, directed and governed by persons with disabilities and in which a clear majority of the membership is	The definition needs to be aligned to the General Comment No 7 (2018) of the United Nations Committee on the Rights of Persons with Disabilities on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention.	Not adopted. Provided for adequately under the Bill.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		recruited from among persons with disabilities themselves with the collective aim of acting, promoting, pursuing, or defending rights of persons with disabilities.		
	Council of Governors	Replace the definition of “inclusive education” with the following definition— “inclusive education and training” includes educating students and learners with disabilities in chronologically age-appropriate general and inclusive education classes and training courses in the learning institutions or least restrictive environments and in regular classrooms and ensure that they receive specialized instruction delineated by their individualized education and training programs within the context of the core curriculum and general class activities regardless of types or severity of disabilities, to the maximum extent possible;	The Competency Based Curriculum provides for the provision of inclusive education and training programmes for learners and trainees with disability, beyond pre-primary, primary and secondary levels. This, therefore, implies that trainees in higher levels of education and training should be considered when deliberating on inclusivity in education.	Not adopted. Already catered for. Education covers all levels of training institutions
4	Prof. Michael M. Ndurumo	Under clause 2B on the obligations of the National government insert the following paragraphs after (i)— (p) Provide registered professionals with		Rework on provision of resources to cater for training and research for PWDs and ensure that they

CLAUSE	STAKEHOL DER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		disabilities and their training and research organizations with grants to undertake research, training, mentorship, printing of resource materials, and other projects that promote education, training, and welfare of persons with disabilities. (q) Allocate grants to specialized training and research non-governmental organizations and institutions focusing on persons with disabilities. (r) Ensure equity in the distribution of resources to all categories of disability. (s) Entrench affirmative action to ensure students with disabilities are enrolled in learning institutions at all educational levels. (t) Register and ensure learners with special educational needs and those with disabilities are provided with the National Council for Persons with Disabilities Card. (u) Provide income taxes exemptions to parents of children with disability.		are provided equitably.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	The National Gender and Equality Commission	In the data base under clause 2C (2) (c) it is important to amend to include the gender variable	Having in place sex disaggregated data would be crucial for gender responsive planning and programming. For instance, the needs for a male disabled person are different from the needs of a female disabled person	Adopted.
	The Kenya National Commission on Human Rights.	Amend clause 2C (2) (d) by inserting the words 'in collaboration with the Kenya National Commission on Human Rights and the National Gender and Equality Commission' after the word 'Constitution'.	To recognize that the mandate of monitoring the rights of persons with disabilities in the country is conducted by independent commissions (Kenya National Commission on Human Rights in collaboration with National Gender and Equality Commission). These bodies have been appointed by the Attorney General to carry out this mandate, in line with Article 33(2) of the UN Convention on the Rights of Persons with Disabilities. It is not good practice for the implementer (County Executive Committee member) to also monitor and evaluate his/her own work.	Not adopted. The roles of the Commissions have already been provided for under the law.
	Council of Governors.	Amend clause 2B (e) to read as follows— (e) Promote the integration of persons with disability in all learning and training institutions	Learning occurs in several types and levels of institutions, both formal and informal. The provision of the Bill should broaden the scope of these institutions to read learning and training institutions in order to adequately capture the needs of persons with disabilities.	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Insert paragraph (j) in clause 2B as follows— (j) allocate adequate resources to programmes specifically targeting persons with disability;	The National Government should allocate financial and technical support towards programmes aimed at persons with disabilities	Rework the Bill for provision of resources.
		Amend clause 2C (1) (a) to read as follows— (a) implement national policies and establish county-specific policies for the protection and promotion of the welfare of persons with disability;	County Governments have already established County legislation and policies to guide programmes for persons with disabilities. The clause should enable County Governments to develop and domesticate policies and legislation for persons with disability. Furthermore, 2C (6) provides for the enactment of County specific legislation for the appointment of a committee to handle matters affecting persons with disability in the County.	Not adopted. Counties implement national government policies.
		Amend clause 2 C (1) (b) to read as follows— (b) allocate adequate resources to complement existing programmes by the national government for persons with disabilities;	The clause implies that only the County Governments have the mandate of allocating financial resources for programmes. Financial support should be complemented and supplemented by the County Governments.	Not adopted. It is the role of all levels of government.
		Amend Clause 2 C (2) (c) to read as follows— (c) Liaise with the Council to maintain a database of persons with disability in respective counties;	The National Council of Persons with Disability is mandated to register and maintain a national database of persons with disabilities in the country. This clause proposes the establishment of a similar database which will be duplicating the existing	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			role of the NCPWD. The proposal is to have the County Governments gain access to the database established by the Council.	
5	Council of Governors.	Amend clause 5 (a) (i) to read— (c) two persons nominated by the council of county governors with knowledge and at least three years' experience on matters relating to disabilities;	There is need for adequate representations by county governments at the Council.	Not adopted.
		Amend by deleting Clause 5 (b) (1C) and (1D).	Mwongozo Code discourages the establishment of the office of Vice Chairpersons in state corporations.	Not adopted.
6	Council of Governors	Amend clause 6 (1) Marginal note to read— Director General (1) There shall be a Director- General of the Council who shall be the chief executive of the Council.	This is to conform to Mwongozo and good practices since section 3 of the Principal Act establishes the Council has a body corporate.	Not adopted.
13- Right to Legal Capacity	Council of Governors.	Amend sub-clause (3) to read as follows— (3) every person with disability has equal right to own and inherit property, to control his or her own financial affairs and to have equal access to savings and loan facilities, mortgages and other forms of financial credit	The clause provides only or bank loans and has no provision for savings facilities in financial institutions. The proposed amendment will enhance access to savings and credit facilities in all financial institutions, not just banks.	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
14	The In business Steering Committee in Turkana West	Amend Clause 14(1) by deleting the word “who is marriageable” between “Every” and “person” and inclusion of the word “adult”.	Article 45 (2) of Constitution of Kenya provides that every adult has the right to marry a person of the opposite sex, based on the free consent of the parties. The proposed amendment will provide uniformity with the language used in the Constitution of Kenya 2010.	Approved. Align it with the Constitution.
	The Kenya National Commission on Human Rights.	Clause 12 (2) – Right to equality and non-discrimination. The Commission recommends that (reasonable accommodation) should be deleted. A new sub-clause should be included which states that ‘denial of reasonable accommodation amounts to discrimination on the basis of disability’.	To align with General Comment No. 6 of 2018 on equality and non-discrimination, which at para 25(c) states that— “Reasonable accommodation” should also not be confused with “specific measures”, including “affirmative action measures”. While both concepts aim at achieving de facto equality, reasonable accommodation is a non-discrimination duty, whereas specific measures imply a preferential treatment of persons with disabilities over others to address historic and/or systematic exclusion from the benefits of exercising	Adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			rights. In other words, it is inaccurate to list reasonable accommodation as a 'specific measure'. Reasonable accommodation is not a specific measure (which depend on availability of resources and are to be progressively realized), but rather is a critical element of non-discrimination of persons with disabilities and is therefore immediately realizable.	
		In Clause 18 insert a new paragraph (h) to read as below— (h) ensuring that youth with disabilities have access to appropriate sexual and reproductive health education on an equal basis with others.	This will align the Bill fully with Article 29(h) of the Protocol to the African Charter on Human and Peoples' Rights which Kenya is in the process of ratifying.	Not adopted. The Bill is for all persons with disabilities.
		In Clause 27 insert a sub clause under Clause 27 (3) to provide for the penalty for employers who fail to submit their report on the status of employment of persons with disabilities within their establishments.	Provision of a penalty enhances enforceability (and it is worth noting that the general penalty under clause 49H is not applicable as it only applies to sections of the Bill that create offences – which Clause 27 does not).	Adopted for public service employers.
		In Clause 27 amend clause 27 (6) (b) of the Bill to include private sector employers. The amended Clause to read as below—	Section 13 of the Persons with Disabilities Act, 2003 provides for 5% reservation of employment in public and private sectors. The Bill therefore should not	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		“employer” means an employer in the public service or private sector	take away the gains at hand. Furthermore, the national values and the bill of rights binds all persons and all organs (this includes private bodies)- Articles 10(1), 20 Constitution of Kenya, 2010.	
		On Clause 30, the Commission proposes a deletion of Clause 30 (5) and (6) of the and replace with the following proposed new sub clause : (5) Persons with disabilities, including children, have the right to retain their fertility on an equal basis with others.	This is to align the Bill with Article 23(1)(c) of the CRPD on respect for home and the family. Under this Article, States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood, and relationships, on an equal basis with others, to ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.	Adopted. Create an offence and fine.
		On Clause 30 (2), the Commission proposes the addition of a clause to the effect that: ‘every person with a disability has the right to access health care based on his/her free and informed consent’.	To offer redress for the current situation where many persons with disabilities have medical interventions performed against their will.	Adopted.
		Delete in Clause 31 (1) (a) the words ‘prevention of occurrence’	Provisions on ‘prevention of disability’ are better suited in a health law, not in the ‘Persons with Disabilities’ law. The purpose of Persons with Disabilities Act is to address issues relating to	Not adopted.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			those who already have disabilities. Prevention is a good cause – but is nevertheless misplaced in the law that addresses issues related to those people who already have disabilities. Issues of prevention lean on the medical model of disability which sees disability (only) as something that is situated in the person, as opposed to also addressing the barriers that exist in society that exclude people with disabilities from full participation.	
		In Clause 31E 3 (c) delete the word ‘reasonable’ placed immediately before the word ‘access’.	The term ‘reasonable’ seems to qualify the progressive provision/obligation to make amenities accessible.	Not adopted.
		The Commission recommends that a new paragraph be introduced under Clause 31E (6) providing that the Council can be moved (through complaints or petitions) by any organization or person to commence the process of issuing an adjustment order. While the Council is the primary actor, it can be assisted in identification of no accessible buildings by affected persons or organizations.	Private individuals/organizations should be able to lodge a complaint and trigger the adjustment orders mechanism as long as the Council is the body mandated to move the procedure forward as opposed to waiting for the Council to solely commence the process.	Not adopted. Already provided for. It can be provided for administratively.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	The County Assemblies Forum	Amend section 11 to provide a new sub clause (k) to provide— (k) take appropriate measures to prevent the discrimination of Youth and Children with disabilities;	Youth with Disabilities are a marginalised group facing double discrimination and its important to recognise them under this clause.	Not adopted. It is not necessary.
26- Right to Education.	Council of Governors.	Amend paragraph 7 (c) (vi) to read as follows— (7) (c) The Council in consultation with the National and respective county government shall ensure that— (vi) Introduction of Kenya sign language interpretation course in all learning and training institutions.	The Competency Based Curriculum provides for the inclusion of Kenya Sign Language as a means of instruction in all schools and training institutions for learners and trainees with special needs.	Not adopted.
27	Prof. Michael M. Ndurumo	27(2)(a). Delete at least and have the clause read “five per cent of direct employment opportunities and placement of persons with disabilities to secure and progress in employment at each level of an institution. ” 27(4) Amend and add (i) after (h) to read “ assigning, retiring, or using selective discrimination in retiring an employee with disabilities on the basis of inadequacies in an organization or institution whether financial, administrative, or re-organization. ” 27(5) Amend after retirement to read “ shall be ”		Not adopted. Already provided for

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		five years above the mandatory retirement age in the employee's sector." Add before clause 6 27(5)(b) "Academic staff of the rank of associate professor and above and researchers of similar rank and registered by the National Council for Persons with Disabilities shall be considered persons possessing special and rare skills and shall be eligible for employment on contract after retirement."		
	The National Gender and Equality Commission	The Commission proposes to amend clause 276a by inserting a new sub clause iii as follows— iii) Providing appropriate support services to employees who have disabilities and need them to deliver results competitively with other employees. Insert a new clause 27A – Downsizing as follows— 27A- in the event of an employer undertaking a downsizing exercise, they shall consider the vulnerability of employees with disability and only take such a step if there are no alternative considerations.		Not adopted. Already provided for.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
28	Prof. Michael M. Ndurumo	28(1) Amend to read: “A person with disability shall not be dismissed or suffer reduction or rendered redundant in rank or be denied extension of retirement age or contract on the grounds of disability or after acquiring any disability or owing to administrative, institutional, or financial status of the employer or any consequences thereof ”		Not adopted. Already provided for
30	The National Gender and Equality Commission	Sub Clause(1) to be amended to insert before the word “health “the following “the highest attainable standard of”	This will ensure alignment with Article 43.	Not approved. already
		Amend sub-clause (2) by adding a new sub-clause c as follows; (c) a comprehensive health insurance cover	There is need to include a provision on Universal Health Insurance as a right.	Not adopted.
		We propose to amend sub clause 3 by inserting after the word “Facility “the following— “and shall be signed by a designated and gazetted County Medical Officer”	Such a provision will speed up the issuance of disability registration cards because there will no longer be a need to have cards signed by the Director of Medical Services in Nairobi	Adopted. This will strengthen devolution and bring services close to the people.
		We propose to amend section 30 by inserting a new sub clause (6) as follows— (6)“ County Governments shall ensure that the established health care services in the community give priority to issues of disability’	This will help in early detection and prevention of some preventable or curable disabilities.	Not adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		We propose a new clause as follows— 4A- All health facilities shall endeavour to emboss in braille all the drugs prescription for persons who are print disabled.		Not adopted. It can be provided for under regulations.
31C	The National Gender and Equality Commission.	Amend to provide that both public and private learning institutions to ensure that children with disabilities have equal access with other children to participation in play, recreation, leisure and sporting activities, including all activities in the school system.		Not adopted. Already covered.
31D	The National Gender and Equality Commission.	Amend sub clause 7(f) by substituting the following words” Zebra crossings” with as “pedestrian crossing “as follows— (f) pedestrian infrastructure including pedestrian crossings, sidewalks and walkways	Sidewalks are described as a walk on the side of something, whereas walkways are specifically made for pedestrian traffic. Sidewalks are not originally designed for continuous traffic. Sidewalks are made for occasional traffic; walkways are designed for perpetual traffic.	Not adopted.
31F	Westminster Foundation for Democracy, Disabled Persons Organizations and Civil Society Organizations and Consortium	Require that specifications be made for each disability as may be appropriate under section 31 (F) (2) (a)	This will ensure that all types of disabilities are effectively provided for. In its current form, it may exclude some disabilities with the silence posing a legal vulnerability.	Not adopted. It’s an administrative action.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	of Disabled Persons Organizations of Kenya.			
31G	The National Gender and Equality Commission.	Amend the clause by inserting a new sub clause (3) as follows— (3) All registration cards shall be issued within 30 days after medical assessment by the respective offices of the Council in the County.	This will ensure that persons with disabilities are issued with cards without unreasonable delay and that they do not incur costs travelling to Nairobi to collect the cards.	Adopted. Align with the clause on signing of certificate of disability
	The In business Steering Committee in Turkana West.	Amend Clause 31G(1)(a) by inserting the word “every” before person and inserting the words “in Kenya” between “disability” and “to” and inclusion of including but not limited to Kenyans, Refugees, stateless persons and foreigners at the of the sentence.	The Constitution of Kenya provides for protection of every person with disability in Article 54. Kenya is a party to The Convention on the Rights of Persons with disability and Optional Protocol which it ratified in 2008. Article 5 provides for equality and non-discrimination of persons with disability. This amendment seeks to include registration of all persons with disability in Kenya including Kenyans, refugees, asylum seekers, stateless persons, foreigners etc.	Not approved.
NEW CLAUSES				
Proposed clause 50	The National Gender and Equality Commission.	Include a new clause as follows— 50- Right to public Participation (1) All conveners of public participation		Adopted. Include a clause on public participation

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		forums shall support and facilitate Persons with various categories of disabilities and age to access the location and documents and information in accessible format. (2) This shall include but shall not be limited to sign language interpretation services and braille copies and accessible venues in all public participation. (3) The Conveners shall also ensure that there is an integrated feedback mechanism and tracking of public views given during public participation.		

25. The National Gender and Equality Commission made the following proposals too—

- (m) the penalties in the Bill should be aligned to other Acts of Parliament;
- (n) the Commission proposes the enactment of the Persons with Disabilities Education Act to provide a comprehensive legislative framework that will incorporate all the proposed provisions. There is draft Persons with Disabilities Education Bill developed by NGEC and its stakeholders for consideration;
- (o) there is need for a policy or legislation specific to the welfare and protection of persons with disabilities who are marginalized or from minority group and who need access to justice, education, economic wellbeing, physical security and health, including reproductive health issues;
- (p) there is need for programs that take care of special needs of persons with disabilities in hardship areas;

- (q) all employment and labour laws need to be amended to entrench the provisions in clause 27;
 - (r) the Commission proposes that the National and County government develop Inclusiveness and Accessibility Index to benchmark and evaluate readiness of various stakeholders for making the workplace accessible for Persons with Disabilities;
26. The Kenya National Commission on Human Rights noted that—
- (e) there is need to harmonise the penalties in the Bill with other laws;
 - (f) there is need to clarify the kind of data to be collected by the National and county governments.
27. The County Assemblies Forum noted that there is need—
- (e) to clarify on the required timeline for County Governments to enact the specific legislation after this bill is passed. This will ensure a time-specific implementation at the County Governments;
 - (f) to define the term “cruel treatment”;
28. Disability and human rights organizations, and individuals with interest in disability matters noted the need for—
- (aa) reduction of bureaucracy in accessing services for PWDs;
 - (bb) ease of acquiring tax exemption certificates by ensuring that registration by the National Council for Persons with Disabilities (NCPWD) should automatically qualify one to get a tax exemption certificate from the Kenya Revenue Authority (KRA);
 - (cc) decentralization of registration of PWDs should be implemented, to reduce the burden experienced by PWDs currently;
 - (dd) accessibility audits and Adjustment orders should be done by an entity with technical expertise and resources, such as National Construction Authority, in collaboration with NCPWD;
 - (ee) to ensure that realization of the 5% employment of PWDs in public service, the Public Service Ministry and county service boards should keep data on the number of persons with disabilities employed, and their positions;
 - (ff) a larger quota to be set aside for employment of persons with disabilities NCPWD;
 - (gg) the tax incentives for employers who meet the 5% threshold of employment of persons with disabilities to be clear in the Bill, and should be adequate incentivize organizations to ensure that more PWDs get employment opportunities;
 - (hh) the government to set aside funds for DPOs to support their advocacy efforts and enhance their participation in public participation processes;
 - (ii) clear provisions on support to care givers;

- (jj) penalties for individuals who give false information to enjoy benefits of PWDs to be stiffer than stipulated in the Bill;
- (kk) provisions on how the Senate will hold the county governments accountable in implementation of the Bill;
- (ll) feedback/complaints mechanism to be integrated in service delivery, particularly by NCPWD; and
- (mm) a Marshall plan for implementation of the Bill.

29. Steve Muema noted that vetting of Applicants nearly takes 1 year after submission to the Council minding the forms from counties to the Director of Medical Services takes a year for approval, making 2 years for the PLWDs lose in the tax exemption procedure, making the applicants suffer even after several visits to the council. He requested the Committee to set the timelines for the applicants, ie once the council verifies your status they can award the exemption status unlike where they have to set a council for determination.
30. David Lunalo (Deaf), Deputy Head teacher Mwikhomo special school for the Deaf, Kakamega noted that the Bill should provide for payment of disabled early childhood education teachers and provide school feeding programmes for special needs children.
31. Leah Wambetela requested the Committee to consider extending exemptions to parents and caregivers of those who care for those with disabilities that have rendered them totally dependent.
32. Fred Kolele requested the Committee to consider subsidizing motorized wheelchairs, prosthetic limbs, hearing aids, urethral catheters, urine bags, etc for registered PWD.
33. Peter Ntonjira Nahason requested the Committee to consider factoring in a retirement package for people with disabilities.
34. Juliana Auma, a mother to a special needs young adult who was born with Spina Bifida and Hydrocephalus requested the Senate to—
 - (e) consider making sure that persons with Spina Bifida and or Hydrocephalus have access to free continence materials such as intermittent catheters, bowel wash out kits, ky jelly and oxybutinin a drug that we use to expand the bladder muscles to enable the bladder to hold more urine; and
 - (f) facilitate enrollment of all persons with Spina Bifida from low income households across Kenya in the Inua Jamii cash transfer program.
35. Shem Nyagemi Bitoyo submitted as follows—
 - (i) that there is need to ensure that there is equal employment opportunity either in government or private sector;

- (j) on matters education, PWDs or students living with disabilities should be exempted from school fees be either lower or upper level of education;
- (k) PLWDs should be treated free of charge in government hospitals and the government cater for the NHIF also their family should enjoy the same; and
- (l) private or government sector e.g school should ensure that it has a disability office department to tackle matters related to disability.

36. The Ministry of Labour and Social Protection noted that—

- (q) the Persons with Disabilities (Amendment) Bill (Senate Bill No. 29 of 2020) is a Private Member's Bill that has glaring conceptual & constitutional shortcomings and is of great concern to the Ministry, where the National Council for Persons with Disabilities is domiciled;
- (r) in Clause 4 of the Persons with Disabilities (Amendment) Bill, 2020, the proposal to impose obligation to the Counties in the new section 2C in Part 1 A of the Bill offends the Constitution of Kenya, 2010 and other applicable laws, in that the National Council for Persons with Disabilities is an entity within the National Government;
- (s) many County Governments have developed their legislations on how best to deliver services to persons with disabilities within the respective Counties. Nairobi City County, Meru County, Machakos County, Nakuru County and Kisii County already have enacted new legislations dealing with matters of persons with disabilities to address rights and privileges that cut across the counties;
- (t) the existing law, to wit, the Persons with Disabilities Act, 2003, is the wrong vehicle to compel counties to do matters pertaining to the persons with disabilities when counties have their own separate county laws on the same. The new Section 2C in Clause 4 of the Bill ought to be deleted in entirety since it imposes additional financial burden on the National Government;
- (u) Clause 5 of the Bill is addressed in the Government Sponsored Bill that creates a lean council of nine (9) Council members including a nominee from the Council of Governors. Clause 5 of the Senate Bill does not address the nature of the bloated membership of the Council in the current Act, which is a huge financial burden to the exchequer and contrary to Mwongozo Code of Governance for State Corporations;
- (v) Section 4B in Clause 6 of the Bill, contradicts the norms in the appointment of chairperson and members in state corporations under the State Corporations Act (CA. 446) of the laws of Kenya, in requiring in the event of a vacancy in the position

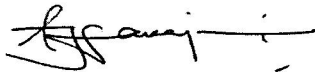
of the chairperson and members of the Council, the Public Service Commission to declare and invite applications after notification. Section 4B in Clause 6 of the Bill ought to be expunged.

(w) Clauses 9 & 14 of the Bill are adequately provided for in the proposed Government sponsored Bill; and

(x) Clause 15 of the Bill is comprehensively addressed in the proposed Government Sponsored Bill on the advice of the National Treasury & Planning & the Office of the Attorney- General & Department of Justice, as directed by the Cabinet, in respect of tax incentives, statutory taxes and other reliefs to persons with disabilities. The new Part 1 V in Clause 15 of the Bill is contrary to the advice given by the National Treasury & Planning and as directed by the Cabinet.

**MINUTE SEN/SCLSW/113/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.47 p.m.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: **Wednesday, 14th July, 2021**

**MINUTES OF THE 22ND (ZOOM ONLINE) MEETING OF THE
STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON
WEDNESDAY, 26TH MAY, 2021, AT 10.00 AM.**

MEMBERS PRESENT

- | | |
|-------------------------------------|---------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson |
| 2. Sen. Makori Beatrice Kwamboka | - Member |
| 3. Sen. Masitsa Naomi Shiyonga | - Member |
| 4. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 5. Sen. Mwangi Paul Githiomi | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|--------------------|
| 6. Sen. Mwaruma Johnnes | - Vice Chairperson |
| 7. Sen. Madzayo Stewart Mwachiru | - Member |
| 8. Sen. Kihika Susan Wakarura | - Member |
| 9. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Ms. Marale Sande | - Senior Research Officer |
| 4. Mr. Reuben Kimosop | - Senior SAA |
| 5. Ms. Fatuma Abdi | - Audio Officer |

IN ATTENDANCE

1. Mr. David Njoroge - Office of the Chairperson

MINUTE SEN/SCLSW/89/ 2021: PRELIMINARIES

The Chairperson called the meeting to order at 10.19 am followed by a word of prayer.

MINUTE SEN/SCLSW/90/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. (Dr.) Alice Milgo, MP. and seconded by Sen. Naomi Shiyonga as follows

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AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. Consideration of Pending Legislative Business; and
4. Correspondence;
5. Minutes: 16, 15, 14, & 13;
6. Bills;
7. Statements; and
8. -Committee Work schedule for the month of June, 2021.
9. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/91/2021: CONSIDERATION OF PENDING LEGISLATIVE BUSINESS;

a) Correspondence

1. The Committee considered the letter from County Assembly of Makueni regarding Resolution of the County Assembly of Makueni on a Public Petition by former employees of Bedrock Security Services who served at Thwake Mega Dam in Kalawa Ward.

The Committee resolved to write to the Ministry of Water and Sanitation copying the County Assembly of Makueni and Bedrock Security Company on the Matter.

2. The Committee also noted a letter from the Ministry of Public Service and Gender inviting the Committee to a validation meeting to the National Plan of Action (2021 – 2025) for the National Policy on Gender and Development on 12th May, 2021.

The Committee observed that the letter came late and resolved to invite the Ministry to take the Committee through the draft policy. The Secretariat was also tasked to prepare a brief on the policy paper.

b) Confirmation of Minutes

1. The Minutes of the 16th Sitting of the Committee which was an online meeting held on Wednesday, 17th March, 2021 at 9.00 am were confirmed as true records of the Meeting proceedings after being proposed by Sen. (Dr.) Alice Milgo, MP. and seconded by Sen. Beatrice Kwamboka, MP;
2. The Minutes of the 15th Sitting of the Committee which was an online meeting held on Thursday, 11th March, 2021 at 3.00 pm were confirmed as true records of the Meeting proceedings after being proposed by Sen. Beatrice Kwamboka, MP. and seconded by Sen. (Dr.) Alice Milgo, MP;
3. The Minutes of the 14th Sitting of the Committee which was an online meeting held on Thursday, 11th March, 2021 at 2.00 pm were confirmed as true records of the Meeting proceedings after being proposed by Sen. Beatrice Kwamboka, MP. and seconded by Sen. (Dr.) Alice Milgo, MP; and
4. The Minutes of the 13th Sitting of the Committee which was an online meeting held on Wednesday, 10th March, 2021 at 9.00 am were confirmed as true records of the Meeting proceedings after being proposed by Sen. (Dr.) Alice Milgo, MP. and seconded by Sen. Beatrice Kwamboka, MP.

The Chair informed the Committee that he had since spoken to Treasury, LapTrust and Lapfund about the gridlock, he was

arranging meetings with the two and will report to the Committee on the outcome.

c) Bills

The Committee was informed that there were two Bills before the Committee as follows –

- i) The Persons with Disabilities (Amendment) Bill, 2020 (Senate Bills No. 29 of 2020).
The Committee noted that the Public hearing had been conducted and resolved to hold a report writing retreat on the Bill from 16th – 20th June, 2021 in Mombasa.
- ii) The County Hall of Fame Bill, 2021 (Senate Bills No.9 of 2021).
The Committee noted that the advertisement for request of memoranda was done on Thursday, 13th May and resolved to invite the stakeholders on Wednesday, 2nd June, 2021.
The Committee also resolved to consider the submissions and adopt the report during its report writing retreat in Mombasa from 16th to 20th June, 2021.

d) Statements

	Senator	Issue Raised	Committee Resolutions
1	Sen. (Dr.) Isaac Mwaura	Implementation of the guidelines of the Ministry of Public Service, Youth and Gender Affairs on retirement age of public servants with disabilities`	Committee to write to the Ministries and seek Clarifications on the matters.
2.	Sen. (Dr.) Isaac Mwaura	National Government Interventions to cushion Persons with Disabilities in line with the Big Four Agenda on Universal Health Coverage (UHC)	
3.	Sen. Enoch Wambua	Payment of One-off Honorarium and monthly pension to former Councilors under the defunct local authorities	The Committee noted that this Statement is part of resolutions that the Committee has been following up on. The last response on the matter was that a taskforce had been formed.

			Meeting with Treasury, Ministry of Devolution, Ministry of Labour set for Tuesday, 29th June, 2021 to enquire on the status
4.	Sen. (Dr.) Abdullahi Ali	Delays in Payment of Work Injury Benefits and other labour related compensation to staff in county governments across the Country	The Committee noted that it had received a response from the Ministry on a similar statement last year confirming that indeed County governments are not paying WIBA. The Committee resolved to convene a meeting between the Ministry of Labour, COG and CAF on the Matter.
5.	Sen. Petronila Were	Status of operations of the Kenya Scouting Association	The Committee noted the response from State Department of Youth advising the Committee to take up the matter with Ministry of Education.

e) Committee Work schedule for the month of June, 2021

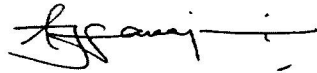
The Committee reviewed the proposed work program for June, 2021 and unanimously passed and adopted the schedule as in the table below.

	Activity	Dates	External Stakeholders
1	Committee Meeting	Wednesday, 26th May, 2021 10.00 am	In-house Meeting to consider pending legislative business
2	Committee Meeting	Wednesday, 2nd June, 2021 10.00 am	Stakeholder meeting on the County Hall of Fame Bill, 2021 (Senate Bill no. 9 of 2021)
3	Committee Meeting	Tuesday 8th June, 2021 10.00 am	-Consideration of public hearing submissions of the County hall of fame bill -Pending legislative business before the Committee -Consideration of the draft Report on the Middle East study Tour.
4	Committee Meeting	Wednesday, 9th June, 2021 10.00 am	Meeting CS MEAC & RDA on ENNDA
5	Committee Meeting	Thursday, 10th June, 2021 10.00 am	Meeting with Recruiting Agents on issues of workers at the Middle East. Committee to invite the Recruiting Agencies, Ministries and National Employment Authority.
6	Committee Meeting	Wednesday 16th June, 2021 10.00 am	Stakeholder follow up meeting on KRSRBS pension payments
7	Report Writing Retreat	Wednesday, 16th June – Sunday, 20th June, 2021	PWD (Amendment) Bill, 2020 and the County Hall of Fame Bill, 2021
8	County Visits to Nyamira, Bomet, Kisii and Kericho	Tuesday, 22nd June – Saturday 26th June, 2021	County Government Officials, Finlays Tea Ltd. Officials, Labour Officials, County Assemblies
9	Committee Meeting	Tuesday, 29th June, 2021 10.00 am	Consultative meeting on the payment of monthly pension and one-off honorarium to former councilors
10	Committee Meeting	Wednesday 30th June, 2021 10.00 am	Consultative Meeting on the welfare of children
11	Consultative ADAK Workshop on the World Anti-Doping Act,	Thursday 8th – Sunday 11th, July, 2021	ADAK, Ministry of Sports,

	2020 Machakos	-		
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**MINUTE SEN/SCLSW/92/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.00 am.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 19th June, 2021

**MINUTES OF THE 21ST ZOOM ONLINE) MEETING OF THE
STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON
WEDNESDAY, 10TH MAY, 2021, AT 10.30 AM.**

MEMBERS PRESENT

- | | |
|-------------------------------------|--------------------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | - Chairperson (Member) |
| 2. Sen. Mwaruma Johnnes | - Vice Chairperson (Ag. Chair) |
| 3. Sen. Masitsa Naomi Shiyonga | - Member |
| 4. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 5. Sen. Kihika Susan Wakarura | - Member |
| 6. Sen. (Dr.) Mwaura Isaac, CBS | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Madzayo Stewart Mwachiru | - Member |
| 2. Sen. Mwangi Paul Githiomi | - Member |
| 3. Sen. Makori Beatrice Kwamboka | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Mr. Frank Mutulu | - Media Relations Officer |
| 4. Ms. Fatuma Abdi | - Audio Officer |

IN ATTENDANCE

1. Hon. Ole Ntutu – CAS Labour and Social Protection
2. Hon. Ndegwa Wahome - Chair, County Assemblies Forum
3. Hon. Priscilla Nyokabi – Chair, NGECC
4. Betty Sungura – CEO, NGECC
5. Council of Governors
6. National Council for Persons with Disabilities
7. Kenya National Commission on Human Rights

MINUTE SEN/SCLSW/85/ 2021: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 am followed by a word of prayer. This was followed by introductions from all present

MINUTE SEN/SCLSW/86/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after being proposed by Sen. Kihika MP. and seconded by Sen. (Dr.) Milgo MP. as follows –

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Stakeholder Meeting on the Persons with Disabilities (Amendment) Bill, 2020;**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/87/2021: BRIEFING ON THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2020;

a) Presentation by Hon. Ole Ntutu, CAS Labour and Social Protection

The Ministry has a similar Bill that is comprehensive and is currently waiting to be tabled in Cabinet

b) Presentation by the Hon. Ndegwa, CAF

1. The County Assemblies Forum thanks the Senate for the invite to discuss the PWD (Amendment) Bill, 2020;
2. The County Assemblies Forum notes that the Senate always considers the County Assemblies when considering legislation;
3. The County Assemblies Forum is in agreement with the Bill and notes that it will go a long way in improving the conditions of PWDs in the Country and has submitted specific amendments to the Bill;
4. Section 4 (2) 6 needs to include timelines of implementation after the passing of the Bill; and
5. Section 11 to be amended to provide a new sub clause K to provide for the non-discrimination of children and youth with disabilities.

c) Presentation by the National Gender and Equality Commission

1. Article 59 Commission charged with PWD issues;
2. The Commission has submitted specific amendments to the Bill;
3. The Bill aligns with the Constitution of Kenya, the CRPD and the African Protocol on PWDs;
4. Aiming to have a one-stop shop on matters disabilities;
5. NGEK is looking for a Bill that is self-executing and self-implementing;
6. The National Policy on Disability, 2016 has not been adopted and senate should fast-track the process;
7. The Gender Policy took over 20 years to be adopted;
8. Happy with the provisions of expediting and decentralizing the registration process; the requirement that the Director for Medical Services signs the Assessment process;
9. Offences be created for persons that abuse the provisions and non-compliance;
10. Accessibility to buildings, mobile transportation
11. Terms of the Senate in terms of monitoring counties;
12. Access to information

13. Access to Education – PWDs should have specific provisions in the Basic Education Act to provide for PWD learners.

d) Presentation by the National Council of Persons with Disabilities

1. The NCPWD raised concerns over the Director of Medical Services being the only one who can certify assessment reports, enforcement in regards to adjustment orders and the illegal obtainment of the PWD card;
2. The Council is coming up with new generation cards and upgrading all members;
3. On Penalties the Council has noted challenges at both assessment and registration levels and is in consultations with Ministry of Health;
4. The Council is in talks with Treasury regarding tax rebates.

e) Presentation by Prof. Michael Ndurumo, PhD, HSC, SIOP

1. Under 2 after rural-based organization, add “Sector” means organization, institution, or body directly or indirectly receiving public funds.
2. PART IA 2B after (i) add:
 - a) Provide registered professionals with disabilities and their training and research organizations with grants to undertake research, training, mentorship, printing of resource materials, and other projects that promote education, training, and welfare of persons with disabilities.
 - b) Allocate grants to specialized training and research non-governmental organizations and institutions focusing on persons with disabilities.
 - c) Ensure equity in the distribution of resources to all categories of disability.
 - d) Entrench affirmative action to ensure students with disabilities are enrolled in learning institutions at all educational levels.
 - e) Register and ensure learners with special educational needs and those with disabilities are provided with the National Council for Persons with Disabilities Card.
 - f) Provide income taxes exemptions to parents of children with disability.
3. 27(2)(a). Delete at least and have the clause read “five per cent of direct employment opportunities and placement of persons with

disabilities to secure and progress in employment at each level of an institution.”

4. 27(4) Amend and add (i) after (h) to read “assigning, retiring, or using selective discrimination in retiring an employee with disabilities on the basis of inadequacies in an organization or institution whether financial, administrative, or re-organization.”
5. 27(5) Amend after retirement to read “shall be five years above the mandatory retirement age in the employee’s sector.”
6. Add before clause 6

27(5)(b) “Academic staff of the rank of associate professor and above and researchers of similar rank and registered by the National Council for Persons with Disabilities shall be considered persons possessing special and rare skills and shall be eligible for employment on contract after retirement.”

28(1) Amend to read: “A person with disability shall not be dismissed or suffer reduction or rendered redundant in rank or be denied extension of retirement age or contract on the grounds of disability or after acquiring any disability or owing to administrative, institutional, or financial status of the employer or any consequences thereof”

f) Presentation by the Kenya National Commission on Human Rights

1. The Bill aligns the Bill with the Constitution and the CRPD;
2. Brings about the inclusion of the County governments in matters;
3. Recognize KNCHR and the NGEC as bodies appointed to monitor the PWD matters;
4. There is a gap on the tax rebates and monitoring on the implementation is needed by creating awareness to employees on the benefits accrued;
5. KNCHR should submit reports on the CRPD to the Senate;
6. KNCHR is designated with the monitoring agency on UNCRPD; it is therefore the lead agency, and it collaborates with NGEC, which is recognized by the Constitution on the mandate of PWDs. The two are required to work together, while the NCPWD is the implementing and the administrative institution;
7. KNCHR does not have a budget from the government in terms of monitoring implementation and has to fund raise from donors. Appeals to the Senate and Parliament for increased funding;

g) Members interventions

1. Prof Ndurumo to assist the Senate in drafting a clause to take care of deaf matters;
2. Clarity on the role of the Senate in terms of monitoring counties;
3. KNCHR and NGEC to craft a clause on institutional arrangements on PWD issues;
4. On Tax rebates, the KNCHR to come up with an enforcement mechanism;
5. When there is an economy slump, the first monies to be affected are those in social protection. NCPWD budget has been reduced by a quarter of a billion;
6. NCPWD to recommend on whether to have a Board of Trustees and whether registration should be entrenched in law; and
7. Recommendations on penalties.

h) Presentation by Sam Muraya, Council of Governors

1. The Council has presented its submission and is in agreement with the provisions of the Bill.
2. 15 counties have established policies with PWDs; and
3. All 47 counties have programs on PWDs.

**MINUTE SEN/SCLSW/88/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 2.03 am.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: **Saturday, 19th June, 2021**

SPECIAL ISSUE

Kenya Gazette Supplement No. 213 (Senate Bills No. 29)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2020

NAIROBI, 30th November, 2020

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—

**THE PERSONS WITH DISABILITIES
(AMENDMENT) BILL, 2020**

A Bill for

An ACT of Parliament to amend the Persons with Disabilities Act to provide for the functions of the national government and the county governments; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Persons with Disabilities (Amendment) Act, 2020.

Short title.

2. The Persons with Disabilities Act, hereinafter referred to as the “principal Act”, is amended by deleting section 2 and substituting the following new section—

Amendment of section 2 of No.14 of 2003.

Interpretation

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

“adjustment order” means an order made by the Council under section 31E of this Act;

“assistive devices” includes implements, tools, equipment, taped texts, audio, visual and pictorial recording, Braille equipment and materials, tactile equipment, orthopedic appliances and other devices and machines of whatever kind for persons with disability for their socio-cultural, economic, civil, political wellbeing of persons with disability;

No. 24 of 2013

“Authority” means the Social Assistance Authority established under section 3 of the Social Assistance Act;

“authorized officer” includes a Principal Secretary in a ministry, a chief executive officer in a government department or agency or commission or committee or council or any other public and private body;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to persons with disability;

“communication” includes languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia and written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Council” means the National Council for Persons with Disabilities established under section 3;

Cap. 253.

“county executive committee member” means the county executive committee member for the time being responsible for matters relating to persons with disability;

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities;

“discrimination” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes denial of amenities and the use of derogatory words, gestures or caricatures;

“disability mainstreaming” means a strategy through which concerns, needs and experiences of persons with disability are made an integral part or dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that

persons with disability benefit equally and inequality is not perpetuated;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act;

“exploitation” includes any act which has the purpose and effect of taking unfair advantage of any limitation of persons with disability;

“harmful practices” include behaviour, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disability or perpetuate discrimination against such persons;

“inclusive education” includes educating students with disabilities in chronologically age-appropriate general and inclusive education classes in the schools or least restrictive environments and in regular classrooms and ensure that they receive specialized instruction delineated by their individualized education programs within the context of the core curriculum and general class activities regardless of types or severity of disabilities, to the maximum extent possible;

“legal capacity” means the ability to hold rights and duties under the law and to exercise these rights and duties;

“medical practitioner” means a person duly registered under the Medical Practitioners and Dentists Act as a medical practitioner;

“organizations for persons with disability” means associations, groups, non-

governmental organizations or societies formed for the purposes of rendering services to persons with disability;

“organisations of persons with disability” means associations or societies formed by persons with disability for their welfare and protection;

“persons with disability” includes persons with permanent physical, mental, intellectual, developmental or sensory impairments, visual, hearing or Albinism, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

“public building” means a building, place of lodging, recreation, transportation, education, or dining, along with stores, care providers, and places of public displays, irrespective of ownership, which is used to render different types of services for people in the society and accessed by the general public at large, and includes its entrance, exit, parking space, footpath and other appurtenant lands;

“reasonable accommodation” means necessary and appropriate modification and adjustments needed to ensure persons with disability the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms and may include a change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to—

- (a) participate in the job application process;
- (b) perform the essential functions of a job; or
- (c) enjoy benefits and privileges of employment equal to those enjoyed by an employee without a disability;

“rural-based organisation” means an organisation whose membership is comprised of persons with disability and whose operations are based in a rural area;

“special measures” means legislative, executive, administrative and other regulatory instruments, policies and practices, including outreach or support programmes, allocation or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems designed, adopted and implemented in order to fulfill equal enjoyment of rights of persons with disability;

“support services” includes guide dogs, support persons, personal assistants, sign language interpreters, guide, readers, government or other institutional services and other personal supports specifically provided to enable people with disabilities to fully participate in society and community life and include specialized expert or any other service, qualified readers, Interpreters and guides; and services that support Persons with disability to participate effectively in all aspects of life;

“universal design” means the design of products, environments, programmes and services to be usable to the greatest extent possible, without the need for adaptation or specialized design, including assistive devices for particular groups of persons with disability necessary.

3. The principal Act is amended by inserting the following new section immediately after section 2—

Insertion of new
section 2A

Guiding Principles.

2A. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles in addition to the national values and principles set out under Articles 10, 174 and 232 of the Constitution —

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices and the independence of all persons in the conduct of their affairs;
- (b) equality and non-discrimination;
- (c) participation and inclusion in society;
- (d) acceptance of persons with disability as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility; and
- (g) respect for the evolving capacities of children with disability.

4. The principal Act is amended by inserting the following new Part immediately after Part I—

Insertion of new part IA.

PART IA – OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

Obligations of national government.

2B. The national government shall —

- (a) develop policies on the protection and promotion of the welfare of persons with disability;
- (b) undertake investigations, surveys and research into the causes and nature of disabilities and development of new assistive devices;

- (c) put in place measures for the prevention of disabilities and rehabilitation of persons with disability;
- (d) provide facilities and infrastructure for the training of professionals in the rehabilitation and habilitation of persons with disability;
- (e) promote the integration of persons with disability in schools;
- (f) promote the inclusion of persons with disability in the public service and put in place measures to ensure that at least five per centum of the employment positions are filled by persons with disability;
- (g) prescribe minimum standards and guidelines to be adhered to by public transport vehicles, communication service companies and infrastructure developers to facilitate reasonable access by persons with disability;
- (h) adopt affirmative action measures in procurement of national government goods and services by implementing preferential procurement for persons or entities managed by persons with disability; and
- (i) ensure access to free basic education and other social amenities to every child with a disability.

Obligations of
county
governments.

2C. (1) Every county government shall—

- (a) implement national policies for the protection and promotion of the welfare of persons with disability;

- (b) allocate adequate resources to programmes specifically targeting persons with disability;
 - (c) ensure access to free pre-primary education and other social amenities to every child with disability;
 - (d) co-ordinate and disseminate information on government sponsored and non-government sponsored programmes targeting persons with disability within the respective counties;
 - (e) promote the inclusion of persons with disability in the county public service by putting in place measures to ensure that at least five per centum of the employment positions are filled by persons with disability; and
 - (f) adopt affirmative action in procurement of county government goods and services by implementing preferential procurement for individuals or entities established or managed by persons with disability.
- (2) In ensuring that a county government meet its obligations under subsection (1), the county executive committee member in each county shall—
- (a) advise the respective county governor on the appropriate measures and interventions to be put in place for the protection of persons with disability in the county;
 - (b) develop mechanisms for the identification of persons with disability residing in the county;

- (c) establish a database of persons with disability residing within the respective county containing the following information regarding the persons with disability —
 - (i) the name, age and place of residence of the person;
 - (ii) the type of disability of the person;
 - (iii) the education level of the person;
 - (iv) the health needs of the person;
 - (v) the employment status of the person;
 - (vi) any interventions made in relation to the person; and
 - (vii) any other information that the county executive committee member may consider necessary;
- (d) monitor and evaluate the progress by the county in ensuring the realisation of the rights of persons with disabilities under Article 54 (1) of the Constitution;
- (e) formulate and implement programmes aimed at promoting the socio-economic development, including participation in cultural life, recreation and sports, by persons with disability in the county;
- (f) co-ordinate the implementation of programmes developed by the Council and the Authority relating to persons with disability in the county; and
- (g) prepare and publish reports containing statistical or other information relating to programmes

and effect of the programmes carried out by the county in relation to persons with disability.

(3) The county executive committee member may, for the effective performance of the functions under subsection (2), designate a public officer within the county public service or constitute a committee to perform such functions as the county executive member may determine.

(4) Where the county executive member constitutes a committee under subsection (3), the committee shall consist of—

- (a) a person who represents persons with disability in the county;
- (b) two public officers serving in the respective county public service;
- (c) two members of the public with knowledge or experience on matters relating to the welfare, rehabilitation and the management persons with disability and belong to a related group or organization; and
- (d) such other persons, not exceeding two, as the county executive committee member shall consider necessary for the performance of the functions of the committee.

(5) In constituting a committee under subsection (4), the county executive committee member shall ensure that—

- (a) not more than two thirds of its members shall be of the same gender; and
- (b) the persons appointed to the committee hold a minimum qualification of a degree from a university recognised in Kenya.

(6) The respective county government shall enact county specific legislation to provide for —

- (a) procedure for nomination and appointment of the members of the committee;
- (b) such further qualifications for appointment to the committee as may be considered appropriate;
- (c) the term of appointment;
- (d) the criteria and procedure for removal of a member from the committee; and
- (e) such other matters as the county government shall consider necessary.

5. Section 4 of the principal Act is amended —

Amendment of
section 4 of
No.14 of 2003.

- (a) in subsection (1) —
 - (i) by deleting paragraph (c) and substituting therefor the following new paragraph —
 - (c) one person nominated by the council of county governors with knowledge and at least three years' experience on matters relating to disabilities;
 - (ii) by inserting the words “an ex officio member and” immediately after the words “who shall be” in paragraph (e); and
- (b) by inserting the following new subsections immediately after subsection (1) —
 - (1A) The Council may co-opt not more than two persons, whose knowledge and skills are necessary for the performance of the functions of the Council.
 - (1B) A member co-opted under subsection (1A) shall —
 - (a) have no right to vote at a meeting of the Council; and

- (b) serve for a specified period as the Council may determine.

(1C) The members of the Council shall, at their first meeting elect a vice chairperson from amongst their members.

(1D) The person elected under subsection (1C) shall be of opposite gender and of a different category of disability from the Chairperson.

6. The principal Act is amended by inserting the following new sections immediately after section 4—

Insertion of new sections in No. 14 of 2003.

Qualifications for appointment.

4A. (1) A person is qualified to be appointed as a member of the Council if that person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and—
 - (i) in the case of the chairperson, at least six years' working experience, three of which shall be on matters relating to disability, human rights or social development; and
 - (ii) a member, at least five years' experience of which three years shall be on matters relating to disabilities; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(2) A person shall not qualify for appointment as a member of the Council if that person—

- (a) has been removed from office for contravening the provisions of the Constitution or any other law;
- (b) is a public officer;
- (c) is a member of a governing body of a political party;
- (d) is a member of Parliament or a county assembly;
- (e) has been convicted for an offence and sentenced to a term of imprisonment of at least six months;
- (f) has been convicted of an offence under this Act; or
- (g) has been compelled to resign or been removed from office, on account of abuse of office.

Procedure for
appointment

4B. (1) Whenever a vacancy occurs in the office of the chairperson or a member under section 4C (b), the executive director shall forthwith notify the Public Service Commission.

(2) The Public Service Commission shall, within a period of fourteen days from the date of the occurrence of the vacancy, by notice in two daily newspapers of national circulation and its official website and the website of the Ministry responsible for matters relating to disability, declare the vacancy on the Council and invite applications from persons qualified under this Act within a period specified in the notice.

(3) The Commission shall consider all applications submitted under subsection (2) and, within a period of fourteen days from the expiry of the period specified in the

notice issued under that subsection, forward names of persons nominated for appointment to—

- (a) the President, in the case of the Chairperson, or
- (b) the Cabinet Secretary in the case of a member.

(4) The appointment under this section shall be by notice in the Gazette.

Vacation of office

4C. A member of the Council may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Council without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term of at least six months;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
 - (v) is unable to perform the functions of office by reason of physical or mental infirmity.

Remuneration of the Council

4D. The members of the Council shall be paid such remuneration or allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

7. The principal Act is amended by deleting section 5 and substituting therefor the following new section—

Tenure of office of Members of the Council.

5. The Chairperson and members of the Council appointed under section 4(1)(d) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

8. Section 6 of the principal Act is amended—

Amendment of section 6 of No 14 of 2003.

- (a) in subsection (2) by deleting the words “local authorities” appearing immediately after the words “Ministries and” in paragraph (a) and substituting therefor the words “county governments”;
- (b) in subsection (3) by inserting the words “in consultation with the Salaries and Remuneration Commission,” immediately after the words “as the Council may”.

9. Section 7 of the principal Act is amended—

Amendment of section 7 of No 14 of 2003.

- (a) in subsection (1)(b) by —
 - (i) inserting the word “National” immediately after the words “cooperate with the” in subparagraph (ii);
 - (ii) inserting the following new subparagraph immediately after subparagraph (ii) —
 - (iia) advise the Cabinet Secretary for the time being responsible for matters relating to planning and the county executive committee members in each county on the collection, collation, management and dissemination of data relating to persons with disability;

- (iii) deleting the word “Minister” appearing immediately after the words “advise the” in subparagraph (iii) and substituting therefor the words “Cabinet Secretary and the respective county executive committee members”;
- (iv) inserting the following new subparagraphs immediately after subparagraph (iii)—
 - (iiia) advise the Cabinet Secretary on the development of national policy and legislation for the promotion and protection of the rights of persons with disability;
 - (iiib) monitor, evaluate, report on and advise the Cabinet Secretary and the respective county executive committee members on the progress made in the realisation of the rights of persons with disability and recommend appropriate action to facilitate full enforcement;
- (v) inserting the following new subparagraph immediately after subparagraph (iv)—
 - (iva) monitor and evaluate the effectiveness of strategies and programmes on the promotion and protection of the rights of persons with disability;
 - (vi) deleting the words “encourage and secure the” appearing at the beginning of subparagraph (vii) and substituting therefor the words “collaborate with the county governments”;
- (b) in subsection (1)(c) by—
 - (i) deleting the words “Government and local authorities” appearing immediately after the words “managed by the” in subparagraph (ii) and substituting therefor the words “National and county governments”;

- (ii) by inserting the following new paragraph immediately after paragraph (c)—
 - (ca) maintain a database on, and facilitate access to information by, persons with disability including institutions and organizations offering services to the persons with disability;
- (c) in subsection (1)(d) by—
 - (i) deleting the word “Government” appearing immediately after the words “managed by the” in subparagraph (ii) and substituting therefor the words “National and county governments”;
 - (ii) inserting the following new paragraphs immediately after paragraph (d)—
 - (da) facilitate access to information on, and the acquisition of, mobility aids, devices and assistive technologies required by persons with disability;
 - (db) advise the county governments on the implementation of national policy in so far as they relate to the promotion and protection of basic rights and freedoms of persons with disability, including—
 - (i) the rights of children with disabilities to access early childhood development programmes, child care facilities and respite care services; and
 - (ii) the right of learners with disabilities to access village polytechnics, homecraft and vocational training centres;
- (d) in subsection (1)(e) by inserting the word “National” immediately after the words “to consult with the”;

- (e) by deleting subsection (1)(g) and substituting therefor the following new subsection—
- (g) to prepare and submit an annual report to the Cabinet Secretary and Parliament on—
 - (i) the progress made in the realization of the rights of persons with disability;
 - (ii) the challenges faced by persons with disability in the realisation of their rights; and
 - (iii) measures and strategies put in place to address the challenges;
- (g) in subsection (1)(h) by deleting the word “Government” appearing immediately after the words “consult with the” and substituting therefor the words “national and county governments”;
- (h) by inserting the following new paragraphs immediately after subsection (1)(h)—
 - (ha) advise the Cabinet Secretary and county governments on—
 - (i) appropriate programmes, plans and other administrative measures required for the realisation of the rights of persons with disability;
 - (ii) appropriate measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by persons with disability because of past discrimination;
 - (hb) advise and facilitate state and non-state agencies in the training of relevant professionals and staff in matters relating to the rights of persons with disability;
 - (hc) provide information and technical advice to individual care givers, institutions, associations and organizations concerned with the care and rehabilitation of persons with disability;

- (hd) undertake research, advise and recommend the development of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for use by persons with disability;
- (he) collaborate with the Media Council of Kenya and media in—
 - (i) creating awareness through programmes on matters relating to the rights of persons with disability; and
 - (ii) ensuring that information communicated by the media houses is accessible to persons with disability;
- (i) in subsection (2) by—
 - (i) deleting the word “Minister” appearing at the end of paragraph (b) and substituting therefor the words “Cabinet Secretary”;
 - (ii) deleting the word “Minister” appearing immediately after the words “approval of the” in paragraph (c) and substituting therefor the words “Cabinet Secretary” and
 - (iii) deleting the word “Minister” appearing immediately after the words “approval of the” in paragraph (d) and substituting therefor the words “Cabinet Secretary”.

10. The principal Act is amended by inserting the following new section immediately after section 7—

Insertion of new sections in No. 14 of 2003.

Powers of the Council.

7A. In the performance of its functions under this Act, the Council may, or in association with other persons or bodies—

- (a) enforce and generally administer the provisions of this Act and other related laws;
- (b) issue adjustment orders;

- (c) conduct accessibility audits;
- (d) issue summonses or other such other orders requiring the attendance of such person, organization or institution as it may consider necessary for the realization of the objects of this Act;
- (e) control, supervise and manage the assets and liabilities of the Council in such a manner and as best provides for the purposes of the Act;
- (f) seek and receive any grants, testamentary gifts, donations and make legitimate disbursements from such grants, testamentary gifts and donations for its purposes as it may consider necessary;
- (g) levy such fees and charges for its services as may be prescribed;
- (h) enter into association with other bodies within or outside Kenya as the Council may consider necessary;
- (i) subject to the law on public finance, the Council may invest the funds of the Council not immediately required for the purposes of the Council;
- (j) open and operate such accounts as are necessary for the funds of the Council with a bank or financial institution licensed to conduct banking business under the Banking Act to be approved by the National Treasury which shall be operated and maintained in the manner as may be prescribed by the National Treasury under the Public Finance Management Act; and

No. 18 of 2012

(k) do all such other things as may be necessary for the performance of its functions under this Act.

11. Section 8 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 8 of No. 14 of 2003

(c) any grants, gifts, donations or other endowments that may be donated to the Council.

12. Section 9 of the principal Act is amended by deleting the word “Minister” appearing at the end of subsection (2) and substituting therefor the words “Cabinet Secretary”.

Amendment of section 9 of No. 14 of 2003

13. Section 10 of the principal Act is amended by deleting the words “Minister and all other Government agencies involved in the work of the Council” appearing immediately after the words “presented to the” and substituting therefor the words “Cabinet Secretary and Parliament.”

Amendment of section 10 of No. 14 of 2003.

14. The principal Act is amended by deleting Part III and substituting therefor the following new Part—

Amendment of Part III of No. 14 of 2003.

PART III—RIGHTS OF PERSONS WITH DISABILITY

Realisation of rights of persons with disability

11. The National and county governments shall take steps to achieve the full realisation of the rights of persons with disability and shall, for this purpose—

- (a) take all necessary measures to ensure the effective enjoyment of the inherent right to life by persons with disability;
- (b) take appropriate measures to prevent the discrimination of women and girls with disabilities;
- (c) take all feasible measures to specifically protect persons with disability in situations of risk;
- (d) ensure that persons with disability enjoy equal protection before the law;

- (e) take all the necessary measures to prevent persons with disability from being subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (f) take all the necessary measures to prevent persons with disability from being subjected to medical or scientific experimentation without their consent;
- (g) take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation, habilitation and social reintegration of persons with disability;
- (h) protect the privacy and information relating to the health, rehabilitation and habilitation of a person with disabilities;
- (i) establish appropriate habilitation and rehabilitation programmes for persons with disability; and
- (j) facilitate the full participation of persons with disability in political activities including voting and seeking public positions whether elective or appointive.

Right to Equality
and
Non-Discrimination

12. (1) Every person with disability is—

- (a) equal before the law in the social, cultural, economic, political, or any other field of life and is guaranteed to protection, benefit of the law and to effective legal protection against discrimination on all grounds;
- (b) entitled to the full and equal enjoyment of the goods, services, facilities, or accommodations on an equal basis with others.

(2) Special measures, including reasonable accommodation and support services which are necessary to accelerate or achieve equality and eliminate discrimination against persons with disability shall not be considered discrimination.

Right to
Legal Capacity.

13. (1) Every person with disability has the right to—

- (i) recognition of legal capacity before the law; and
- (ii) protection and benefit of the law on an equal basis with others.

(2) Every person with disability is entitled to the support services he or she may require in exercising the right to legal capacity.

(3) Every person with disability has equal right to own or inherit property, to control his or her own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

Right to marry and
form a family.

14. (1) Every person with disability who is of marriageable age has the right to marry and form a family on the basis of free and full consent.

(2) A person with disability has the right to control their sexuality and reproductive health.

(3) A person with disability shall not be separated from their child on the ground of disability.

(4) Every person with disability shall at marriage, during marriage and at the dissolution of marriage be entitled to affirmative action in the protection of his or her property acquired at marriage, during marriage and dissolution of marriage.

Right to Privacy.

15. (1) A person with disability has a right to privacy and confidentiality and for this purpose, a public or a private institution shall protect information relating to—

- (a) personal health;
- (b) habilitation; and
- (c) rehabilitation services for persons with disability and such information shall not be shared without express authority of the person with disability concerned.

Women
disability.

with

16. Every woman with disability has the right to enjoyment of her human rights and fundamental freedoms without discrimination on an equal basis with others, including the right to—

- (a) participate in social, economic and political decision-making and other related activities;
- (b) protection from sexual and gender-based violence;
- (c) be provided with habilitation, rehabilitation and psychosocial support against sexual and gender-based violence;
- (d) sexual and reproductive health services;
- (e) retain and control her fertility;
- (f) keep her child and not be deprived of her child on grounds of disability; and
- (g) full development, advancement and empowerment.

Children
disability.

with

17. Every child with disability has the right and freedom on an equal basis with other children in respect to—

- (a) a name and registration immediately after birth;
- (b) evolving capacities, identities and to enjoy a full and decent life, in conditions which promote and ensure dignity, self-reliance, and independence;
- (c) freedom to express their views on all matters affecting them; and
- (d) age-appropriate assistance to realise their rights under Chapter 4 of the Constitution and this Act.

Youth
with disability.

18. (1) Every youth with disability is entitled to enjoyment of human rights and fundamental freedoms on an equal basis with other youth.

(2) The Council in consultation with National and County Governments and other state agencies shall take policy, legislative, administrative and other measures to ensure that the rights of youth with disabilities are fully respected, including by—

- (a) promoting full, inclusive and accessible education, training and employment and programmes for youth with disabilities;
- (b) promoting the inclusion of youth with disabilities in mainstream youth organisations and programmes;
- (c) removing barriers that hinder or discriminate against the participation of youth with disabilities in society;
- (d) promoting training and access to Information, Communication and technology especially for youth with disabilities in rural areas;

- (e) developing programmes to overcome social and economic isolation, and removing systemic barriers in the labour market for youth with disabilities;
- (f) ensuring access to credit facilities for youth with disabilities; and
- (g) developing and implementing special measures to facilitate full and equal participation of youth with disabilities in training, sports, culture, science and technology.

Older members
of the society
with disability.

19. Every older member of the society with disability has the right to enjoyment of human rights and fundamental freedoms on an equal basis with others, including the right to—

- (a) access social protection programmes;
- (b) have appropriate measures and safeguards put in place to provide them with support they may require to exercise the legal capacity; and
- (c) access inclusive services.

Right to documents
of registration
or identification.

20. (1) Every person with disability has a right to be issued with a certificate of birth, national identification card, passport, and any other document of registration or identification

(2) A person with disability shall not be deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes, that may be needed to facilitate exercise of other rights.

Right to physical and
mental integrity.

21. Every Person with disability has a right to respect for their physical and mental integrity and the right to security.

Right to human
dignity.

22. Every person with disability has a right to human dignity and the right for that dignity to be respected and protected and in particular not to be referred to by demeaning, embarrassing, derogatory and any other term that may be considered as lowering his or her human dignity.

Protection from
abuse, exploitation
and violence.

23. (1) Every person with disability has the right to be protected against all forms of abuse, neglect, exploitation, physical, mental, sexual, or emotional violence in all settings at all places including; homes, care-houses, educational institutions, hospitals, workplaces, and any other place which resides, cohabits, employs or in other manner inhabits any person with disability whether temporarily or permanently.

(2) A person or an organisation working with a person with disability who has reason to believe that an act of exploitation, neglect, violence or abuse has been, or is being, or is likely to be committed against a person with disability shall submit information regarding the acts to a law enforcement agency in whose jurisdiction such incident occurs or is likely to occur, and such agency shall take immediate steps on the receipt of such information to stop or prevent it.

(3) A person who fails to comply with the provisions of subsection (2) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment to a term not exceeding one year or both.

Protection and
Safety of
persons
with disability
in situations of
risk
and
humanitarian
emergencies.

24. (1) Every person with disability has a right to suitable and specialised protection and safety in situations of risk, including conflict, humanitarian emergencies and the occurrence of natural disasters.

(2) Entities which run places to which the public has access shall take appropriate

measures to ensure protection and safety of persons with disability during the occurrence of any disaster and in situations of risk and humanitarian emergencies.

(3) The Kenya Defence Forces, the National Police Service and any other establishment whether public or private, engaged in emergency or humanitarian services shall, in all situations of conflict, humanitarian emergencies and the occurrence of natural disasters take measures to ensure the safety and protection of persons with disability in light of the obligations under the relevant international conventions on human rights.

(4) Every construction and reconstruction programmes and activities undertaken by the National and county governments and any other establishment whether public or private engaged in emergency or humanitarian services shall, after consultation with the Council, in response to any situation of conflict, humanitarian emergencies or natural disasters take into account the accessibility requirements of persons with disability.

Special measures for
persons with
disability.

25. (1) Every person with disability is entitled to special measures to accelerate the equal participation in the social, cultural, economic, civil, political, or any other field.

(2) Every public and private institution shall take effective measures and, where appropriate, special measures to ensure continuing improvement of economic and social conditions of persons with disability.

Right to education.

26. (1) Every child and person with disability has a right to admission to any institution of learning and access to an inclusive, quality and free primary and secondary education on an equal basis.

(2) A child or other person with disability shall not be excluded from the education system on the basis of disability.

(3) The National government shall facilitate participation of persons with disability in accessible and adaptable continuing adult education programmes on an equal basis.

(4) The national and county governments shall ensure that persons with disability have access to inclusive education, without discrimination and on an equal basis at all levels.

(5) A child with disability shall not be excluded from free and compulsory early childhood, primary or secondary education, on the basis of disability.

(6) Every child with disability has a right to equal access to play, recreation and leisure and sporting activities, including those activities in the school system.

(7) The Council in consultation with the National and respective county government shall ensure that—

- (a) learning institutions take into account the needs of persons with disability with respect to the set entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations;
- (b) learning institutions provide individualized support measures, appropriate equipment, assistive devices, adoptive technologies and other supportive services in environments that maximize academic and social development,

consistent with the goal of full inclusion of students with disabilities; and

- (c) the Ministry responsible for education formulates strategies to implement inclusive education through—
 - (a) enforcement of recruitment and retention of special education teachers in all schools and institutions;
 - (b) development of a least restrictive environment by adaptation and structural adjustments of all educational institutions to the needs of persons with disability;
 - (c) establishment of specialized institutions that undertake research and development in education for learners with disability;
 - (d) establishment of at least one assessment center in each county to support educational institutions within the county by way of teacher trainers, educational aids, equipment and materials;
 - (e) promotion of the use of appropriate augmentative and alternative modes, means and formats of communication, adoptive technologies, including Braille and Kenya Sign Language; and
 - (f) introduction of Kenya sign language interpretation course in all training institutions.

(8) The Cabinet Secretary in charge of education shall develop an adaptable examination framework and award a certificate to children with mental disabilities after completion of their education.

(9) A person who denies a person with disability admission to a learning institution on the basis of disability commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(10) The Cabinet Secretary responsible for education shall—

- (a) put in place strategies and policy for the development of persons with disability through their personality, talents and creativity and their mental and physical abilities, to their fullest potential;
- (b) in collaboration with the relevant line ministries shall provide training facilities for speech therapy, occupational therapy, physiotherapy, guidance and counseling, audio-logical assessments, habilitation and aural and oral rehabilitation for children with disabilities; and
- (c) in consultation with the County Education Board put in place a sustainable financial framework in each financial year to achieve full realization of the right to education for persons with disability.

(11) Every person with a disability is entitled to receive the support services required, within the general education system, to facilitate his or her effective inclusive education.

(12) The Council shall work in consultation with relevant agencies of National and county governments to make provisions for an integrated system of special and non-formal schools and institutions, especially for the deaf, the blind, the deaf blind and those with developmental disabilities to cater for skills development and self-reliance, and establishment of braille and recorded libraries for persons with visual disabilities.

Right to work
and Employment
for Persons
with disability.

27. (1) An employer shall not discriminate against a qualified person with disability in the formulation and implementation of job. Application and employment procedures, hiring, promotion and other terms, conditions and privileges of employment.

(2) Every employer shall—

- (a) reserve at least five per cent direct employment opportunities for persons with disability to secure employment;
- (b) formulate policies and programmes to promote basic human rights, improve working conditions and enhance employment opportunities for persons with disability;
- (c) in the process of recruitment, not discriminate solely on account of the disability of a person;
- (d) not conduct any test or examination to establish whether an applicant is a person with a disability or as to the nature or severity of the person's disability; and
- (e) be required to carry out appropriate modifications in their work premises to accommodate the employment of persons with disability;

words "Council shall be" and substituting therefor the word "six";

(f) by deleting paragraph 8 and substituting therefor the following new paragraph—

8. (1) The chairperson, or in the absence of the chairperson, the vice-chairperson, shall preside at the meeting of the Council.

(2) In the absence of both the chairperson and vice-chairperson, the members present shall elect one of their number to preside at the meeting.

(g) in paragraph 9 by deleting the words "chairman, vice-chairman" appearing immediately after the words "voting shall be equal, the" and substituting therefor the words "chairperson, vice chairperson";

(h) by inserting the following new paragraphs immediately after paragraph 10—

11. If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

12. The Council shall cause minutes of all resolutions and proceedings of meetings of the Council to be entered in books kept for that purpose.

23. The Films and Stage Plays Act is amended in section 35 (2) by inserting the following new paragraph immediately after paragraph (f)—

(fa) prescribing the requirements to be met by makers and exhibitors of films in order to

is expressly provided shall be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

(2) Nothing in this Act shall be construed to preclude an aggrieved person from seeking other civil remedies.

491. (1) The Council may, in consultation with the Cabinet Secretary, make regulations generally for the better carrying into effect of the provisions of this Act.

(2) Without limiting the generality of Subsection (1), Regulations may be made in respect of the following—

- (a) forms prescribed under this Act;
- (b) fees to be charged under this Act; and
- (c) adjustment orders

22. The Schedule to the principal Act is amended—

Amendment of
the Schedule of
No 14 of 2003.

- (a) by deleting paragraph 1;
- (b) by deleting paragraph 2;
- (c) by deleting paragraph 3;
- (d) by deleting paragraph 5 and substituting therefor the following new paragraphs—

5. A meeting of the Council shall be held on such date and at such time as the Council shall decide, or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson.

5A. Notwithstanding the provisions of paragraph (5), the Chairperson may, and upon requisition in writing by at least six members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

(e) in paragraph 7 by deleting the word “fifteen” appearing immediately after the

Regulations.

Awareness raising.

49D. (1) All public media houses with television and radio shall dedicate at least one hour free airtime every month to sensitize members of the public on issues of disability.

(2) The Council shall, for purposes of subsection (1), collaborate with the media for the production or publication of at least one column in the print media every month.

Right to independent living.

49E. (1) Every person with disability has a right to independent living and access to a range of in-home, residential and other support services, including personal assistance, necessary to support living and inclusion in society on an equal basis with others.

(2) Subject to subsection (1), an employer may provide hardship allowance to or for a family of a person with disability.

of Enforcement rights.

49F. (1) Subject to subsection (2), if any person alleges that any of the provisions of this Act has been, is being or is likely to be contravened in relation to a person with disability, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall hear and determine an application made by a person in pursuance of subsection (1) and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Act.

Appointment of Public Prosecutors.

Cap. 75

General penalty.

49H. (1) A person found guilty of an offence under this Act for which no penalty

49G. The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for purposes of this Act.

49A. (1) All government ministries shall establish a Disability Mainstreaming Unit for the purpose of—

(a) mainstreaming disability issues;

(b) carrying out regular inspections to ensure implementation and compliance with the provisions of this Act; and

(c) liaising with the Council on disability matters.

(2) Each Ministry shall appoint an officer to head the Disability Mainstreaming Unit established under subsection (1).

(3) The officer appointed under subsection (2) shall submit quarterly reports to the Council outlining progress and compliance with this Act and any challenges faced.

(4) The Council shall appoint an inspector who shall investigate the level of compliance by a Ministry under subsection (1) and (2) and make such recommendations as may be considered necessary for compliance or to remedy any infringement of this Act.

(5) The inspector appointed under subsection (4) shall report to the Council or the relevant committee of the Council, any person or persons whose conduct is in violation of this Act or any regulations made under the Act.

49B. Every government agency putting up a residential and commercial building shall reserve at least five percent of the said residential and commercial buildings for acquisition by persons with disability.

49C. The national and county governments when constructing markets shall reserve five percent of the stores to persons with disability.

Inspectorate Units and Inspectors.

Housing.

Markets.

(2) The proprietor of premises referred to in subsection (1) (a) shall not have the right, on the grounds of a person's disability alone, to reserve the right of admission to his or her premises against such a person.

(3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction.

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

48. A person shall not provide goods information or services, or make facilities available to the general public, with a view to discriminating against a person with disability on the ground of that person's disability by—

(a) refusing to provide to a person with a disability any service which he or she provides to other members of the public; or

(b) deliberately making it impossible or unreasonably difficult for persons with disability to make use of the goods, information, service or facility.

49. Every person with disability shall, subject to the provisions of the Employment Act, be eligible for engagement as an apprentice or learner in their particular occupation for the period for which they are hired.

Prohibition of discrimination relating to goods, facilities and services.

Apprenticeship Technical, Vocational Training, Rehabilitation and Self-Employment.

PART VIII – MISCELLANEOUS

45. The national and county governments shall put in place measures to facilitate access to public roads and highways under their respective mandates by persons with disability and shall, for this purpose —

(a) equip pedestrian crossings with traffic control signals controlled by a pedestrian push-button system; and
provide pedestrian traffic lights with clearly audible signals.

46. (1) A registered owner of a public transport vehicle shall adjust the vehicle to suit persons with disability in such manner as may be specified by the Council in consultation with the relevant government agencies.

(2) A registered owner of public transport vehicle who improves or modifies it to make it accessible for persons with disability shall be entitled to apply to the Cabinet Secretary responsible for finance for twenty five percent of the direct cost of the improvements and modifications.

(3) A registered owner of a public transport vehicle referred in subsection (2) shall present with the application under that subsection proof of modifications certified by the Council.

47. (1) A person shall not, on the ground of disability alone, deny a person with disability —

(a) admission into any premises to which members of the public are ordinarily admitted; or
(b) the provision of any services or amenities to which members of the public are entitled.

Protection of road users with disabilities.

Public service vehicles and transport.

Denial of admission into premises.

any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, he or she is duty bound to produce or furnish, or to answer any question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months, or both.

21. The principal Act is amended by deleting Part VIII

and substituting therefor the following new part—

Amendment of
Part VIII of No 14
of 2003.

published, circulated or displayed, a publication that lowers or demeans the dignity of a person with disability or which amounts to discrimination.

(2) For the purposes of subsection (1), “advertisement” includes all forms of publicity—

(a) in newspapers, internet, television or radio;

(b) by displaying notices, signs, labels, shows cards or goods;

(c) by the circulation of samples, catalogues, price lists, leaflets, handbills or any other form of circular;

(d) by exhibition of pictures, models, photographs, films or any other form of exhibition.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one million or to both.

44C. A person who —

(a) knowingly gives false information to the Council for the purpose of being registered or for the purpose of acquiring any right or privilege due to persons so registered; or

(b) fraudulently avails or attempts to avail or confers or attempts to confer any benefit meant for persons with disability on a person not entitled to such benefit;

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding six months, or to both and any monetary benefits wrongly obtained under this section shall be returned to the Council with interest at commercial rates.

Giving false information for purposes of registration

Failure to furnish information.

44D. A person who fails to produce any book, account or other document or to furnish

information.

(2) Without prejudice to subsection (1), every health care professional shall, when making impairment-specific interventions, provide complete information to the person with disability through accessible modes, methods and formats.

(3) A health professional who contravenes the provisions of subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding Kenya Shillings two million or to imprisonment for a term not exceeding one year, or both.

(4) A person who, being a doctor or other medical practitioner, negligently causes a disability to a patient commits an offence and is liable, on conviction, to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding ten years, or both.

(5) A person who, not being a doctor or medical practitioner, causes a disability to another person or who through negligence, deliberately worsens the disability of another person, commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term of five years or both.

(6) A persons who performs, conducts or directs any medical procedure to be performed on a person with disability which leads to or is likely to lead to infertility is commits of an offence and is liable, on conviction, to a fine of three million shillings or to imprisonment for a period not exceeding four years or both.

(7) A person acting as a care-giver of a person with disability, whether as parent or guardian or in any other capacity, who does any act to facilitate, or negligently fails to prevent such medical procedure from being performed, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand or with imprisonment of one year or both.

44B. (1) A person shall not publish, circulate or display, cause or permit to be

Offensive
Publications.

commits an offence and shall be liable, on conviction, to life imprisonment.

(3) A person who willfully aids, abets or is an accessory to an offence in subsection (2), commits an offence and shall be liable, on conviction, to life imprisonment

41. A person who causes harm or death of a person with disability through torture, cruel treatment, ritual killings or other practices commits an offence and shall be liable, on conviction, to life imprisonment.

Torture and
cruel
treatment.

42. (1) A parent, guardian or next of kin of a person with disability shall not knowingly conceal such person in such a manner as to deny any such a person the opportunities and services available under this Act or any other law.

Concealment
of persons
with disability.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

Denial of food
and fluids.

43. A person who knowingly denies food or fluids to a person with disability who is under his or her care or responsibility or aids or abets in such denial commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

44. A person who voluntarily or knowingly commits or abets the degrading treatment of a person with disability by words, either spoken or written, or by signs or by visible representations or otherwise, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

Degrading
treatment of a
person with
disability

44A. (1) A health professional shall not discriminate against a person with disability in the observance of ethical guidelines on informed consent and confidentiality while providing health care and other services to a person with disability.

Negligence by
medical
practitioners.

birth, national identity card and passport; and

(i) the right to respect for personal dignity as guaranteed under article 28 of the Constitution.

(3) Nothing in this section limits the right of action of a person with disability for compensation or other appropriate remedies in civil proceedings.

39. (1) A person who treat a person with disability or does any of the acts specified in subsection (2) by reason only of their disability commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(2) The acts referred to in subsection (1) include—

(a) physical violence occasioning actual bodily harm or any form of physical or psychological torture.

(b) wrongful concealment, confinement or detention whether in residential premises or in an institution resulting in denial of a person with disability the opportunities and services available under this Act or any other law;

(c) harmful cultural practices and exploitation; or

(d) any other form of cruel, inhuman and degrading treatment.

40. (1) The national and county governments shall take such measures as it considers necessary to eliminate harmful practices committed against a person with disability, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.

(2) A person who perpetrates a harmful practice against a person with disability is

Harmful practices.

Prohibition of abuse, exploitation or violence.

make regulations for the better carrying into effect of subsection (1).

20. The principal Act is amended by deleting Part VII and substituting therefor the following new part —

PART VII—OFFENCES AND PENALTIES

38. (1) A person who willfully and without any lawful justification treats a person with disability in any manner resulting in contravention of article 27(4) and (5) of the Constitution commits an offence and shall, on conviction, be liable to an imprisonment not exceeding fifteen years or to a fine not exceeding two million shillings or to both.

(2) The following acts or omissions constitute discrimination within the meaning of subsection (1) if the act or omission complained of results in denial to any person by reason only of his or her disability to any of the following —

- (a) public services or entry to public premises generally accessible to members of the public;
- (b) the right of inheritance in accordance with the law of succession;
- (c) health services including reproductive health services generally accessible to members of the public in accordance with the law relating to health;
- (d) educational or other training services, generally accessible to the public;
- (e) employment or indentured learner ship;
- (f) the rights guaranteed under Articles 53 and 55 of the Constitution;
- (g) the rights of older persons guaranteed under Article 57 of the Constitution;
- (h) the right to obtain, possess and utilize documents of registration or identification, including a certificate of

Discrimination
contrary to
Article 27 of
the
Constitution.

Amendment of
Part VII of
No. 14 of 2003

(b) hearing aids, mobility aids and orthopaedic devices designed for use by persons with disability and sent within or outside Kenya for the purpose of repair or delivery to —

(i) a person with disability;

(ii) a parent or guardian of a child with disability; or

(iii) a duly registered organizations of or for persons with disability; and

(c) all types of assistive devices and adaptive technology equipment sent by or delivered to the persons specified in paragraph (b).

(2) The exemptions under subsection (1) shall apply to items for personal or institutional purposes only where the person or institution is registered with the Council.

(3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to communication the Council, make regulations to give effect to this section.

37C. (1) All state and non-state agencies shall take reasonable measures to ensure the safety and protection of persons with disability in situations of risk and humanitarian emergencies.

(a) civil strife and armed conflicts;

(b) terror attacks;

(c) emergency situations arising from natural calamities such as floods and earthquakes;

(d) outbreaks of communicable diseases.

(2) The Cabinet Secretary shall on his own motion or on the advice of the council

(f) exemptions from taxes and duties on raw materials;

(g) access to bonded manufacturing systems; and

(h) demurrage charges.

37. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions and the Council develop regulations to facilitate access to credit by persons with disability.

37A. A person who employs a person with disability and who incurs reasonable expenses on account of —

(a) reasonable accommodation of the employee with disability;

(b) modification of any part of the work place designed to meet the special needs of the employee with disability; or

(c) mobility aids, assistive devices, adaptive technology or other devices or equipment, including computer software and computerized systems designed to meet the special needs of the employee with disability, is entitled to exemption from taxable income to the amounts so expended.

37B. (1) Pursuant to article 54(1)(e) of the Constitution the following materials and devices shall be exempted from postal charges —

(a) braille, printed or recorded literature, including any materials in tactile format, sent or received by postal mail from within or outside Kenya;

Access to credit.

Exemption from taxable income of employers of persons with disability.

Exemption from postal charges.

(6) The purchase, importation, transfer or gift of health materials or equipment relating to a person with disability shall be exempted from tax, duties, surcharges or levies.

(7) The National and county governments shall not collect license fee, levies and other charges from persons with disability.

(8) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for matters relating to finance and the Council make regulations to give effect to this section.

36. (1) Any donation, bequest, subsidy or financial aid which may be made to an institution or organization involved in the programmes of persons with disability and registered with the Council for the purposes of this section shall, notwithstanding the provisions of any other law and on recommendation by the Council, be allowable as a deduction from the donor's gross income for the purposes of computing taxable income.

(2) The Cabinet Secretary responsible for finance, in consultation with the Council, shall provide incentives to local manufacturers of assistive devices used by persons with disability including—

- (a) additional deductions for labour expenses;
- (b) tax and duty exemptions on imported capital equipment;
- (c) tax credits on domestic capital equipment;
- (d) simplified customs procedures;
- (e) unrestricted use of consigned equipment;

Incentives.

PART VI—RELIEFS AND INCENTIVES

35. (1) A person with disability who is in receipt of an income may apply to the Cabinet Secretary responsible for finance for exemption from income tax and any other levies on such income.

(2) The Cabinet Secretary responsible for finance shall, in consultation with the Council, assess all applications received under subsection (1) and make such he may consider appropriate, exempting the applicant wholly or to the extent provided by the order, from income tax or other levies specified therein, and any such order shall, notwithstanding the provisions of any other Act, have effect according to its terms.

(3) Materials, articles and equipment, including motor vehicles, that are modified or designed for the use of persons with disability shall be exempt from import duty, value added tax, demurrage charges, port charges and any other government levy which would in any way increase their cost to the disadvantage of persons with disability.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disability shall be exempt from import duties, value added tax, demurrage charges, port charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

(5) All goods, items, materials, machinery, tools, articles, implements or equipment donated to institutions and organizations of or for persons with disability shall be exempt from import duties, value added tax, demurrage charges, port charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

Exemptions.

with" in paragraph (e)(iii) and substituting therefor the word "developmental";

(v) inserting the following new paragraph immediately after paragraph (e) —

(ea) a person appointed by the Council of County Governors who has knowledge and experience in matters relating to finance;

(vi) deleting the word "three" appearing immediately after the words "not more than" in paragraph (f) and substituting therefor the word "two";

(b) in subsection (2) by deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary";

(c) by inserting the following new subsection immediately after subsection (2) —

(2A) The Board of Trustees shall prepare and submit to the Council quarterly and annual reports on the discharge of its functions every financial year.

18. Section 35 of the principal Act is amended —

(a) in subsection (1) by deleting the word "Minister" appearing immediately after the words "may apply to the" and substituting therefor the words "Cabinet Secretary";

(b) by inserting the following new subsection immediately after subsection (1) —

(1A) The Cabinet Secretary responsible for finance may, on recommendation by the Council exempt an applicant from income tax or other levies specified under this Act.

(c) in subsection (2) deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary";

19. The principal Act is amended by deleting Part VI and substituting therefor the following new part —

Amendment of
Part VI of No.14
of 2003.

Amendment of
section 35 of No
14 of 2003.

approval of the Council, ensure that the funds are invested in a lawfully constituted investment scheme in accordance with the law relating to the administration of public funds.

(c) in subsection (2)—

(i) by inserting the words “National and county funds” immediately after the words “undertaken by the” appearing in paragraph (c);

(ii) by inserting the following new paragraphs immediately after paragraph (c)—

(ca) make contributions to support capacity building and empowerment programmes undertaken by organisations of and for persons with disability registered under this Act for the general benefit and development of persons with disability;

(cb) pay such sums of money required to defray the expenses incurred in the administration of the Fund, provided that such payments shall not be made in excess of fifteen per cent of the money appropriated by Parliament in to the Fund in any particular year;

17. Section 34 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting the words “The Chairman” appearing at the beginning of paragraph (a) and substituting therefor the words “The Chairperson”;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph—

(c) a representative of the Cabinet Secretary appointed by the Cabinet Secretary;

(iii) deleting the word “Minister” appearing immediately after the words “appointed by the” in paragraph (d) and substituting therefor the words “Cabinet Secretary”;

(iv) deleting the word “mental” appearing immediately after the words “for persons

(b) institutions, entities owned by persons with disability, associations and organizations, including those controlled and managed by the Government, which promote the rights of and provide services to persons with disability and issue certificates of registration thereof.

(2) The disability identification card or certificate of identification issued by the Council under subsection (1) shall be conclusive evidence that—

(a) the holder is a person with disability, or

(b) the institution, integrated enterprise or organisation holding it is registered with the Council.

15. The principal Act is amended by deleting Part IV.

16. Section 33 of the principal Act is amended—

- (a) in subsection (1) by—
- (i) deleting paragraph (c) and substituting therefor the following new paragraph—
- (c) any grants, donations, bequests or other contributions made to the Fund;
- (ii) inserting the following new paragraphs immediately after the new paragraph (c)—
- (d) fees and levies collected by the Council;
- (e) monies that may be borrowed by the Council in the discharge of its functions under the Act; and
- (f) all other payments due to the Fund in respect of any matter incidental to its functions.
- (b) by inserting the following new subsection immediately after subsection (1)—
- (1A) In making investments under subsection (1)(b) the Board of Trustees shall, with the

public life and the opportunity to enjoy them on an equal basis with others, and to vote for and be voted directly or through freely chosen representatives in any public or political office.

(2) The Independent Electoral and Boundaries Commission shall put in place measures to facilitate the realization of civic and political rights by persons with disability by—

(a) providing voting procedures, facilities and materials which are appropriate, accessible and easy to understand and use;

(b) protecting the rights of persons with disability to vote by secret ballot in elections without intimidation and to offer themselves for elections; and

(c) putting in place measures for assistive voting by a person of their own choice, on request and facilitating the use of assistive and appropriate technologies.

(3) A person who undertakes to render assistance under subsection (3)(c) shall do so in accordance with the instructions of the voter.

(4) A person described in subsection (2) shall bind himself or herself, in the prescribed form, to comply with that subsection.

31G. (1) The Council shall, in order to facilitate the realization of the rights set out under this Part by persons with disability, keep and maintain a register setting out information on—

(a) persons with disability, to whom it shall issue disability identification cards in such form as it may determine; and

Registration of
Persons with
disability.

persons
with disability.

31F. (1) Every person with disability has the right to participate in political and

(6) A person who fails to comply with an adjustment order commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

adjustment order.

(4), the person concerned may appeal to the High Court against the issue of the adjustment order is issued under subsection (5) Within thirty days after an

of an adjustment order.

(3)(c), issue, refrain from or defer the issuing any representations made under subsection (4) The Council may, upon considering

date of the service of the notice.

(c) calling upon the person to make representations to the Council within a specified period from the date of the service of the notice.

proposes to order; and

(b) stipulating the maximum period that the Council considers reasonable for the implementation of the action it

rise to the proposed order;

(a) specifying the grounds upon which the Adjustment Order is to be issued and the nature of the action which the Council considers necessary to rectify the situation which has given

notice upon the person concerned—

(3) Before serving an adjustment order under subsection (2) the Council shall serve

implemented.

(d) the period within which the action under paragraph (b) shall be

or amenities; and

reasonable access by persons with disability to the premises, services

undertaken after the commencement of this Act shall be undertaken in conformity with the standards set out in the First Schedule on accessibility of the built environment for persons with disability.

(10) The Cabinet Secretary responsible for matters relating to building standards shall prescribe standards to ensure a barrier free environment for persons with disability.

Adjustment orders.

31E. (1) This section shall apply to—
(a) all premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise;

(b) public transport operators and providers of communication and information services; and
(c) all services or amenities ordinarily provided to members of the public.

(2) If the Council considers that any premises, services or amenities are inaccessible to persons with disability by reason of any structural, physical, administrative or other impediment to such access, the Council shall, subject to this section, serve upon the proprietor of the premises or the provider of the services or amenities concerned an adjustment order.

(3) The Council shall set out the following information in the adjustment order issued under subsection (2) —

- (a) a description of the premises, services or amenities concerned;
- (b) the grounds upon which the Council considers that the premises, services or amenities are inaccessible to persons with disability;
- (c) the action required to be undertaken by the owner or provider at his or her own expense in order to secure

assistive devices and services including guide animals and no person with disability shall be denied access to any public place because of the nature of his or her assistive device and service.

(5) The relevant government agencies shall not approve a building plan unless such plan complies with such standards on accessibility as may be prescribed.

(6) The Council shall, in consultation with the relevant government agencies and the private sector, prescribe the minimum standards for the accessibility, by persons with disability, of facilities and services that are provided to the public.

(7) In prescribing the standards under subsection (6), the Council shall take into account the need to ensure that the facilities and services are age and gender appropriate and are applicable to—

(a) all buildings and facilities used by the public;

(b) permanent, temporary or emergency conditions;

(c) road and rail based transport;

(d) aviation;

(e) maritime transport and ports;

(f) pedestrian infrastructure including zebra crossings and sidewalks;

(g) public transport system; and

(h) any other mode of transport.

(8) No individual, organisation or establishment shall be issued a certificate of completion or allowed to take occupation of a building if it has failed to comply with the standards and regulations.

(9) Any construction, modification or alteration to the built environment that is

(4) Every person with disability has the right to free movement with his or her

(3) Public and private institutions shall formulate and implement minimum standards and guidelines to enable access, by persons with disability, to facilities and services that accessible to or provided to the public taking into account the different forms of disability.

(2) The national and county governments shall put in place measures to ensure that the physical environment, transport system, information and communication facilities and other facilities and services including emergency services that are accessible to or provided to the public are also accessible to persons with disability.

31D. (1) Every person with disability is entitled to a barrier-free and disability-friendly environment to enable him or her to live independently and participate fully in all aspects of life.

(7) The national and county governments shall provide persons with disability with the necessary suitable environment, including appropriate instruction, training, resources and medical personnel, architectural infrastructure, apparatus and equipment, transportation facilities for the participants.

(6) Every person with disability shall be entitled to the use, without discrimination and on the same basis with other persons, of recreational and tourism venues or sports facilities owned or operated by the government during social, sporting or recreational activities.

development shall restructure courses and programmes to ensure access, inclusion and participation of persons with disability in all sporting activities.

Accessibility.

with disability, physical guide assistance and intermediaries.

(4) Accused persons with disability who are denied bail shall be entitled to be held in custody in a facility modified in accordance with such standards as may be prescribed.

(5) The Chief Justice shall ensure that all suits involving persons with disability are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

(6) Law enforcement agencies and institutions shall take into consideration the disability of a person on arrest, detention, investigation, trial or confinement.

31C. (1) Every person with disability has a right to take part on an equal basis with other persons in sporting, recreation, leisure and culture.

(2) The Cabinet Secretaries responsible for matters relating to sports and cultural activities shall, in consultation with the Council, take put in place such measures as may be considered necessary to avail all persons with disability the opportunity to develop and utilize their creative, artistic and intellectual potential.

(3) A person with disability shall be entitled, on an equal basis with others, to recognition and support of his or her specific cultural and linguistic identity, including Kenya sign language and deaf culture.

(4) Every public and private institution with sporting, recreation, leisure and cultural activities for their employees shall ensure that such sporting, recreational, leisure and cultural activities shall put in place mechanisms to enable the participation of persons with disability.

(5) Government agencies and institutions responsible for curriculum

newscasts, educational programs and in all programs covering events at the national, regional and international level.

(7) Every public institution of higher learning shall offer a common course in Kenya Sign Language.

Access to Justice.

31B. (1) Every person with disability has a right to effective access to justice on an equal basis with others including the provision of procedural and age-appropriate accommodation 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.

(2) The Attorney-General, in consultation with the Council and the Law Society of Kenya, shall make regulations for the provision of legal services at a subsidised fee for persons with disability with respect to

(a) matters affecting the violation of the rights of persons with disability or the deprivation of their property;

(b) cases involving capital punishment of persons with disability; and

(c) such matters and cases as maybe prescribed.

(3) The Chief Justice shall make rules to provide for—

(a) the exemption, of persons with disability, from the payment of court fees in relation to matters or cases described in subsection (1); and

(b) the provision, to persons with disability who attend court, of free Kenya Sign Language interpreters, Braille services other communication formats and technologies accessible to persons

(e) prompt attendance by medical personnel to persons with disability.

(2) Every person with disability has a right to information, communication technology and systems which would enable such persons carry on with their day to day activities with ease.

31A. (1) Every person with disability has the right to access information, communication and other services including the right to freedom of expression and opinion, the freedom to seek, receive and impart information and ideas, electronic and emergency services open or provided to the public on an equal basis with others in a timely manner and without additional cost and through all forms of communication of his or her choice.

(2) It shall be the obligation of a public institution to disseminate information intended for the general public in a format that is accessible to. Persons with disability.

(3) Every public institution shall put in place systems to facilitate communication by persons with disability including sign language interpreters, Braille, augmentative and alternative communication.

(4) Every public television and radio station and telephone service providers shall provide information and services in accessible formats and technologies appropriate to different kinds of persons with disability.

(5) Every telecommunication entity in Kenya shall take steps to provide functionally equivalent services for consumers with disability to enable them access services, products and programs offered by entity.

(6) Every television station shall provide a Kenya sign language inset, sub-titles in

Access
to information
and
communication
technology
services.

- (d) free medical care and treatment on condition of his or her disability in public owned health institutions.
- (3) Medical assessment reports undertaken with respect to a person with disability for purposes of registration, employment or compensation shall be carried out free of charge in public-owned health facility.
- (4) Every national or referral health facility shall employ at least two Kenya Sign Language interpreters and shall take into account the need for gender balance in the hospital organizational structure.
- (5) No person shall subject a person with disability to any medical procedure which leads to or could lead to infertility without that person's express consent.
- (6) Notwithstanding subsection (5), where the person with a disability is a minor such procedure may in cases of medical necessity confirmed by a medical practitioner, be performed with the parent or guardian's consent.
31. (1) The Council shall be represented in the implementation of the national and county health programs under the Cabinet Secretary and county executive committee responsible for health for the purpose of—
- (a) prevention of occurrence and early identification of disability;
- (b) early rehabilitation of persons with disability;
- (c) enabling persons with disability to receive free habilitation and rehabilitation and medical services in public and privately-owned health institutions;
- (d) availing health services and field medical personnel to persons with disability at an affordable cost; and

Council
to participate
in
health
programmes.

29. (1) A private employer who engages a person with a disability with the required skills or qualifications either as a regular employee, apprentice or learner may apply for a deduction from its taxable income equivalent to twenty five percent of the total amount paid as salary and wages to such employee.

(2) An employer shall, for purposes of subsection (1), present proof certified by the Council of the employee of the person in respect of whom it claims the deduction and the persons with disability so employed are accredited with the Council as to their disabilities, skills and qualifications.

(3) A private employer who improves or modifies its physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities may apply for additional deductions from its net taxable income equivalent to fifty percent of the direct costs of the improvements, modifications or special services.

30. (1) Every person with disability has the right to health, including health-related habilitation and rehabilitation services without discrimination on the basis of disability.

(2) Every person with disability has the right to—

(a) the enjoyment of sexual and reproductive health rights;

(b) information that will enable him or her to make responsible and informed choices about their sexual and reproductive health;

(c) be treated with respect, privacy and dignity while seeking health related services; and

Right to health.

Incentive for private employer.

- (c) "discrimination" may include—
- (i) limiting or classifying a job applicant or employee in an adverse way;
 - (ii) denying employment opportunities qualified persons;
 - (iii) not making reasonable accommodation for the known physical or mental limitations of an employee with disabilities;
 - (iv) not advancing employees with disabilities in employment; and
 - (v) not providing necessary accommodations in training materials or policies; and the provision of qualified readers or interpreters.
- 28. (1)** A person with disability shall not be dismissed or suffer a reduction in rank solely on the grounds of disability, acquiring any disability or any consequences thereof.
- (2) Notwithstanding subsection (1), —
- (a) where an employee with disability is placed under undue stress or disadvantage in the usual course of employment as a result of the disability, such employee shall be eligible for a post at the same rank with adequate support; and
 - (b) such employee may, if required by the nature of disability, be deployed to another post with the same pay scale and service and if it is not possible to adjust the employee against any post, the employee may be kept on a supernumerary post until a suitable post is available or he attains the age of retirement, whichever is earlier.

No dismissal
for employee
with disability.

- he or she cannot perform because of his or her disability;
- (g) failing to select or administer in the most effective manner, employment tests which accurately reflect the skills, and aptitude of an applicant or employee with disability, rather than the impaired sensory, manual or speaking skills of such applicant or employee; if any; and
- (h) excluding persons with disability from membership in trade and labour unions or similar organizations.
- (5) For the purposes of subsection (4), the age of retirement shall be the age as may be provided in regulations made by the Cabinet Secretary.
- (6) For purpose of this section—
- (a) “reasonable accommodation” for purposes of employment includes—
- (i) making existing facilities used by employees accessible to, and usable by, persons with disability; and
- (ii) job restructuring, part time or modified work schedules, reassignment to a vacant or suitable position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or policies, the provisions of qualified readers or interpreters, and other similar accommodations for persons with disability;
- (b) “employer” means an employer in the public service;

(3) Every employer shall submit, in the prescribed form, such information regarding the status of employment of persons with disability within their establishments to the Council.

(4) The following acts shall, for purposes of subsection (2)(c) constitute acts of discrimination—

(a) limiting, segregating or classifying a job applicant with disabilities in a manner which adversely affects his or her employment opportunities;

(b) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out or prohibit career progression of persons with disability;

(c) implementing standards, criteria, or methods of administration showing the effect of discrimination on the basis of disability or perpetuating the discrimination of others who are subject to common administrative control;

(d) providing less payment, remuneration or fringe benefits to a qualified employee with disability, than the amount paid to other employees performing the same work;

(e) favoring an employee without disability over a qualified employee with disability with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;

(f) re-assigning or transferring a qualified employee with disability from a task or position the employee is able to can perform to one which

make such films accessible to persons with disability.

24. (1) All existing organisations of or for persons with disability shall apply in the prescribed manner to the Council for registration.

Transitional provisions.

(2) All organisations of persons with disability and any integrated organisation with at least seventy per cent persons with disability shall within twelve months of formation, apply to the Council, in the prescribed manner, for registration.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

Article 54(1) of the Constitution provides for various rights in relation to persons with disability. These include the right to access various social amenities and the right to be treated with dignity and respect. The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that persons with disability within their jurisdiction are protected and that the requirements of Article 54(1) of the Constitution are met.

It is in this context that this Bill proposes to impose obligations on each level of government to address the socioeconomic needs of persons with disability. The Bill proposes to bestow upon the county executive committee member for the time being in charge of matters relating to persons with disability the responsibility to advise on and put in place measures to ensure the socio-economic development of persons with disability in the county.

The Bill also seeks to align the Persons with disability Act, 2003 with the Constitution.

The Bill further proposes to review the membership of the National Council for Persons with disability to include a nominee of the Council of County Governors in order to make the workings of the Council more efficient and representative.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill outlines the obligations of the county government in regard to securing the rights of persons with disability in the county.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 12th November, 2020.

ISAAC MWAURA,
Senator.
AARON CHERUIYOT,
Senator.

Section 2 of Act No.14 of 2003 of which it is proposed to amend

Interpretation

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

“adjustment order” means an order made by the Council under section 24;

“aged person” includes a person with a disability who has been forced into retirement from employment due to his disability;

“assistive devices and services” means implements, tools and specialised services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disability to assist them in education, employment or other activities;

“Council” means the National Council for Persons with disability established under section 3;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation;

“discriminate” means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalise or embarrass a person with a disability;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253);

“Fund” means the National Development Fund for Persons with disability established under section 32;

“organizations for persons with disability” means associations or societies formed for the purposes of rendering services to persons with disability;

“organizations of persons with disability” means associations or societies formed by persons with disability for their welfare and protection;

“usual day-to-day activities” means the activities of daily living which an ordinary person would reasonably be expected to carry out.

Section 4 of Act No. 14 of 2003 of which it is proposed to amend

Membership

4. (1) The Council shall consist of the following members appointed by the Minister—

- (a) not more than eight persons nominated in a manner approved by the Minister, by organisations representing persons with various categories of disabilities;
- (b) three members appointed from a panel of names submitted to the Minister by organizations for persons with disability;
- (c) eight members representing the Ministries responsible for the following—
 - (i) culture and social services;
 - (ii) local government;
 - (iii) health;
 - (iv) education;
 - (v) economic planning;
 - (vi) housing;
 - (vii) transport; and
 - (viii) labour;
- (d) one member representing the Attorney-General;
- (e) one member appointed from a list of not less than three persons submitted by an organization which the Minister responsible for labour deems to be representative of employers in Kenya;
- (f) one member appointed in consultation with the organization for the time being recognized by the Government as the umbrella organization representing the interests of workers in the country; and
- (g) such other members as may be co-opted by the Council with the approval of the Minister:

Provided that—

- (i) the membership of the Council shall not exceed twenty-seven persons, out of whom at least twenty members shall be persons with disability;
- (ii) the members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
- (iii) one of the members of the Council shall be from a rural-based organization.

(2) The Minister shall appoint one of the members appointed under subsection (1)(a) as the chairman.

(3) The Minister shall appoint one of the members, other than a member appointed under subsection (1)(c) or (d), as the vice-chairman.

(4) The member appointed under subsection (1)(c) to represent the Ministry of Education shall be a child psychologist.

Section 6 of Act No.14 of 2003 of which it is proposed to amend

Director

6. (1) There shall be a Director of the Council who shall be employed by the Council on such terms as the Council may determine.

(2) The functions of the Director shall be—

- (a) to consult with Ministries and local authorities to secure the implementation of measures recommended under this Act by the Council for the benefit of persons with disability;
- (b) to work together with institutions, associations and organizations concerned with the educational, social and cultural circumstances of persons with disability; and
- (c) to do such other things as he may be directed by the Council under this Act.

(3) The Council shall employ such other staff in its secretariat as may be necessary for the discharge of its functions under this Act, on such terms and conditions as the Council may determine.

Section 7 of Act No.14 of 2003 of which it is proposed to amend

Functions of the Council

7. (1) The functions of the Council shall be—

- (a) to issue adjustment orders under section 24 of this Act;
- (b) to formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disability by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
 - (ii) co-operate with the Government during the national census to ensure that accurate figures of persons with disability are obtained in the country, for purposes of planning;
 - (iii) advise the Minister on the provisions of any international treaty or agreement relating to the welfare or rehabilitation of persons with disability and its benefits to the country;

- (iv) recommend measures to prevent discrimination against persons with disability;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disability;
 - (vi) encourage and secure the rehabilitation of persons with disability within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disability; and
 - (viii) co-ordinate services provided in Kenya for the welfare and rehabilitation of persons with disability and to implement programmes for vocational guidance and counselling;
- (c) to register—
- (i) persons with disability;
 - (ii) institutions, associations and organizations, including those controlled and managed by the Government and local authorities, that provide services for the rehabilitation and welfare of persons with disability;
 - (i) places at which services for the rehabilitation of persons with disability are provided; and
 - (iv) persons with disability whose condition requires constant medical attention for the purposes of availing subsidized medical services;
- (d) to provide, to the maximum extent possible—
- (i) assistive devices, appliances and other equipment to persons with disability; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disability, including those controlled and managed by the Government;
- (e) to consult with the Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disability;

- (f) to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;
- (g) to assess and report to the Minister on the welfare and rehabilitation of persons with disability and to advise on the relative priorities to be given to the implementation of those measures;
- (h) to consult with the Government in the provision of suitable and affordable housing for persons with disability;
- (i) generally to carry out measures for public information on the rights of persons with disability and the provisions of this Act;
- (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disability as the Council may deem necessary; and
- (k) to perform such other functions as may be assigned to the Council under this or any other Act.

(2) Without prejudice to the provisions of subsection (1), the Council shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—

- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disability;
- (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the Minister;
- (c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Council as the Council may with the approval of the Minister determine; and
- (d) with the approval of the Minister, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disability.

Section 8 of Act No.14 of 2003 of which it is proposed to amend

Funds of the Council

8. The funds of the Council shall consist of the following—

- (a) funds voted by Parliament; and

- (b) funds the Council may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions.

Section 9 of Act No.14 of 2003 of which it is proposed to amend

Annual accounts

9. (1) The financial year of the Council shall be from the 1st July of one year to the 30th June of the following year.

(2) The Council shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Council and ensure that, within three months of the end of each financial year of the Council, a statement of accounts of the Council is prepared and audited by an external auditor appointed by the Council and approved by the Minister.

Section 10 of Act No.14 of 2003 of which it is proposed to amend

Annual report

10. The Council shall prepare an annual report of its activities which shall be presented to the Minister and all other Government agencies involved in the work of the Council.

Part III of Act No.14 of 2003 of which it is proposed to amend

PART III – RIGHTS AND THE PRIVILEGES OF PERSONS WITH DISABILITY

Realisation of rights of persons with disability

11. The Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disability set out in this Part.

Employment

12. (1) No person shall deny a person with a disability access to opportunities for suitable employment.

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) An employee with a disability shall be entitled to exemption from tax on all income accruing from his employment.

Reservation of employment

13. The Council shall endeavour to secure the reservation of five per cent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disability.

Apprenticeship

14. Subject to the provisions of the Employment Act, persons with disability shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Discrimination by employers prohibited

15. (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court through the appropriate trade union.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void insofar as it purports to

deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act.

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disability.

(6) The minimum retirement age for persons with a disability shall be sixty years.

Incentives to employers

16. (1) A private employer who engages a person with a disability with the required skills or qualifications either as a regular employee, apprentice or learner shall be entitled to apply for a deduction from his taxable income equivalent to twenty five per cent of the total amount paid as salary and wages to such employee:

Provided that—

- (i) such an employer shall present proof certified by the Ministry responsible for labour that the persons with disability in respect of whom he claims the deduction are under his employ; and
- (ii) the persons with disability so employed are accredited with the Council as to their disabilities, skills and qualifications.

(2) A private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities shall be entitled to apply for additional deductions from his net taxable income equivalent to fifty per cent of the direct costs of the improvements, modifications or special services.

Records for job placement

17. The Council shall establish and maintain a record of persons with disability who are in possession of various levels of skills and training and shall update such records regularly for the purposes of job placement.

Education

18. (1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disability with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class

schedules, physical education requirements and other similar considerations.

(3) Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and self-reliance.

Special and non-formal education

19. The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Health

20. The Council shall be represented in the implementation of the national health programme under the Ministry responsible for health for the purpose of—

- (a) prevention of disability;
- (b) early identification of disability;
- (c) early rehabilitation of persons with disability;
- (d) enabling persons with disability to receive free rehabilitation and medical services in public and privately owned health institutions;
- (e) availing essential health services to persons with disability at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disability; and
- (g) prompt attendance by medical personnel to persons with disability.

Accessibility and mobility

21. Persons with disability are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Public buildings

22. (1) A proprietor of a public building shall adapt it to suit persons with disability in such manner as may be specified by the Council.

(2) All proprietors of public buildings shall comply with subsection (1) within five years after this section comes into operation.

Public service vehicles

23. (1) An operator of a public service vehicle shall adapt it to suit persons with disability in such manner as may be specified by the Council.

(2) All operators of public service vehicles shall comply with subsection (1) within two years after this section comes into operation.

Adjustment orders

24. (1) This section shall apply to—

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and
- (b) any services or amenities ordinarily provided to members of the public.

(2) Without prejudice to the provisions of section 22, if the Council considers that any premises, services or amenities are inaccessible to persons with disability by reason of any structural, physical, administrative or other impediment to such access, the Council may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities concerned an adjustment order—

(a) setting out—

- (i) a full description of the premises, services or amenities concerned; and
- (ii) the grounds upon which the Council considers that the premises, services or amenities are inaccessible to persons with disability;

(b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disability to the premises, services or amenities concerned; and

(c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

(3) Before serving an order under subsection (2) the Council shall serve notice upon the person concerned—

- (a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Council considers necessary to rectify the situation which has given rise to the proposed order;

- (b) stipulating the maximum period that the Council considers reasonable for the implementation of the action it proposes to order; and
- (c) calling upon the person concerned, if he wishes to do so, to make representations to the Council within thirty days from the date of the service of the notice.

(4) After considering any representations described in subsection (3)(c) the Council may issue, or refrain from or defer the issuing of, an adjustment order.

(5) Within thirty days after an adjustment order is confirmed or issued under subsection (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—

- (a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;
- (b) the period stipulated for implementing the adjustment order is unreasonable;
- (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or
- (d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order.

(6) Upon hearing an appeal under subsection (5), the Court may—

- (a) confirm, vary or set aside the adjustment order appealed against; and
- (b) make such order as to the costs of the appeal as it thinks fit.

Denial of admission into premises, etc.

25. (1) No person shall, on the ground of disability alone, deny a person with a disability—

- (a) admission into any premises to which members of the public are ordinarily admitted; or
- (b) the provision of any services or amenities to which members of the public are entitled,
unless such denial is motivated by a genuine concern for the safety of such person.

(2) The proprietor of premises referred to in subsection (1)(a) shall not have the right, on the ground of a person's disability alone, to reserve the right of admission to his premises against such a person.

(3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction.

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

Offences-Adjustment orders and discrimination

26. (1) A person is guilty of an offence if he—

- (a) fails to comply with an adjustment order served under section 24;
- (b) contravenes section 12(1) or discriminates against a person contrary to section 12;
- (c) discriminates against a person contrary to section 15(1);
- (d) contravenes section 25(1) or discriminates against a person contrary to section 25; or
- (e) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the Court be ordered to pay the person injured by the offence such sums of money in compensation as the Court may deem appropriate.

Adjustment orders against Government institutions

27. (1) The Council shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the Government or registered under the Public Health Act (Cap. 242) except with the consent of the Minister responsible for health; or
- (b) any school or educational or training institution controlled or managed by the Government or registered under the Education Act (Cap. 211) except with the consent of the Minister responsible for the administration of the institution or Act concerned.

(2) Within sixty days after being requested to consent under subsection (1) the Minister shall either give or refuse his consent and if he fails to do so within that period the Council may proceed to serve the adjustment order as though the Minister had consented.

Sports and recreation

28. (1) All persons with disability shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the Government during social, sporting or recreational activities.

(2) Persons with disability shall be entitled to participate in all national and international sports events.

(3) For the purpose of subsection (2) the Ministry responsible for sports shall, in consultation with the Council, provide the necessary suitable environment including—

- (a) architectural infrastructure;
- (b) apparatus and equipment;
- (c) training and medical personnel; and
- (d) transportation facilities for the participants.

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

Part IV of Act No.14 of 2003 of which it is proposed to amend

PART IV – CIVIC RIGHTS

Voting

29. (1) All persons with disability shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections.

(2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter.

(3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.

(4) A person who contravenes subsection (2) is guilty of an offence.

Polling stations

30. Polling stations shall be made accessible to persons with disability during elections, and such persons shall in addition be provided with the necessary devices and assistive devices and services to facilitate the exercise of this right under this section.

Registration of organizations

31. (1) The Council shall register all organizations of or for persons with disability.

(2) All existing organizations of or for persons with disability shall, within twelve months after this section comes into operation, apply in the prescribed manner to the Council for registration.

(3) Notwithstanding the provisions of any other law, organizations of or for persons with disability that are registered under this Act shall be exempt from registration under the Non-Governmental Organizations Coordination Act (No. 19 of 1990) and the Societies Act (Cap. 108).

Part VI of Act No.14 of 2003 of which it is proposed to amend

PART VI – RELIEF AND INCENTIVES**Exemptions**

35. (1) All persons with disability who are in receipt of an income may apply to the Minister responsible for finance for exemption from income tax and any other levies on such income.

(2) The Minister responsible for finance may, by notice in the Gazette, prescribe the procedure for application for and grant of exemption under this section.

(3) Materials, articles and equipment, including motor vehicles, that are modified or designed for the use of persons with disability shall be exempt from import duty, value added tax, demurrage charges, port charges and any other government levy which would in any way increase their cost to the disadvantage of persons with disability.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disability shall be exempt from import duties, value added tax, demurrage charges, port charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

Incentives

36. (1) Any donations, bequest, subsidy or financial aid which may be made to government agencies involved in the rehabilitation of persons with disability or to organisations involved in such rehabilitation and registered with the Council for the purposes of this section shall, subject to the provisions of the Income Tax Act, be allowed as deductions from the donor's gross income for the purpose of computing taxable income.

(2) The Minister responsible for finance or other appropriate authority shall endeavor to provide, subject to the provisions of any other

relevant law, incentives to local manufacturers of technical aids and appliances used by persons with disability including, but not limited to, the following—

- (a) additional deductions for labour expenses;
- (b) tax and duty exemptions on imported capital equipment;
- (c) tax credits on domestic capital equipment;
- (d) simplified customs procedures;
- (e) unrestricted use of consigned equipment;
- (f) employment of foreign nationals;
- (g) exemptions from taxes and duties on raw materials; and
- (h) access to bonded manufacturing systems.

Credit

37. It shall be the duty of the Minister responsible for matters relating to credit unions, co-operatives and other lending institutions to encourage the extension by such institutions of credit to persons with disability.

Part VII of Act No.14 of 2003 of which it is proposed to amend

PART VII – MISCELLANEOUS

Legal system

38. (1) The Attorney-General, on consultation with the Council and the Law Society of Kenya, shall make regulations providing for free legal services for persons with disability with respect to the following—

- (a) matters affecting the violation of the rights of persons with disability or the deprivation of their property;
- (b) cases involving capital punishment of persons with disability; and
- (c) such matters and cases as maybe prescribed in the regulations made by the Attorney-General.

(2) The Chief Justice shall make rules providing for—

- (a) the exemption, for persons with disability, from the payment of fees in relation to matters or cases described in subsection (1); and
- (b) the provision, to persons with disability who attend court, of free sign language interpretation, Braille services and physical guide assistance.

(3) Accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister.

(4) The Chief Justice shall endeavour to ensure that all suits involving persons with disability are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

Television programmes

39. All television stations shall provide a sign language inset or subtitles in all newscasts and educational programmes, and in all programmes covering events of national significance.

Telephone services

40. All persons providing public telephone services shall as far as possibly install and maintain telephone devices or units for persons with hearing disabilities and tactile marks on telephone sets to enable persons with visual disabilities to communicate through the telephone system.

Postal charge exemption

41. The following shall be exempt from postal charges—

- (a) printed and recorded literature, articles, equipment and other devices for the use of persons with disability which are sent by mail within and outside Kenya; and
- (b) aids and orthopaedic devices for persons with disability sent outside Kenya by mail for repair:

Provided that the aforesaid items are for personal or institutional purposes and are recommended for this exemption by the Council, and that the person with a disability or the organization is registered with the Council.

Exemptions and deductions-general requirements

42. (1) The following apply with respect to exemptions and deductions described in subsection (2)—

- (a) no person is eligible for an exemption or deduction unless the exemption or deduction has been recommended by the Council and approved by the appropriate government authority;
- (b) no person is eligible for an exemption or deduction unless any additional requirements or conditions prescribed in the regulations made by the Minister are satisfied;
- (c) an exemption or deduction may be refused on the basis that it has not been provided for in the allocation of public resources.

(2) The exemptions and deductions referred to in subsection (1) are the exemptions and deductions under the following—

- (a) section 12;
- (b) section 16;
- (c) section 35;
- (d) section 36(1); and
- (e) section 40.

Inspectorate units and Council inspectors

43. (1) All Government ministries shall, under the provisions of this Act, establish and maintain an inspectorate unit for the purpose of ensuring the implementation and compliance with the provisions of this Act.

(2) The Council shall appoint an inspector who shall be empowered to investigate and recommend prosecution or other remedy against infringement of this Act.

(3) The inspector appointed under subsection (2) shall report, to the Council or the relevant committee of the Council, any person or persons whose conduct is in violation of this Act or the regulations made thereunder.

Regulations

44. The Minister may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations—

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities; and
- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act.

Part VIII of Act No.14 of 2003 of which it is proposed to amend

PART VIII – OFFENCES AND PENALTIES

Concealment of persons with disability

45. (1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the opportunities and services available under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding twenty thousand shillings.

Negligence by doctor

46. (1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) The Court may order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate.

Giving false information to get registered

47. A person is guilty of an offence if he knowingly gives false information to the Council for the purpose of being registered or for the purpose of acquiring any privilege due to persons so registered.

General penalty

48. Any person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

Request for legal action by Attorney-General

49. (1) The Council may request the Attorney-General to take appropriate legal action if the Council believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act; and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disability and raises issues of public interest.

(2) Any person or group of persons aggrieved by an order made in a legal action commenced pursuant to a request under subsection (1) may within sixty days after the making of such order apply in the prescribed form to the High Court for the review of such order.

The Schedule of Act No.14 of 2003 of which it is proposed to amend

SCHEDULE [Section 5 (2)]

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE COUNCIL**

1. A member of the Council may—

(a) resign his office by notice in writing to the Minister; or

(b) be removed by the Minister by notice in writing if he—

(i) is subject to a vote calling for his removal by a two-thirds majority of all members of the Council;

(ii) has been absent from five consecutive meetings of the Council without permission of the chairman;

(iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;

(iv) is an undischarged bankrupt;

(v) is convicted by a Court of an offence punishable by a term of imprisonment; or

(vi) is otherwise unable or unfit to discharge his functions.

2. Where the office of a member becomes vacant the vacancy may with the approval of the Minister be filled through the majority vote of the members for the remainder of the term.

3. The Council shall pay to its members such remuneration as the Minister may approve.

4. The Council shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

5. A meeting of the Council shall be held on such date and at such time as the Council shall decide, or in the absence of such a decision if the chairman decides that a meeting is necessary, on a date and at a time determined by the chairman.

6. Unless otherwise decided by a two-thirds majority of the members of the Council, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

7. The quorum of a meeting of the Council shall be fifteen members.

8. (1) The chairman, or in his absence, the vice-chairman, shall preside at every meeting of the Council.

(2) In the absence of both the chairman and vice-chairman, the members present may choose one of their number to preside at the meeting.

9. A decision of the majority of members of the Council present at any meeting of the Council shall be deemed to be the decision of the Council and if upon any question the voting shall be equal, the chairman, vice-chairman or other person presiding shall have a second and casting vote.

10. No act, decision or proceedings of the Council shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Council being defective.

Section 35 (2) of Act No. Cap. 222 of which it is proposed to amend

Without prejudice to the generality of subsection (1) of this section, regulations under this section may provide for—

- (a) prescribing fees for anything to be done under this Act, generally or in respect of specified areas, and, for the purpose of prescribing fees, licences may be divided into different classes and a different fee prescribed for each such class;
- (b) prescribing charges for, or for matters incidental to, the attendance of police officers and other persons at the making of films under section 7;
- (c) prescribing the procedure for appeals to the Minister under this Act;
- (d) deleted by Act No. 5 of 2007, s. 14;
- (e) prescribing the conditions to be observed in regard to the erection, alteration and equipment of any theatre or cinema in the Nairobi Area;
- (f) prescribing the conditions to be observed in regard to securing the safety of theatres and cinemas from fire or other danger, or the safety and control of persons attending at theatres and cinemas in the Nairobi Area;

Tuesday, 16th March 2021

REPUBLIC OF KENYA



**TWELFTH PARLIAMENT | FIFTH SESSION
THE SENATE**

**INVITATION FOR PUBLIC PARTICIPATION AND
SUBMISSION OF MEMORANDA**

At the sitting of the Senate held on Thursday, 4th March, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Standing Orders of the Senate, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address: csenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Wednesday, 31st March, 2021 at 5.00pm.**

	Bill	Committee Referred To	Email Address
a)	The Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020)	Standing Committee on Health	senatekehealth@gmail.com
b)	The Persons with Disabilities (Amendment) Bill (Senate Bill No. 29 of 2020)	Standing Committee on Labour and Social Welfare	senatecommittee.labour@parliament.go.ke
c)	The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 30 of 2020)	Standing Committee on Land, Environment and Natural Resources	senlandenviron@gmail.com
d)	The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020)	Standing Committee on Finance and Budget	scfinanceandbudget@gmail.com
e)	The County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020)	Standing Committee on Tourism, Trade and Industrialization	senatetourismandtrade@gmail.com
f)	The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 33 of 2020)	Standing Committee on Justice, Legal Affairs and Human Rights	senateilahrc@gmail.com
g)	The Community Health Services Bill (Senate Bills No. 34 of 2020)	Standing Committee on Health	senatekehealth@gmail.com
h)	The Political Parties Primaries Bill (Senate Bills No. 35 of 2020)	Standing Committee on Justice, Legal Affairs and Human Rights	senateilahrc@gmail.com

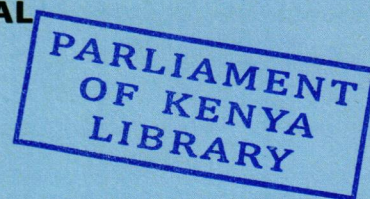
The Bills may be found on the Parliament website at <http://www.parliament.go.ke/the-senate/senate-bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**



OFFICE OF THE AUDITOR-GENERAL

Enhancing Accountability



REPORT

OF

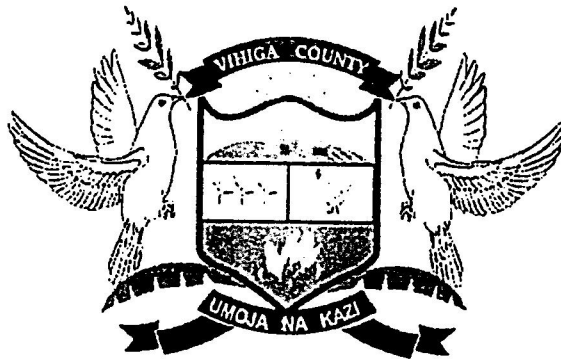
PAPERS LAID	
DATE	11.05.2022
TABLED BY	MAJORITY LEADER
COMMITTEE	CPAIC
CLERK AT THE TABLE	J. MBAYA

THE AUDITOR-GENERAL

ON

VIHIGA COUNTY EDUCATION FUND

FOR THE YEAR ENDED
30 JUNE, 2017



COUNTY GOVERNMENT OF VIHIGA

**DEPARTMENT OF EDUCATION, SCIENCE, TECHNICAL AND
VOCATIONAL TRAINING**

VIHIGA COUNTY EDUCATION FUND

ANNUAL REPORT AND FINANCIAL STATEMENTS

**FOR THE YEAR ENDED
JUNE 30, 2017**

**Prepared in accordance with the Cash Basis of Accounting Method under the International Public
Sector Accounting Standards (IPSAS)**



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1. KEY ENTITY INFORMATION AND MANAGEMENT

a) Background information

The Vihiga County Education Fund was formed after extensive consultations between the County Executive and the members of the Vihiga County Assembly vide the Public Finance Management Act 2012, (Vihiga County Education Fund Act 2014).

The fund's objective is to Providing supplementary education grants or bursaries to eligible Students, Granting Scholarship in accordance with criteria established under the Act, Meeting any expenditure related to administration of the fund.

b) Principal Activities

The principal activity/mission/ mandate of the Fund is to provide for funds for financial assistance to bright and needy students from the county pursuing education in various levels of education.

c) Fund Administration Committee

Name	Position
1. Mary Anyiendah	CO- ECDE
2. Albert Ingati	Chairperson
3. Jahonga Benard	Student Network Representative
4. Roselidah Marende	Vihiga County PWD
5. Samuel Kiplagat	Minority representative
6. Andrew Loreng'e	Fund Administrator
7. Lynett Odida	Director Social Services
8. Jacintar Mung'aya	National Youth Council
9. Joseph A. Ollando	CO Finance and Economic planning Rep
10. Harrison Matevwa	Director, PSACCA
11. Abisai Amatalo	CO- TVET

d) Key Management

Ref	Name	Position
1.	Andrew Loreng'e	Fund Administrator
2.	Felix Mugalitsi	Fund Accountant
3.	Susan Anyiendah	Chief Officer

e) Registered Offices

Vihiga County Government,
Department of Education, Science, Technical and Vocational Training,
P.O Box 344-50300,
Maragoli, Kenya.
Offices located at the county headquarters, Mbale.

f) Fund Bankers

KCB Bank Kenya Limited,
KCB Mbale-4119
Maragoli.

g) Independent Auditors

Office of the Auditor General
Anniversary Towers, University Way
P.O.Box 30084
GPO 00100
Nairobi, Kenya

h) Principal Legal Adviser

The County Attorney
P.O Box 344-50300,
Maragoli, Kenya

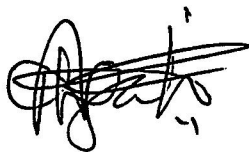
2. BOARD/FUND CHAIRPERSON'S REPORT

Section 167 of the PFM Act, 2012 require administrator of a County Public Fund established by the constitution, an Act of Parliament or County Legislation to prepare Financial Statement for the fund for each Financial Year in a form prescribed by PSASB.

The Financial Statement should be submitted to Auditor general by 30th September with a copy of the report to CEC-Member responsible for that fund.

However, in reference to the above sections of the PFM Act, the responsible fund management at the time under review failed to comply with the requirement. Following discussion with the Office of the Auditor it was agreed that the current fund management prepare the Financial Statement for the 2016-2017 Financial Year. The current management is committed in complying with statutory requirements and Acts governing the fund.

Since there was no handing over of the previous year's Fund records, the Financial Statements have been prepared from the extract of the Bank Statement for year under review. Therefore, it was not possible to obtain supporting documents for the stated figures in the report.



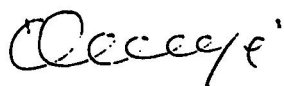
ALBERT E. INGATI

3. REPORT OF THE FUND ADMINISTRATOR

I am presenting the unaudited report for Vihiga County Education Fund Report for FY 2016/17 based on bank statement; the statement has been extremely useful in preparing this report since the current management did not have any other source of information. All activities relating to bursaries transactions were carried out in the Vihiga County education Fund main account. The previous management of the Fund including Fund Administrator, Director Education and Former Chief Officer-Education are out of the office after expiry of their contracts in 2018.

The Act Governing the Fund, *Vihiga County Education Fund act, 2014* was gazetted on 11th July, 2014.

During the period under review, the fund was allocated Kshs. 81,286,580. This comprised of kshs. 2,853,951 utilized for administration cost expenses, kshs. 75,000,000 disbursed to ward bursary accounts whereas Kshs. 3,437,720 was retained at the county level and disbursed to various beneficiaries as per the bank statement analysis.



Andrew Loreng'e

Fund Administrator

4. REPORT OF THE TRUSTEES

The Trustees submit their report together with the un-audited financial statements for the year ended June 30, 2017 which show the state of the Fund affairs.

Principal activities

The principal activities of the Fund are to offer financial assistance to the bright and needy student in the county pursuing their education, provision of necessary legal framework for administration of the fund and other related activities.

Trustees

The members of the Board of Trustees who served during the year under review not provided since their details could not be found and ascertained.

5. STATEMENT OF MANAGEMENT'S RESPONSIBILITIES

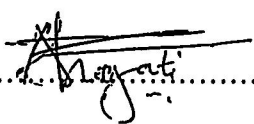
The board presents their report together with unaudited financial report and statement for the year ended 30th June 2017.

The Act requires the board to prepare financial statements for each financial year which show a true and fair view of the financial transactions of the fund for the year and of disposition at year end of its assets and liabilities. It also requires that the fund keeps proper accounting records which disclose with reasonable accuracy at any time the financial position of the fund.

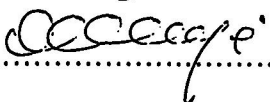
The board is responsible for the preparation of the financial statements that give a true and fair view in accordance with IPSAS and PFM Act 2012 for such internal control as the board determines is necessary to enable preparation of financial statements that are free from financial misstatement whether due to error or fraud.

The board certifies that to the best of their knowledge and belief, the information furnished for the purpose of internal control is correct and complete in every aspect.

Signature:

Chairperson:

Date: ..06..05.2020

Secretary:

Date: ..06..05.2020

REPUBLIC OF KENYA

Telephone: +254-(20) 3214000
E-mail: info@oagkenya.go.ke
Website: www.oagkenya.go.ke



HEADQUARTERS
Anniversary Towers
Monrovia Street
P.O. Box 30084-00100
NAIROBI

REPORT OF THE AUDITOR-GENERAL ON VIHIGA COUNTY EDUCATION FUND FOR THE YEAR ENDED 30 JUNE, 2017

REPORT ON THE FINANCIAL STATEMENTS

Disclaimer of Opinion

I have audited the accompanying financial statements of Vihiga County Education Fund set out on pages 8 to 18, which comprise the statement of financial position as at 30 June, 2017, and the statement of performance, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015.

I do not express an opinion on the accompanying financial statements. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

In addition, as required by Article 229(6) of the Constitution, based on the procedures performed, I confirm that, public money has not been applied lawfully and in an effective way.

Basis for Disclaimer of Opinion

1.0 Late Submission of the Financial Statements

Section 167(3) of the Public Finance Management Act, 2012 requires the County Fund Administrator to prepare and submit for audit the financial statements of the Fund within three (3) months after the end of each financial year.

However, the financial statements were submitted for audit on 24 January, 2020 two years and three months later contrary to the stipulated required date, on or before 30 September, 2017.

The Management therefore breached the law.

2.0 Doubtful Comparative Balances

As previously reported, the expenses, assets and surplus comparative balances in the financial statements for year 2015/2016 could not be confirmed as fairly stated since the Management did not provide the relevant supporting documents such as: payment vouchers, cash book, ledgers, bursary applications, list of beneficiaries and screening documents for audit review.

Consequently, the accuracy and completeness of the opening balances reflected in these financial statements for the year ended 30 June, 2017 could not be confirmed.

3.0 Unsupported Fund Administration Expenses

The statement of financial performance reflects fund administration expenses of Kshs.2,853,951. However, the relevant payment vouchers, cash book, ledgers, bursary applications and screening documents were not provided for audit review.

Consequently, the propriety, completeness, accuracy and validity of the fund administration expenses balance of Kshs.2,853,951 for the year ended 30 June, 2017 could not be confirmed.

4.0 Unsupported Ward Bursary Disbursement

Included in the statement of financial performance is Ward bursary disbursement balance of Kshs.75,000,000. However, the expenditure was not supported by relevant supporting documents such as: bursary application documents, payment vouchers, cash books and acknowledgements from various Institutions.

Consequently, the propriety, completeness, accuracy and validity of the Ward bursary disbursements figure of Kshs.75,000,000 for the year ended 30 June, 2017 could not be confirmed.

5.0 Unsupported County Bursary Disbursements

Included in the statement of financial performance is county bursary disbursements of Kshs.3,437,720. However, the balance was not supported by relevant supporting documents such as: bursary application documents, payment vouchers, cash books, ledgers and screening documents.

Consequently, the propriety, completeness, accuracy and validity of the county bursary disbursements figure of Kshs.3,437,720 for the year ended 30 June, 2017 could not be confirmed.

6.0 Failure to Incorporate Financial Information in the Statement of Comparison of Budget and Actual Amounts

The statement of comparison of budget and actual amounts was not populated with the budget and actual amounts for the year as required by the reporting standards.

The Management therefore breached the Standard.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Vihiga County Education Fund Management in accordance with ISSAI 130 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements and internal control in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my Disclaimer of opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. Except for the matter described in the Basis for Disclaimer Opinion section, I have determined that there are no Key Audit Matters to communicate in my report.

Responsibility of Management and those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for such internal control as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, Management is responsible for assessing the Fund's ability to sustain services, disclosing, as applicable, matters related to sustainability of services and using the going concern basis of accounting unless Management is aware of the intention to terminate the Fund or to cease operations. Those charged with governance are responsible for overseeing the Fund financial reporting process.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could

reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances and for the purpose of giving an assurance on the effectiveness of the Fund's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the Management's use of the appropriate basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue offering services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Fund to cease to continue offering services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships

and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.


CPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

10 January, 2022

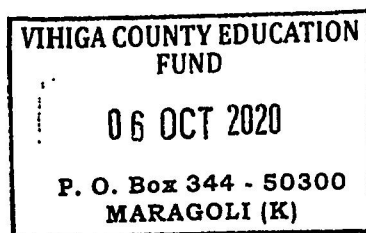
6. FINANCIAL STATEMENTS

6.1. STATEMENT OF FINANCIAL PERFORMANCE

	Notes	2016/2017	2015/2016
		KShs	KShs
Revenue From Non-Exchange Transactions			
Transfers from the County Government	1	81,286,580	130,168,100
Total Revenue		81,286,580	130,168,100
Expenses			
Fund administration expenses	2	2,853,951	3,399,265
Ward Bursary Disbursement	3	75,000,000	122,500,000
County Bursary Disbursement	4	3,437,720	4,253,000
Total Expenses		81,291,671	130,152,265
Surplus/(deficit) for the period		(5,091)	15,835

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved on 06 OCT 2020 and signed by:


 Administrator of the Fund
 Name: Andrew Loreng'e




 Fund Accountant
 Name: Felix Mugalitsi

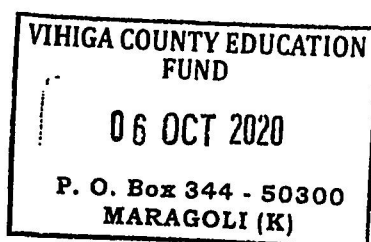
6.2. STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 2017

	Note	2016/2017	2015/2016
		KShs	KShs
Assets			
Current Assets			
Cash and Cash Equivalents	5	(5,091)	15,835
Total Assets		(5,091)	15,835
Financed By:			
Surplus for the period		(5,091)	15,835
		(5,091)	15,835

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved on 06 OCT 2020 and signed by:



Administrator of the Fund
Name: Andrew Loreng'e



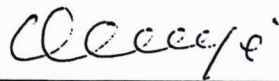


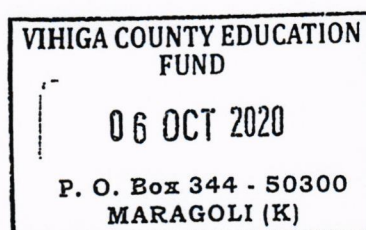
Fund Accountant
Name: Felix Mugalitsi

6.3. STATEMENT OF CASHFLOWS

	Note	2016/2017	2015/2016
		KShs	KShs
Cashflows From Operating Activities			
Receipts			
Transfers from the County Government	1	81,286,580	130,168,100
Total Receipts		81,286,580	130,168,100
Payments			
Fund administration expenses	2	2,853,951	3,399,265
Ward Bursary Disbursement	3	75,000,000	122,500,000
County Bursary Disbursement	4	3,437,720	4,253,000
Total Payments		(81,291,671)	(130,152,265)
Net Cashflows From Operating Activities		(5,091)	15,835
Cash Flows From Investing Activities		-	-
Cashflows From Financing Activities		-	-
Net Increase/(Decrease) In Cash And Cash Equivalents		(5,091)	15,835
Cash and cash equivalents at 1 JULY 2016			-
Cash and cash equivalents at 30 JUNE		(5,091)	15,835

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The entity financial statements were approved on 06 OCT 2020 and signed by:


 Administrator of the Fund
 Name: Andrew Loreng'e




 Fund Accountant
 Name: Felix Mugalitsi

6.4. STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS FOR THE PERIOD ENDED 30th JUNE 2017

	Original Budget	Amendments	Final Budget	Actual on comparable basis	Performance difference	% utilization
Revenue	KShs	KShs	KShs	KShs	KShs	
Transfers from County Govt.						
Interest income						
Other income						
Total Income	-	-	-	-	-	
Expenses						
Fund administration expenses						
General Expenses						
Finance Cost						
Total Expenditure	-	-	-	-	-	
Surplus For The Period	-	-	-	-	-	

Budget notes

- The budget figures could not be provided because there was no hand over of the Fund Assets, liabilities and (or) any other document by the previous management to aid in preparation of the budget.

6.5. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

1. Statement of compliance and basis of preparation

The Fund's financial statements have been prepared in accordance with and comply with International Public Sector Accounting Standards (IPSAS). The financial statements are presented in Kenya shillings, which is the functional and reporting currency of the Fund. The accounting policies have been consistently applied.

The financial statements have been prepared on the basis of historical cost, unless stated otherwise. The cash flow statement is prepared using the direct method. The financial statements are prepared on accrual basis.

2. Revenue recognition

i) Revenue from non-exchange transactions

Transfers from other government entities

Revenues from non-exchange transactions with other government entities are measured at fair value and recognized on obtaining control of the asset (cash, goods, services and property) if the transfer is free from conditions and it is probable that the economic benefits or service potential related to the asset will flow to the entity and can be measured reliably.

ii) Revenue from exchange transactions

Interest income

Interest income is accrued using the effective yield method. The effective yield discounts estimated future cash receipts through the expected life of the financial asset to that asset's net carrying amount. The method applies this yield to the principal outstanding to determine interest income each period.

3. Budget information

The entity's budget is prepared on a different basis to the actual income and expenditure disclosed in the financial statements. The financial statements are prepared on accrual basis using a classification based on the nature of expenses in the statement of financial performance, whereas the budget is prepared on a cash basis. A comparison of budget and actual amounts, prepared on a comparable basis to the approved budget, is then presented in the statement of comparison of budget and actual amounts.

In addition to the Basis difference, adjustments to amounts in the financial statements are also made for differences in the formats and classification schemes adopted for the presentation of the financial statements and the approved budget.

A statement to reconcile the actual amounts on a comparable basis included in the statement of comparison of budget and actual amounts and the actual as per the statement of financial performance has been presented.

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

4. Property, plant and equipment

All property, plant and equipment are stated at cost less accumulated depreciation and impairment losses. Cost includes expenditure that is directly attributable to the acquisition of the items. The Fund did not have any Property, Plant and Equipment.

5. Changes in accounting policies and estimates

The Entity recognizes the effects of changes in accounting policy retrospectively. The effects of changes in accounting policy are applied prospectively if retrospective application is impractical.

6. Borrowing costs

Borrowing costs are capitalized against qualifying assets as part of property, plant and equipment. Such borrowing costs are capitalized over the period during which the asset is being acquired or constructed and borrowings have been incurred. Capitalization ceases when construction of the asset is complete. Further borrowing costs are charged to the statement of financial performance.

7. Related parties

The Entity regards a related party as a person or an entity with the ability to exert control individually or jointly, or to exercise significant influence over the Entity, or vice versa. Members of key management are regarded as related parties and comprise the directors, the CEO and senior managers.

8. Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and cash at bank, short-term deposits on call and highly liquid investments with an original maturity of three months or less, which are readily convertible to known amounts of cash and are subject to insignificant risk of changes in value. Bank account balances include amounts held at the Central Bank of Kenya and at various commercial banks at the end of the financial year. For the purposes of these financial statements, cash and cash equivalents also include short term cash imprests and advances to authorised public officers and/or institutions which were not surrendered or accounted for at the end of the financial year.

9. Comparative figures

Where necessary comparative figures for the previous financial year have been amended or reconfigured to conform to the required changes in presentation. Since this is the first year of reporting, there were no comparative figures.

10. Events after the reporting period

There were no material adjusting and non- adjusting events after the reporting period.

11. Ultimate and Holding Entity

The entity is a County Public Fund established by Public Finance Management Act 2012, (Vihiga County Education Fund Act 2014) under the Department of Education, Science and Technical Vocational Training. Its ultimate parent is the County Government of Vihiga.

12. Currency

The financial statements are presented in Kenya Shillings (KShs).

6.6. NOTES TO THE FINANCIAL STATEMENTS

1. Transfers from County Government

Description	2016/2017	2015/2016
	KShs	KShs
1 st	25,000,000	50,000,000
2 nd	2,000,000	5,000,000
3 rd	25,020,000	25,000,000
4 th	2,000,000	25,000,000
5 th	26,000,000	25,000,000
Returned Cheques	1,266,580	168,100
Total	81,286,580	130,168,100

2. Fund administration expenses

Description	2016/2017	2015/2016
	KShs	KShs
21.09.2015	-	550,000
09.11.2015	-	1,258,200
14.01.2016	-	500,000
04.02.2016	-	200,000
08.02.2016	-	55,000
23.02.2016	-	250,000
18.03.2016	-	200,000
18.03.2016	-	54,800
08.06.2016	2,793,450	220,000
Bank Charges	60,501	111,265
Total	2,853,951	3,399,265

3. Ward Bursary Disbursement

Description	2016/2017	2015/2016
	KShs	KShs
21.09.2015	-	47,500,000
03.02.2016	-	15,000,000

Vihiga County Education Fund
Reports and Financial Statements
For the year ended June 30, 2017

16.02.2016	-	9,000,000
25.02.2016	-	1,000,000
05.04.2016	-	24,000,000
05.05.2016	-	1,000,000
22.06.2016	75,000,000	25,000,000
Total	75,000,000	122,500,000

4. County Bursary Disbursement

Description	2016/2017	2015/2016
	KShs	KShs
30.06.2016	3,437,720	4,253,000
Total	3,437,720	4,253,000

5. Cash and cash equivalents

Description	2016/2017	2015/2016
	KShs	KShs
Bank Balance Main Account	(5,091)	15,835
Total Cash And Cash Equivalents	(5,091)	15,835

Detailed analysis of the cash and cash equivalents are as follows:

Financial Institution	Account Number	2016/2017	2015/2016
		KShs	KShs
a) Current account			
Kenya Commercial bank	1173663711	(5,091)	15,835
Grand total		(5,091)	15,835

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

6. Related party balances

a) Nature of related party relationships

Entities and other parties related to the Fund include those parties who have ability to exercise control or exercise significant influence over its operating and financial decisions. Related parties include management personnel, their associates and close family members. The fund/scheme is related to the following entities:

- a) The County Government;
- b) The Parent County Government Ministry;
- c) Key management;
- d) Board of Trustees; etc

Vihiga County Education Fund
Reports and Financial Statements
For the year ended June 30, 2017

7. PROGRESS ON FOLLOW UP OF AUDITOR RECOMMENDATIONS

This is the subsequent set of the Funds' Financial Statement. The Fund has never been audited.

Recommended & forwarded for approval
27/11/2021

November, 2021

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI

30/11/2021
Approved
[Signature]

30/11/21
You may approve for
Rt. Hon. Speaker

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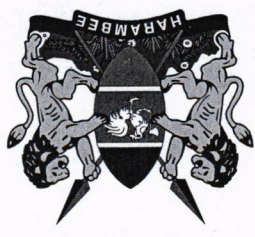
REPORT ON THE PETITION REGARDING THE STATE OF 'INUA JAMII'

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT - FIFTH SESSION

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Annex 1: Minutes of the proceedings
Annex 2: Submission by the State Department for Social Protection, Senior Citizens
Affairs and Special programmes
Annex 3: Copy of the Petition

ABBREVIATIONS AND ACRONYMS

CCTP-MIS	-	Consolidated Cash Transfer Program - Management Information System
CT-OVC	-	Cash transfer for Orphans and the Vulnerable Children
IPRS	-	Integrated Population Registry Service
KCB	-	Kenya Commercial Bank
MTEF	-	Medium Terms Expenditure Framework
NHIF	-	National Hospital Insurance Fund
NICHE	-	Nutrition improvement through cash and Health Education (NICHE)
OPCT	-	Older Persons Cash Transfer
PSPs	-	Payment Service Providers
PwSD-CT	-	Persons with Severe Disability Cash transfer (PwSD-CT)

PREFACE

The Standing Committee on Labour and Social Welfare is established under standing orders 187 and 218 (3) of the Senate Standing Orders.

The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, culture and social welfare, youth, National Youth Service, children's welfare, national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

In executing its mandate, the Committee oversees the Ministry of Labour and Social Protection; the Ministry of Public Service, Youth and Gender Affairs; and the Ministry of Sports Culture and the Arts. The membership of the Committee includes -

- | | |
|---|--------------------|
| 1) Sen. Sakaja Johnson Arthur, CBS, MP | - Chairperson |
| 2) Sen. Mwaruma Johnes, MP | - Vice Chairperson |
| 3) Sen. Madzayo Stewart Mwachiru, CBS, MP | - Member |
| 4) Sen. Mwangi Paul Githioni, MP | - Member |
| 5) Sen. Kihika Susan Wakarura, MP | - Member |
| 6) Sen. Makori Beatrice Kwamboka, MP | - Member |
| 7) Sen. (Dr.) Miligo Alice Chepkorir, MP | - Member |
| 8) Sen. Masitsa Naomi Shiyonga, MP | - Member |
| 9) Sen. (Dr.) Mwaura Isaac, CBS, MP | - Member |

In executing its mandate, the Committee oversees the Ministries of:

- a) Labour;
- b) Public Service, Gender Affairs, Senior Citizens Affairs and Social Protection;
- and,
- c) Sports, Culture and Heritage

Mr. Speaker Sir,

The petition regarding the state of *Inua Jamii* Programme was read at a sitting of the Senate on the 8th September 2021.

Mr. Speaker Sir,

The petition raised the following issues -

- (a) Possibilities of further registrations of elderly persons who have in the past years turned 70 years and are eligible for registration in the Inua Jamii Programme;

exercise aimed at consolidating all the cash transfer programmes for their

2. The *Inua Jamii* program management information system enhancement

Members of Society Bill 2018.

1. Parliament is in the process of enacting the Care and Protection of Older

Upon consideration of the submission on the status of *Inua Jamii* Programme and specifically the thematic issues raised by the petitioner, the Committee observes that:

Affairs and Special programs.

Taratisio Ileri Kawe and the State department of Social Protection, Senior Citizens

In processing the petition, the Committee held one sitting with both the petitioner, Mr.

Mr. Speaker Sir,

public resources

securing the rights and dignity of older persons as well as protect and safeguard

b) recommends for and or take any other legal action deemed appropriate for

Program; and

special audit on expenditures and management of the Inua Jamii Cash Transfer

a) constitutes a parliamentary committee to investigate and recommend for a

Program and as such humbly prayed that the Senate-

Mr. Speaker Sir,

Programme and possible solutions

(h) The implication of inadequate resources on the implementation of Inua Jamii

(g) The discriminatory nature of Inua Jamii Program; and

(f) Accountability in the Inua Jamii program;

(e) The challenges experienced by beneficiaries receiving cash through KCB Bank

from the Inua Jamii Program;

(d) The status of implementation of NHIF program for elderly persons benefiting

(c) Reasons for failure to receive the cash upon eligibility and registration;

(b) Registration procedure and timelines as beneficiaries for Inua Jamii Programs;

- effective management, including the operations of the contracted Payment Service Providers is ongoing;
3. The completion of (2) above will address the complaints of at least 93,565 registered beneficiaries not in the payroll, 29,153 beneficiaries who were not migrated due to errors in their data and any of the beneficiaries whose disbursement were stopped for one reason or the other;
 4. Registration of fresh cohort of older persons has not been undertaken since August 2017;
 5. There seems to be no immediate plans to undertake further registration of fresh cohort of older persons owing to inadequate funding;
 6. The implementation of NHIF for persons above 70 years was planned for implementation during 2020/21. However, this was hampered by inadequate resources following a Ksh. 4.9 budget requirement by the State department of Social Protection, Senior Citizens Affairs and Special programmes that failed to receive funding;
 7. The Office of the Auditor General and the Ministry's internal audit department, undertakes annual audits for Inua Jamii Program. However, the department is yet to undertake and disseminate any impact assessment on the program.
- Mr. Speaker Sir,**
- Based on the foregoing, the Committee therefore recommends that:
1. The State Department for Social Protection, Senior Citizens Affairs and Special programmes, Ministry of Health to further engage with the National Treasury to actualise the NHIF program for persons above 70;
 2. The State Department for Social Protection, Senior Citizens Affairs and Special programmes reviews its budgeting practices to incorporate data and research evidence while budgeting for the Inua Jamii Program. This will ensure that budget needs and gaps in the program are informed by data and evidence, they are budgeted for and ultimately funded; and
 3. The State Department for Social Protection, Senior Citizens Affairs and Special Programmes undertake a comprehensive impact evaluation of the Inua Jamii Program and report to the Senate within 90 days after tabling of this report.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

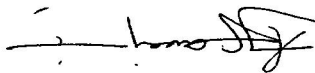
The Committee wishes to acknowledge the time and considerable effort made by all stakeholder involved in addressing the matter in question. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions.

Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all virtual meetings and subsequent activities that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff serving the Committee and that made its work and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 232 (2) to table the report of the Standing Committees of Labour and Social Welfare on the petition on the status of *Inua Jami* Programme.

SIGNATURE:



CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS, MP,
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

DATE: Saturday, 27th November, 2021

CHAPTER ONE: INTRODUCTION

1.1 The Petition and the Petition Prayers

The petition calling for an urgent special forensic audit on the governments social security fund '*Inua Jamii* Program' under the Ministry of Labour and Social was read during the Senate sitting held on the 8th September 2021. The petitioner draws the attention of the Standing Committee Labour and Social Welfare on the following substantive issues, that-

- (a) As a human rights defender and protector, several complaints have been brought to his attention from amongst the elderly, orphans and the disenfranchised as regards the *Inua Jamii* Program;
- (b) The Ministry of Labour and Social Protection runs the program that comprises of Older Persons Cash Transfer (OPCT), Cash transfer for Orphans and the Vulnerable Children (CT-OVC) and the Persons with Severe Disability Cash transfer (PwSD-CT);
- (c) The third phase of registration of older persons who have attained the age of 70 years is still pending, the second being in 2018;
- (d) There are pending payments for numerous *bona fide* beneficiaries in all the three programs;
- (e) No action has been taken following older persons' registration with National Hospital Insurance Fund (NHIF) in 2017 despite the promises that the former will be entitled to free health care through the fund;
- (f) Despite the government having released the latest disbursement of Ksh 8.76billion under the *Inua Jamii* program and a further Kshs. 26.39million towards a complementary program (the nutrition improvement through cash and Health Education (NICHE), majority of the older persons with payment accounts through KCB are yet to receive their share;
- (g) Suspicion that the funds meant for the program are being misappropriated by government officials hence the pending payments for bona fide beneficiaries across programs. Further that some recipients who seem not to be illegible are accessing the funds without explanation;

- (h) There has been allegation by the Principal Secretary, Mr. Nelson Marwa regarding existing cartels working within the Ministry and some banking partners whose goal is to siphon fund meant for the program without corresponding action on his part;
- (i) There seems to be rampant cases of identity theft in program. Further the program is seen as discriminative since not all persons eligible are benefiting from the programs; and
- (j) Despite the investigation undertaken in 2019 to rid the Ministry of persons misappropriating funds, no prosecution has happened;
- With the foregoing the petitioner calls for an urgent investigation on *Inua Jamii* cash transfer program with a view to-
- (a) Audit all records of recipients and beneficiaries of the program and ascertain any illegalities by Ministry officials and banking agents;
- (b) Identify loopholes in the implementation of the program so as to deter possible misappropriation;
- (c) Expose the cartels within Ministry of Labour and Social Protection and recommend further action;
- (d) Investigate the status of the funds budgeted and allocated towards the medical insurance covers for older persons and the status of the supposed program;
- (e) Recommend for a forensic audit of the program;
- (f) Recommend for the investigation of persons suspected to have or are illegally benefiting from the program; and
- (g) Recommend for governments disengagement with the partner banks following the allegations of misappropriation of the program funds and the mistreatment of older persons.
- The petitioner therefore prays that the Senate-
- (a) Constitutes a parliamentary committee to investigate and recommend for a special audit on expenditures and management of the Inua Jamii Cash Transfer Program; and

(b) Recommends for and or take any other legal action deemed appropriate for securing the rights and dignity of older persons as well as protect and safeguard public resources.

1.2 The Underlying Issues in the Petition

The petition on the status of the Inua Jamii Program raises the following issues:

1. Possibilities of further registrations of elderly persons who have in the past years turned 70 years and are eligible for registration in the Inua Jamii programme;
2. Registration procedure and timelines for beneficiaries of Inua Jamii Programs;
3. Reasons for failure to receive the cash upon eligibility and registration;
4. The status of implementation of NHIF program for elderly persons benefiting from the Inua Jamii Program;
5. The challenges experienced by beneficiaries receiving cash through KCB Bank;
6. Accountability in the Inua Jamii program;
7. The discriminatory nature of Inua Jamii Program; and
8. The implication of inadequate resources on the implementation of Inua Jamii Programme and possible solutions.

This section highlights the key aspects of the Inua Jami! Cash Transfer Program. The National Safety Net Program (NSNP) dubbed '*Inua Jami!*' comprises of consolidated cash transfer programs. These are Cash Transfer- Orphans and Vulnerable Children (CT-OVC), Older Persons Cash Transfer Program (OP-CT), Cash Transfer for Persons with Severe Disabilities (PwSD –CT) and the Hunger Safety Nets Programme (HSNP). The latter is implemented under the Ministry of Devolution hence not within the purview of the petition. These three earlier programs were started as pilot programs in 2004, 2007 and 2010 respectively.

2.1 About Inua Jami! Cash Transfer Program

From the onset, the programs were domiciled in two different departments, with two different Management Information Systems (MIS) namely; the CT-OVC under the Department of Children Services and OPCT and PwSD under the Department for Social Development. However, in 2016, the Ministry reengineered the programs and established the Social Assistance Unit with an aim of consolidating the operations of the cash transfers programs as Inua Jami!. This subsequently led to the consolidation of the two MIS's into a single Consolidated Cash Transfer Program Management Information System (CCTPMIS) where beneficiaries' data was migrated from the legacy systems to the new CCTPMIS. The migration focused on 1,233,129 programme beneficiaries' data and was guided by a Data Migration Strategy.

Prior to the migration, all data in the legacy system was verified through Integrated Population Registry Service (IPRS) to ensure only those beneficiaries whose details matched those in IPRS were migrated. The migration was carried out in phases. Phase one comprised those who had correct data totalling 1,091,166 beneficiaries, Phase two included 112,810 beneficiaries whose minor errors in their data were correctable through case management process. Further, Phase three comprised of 29,153 beneficiaries whose IPRS data mismatched hence the need to recapture their data to enable them get into the new management information system.

The program operates an account based model system for disbursement of the cash through following banking partners Kenya Commercial Bank (KCB), Equity, Postbank and Cooperative Bank.

2.2 Vote 1185: State Department for Social Protection & Senior Citizens Affairs and Special Programmes

The *Inua Jamii* Program is a budget line under Vote 1185: State Department for Social Protection & Senior Citizens Affairs and Special Programmes. During the 2017/18-2019/20 MTEF period, that is, 2017/18, 2018/19 and 2019/20, the department was allocated Ksh. 28.08 billion, Ksh. 31.68 billion and 43.3 billion respectively. Over the same period of time, actual expenditure was Ksh. 22.19 billion, Ksh. 31.30 billion and Ksh 40.5 billion translating to absorption rates of 79%, 99% and 94% respectively.

Programmes	Allocation	No. of	Targets/KPIs
Social development & children services	4,134.2	28	
National Social Safety	29,213.6	24	
Net General Admin & support services	220.1	4	
Total	33,568.07	56	

Source: Appropriation Act 2021 and State Department of Social Protection, Senior Citizens Affairs and Special Programmes

The State department for social protection was allocated Ksh. 33.56 billion for 2021/22 comprising of Ksh. 30.4 billion for recurrent and Ksh. 3.0 billion for development expenditure. Further, Ksh 32.8 billion was allocated over the medium-term. The allocation is an increase from the Ksh.32.4 billion allocated in 2020/21 and a BPS ceiling of Ksh. 33.2 billion; Of the Ksh 33.56 billion, Ksh. 30.4 billion for recurrent and Kshs.3.0 billion for development expenditure. Further, of the Ksh 29.2

billion allocated to the National Social Safety Net programme Ksh 27.7 billion was allocated to the cash transfer project.

In terms of monitoring and evaluation, the three cash transfer projects are expected to achieve and report on the following targets; 1,183,000 households with older persons; 540,500 households with OVC and 94,000 households with PWSD supported with cash transfers.

This chapter provides key highlights of the proceedings of the Committee during its engagement with the petitioner and the representatives of the State Department for Social Protection, Senior Citizens Affairs and Special programmes.

3.1 Meeting with the Petitioner and State Department of Social Protection Senior Citizens Affairs and Special programmes

The meeting between the Committee, the petitioner and the State Department of Social Protection Senior Citizens Affairs and Special programmes was held on 3rd November 2021 at 10.00am. The State department was represented by the Principal Secretary, State Department for Social Protection, Senior Citizens Affairs and Special programmes, Mr. Nelson Marwa. The Principal Secretary made his submission and the Committee was informed that-

A. On Government's inability to roll out the third phase of registration of all the eligible older persons who were qualified but not included in earlier phases

1. Over the last two years, the Government intended to conduct the third phase of data migration targeting the 29,153 beneficiaries who were not migrated due to errors in their data. However, this exercise was not meant to register fresh cohort of older persons who had turned the mandatory age of 70 years as had been alleged by the petitioner;

2. The delay of the Phase 3 migration was as a result of programme management information system enhancement targeting the specific module expected to recapture the data for the affected beneficiaries. As such, the exercise to reinstate the beneficiaries back in to the payroll was expected to run between 27th September, 2021 and end of November 2021.

B. Elderly persons registered with the Inua Jamii program and issued with cards fail to receive cash

3. The last government registration for the Older Persons' Cash Transfer Programme for Senior Citizens aged 70 years and above took place across all constituencies between July and August, 2017. As such, all senior citizens

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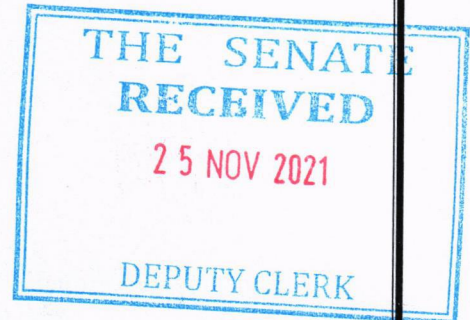
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THE SENATE

Eg 30/11/21



TWELFTH PARLIAMENT – FIFTH SESSION

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE PETITION REGARDING THE STATE OF 'INUA JAMII'
PROGRAMME

PAPERS LAID	
DATE	01/12/2021.
TABLED BY	Chairperson.
COMMITTEE	Labour.
CLERK AT THE TABLE	Doanet

Rt. Hon. Speaker
You may approve for
tabling.
30/11/21

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI

Approved
30/11/2021

November, 2021

Recommended & forwarded for approval
27/11/2021

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ANNEXTURES

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Affairs and Special programmes

Annex 3: Copy of the Petition

ABBREVIATIONS AND ACRONYMS

CCTP-MIS	-	Consolidated Cash Transfer Program - Management Information System
CT-OVC	-	Cash transfer for Orphans and the Vulnerable Children
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PwSD-CT	-	Persons with Severe Disability Cash transfer (PwSD-CT)

PREFACE

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- | | |
|---|---------------------------|
| 1) Sen. Sakaja Johnson Arthur, CBS, MP | - Chairperson |
| 2) Sen. Mwaruma Johnes, MP | - Vice Chairperson |
| 3) Sen. Madzayo Stewart Mwachiru, CBS, MP | - Member |
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In executing its mandate, the Committee oversees the Ministries of:

- a) Labour;
- b) Public Service, Gender Affairs, Senior Citizens Affairs and Social Protection; and,
- c) Sports, Culture and Heritage

Mr. Speaker Sir,

The petition regarding the state of *Inua Jamii* Programme was read at a sitting of the Senate on the 8th September 2021.

Mr. Speaker Sir,

The petition raised the following issues -

- (a) Possibilities of further registrations of elderly persons who have in the past years turned 70 years and are eligible for registration in the *Inua Jamii* programme;

- (b) Registration procedure and timelines as beneficiaries for Inua Jamii Programs;
- (c) Reasons for failure to receive the cash upon eligibility and registration;
- (d) The status of implementation of NHIF program for elderly persons benefiting from the Inua Jamii Program;
- (e) The challenges experienced by beneficiaries receiving cash through KCB Bank
- (f) Accountability in the Inua Jamii program;
- (g) The discriminatory nature of Inua Jamii Program; and
- (h) The implication of inadequate resources on the implementation of Inua Jamii Programme and possible solutions

Mr. Speaker Sir,

The petitioner therefore called for an urgent audit of the *Inua Jamii* Cash Transfer Program and as such humbly prayed that the Senate-

- a) constitutes a parliamentary committee to investigate and recommend for a special audit on expenditures and management of the Inua Jamii Cash Transfer Program; and
- b) recommends for and or take any other legal action deemed appropriate for securing the rights and dignity of older persons as well as protect and safeguard public resources

Mr. Speaker Sir,

In processing the petition, the Committee held one sitting with both the petitioner, Mr. Taratisio Ileri Kawe and the State department of Social Protection, Senior Citizens Affairs and Special programs.

Upon consideration of the submission on the status of *Inua Jamii* Programme and specifically the thematic issues raised by the petitioner, the Committee observes that:

1. Parliament is in the process of enacting the Care and Protection of Older Members of Society Bill 2018.
2. The *Inua Jamii* program management information system enhancement exercise aimed at consolidating all the cash transfer programmes for their

effective management, including the operations of the contracted Payment Service Providers is ongoing;

3. The completion of (2) above will address the complains of at least 93,565 registered beneficiaries not in the payroll, 29,153 beneficiaries who were not migrated due to errors in their data and any of the beneficiaries whose disbursement were stopped for one reason or the other;
4. Registration of fresh cohort of older persons has not been undertaken since August 2017;
5. There seems to be no immediate plans to undertake further registration of fresh cohort of older persons owing to inadequate funding;
6. The implementation of NHIF for persons above 70 years was planned for implementation during 2020/21. However, this was hampered by inadequate resources following a Ksh. 4.9 budget requirement by the State department of Social Protection, Senior Citizens Affairs and Special programmes that failed to receive funding;
7. The Office of the Auditor General and the Ministry's internal audit department, undertakes annual audits for Inua Jamii Program. However, the department is yet to undertake and disseminate any impact assessment on the program.

Mr. Speaker Sir,

Based on the foregoing, the Committee therefore recommends that:

1. The State Department for Social Protection, Senior Citizens Affairs and Special programmes, Ministry of Health to further engage with the National Treasury to actualise the NHIF program for persons above 70;
2. The State Department for Social Protection, Senior Citizens Affairs and Special programmes reviews its budgeting practices to incorporate data and research evidence while budgeting for the Inua Jamii Program. This will ensure that budget needs and gaps in the program are informed by data and evidence, they are budgeted for and ultimately funded; and
3. The State Department for Social Protection, Senior Citizens Affairs and Special Programs undertake a comprehensive impact evaluation of the Inua Jamii Program and report to the Senate within 90 days after tabling of this report.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all stakeholder involved in addressing the matter in question. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions.

Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all virtual meetings and subsequent activities that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff serving the Committee and that made its work and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 232 (2) to table the report of the Standing Committees of Labour and Social Welfare on the petition on the status of *Inua Jamii* Programme.

SIGNATURE:



.....
**CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS, MP,
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

DATE: Saturday, 27th November, 2021

CHAPTER ONE: INTRODUCTION

1.1 The Petition and the Petition Prayers

The petition calling for an urgent special forensic audit on the governments social security fund '*Inua Jamii* Program' under the Ministry of Labour and Social was read during the Senate sitting held on the 8th September 2021. The petitioner draws the attention of the Standing Committee Labour and Social Welfare on the following substantive issues, that-

- (a) As a human rights defender and protector, several complains have been brought to his attention from amongst the elderly, orphans and the disenfranchised as regards the *Inua Jamii* Program;
- (b) The Ministry of Labour and Social Protection runs the program that comprises of Older Persons Cash Transfer (OPCT), Cash transfer for Orphans and the Vulnerable Children (CT-OVC) and the Persons with Severe Disability Cash transfer (PwSD-CT);
- (c) The third phase of registration of older persons who have attained the age of 70 years is still pending, the second being in 2018;
- (d) There are pending payments for numerous *bona fide* beneficiaries in all the three programs;
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- (f) Despite the government having released the latest disbursement of Ksh 8.76billion under the *Inua Jamii* program and a further Kshs. 26.39million towards a complementary program (the nutrition improvement through cash and Health Education (NICHE), majority of the older persons with payment accounts through KCB are yet to receive their share;
- (g) Suspicion that the funds meant for the program are being misappropriated by government officials hence the pending payments for bona fide beneficiaries across programs. Further that some recipients who seem not to be illegible are accessing the funds without explanation;

- (h) There has been allegation by the Principal Secretary, Mr. Nelson Marwa regarding existing cartels working within the Ministry and some banking partners whose goal is to siphon fund meant for the program without corresponding action on his part;
- (i) There seems to be rampant cases of identity theft in program. Further the program is seen as discriminative since not all persons eligible are benefiting from the programs; and
- (j) Despite the investigation undertaken in 2019 to rid the Ministry of persons misappropriating funds, no prosecution has happened;

With the foregoing the petitioner calls for an urgent investigation on *Inua Jamii* cash transfer program with a view to-

- (a) Audit all records of recipients and beneficiaries of the program and ascertain any illegalities by Ministry officials and banking agents;
- (b) Identify loopholes in the implementation of the program so as to deter possible misappropriation;
- (c) Expose the cartels within Ministry of Labour and Social Protection and recommend further action;
- (d) Investigate the status of the funds budgeted and allocated towards the medical insurance covers for older persons and the status of the supposed program;
- (e) Recommend for a forensic audit of the program;
- (f) Recommend for the investigation of persons suspected to have or are illegally benefiting from the program; and
- (g) Recommend for governments disengagement with the partner banks following the allegations of misappropriation of the program funds and the mistreatment of older persons.

The petitioner therefore prays that the Senate-

- (a) Constitutes a parliamentary committee to investigate and recommend for a special audit on expenditures and management of the *Inua Jamii* Cash Transfer Program; and

- (b) Recommends for and or take any other legal action deemed appropriate for securing the rights and dignity of older persons as well as protect and safeguard public resources.

1.2 The Underlying Issues in the Petition

The petition on the status of the Inua Jamii Program raises the following issues:

1. Possibilities of further registrations of elderly persons who have in the past years turned 70 years and are eligible for registration in the Inua Jamii programme;
2. Registration procedure and timelines for beneficiaries of Inua Jamii Programs;
3. Reasons for failure to receive the cash upon eligibility and registration;
4. The status of implementation of NHIF program for elderly persons benefiting from the Inua Jamii Program;
5. The challenges experienced by beneficiaries receiving cash through KCB Bank;
6. Accountability in the Inua Jamii program;
7. The discriminatory nature of Inua Jamii Program; and
8. The implication of inadequate resources on the implementation of Inua Jamii Programme and possible solutions.

CHAPTER TWO: BACKGROUND

This section highlights the key aspects of the Inua Jamii Cash Transfer Program. The National Safety Net Program (NSNP) dubbed '*Inua Jamii*' comprises of consolidated cash transfer programs. These are Cash Transfer- Orphans and Vulnerable Children (CT-OVC), Older Persons Cash Transfer Program (OP-CT), Cash Transfer for Persons with Severe Disabilities (PwSD –CT) and the Hunger Safety Nets Programme (HSNP). The latter is implemented under the Ministry of Devolution hence not within the purview of the petition. These three earlier programs were started as pilot programs in 2004, 2007 and 2010 respectively.

2.1 About *Inua Jamii* Cash Transfer Program

From the onset, the programs were domiciled in two different departments, with two different Management Information Systems (MIS) namely; the CT-OVC under the Department of Children Services and OPCT and PwSD under the Department for Social Development. However, in 2016, the Ministry reengineered the programs and established the Social Assistance Unit with an aim of consolidating the operations of the cash transfers programs as Inua Jamii. This subsequently led to the consolidation of the two MIS's into a single Consolidated Cash Transfer Program Management Information System (CCTPMIS) where beneficiaries' data was migrated from the legacy systems to the new CCTPMIS. The migration focused on 1,233,129 programme beneficiaries' data and was guided by a Data Migration Strategy.

Prior to the migration, all data in the legacy system was verified through Integrated Population Registry Service (IPRS) to ensure only those beneficiaries whose details matched those in IPRS were migrated. The migration was carried out in phases. Phase one comprised those who had correct data totalling 1,091,166 beneficiaries, Phase two included 112,810 beneficiaries whose minor errors in their data were correctable through case management process. Further, Phase three comprised of 29,153 beneficiaries whose IPRS data mismatched hence the need to recapture their data to enable them get into the new management information system.

The program operates an account based model system for disbursement of the cash through following banking partners Kenya Commercial Bank (KCB), Equity, Postbank and Cooperative Bank.

2.2 Vote 1185: State Department for Social Protection & Senior Citizens Affairs and Special Programmes

The *Inua Jamii* Program is a budget line under Vote 1185: State Department for Social Protection & Senior Citizens Affairs and Special Programmes. During the 2017/18-2019/20 MTEF period, that is, 2017/18, 2018/19 and 2019/20, the department was allocated Ksh. 28.08 billion, Ksh. 31.68 billion and 43.3 billion respectively. Over the same period of time, actual expenditure was Ksh. 22.19 billion, Ksh. 31.30 billion and Ksh 40.5 billion translating to absorption rates of 79%, 99% and 94% respectively.

Programmes	Allocation	No. of Targets/KPIs
Social development & children Services	4,134.2	28
National Social Safety Net	29,213.6	24
General Admin & support services	220.1	4
Total	33,568.07	56

Source: Appropriation Act 2021 and State Department of Social Protection, Senior Citizens Affairs and Special Programmes

The State department for social protection was allocated Ksh. 33.56 billion for 2021/22 comprising of Ksh. 30.4 billion for recurrent and Ksh. 3.0 billion for development expenditure. Further, Ksh 32.8 billion was allocated over the medium-term. The allocation is an increase from the Ksh.32.4 billion allocated in 2020/21 and a BPS ceiling of Ksh. 33.2 billion; Of the Ksh 33.56 billion, Ksh. 30.4 billion for recurrent and Kshs.3.0 billion for development expenditure. Further, of the Ksh 29.2

billion allocated to the National Social Safety Net programme Ksh 27.7 billion was allocated to the cash transfer project.

In terms of monitoring and evaluation, the three cash transfer projects are expected to achieve and report on the following targets; 1,183,000 households with older persons; 540,500 households with OVC and 94,000 households with PWSD supported with cash transfers.

CHAPTER THREE: COMMITTEE PROCEEDINGS AND SUBMISSIONS

This chapter provides key highlights of the proceedings of the Committee during its engagement with the petitioner and the representatives of the State Department for Social Protection, Senior Citizens Affairs and Special programmes.

3.1 Meeting with the Petitioner and State Department of Social Protection Senior Citizens Affairs and Special programmes

The meeting between the Committee, the petitioner and the State Department of Social Protection Senior Citizens Affairs and Special programmes was held on 3rd November 2021 at 10.00am. The State department was represented by the Principal Secretary, State Department for Social Protection, Senior Citizens Affairs and Special programmes, Mr. Nelson Marwa. The Principal Secretary made his submission and the Committee was informed that-

A. On Government's inability to roll out the third phase of registration of all the eligible older persons who were qualified but not included in earlier phases

1. Over the last two years, the Government intended to conduct the third phase of data migration targeting the 29,153 beneficiaries who were not migrated due to errors in their data. However, this exercise was not meant to register fresh cohort of older persons who had turned the mandatory age of 70 years as had been alleged by the petitioner;
2. The delay of the Phase 3 migration was as a result of programme management information system enhancement targeting the specific module expected to recapture the data for the affected beneficiaries. As such, the exercise to reinstate the beneficiaries back in to the payroll was expected to run between 27th September, 2021 and end of November 2021.

B. Elderly persons registered with the Inua Jamii program and issued with cards fail to receive cash

3. The last government registration for the Older Persons' Cash Transfer Programme for Senior Citizens aged 70 years and above took place across all constituencies between July and August, 2017. As such, all senior citizens

whose registration was successful were enrolled and began receiving their bi-monthly stipends in January 2018. These senior citizens continue to receive their stipends to date.

However, some older person's registration was unsuccessful and hence do not receive any payments as a result of the following reasons:

- i. Double registration flagged as duplicates hence were suspended;
- ii. shared caregivers against programme guidelines; and
- iii. Unsuccessful transfer to the Consolidated Cash Transfer Programme Management Information System by the respective PSPs.

C. The Status of Implementation of the National Hospital Insurance Fund (NHIF) in the context of Inua Jamii Program

4. At its inception, the NHIF cover for *Inua Jamii* Programme was a pilot complimentary programme funded by World Bank through the Ministry of Health with State Department for Social Protection providing logistical support, for instance beneficiary data. The government's intention was to commence funding at the end of the pilot, however, during the FY2020/21 the State Department for Social Protection was allocated Kshs.600 million against the required Kshs.4.9 billion for the 833,000 older persons' NHIF cover.
5. The foregoing could facilitate 100,000 elderly persons at the rate of Kshs.6000 per year. As such, through the advice of the National Treasury, the amount was reallocated to cater for budget deficit in the cash transfer programme operations. Further, given that no additional funding was made towards this initiative, the programme failed to take off.

D. The Elderly, Sick Persons above 80 years, Eligible and Registered have never been paid while others have been Discontinued

6. At least 8,192 elderly persons registered into the programme have never been paid due to IPRS mismatch, however these are being addressed on continuous basis through the case management process. Other reasons for discontinuation include:
 - a. Double registration especially for those under 65 and further registered under 70 years' cohort;
 - b. Sharing of caregiver across the programme; and

c. Mix-up following the migration to the CCT MIS.

E. The Status of government's latest disbursement of (Eight billion, seven hundred and fifty-eight Million, one hundred and twenty thousand (Ksh. 8,758,120,000) towards the Inua Jamii Program and twenty-six million, three hundred and eighty-six thousand (26,386,000) towards nutrition improvement through cash and Health Education (NICHE) complementary program

7. Indeed, Treasury released Kshs. 8,758,120,000 on 6th July 2021 for payment of Inua Jamii programme beneficiaries for the months of March to June 2021. In that regard, at least 1,091,224 beneficiary accounts were successfully credited while 1327 were failed credits. The funds were disbursed to beneficiaries through the four contracted Payment Service Providers as follows

S/No.	PSP	Beneficiaries Numbers	Amount (Ksh)
1	Coop Bank	57,853	463,874,000
2	EBL	427,135	3,424,554,000
3	Post Bank	52,384	419,698,000
4	KCB	555,179	4,449,120,000
Total :			8,758,120,000

8. Further, the Kshs.26, 386,000.00 for NICHE was paid together with the normal cash transfer stipends as a top up to 7,908 selected Inua Jamii programme beneficiaries in five implementing counties of Kitui, Kilifi, Turkana West Pokot and Marsabit.

F. Inability for KCB to disburse the latest payment of 6th July 2021

9. The Ministry is not aware that majority of Inua Jamii older person's beneficiaries who receive payments through KCB are yet to receive their latest payment released on 6th July 2021. However, at least 526 older person's beneficiaries under KCB whose accounts had failed to credit are yet to receive the money.

G. Misappropriation of Inua Jamii Program Funds by Government Officials with Pending Beneficiary Disbursements

10. The Ministry welcomes information regarding government official(s) engaging in corrupt practices. However, appropriate measures to curb such malpractices are in place following the introduction of a two-factor authentication at the point of payment. In this regard, recipient beneficiaries or caregivers are required to be verified by showing a programme payment card and further verification through biometrics.

H. The Trauma on the Elderly Persons Enlisted with the Inua Jamii programme, with Operational Bank Accounts but not Receiving Cash

11. The Ministry is aware of these cases and has therefore planned for an account opening exercise for 93,565 registered beneficiaries not in the payroll. As such, the exercise is expected to commence in November, 2021 with the expected outcome of enrolled beneficiaries being reinstated in the payroll.

I. Unregistered Persons Eligible for Enrolment in the Inua Jamii Cash Transfer Program

12. The State department acknowledged that indeed some elderly persons who have attained the age of 70 years and are not covered by the programme. The PS cited the 2019 Kenya National Population Census, where at least persons above 70 years and who qualify for the programme approximate 250,000. These cases can only be registered when the Ministry get additional funding for programme expansion.

J. Orphans and persons living with disability and eligible and registered for social assistance benefits have never been paid while some beneficiaries had their benefits mysteriously discontinued

13. It is true that 20,961 caregivers of orphans and vulnerable children's and persons with severe disabilities programme have registered into the programme and have never been paid due to total IPRS mismatch in their data. The Committee was informed that the cases are being addressed through the retargeting exercise currently underway around the country. Further, that those whose benefits were discontinued could be as a result of:

- i. Sharing of caregiver across the programme which requires updates;

- ii. Some after migration opened accounts which were never transmitted to the CCT MIS; and
- iii. Some could have been exited due to none legibility.
- iv. Bio failures during payments

K. Inua Jamii program deemed discriminatory as the eligible majority are missing out of the program

14. The Older Person's Cash Transfer Programme is a universal and voluntary programme. Consequently, all Kenyans citizens who are 70 years and above are eligible to be registered into the programme. The only requirement for registration is a valid National Identification Card to prove one is a Kenyan and above 70 years of age. The last registration for this cohort was in 2017, meaning that besides those who could have been erroneously left out during the last registration, there are many who have turned 70 years since that time.

L. State has failed to demonstrate its inability to accommodate all persons above 70 years in to the programme hence obligated to offer reasonable care and assistance to majority of old persons

15. The Ministry has not been able to undertake any targeting or registration of new beneficiaries in the cash transfer program for the last five (5) years. However, expansion of the program is hampered by insufficient allocations towards the program.

M. Investigate Inua Jamii cash transfer program with a view to audit all records of recipients and beneficiaries including ascertain the credibility of banking agents

16. The Ministry confirmed that the Inua Jamii programme is audited by the Office of the Auditor General annually and that the latter provides operational recommendations. Additionally, the implementing department receives technical advice from the internal audit department. The audits are aimed at reviewing the status of implementation of the programme, identify fiduciary risks, operational gaps and provide recommendations to strengthen the systems and operational processes of the programme. Additionally, the implementing department conducts periodic monitoring of the Inua Jamii programme to assess the areas of improvement.

CHAPTER FOUR: COMMITTEE OBSERVATIONS & RECOMMENDATIONS

4.1 Committee Observations

The Committee considered the submission by State department of Social Protection, Senior Citizens Affairs and Special programmes pertaining the specific issues raised by the petitioner. For instance, the possibilities of further registrations of elderly persons who eligible for registration in the Inua Jamii programme; failure to receive the cash upon eligibility and registration; the status of implementation of NHIF program for elderly persons benefiting from the Inua Jamii Program; Accountability in the Inua Jamii program; and the implication of inadequate resources on the implementation of Inua Jamii Programme and possible solutions among others.

In that regard, the Committee observes that-

1. Parliament is in the process of enacting the Care and Protection of Older Members of Society Bill 2018.
2. The *Inua Jamii* program management information system enhancement exercise aimed at consolidating all the cash transfer programmes for their effective management, including the operations of the contracted Payment Service Providers is ongoing;
3. The completion of (2) above will address the complains of at least 93,565 registered beneficiaries not in the payroll, 29,153 beneficiaries who were not migrated due to errors in their data and any of the beneficiaries whose disbursement were stopped for one reason or the other;
4. Registration of fresh cohort of older persons has not been undertaken since August 2017;
5. There seems to be no immediate plans to undertake further registration of fresh cohort of older persons owing to inadequate funding;
6. The implementation of NHIF for persons above 70 years was planned for implementation during 2020/21. However, this was hampered by inadequate resources following a Ksh. 4.9 budget requirement by the State department of Social Protection, Senior Citizens Affairs and Special programmes that failed to receive funding;

7. The Office of the Auditor General and the Ministry's internal audit department, undertakes annual audits for Inua Jamii Program. However the department is yet to undertake and disseminate any impact assessment on the program.

4.2 Committee Recommendations

The Committee therefore recommends that-

1. The Ministry of Public Service, Gender, Social Protection, Senior Citizens Affairs and Special programmes, Ministry of Health to further engage with the National Treasury to actualise the NHIF program for persons above 70;
2. The Ministry of Public Service, Gender, Social Protection, Senior Citizens Affairs and Special programmes, reviews its budgeting practices to incorporate data and research evidence while budgeting for the Inua Jamii Program. This will address discrepancies between the expected growth in number of beneficiaries and budget projections in the medium term; and
3. The Ministry of Public Service, Gender, Social Protection, Senior Citizens Affairs and Special programmes, undertake a comprehensive impact evaluation of the Inua Jamii Program and report to the Senate within 90 days after tabling of this report.

MINUTES OF THE 92ND MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON SATURDAY, 27TH NOVEMBER 2021 AT 4.30 PM IN CONFERENCE ROOM 1B, TRADEMARK HOTEL, VILLAGE MARKET, KIAMBU COUNTY.

MEMBERS PRESENT)

- | | |
|---------------------------------------|-----------------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - V. Chairperson (Virtual) |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | - Member (Virtual) |
| 4. Sen. Paul Mwangi Githiomi | - Member |
| 5. Sen. Susan Kihika | - Member (Virtual) |
| 6. Sen. Makori Beatrice Kwamboka | - Member (Virtual) |
| 7. Sen. Naomi Masitsa Shiyonga | - Member |
| 8. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------|----------|
| 1. Sen. (Dr.) Isaac Mwaura, CBS | - Member |
|---------------------------------|----------|

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Kevin Kibet | - Clerk Assistant/HO |
| 3. Ms. Marale Sande | - Senior Research Officer |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Frank Mutulu | - Media Relations Officer |
| 6. Ms. Fatuma Abdi | - Audio Officer |
| 7. Mr. Ruben Kimosop | - Serjeant-At-Arms |
| 8. Ms. Lydia Nyagol | - Secretary |
| 9. Mr. Hassan Adow | - Office Assistant |

MINUTE SEN/SCLSW/399/2021: PRELIMINARIES

The Chairperson called the meeting to order at 4.30 pm. followed by a word of prayer.

MINUTE SEN/SCLSW/400/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Makori Beatrice Kwamboka, MP and seconded by Sen. Paul Mwangi Githiomi, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Confirmation of Minutes 91, 90, 89, 88, 87, 86, 85, 84, 83 & 82; and,**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/401/2021: CONFIRMATION OF MINUTES 91, 90, 89, 88, 87, 86, 85, 84, 83 AND 82

1. The Minutes of the 91st meeting held on Saturday, 27th November, 2021 at 12.30 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Paul Mwangi Githiomi, MP and seconded by Sen. (Dr.) Alice Milgo, MP;
2. The Minutes of the 90th meeting held on Saturdays, 27th November, 2021 at 11:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Susan Kihika, MP and seconded by Sen. (Dr.) Alice Milgo, MP;
3. The Minutes of the 89th meeting held on Thursday, 18th November, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Masitsa Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Milgo, MP;

4. The Minutes of the 88th meeting held on Tuesday, 16th November, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Susan Kihika, MP and seconded by Sen. Masitsa Naomi Shiyonga, MP;

Matters Arising

The Committee resolved to invite the Cabinet Secretary (CS) Amb. Amina Mohammed, Ministry of Sports, Culture and Heritage on 7th December, 2021 to—

- (a) Deliberate the issues raised in a Statement sought by Sen. Mutula Kilonzo Jnr. concerning the impromptu inspection of the FKF by the Sports Registrar.
 - (b) Explain the reasons for failure to honour invitations and summons of the Committee.
 - (c) During the meeting, the Committee will deliberate on actions to be taken against the CS guided by the provisions of Section 19 of the Parliamentary Powers and Privileges Act, No. 29 of 2017.
5. The Minutes of the 87th meeting held on Thursday, 11th November, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Masitsa Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Milgo, MP;
 6. The Minutes of the 86th meeting held on Wednesday, 10th November, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Susan Kihika, MP.
 7. The Minutes of the 85th meeting held on Tuesday, 9th November, 2021 at 9:30 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. (Dr.) Alice Milgo, MP.
 8. The Minutes of the 84th meeting held on Thursday, 4th November, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Paul Mwangi Githiomi, MP and seconded by Sen. Beatrice Kwamboka, MP.
 9. The Minutes of the 83rd meeting held on Wednesday, 3rd November, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings

of the Committee having been proposed by Sen. Paul Mwangi Githiomi, MP and seconded by Sen. Stewart Madzayo, CBS, MP.

10. The Minutes of the 82nd meeting held on Saturday, 30th October, 2021 at 11:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Masitsa Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Milgo.

**MINUTE SEN/SCLSW/402/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 6 p.m.



SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 27th November, 2021

MINUTES OF THE 90TH MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON SATURDAY, 27TH NOVEMBER 2021 AT 11 AM IN CONFERENCE ROOM 1B, TRADEMARK HOTEL, VILLAGE MARKET, KIAMBU COUNTY.

MEMBERS PRESENT

- | | |
|---------------------------------------|-----------------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - V. Chairperson (Virtual) |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | - Member (Virtual) |
| 4. Sen. Paul Mwangi Githiomi | - Member |
| 5. Sen. Susan Kihika | - Member (Virtual) |
| 6. Sen. Makori Beatrice Kwamboka | - Member (Virtual) |
| 7. Sen. Naomi Masitsa Shiyonga | - Member |
| 8. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------|----------|
| 1. Sen. (Dr.) Isaac Mwaura, CBS | - Member |
|---------------------------------|----------|

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Kevin Kibet | - Clerk Assistant/HO |
| 3. Ms. Marale Sande | - Senior Research Officer |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Frank Mutulu | - Media Relations Officer |
| 6. Ms. Fatuma Abdi | - Audio Officer |
| 7. Mr. Ruben Kimosop | - Serjeant-At-Arms |
| 8. Ms. Lydia Nyagol | - Secretar |
| 9. Mr. Hassan Adow | - Office Assistant |

MINUTE SEN/SCLSW/388/2021: PRELIMINARIES

The Chairperson called the meeting to order at 11 a.m. followed by a word of prayer.

MINUTE SEN/SCLSW/389/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Makori Beatrice Kwamboka, MP and seconded by Sen. Paul Mwangi Githiomi, MP as follows—

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Consideration and adoption of Reports;**
 - (a) **Report on the Petition Regarding the Plight of Former Employees at Kenya United Steel Company (KUSCO) LTD;**
 - (b) **Report on the Petition Regarding the State of ‘Inua Jamii’ Programme; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/390/2021: ADOPTION OF THE REPORT ON THE PETITION REGARDING THE PLIGHT OF FORMER EMPLOYEES AT KENYA UNITED STEEL COMPANY (KUSCO) LTD

The Committee considered the report on the petition regarding the plight of former employees at Kenya United Steel Company (KUSCO) Ltd. and adopted it after being proposed by Sen. Masitsa Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Chepkorir Milgo, MP.

**MINUTE SEN/SCLSW/391/2021: ADOPTION OF THE REPORT ON
THE PETITION REGARDING THE STATE OF 'INUA JAMII"
PROGRAMME**

The Committee considered the report on the petition regarding the state of 'Inua Jamii" programme and adopted it after being proposed by Sen. (Dr.) Alice Chepkorir Milgo, MP and seconded by Sen. Paul Mwangi Githiomi, MP.

**MINUTE SEN/SCLSW/392/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.30 p.m.



SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 27th November, 2021

MINUTES OF THE 83RD (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY, 3RD NOVEMBER 2021 AT 10.00 A.M.

MEMBERS PRESENT

- | | |
|---------------------------------------|---------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - Vice-Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 4. Sen. Paul Mwangi Githiomi | - Member |
| 5. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 6. Sen. Makori Beatrice Kwamboka | - Member |
| 7. Sen. Naomi Masitsa Shiyonga | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------|----------|
| 1. Sen. Susan Kihika | - Member |
| 2. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

IN-ATTENDANCE

- | | |
|------------------------|---|
| 1. Mr. Nelson Marwa | - PS, State Department of Social Protection, Senior Citizens and Special Programmes |
| 2. Mr. John Gachigi | - Director, Social Assistance |
| 3. Ms. Joyce Mugure | - PA, Mr. Nelson Marwa |
| 4. Mr. Peter Ndwiga | - Officer, State Department |
| 5. Mr. Ngei wa Mutinga | - Officer, State Department |
| 6. Mr. Sydney Achia | - Officer, State Department |
| 7. Mr. Taratisio Kawe | - Lead Petitioner |
| 8. Ms. Charity Kagendo | - Petitioner |
| 9. Media | |

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Kevin Kibet | - Clerk Assistant/ HO |
| 3. Ms. Marale Sande | - Senior Research Officer |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Frank Mutulu | - Media Relations Officer |
| 6. Ms. Fatuma Abdi | - Audio Officer |
| 7. Mr. Reuben Kimosop | - Serjeant-At-Arms |

MINUTE SEN/SCLSW/360/2021: PRELIMINARIES

The Chairperson called the meeting to order at 10.25 a.m. followed by a word of prayer. This was followed by introductions by all present.

MINUTE SEN/SCLSW/361/2021: ADOPTION OF THE AGENDA

The Agenda of the Meeting was adopted after it was proposed by Sen. Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Milgo, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Meeting with the State Department of Social Protection, Senior Citizens and Special Programmes to deliberate on the Petition concerning the state of the Inua Jamii Programme and the Statement by Sen. Samson Cherarkey on the Management of the Inua Jamii Programme by the Kenya Commercial Bank Ltd.; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/362/2021: MEETING WITH THE STATE DEPARTMENT OF SOCIAL PROTECTION, SENIOR CITIZENS AND SPECIAL PROGRAMMES TO DELIBERATE ON THE PETITION CONCERNING THE STATE OF THE INUA JAMII PROGRAMME PETITION CONCERNING THE STATE OF THE INUA JAMII PROGRAMME

a) Welcoming Remarks by the Chair

The Chairperson welcomed all Present and requested the Principle Secretary, Mr. Nelson Marwa to respond to the issues raised in both the Petition and the Staement on the Inua Jamii Programme.

b) Presentation by PS Nelson Marwa

Mr. Marwa responded as follows –

- 1) On the Petition Concerning the State of the Inua Jamii Programme;
- i) **THAT, for the last two years, the Government has been falsely indicating that it would unveil its third phase of registering all the older people who were qualified to have been included in Inua Jamii phase 1 and 2 program but were left out and those who have since reached the mandatory age of 70 years.**
 - That the government had been planning the 3rd phase of data migration which was to target 29,153 beneficiaries who had not been earlier migrated due to error in their data.
 - The exercise was not meant to register a new cohort of older persons.
 - The delay of the Phase 3 migration was due programme management information system enhancement especially the targeting module which was to be used to recapture the data for these cases.
 - The exercise started on 27th September, 2021 and is expected to end by November 2021.
 - These beneficiaries will be reinstated back to the payroll once the exercise is completed in November, 2021.
- ii) **THAT, many elderly people who were registered for the Inua Jamii program and issued with the relevant cards have never received a single cent from the said program and the complaint to the Department of Social services has never born any fruit.**
 - The last Government registration for the Older Persons' Cash Transfer Programme for Senior Citizens aged 70 years and above took place countrywide in all constituencies in July and August, 2017.
 - All Senior Citizens whose registration was successful were enrolled into the programme, and began receiving their bi-monthly stipends

in January 2018. These Senior Citizens continue to receive their stipends to date.

- Some registration was not successful and therefore have never received any payments because;
 - i) double registration
 - (i) share caregivers
 - (ii) Account- opening complications
- These beneficiaries are the targets for the 3rd phase data migration exercise.

iii) THAT, about three years ago, old people who were enlisted in the Inua Jamii program were advised by the Government to register with the National Hospital Insurance Fund so that the Government could start its monthly contribution health cover -support to those individuals but to date, the said promised contribution is yet to start regardless of the old people registering as advised.

- At its inception, the NHIF cover for Inua Jamii Programme was a pilot complimentary programme which was being funded by World Bank through the Ministry of Health. The role of the State Department for Social Protection was to provide beneficiaries' data to NHIF for the sub counties where the pilot was being carried out. The government was to take over the programme at the end of the pilot in terms of funding.
- The State department has no budgetary allocations to roll out the program.

iv) THAT, many sick elderly people who are over 80 years and who are eligible and registered for receiving the social assistance benefits have never been paid while some received their benefits for a short period before it was mysteriously discontinued

- There are 8,192 elderly persons who were registered into the programme and have never been paid due to total IPRS mismatch in their data.
- These cases are the ones being addressed currently through the retargeting exercise.
- Benefits for others were discontinued due to the reasons mentioned above.
- These cases are being addressed on a continuous basis through case management process.

v) **THAT, on around 6th July 2021, the government released its latest disbursement of Ksh.8,758,120,000 to the beneficiaries enrolled in Inua Jamii program and a further total of sum Kshs.26,386,000 towards nutrition improvement through cash and Health Education (NICHE) complementary program.**

- It is true that the government released Kshs.8, 758,120,000 on 6th July 2021 for payment of Inua Jamii programme beneficiaries for the months of March to June 2021. The funds were disbursed to beneficiaries through the four contracted Payment Service Providers as follows;

S/No.	PSP	Beneficiaries Numbers	Amount (Kshs)
1	Coop Bank	57,853	463,874,000
2	EBL	427,135	3,424,554,000
3	Post Bank	52,384	419,698,000
4	KCB	555,179	4,449,120,000
Total :			8,758,120,000

- The amount was credit to individual beneficiaries' accounts out of which 1,091, 224 beneficiaries accounts were successfully credited while 1327 were failed credits. The amount was refunded to the ministry's holding accounts in the respective bank.
- The Kshs.26,386,000.00 for NICHE was paid together with the normal cash transfer stipends as a top up to 7,908 selected Inua Jamii programme beneficiaries in five counties (Kitui, Kilifi, Turkana West Pokot and Marsabit) where the programme is being implemented.

vi) **THAT, majority of the old people who are beneficiaries of the Inua Jamii cash transfer program and who get their payment through Kenya Commercial Bank are yet to receive their latest payment which was released on 6th July 2021.**

- The Ministry is not aware that majority of Inua Jamii older person's beneficiaries who get their payment through Kenya Commercial Bank are yet to receive their latest payment released on 6th July 2021.
- 526 older person's beneficiaries under Kenya Commercial Bank whose accounts had failed credit did not receive their money.

vii) THAT, there is high suspicion that some people in the Government have been receiving money meant for all those old people, orphans and persons living with disability who were enlisted with the Inua Jamii program. Issued with the official Inua Jamii card and had their Bank account opened, but have never received their share of the cash of money.

- The Ministry will be glad to receive the details of the Government official(s) who may be engaging in such a corrupt practice.
- The Programme has put appropriate measures to cap likelihood of such malpractices by introducing a two-factor authentication at the point of payment. That means through the two-factor authentication, recipient beneficiaries or caregivers are required to produce a programme payment card and verify him/her biometrically using finger prints. This ensures only the correct account holder access the funds in the account.

viii) THAT, the Government has caused trauma to all those old people who were enlisted with the Inua Jamii programme and were given the official Inua Jamii card and had their Bank account opened but have never received their share, as they witness their age mates as well as some people who are younger than them benefitting.

- The Ministry is fully aware of this cases. To address this, the Ministry has planned for an account opening exercise for 93,565 registered beneficiaries who for one reason or another, are not in the payroll. The account opening exercise will commence in November, 2021 and the enrolled beneficiaries will be reinstated in the payroll thereafter.

ix) THAT, all over this Country, those old people who have attained the age of 70 years and above and who have been left out by the Inua Jamii cash transfer program have been crying out loudly for assistance from their leaders.

- According to the 2019 Kenya National Population Census, there are over 250,000 persons who are 70 years and above and who qualify to be in the programme. These cases can only be registered when the Ministry get additional funding for programme expansion.

x) That, many orphans and persons living with disability who are eligible and registered for receiving the social assistance benefits

have never been paid while some received the benefits for a short period before it was mysteriously discontinued.

- There are 20,961 caregivers of orphans and vulnerable children's and persons with severe disabilities programme who were registered into the programme and have never been paid due to total IPRS mismatch in their data. These cases are the ones being addressed through the retargeting exercise currently being conducted in the country.
- The others who were receiving their benefits for a short period before it was discontinued could have either been due to:
 - i. Sharing of caregiver across the programme which requires updates;
 - ii. Some after migration opened accounts which were never transmitted to the CCT MIS; and
 - iii. Some could have been exited due to none legibility.
 - iv. Bio failures during payments

These cases are being addressed on a continuous basis through case management process.

xi) THAT, the Inua Jamii program is currently very discriminative such that most of the needy, sickly, weak and vulnerable over 80 members of our society have been left out in the program.

- The Older Person's Cash Transfer Programme is a universal and voluntary programme. Consequently, all Kenyans citizens who are 70 years and above are eligible to be registered into the programme. The only requirement for registration is a valid National Identification Card to prove one is a Kenyan and above 70 years of age.
- The last registration for this cohort was in 2017, meaning that besides those who could have been erroneously left out during the last registration, there are many who have turned 70 years since that time.

xii) THAT, the state has never proved / demonstrated its inability to accommodate all our over 70 years of age people or its inability to gather or allocated enough resources to enable it meet its obligations of giving reasonable care and assistance to majority of old people in our Country.

- The Ministry has not been able to undertake any Targeting or Registration of new beneficiaries in the cash transfer program for the

last five (5) years. However, the Ministry has been requesting for allocation of additional funding to expand the programme but has not been successful.

xiii) THAT, there is urgent need to investigate Inua Jamii cash transfer program with a view of auditing all records of recipients and beneficiaries of the program to find out whether some ministry officials and or the banking Agents have been taking advantage of the program and stealing the Tax payer's money through its systems.

- The Ministry confirm that the Inua Jamii programme is normally audited by the Office of the Auditor General once every year. In addition, the programme on a regular basis receives technical advice from the Ministry's Internal Audit Department. The aim of these audits is to review the status of implementation of the programme, identify fiduciary risks, operational gaps and provide recommendations to strengthen the systems and operational processes of the programme.
- The implementing department also conducts periodic monitoring of the Inua Jamii programme to assess the areas of improvement. Audits conducted on Inua Jamii programme provide recommendations which are operational in nature and they're meant to improve programme operations.

2) On the Statement on the Management of Inua Jamii Programme by the Kenya Commercial Bank

- (i) **State the rationale for shifting the process of cash disbursement for the Inua Jamii programme from the Postal Corporation of Kenya (POSTA) to Kenya Commercial Bank (KCB), noting that majority of the beneficiaries reside in the rural and far-flung areas, where POSTA enjoys a wider presence than KCB.**

The shifting of cash disbursement process from PCK to KCB was informed by the following:

The World Bank review of the cash transfer programme for orphans and vulnerable children in early 2009, observed that although Postal Corporation of Kenya (PCK) was more stable in terms of the delivery cash to beneficiaries than the previous payment system, there was need for an

alternative payment mechanism that was fast, secure, convenient, cost effective, accessible and auditable as the programme expanded. These recommendations were meant to reduce fiduciary risks on programme payment. (The World Bank Project Appraisal Document (PAD) of February, 2009).

The Joint Review and Implementation Support mission of May, 2011, with the Development partners (World Bank, DFID and UNICEF), stressed the need to have an alternative programme payment system that ensures the payment system requirements as stipulated in the Project Appraisal Document and which was necessary for securing their on-going and future financing to the programme.

In view of the above, through a national competitive bidding process, the government started the procurement of alternative payment service provider(s) who would meet the agreed payment system requirements. Equity Bank and Kenya Commercial Bank were brought on board through this process as new payment service providers. These payment service providers had the following advantages over the PCK;

- The payroll was electronically generated and shared, unlike PCK manual payroll;
- Two-factor authentication (use of payment card and biometrics) during payment process unlike the manual thumb-print authentication process under PCK;
- Bank payments were based on Agency Network model which were more spread easily accessible by the beneficiaries unlike PCK model that used Post Office branches only;
- Fast reconciliation process under the alternative service providers compared to manual reconciliation process under the PCK that was tedious, time consuming and prone to human errors.

(ii) **Shed light on the alleged mismanagement and irregularities in the disbursement of funds perpetuated by the Ministry of Labour and officers of KCB with specific reference to July 2021 in the disbursement of Kshs.8.7 billion to Inua Jamii Programme beneficiaries and Kshs.26 million towards the**

nutrition improvement through cash and health education (NICHE) complementary programme, both of which were not received by the beneficiaries.

The Ministry wishes to categorically state that there was no mismanagement and irregularities in the disbursement of funds during the payment cycle in reference.

The State Department for Social Protection generated the payroll for 1,092,551 beneficiaries amounting Kshs. 8,758,120,000. The Ministry made an Exchequer requisition to the National Treasury for the same amount. The National Treasury released the exchequer to the Ministry on 5th July 2021 and the funds were transferred to the four contracted payment service providers on the same day.

(a) Presentation by the Petitioners

1. The petitioner expressed concerns that the State Department of Social Protection, Senior Citizens and Special Programmes does not have clear communication channels for dissemination of information on the Inua Jamii Programme.
2. The Petitioners lamented that they have not received any money since 2018 and urged the Committee to pursue their case.

(b) Members' Interventions.

1. Members sought to know if there has been any impact evaluation of the Inua Jamii programme.
2. Members stated that grassroots leaders such as chiefs were not aware of any registration of persons with disabilities (PWDs) and persons above 70 years.
3. Members sought to be informed on why most Kenyans above 70 years have not received their Inua Jamii cash disbursement since the outbreak of COVID-19 in 2019.
4. Members sought to know if they could be roped in to assist the State Department of Social Protection, Senior Citizens and Special Programmes during their targeting programme to on-board persons above 70 years and PWDs.

5. Members urged the Permanent Secretary (PS) to ensure uniformity and fairness during cash disbursement for the Inua Jamii programme.

(c) Responses by the PS, Mr. Nelson Marwa

He stated that the State Department of Social Protection, Senior Citizens and Special Programmes had not been allocated funds for registration of new beneficiaries. However, they hope that Treasury will allocate funds for on boarding beneficiaries.

1. He stated that the Department did massive education and outreach on TVs, through chiefs and radio stations urging beneficiaries who had been removed in the payroll to re-register.
2. He informed the meeting that a targeting programme was rolled out on 27th September, 2021 and is expected to end by November 2021 and advertisements were done.

MINUTE SEN/SCLSW/363/2021: ANY OTHER BUSINESS AND ADJOURNMENT

1. The Chairperson informed Members that a physical meeting with the Cabinet Secretary, Ministry of Sports, Culture and Heritage and the Football Kenya Federation (FKF) had been scheduled for the following day (Thursday, 4th November, 2021) to discuss the Statement on the directive by the CS to the Sports Registrar to undertake an impromptu inspection of the FKF.
2. There being no other business, the meeting was adjourned at 12.15 p.m.



SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 27th November 2021



Republic of Kenya

MINISTRY OF PUBLIC SERVICE, GENDER, SENIOR CITIZENS AFFAIRS & SPECIAL PROGRAMMES STATE DEPARTMENT FOR SOCIAL PROTECTION, SENIOR CITIZENS AFFAIRS & SPECIAL PROGRAMS

STATEMENT ON THE PETITION CONCERNING THE STATE OF THE INUA JAMII PROGRAMME

Introduction

The Inua Jamii Program is a Consolidated Cash Transfer Program that comprises of Cash Transfer for Orphans and Vulnerable Children (CT-OVC); Older Persons Cash Transfer (OPCT); and Cash Transfer for Persons with Severe Disabilities (CT-PWSD). These programs were started in 2004, 2007 and 2010 respectively, starting off as pilot program.

Previously, the programs were domiciled in two different Departments, with two different Management Information Systems (MIS) namely; the CT-OVC under the Department of Children services and OPCT and PWSD under the Department for Social Development. In 2016, the Ministry reengineered the programs and established the Social Assistance Unit in order to consolidate the operations of the Cash Transfers programs as Inua Jamii. This process meant the consolidation of the two MIS's into a single Consolidated Cash Transfer Program Management Information System (CCTPMIS) where beneficiaries' data was migrated from the legacy systems to the new CCTPMIS. The migration focused on 1,233,129 programme beneficiaries' data and was guided by a Data Migration Strategy.

Before migration could be undertaken, all data in the legacy system was verified through Integrated Population Registry Service (IPRS) to ensure only those beneficiaries whose details matched those in IPRS were migrated. The migration was carried out in phases: Phase 1 was for those who had correct data who comprised 1,091,166 beneficiaries, Phase 2 comprised of 112,810 beneficiaries who had minor errors in their data

which were correctable through case management process and Phase 3 comprised of 29,153 beneficiaries who had total IPRS mismatch and their data had to be recapture to enable them get into the new management information system.

Response to Issues Raised by The Petitioner;

- i) **THAT, for the last two years, the Government has been falsely indicating that it would unveil its third phase of registering all the older people who were qualified to have been included in Inua Jamii phase 1 and 2 program but were left out and those who have since reached the mandatory age of 70 years.**

Over the last two years, the Government intended to conduct the third phase of data migration. This was to target the 29,153 beneficiaries who were not migrated due to errors in their data. However, this exercise was **NOT** meant to register fresh cohort of older persons who had turned the mandatory age of 70 years as it was alleged in the petition.

The delay of the Phase 3 migration was due programme management information system enhancement especially the targeting module which was to be used to recapture the data for these cases. Nevertheless, the exercise started on 27th September, 2021 and is expected to end by November 2021. These beneficiaries will be reinstated back to the payroll once the exercise is completed in November, 2021.

- ii) **THAT, many elderly people who were registered for the Inua Jamii program and issued with the relevant cards have never received a single cent from the said program and the complaint to the Department of Social services has never born any fruit.**

The last Government registration for the Older Persons' Cash Transfer Programme for Senior Citizens aged 70 years and above took place countrywide in all constituencies during the months of July and August, 2017. All Senior Citizens whose registration was successful were enrolled into the programme, and began receiving their bi-monthly stipends in January 2018. These Senior Citizens continue to receive their stipends to date.

However, some older person's registration was not successful and therefore have never received any payments because;

- Some registered for the second time and hence were flagged as duplicates within the programme forcing them to be suspended;
- Others had shared caregivers which is against programme guidelines; and
- Others had their accounts opened but were not successfully transmitted to the Consolidated Cash Transfer Programme Management Information System by the respective PSPs.

These beneficiaries will be given another an opportunity to open accounts starting from November 2021.

iii) THAT, about three years ago, all those old people who were enlisted in the Inua Jamii program were advised by the Government to register with the National Hospital Insurance fund so that the Government could start its monthly contribution health cover support to those individuals but to date, the said promised contribution is yet to start regardless of the old people registering as advised.

At its inception, the NHIF cover for Inua Jamii Programme was a pilot complimentary programme which was being funded by World Bank through the Ministry of Health. The role of the State Department for Social Protection was to provide beneficiaries data to NHIF for the sub counties where the pilot was being carried out. The government was to take over the programme at the end of the pilot in terms of funding. In FY2020/21 the State Department for Social Protection was allocated Kshs.600 million against the required Kshs.4.9 billion for the 833,000 older persons' NHIF Cover. This amount could only cover 100,000 elderly persons at the rate of Kshs.6000 per year. Therefore, through the advice of the National Treasury, the amount was reallocated to cater for budget deficit in the cash transfer programme operations. No further allocation was made toward this item; hence the programme could not be rolled out.

iv) THAT, many of sick elderly people who are over 80 years and who are eligible and registered for receiving the social assistance benefits have never been paid while some received their benefits for a short period before it was mysteriously discontinued

There are 8,192 elderly persons who were registered into the programme and have never been paid due to total IPRS mismatch in their data. These cases are the ones being addressed currently through the retargeting exercise.

The others who were receiving their benefits for a short period before it was discontinued could have been either due to:

- a) Double registration especially those who were registered under 65 and again registered under 70 years' cohort;
- b) Sharing of caregiver across the programme;
- c) Some after migration opened accounts which were never transmitted to the CCT MIS.

These cases are being addressed on a continuous basis through case management process.

- v) **THAT, on around 6th July 2021, the government released its latest disbursement of (Eight Billion, Seven hundred and fifty-eight Million, One hundred and twenty thousand (Ksh. 8,758,120,000) to the beneficiaries enrolled in Inua Jamii program and a further total of sum of Twenty-six million, three hundred and eighty-six thousand (26,386,000) towards nutrition improvement through cash and Health Education (NICHE) complementary program.**

It is true that the government released Kshs.8, 758,120,000 on 6th July 2021 for payment of Inua Jamii programme beneficiaries for the months of March to June 2021. The funds were disbursed to beneficiaries through the four contracted Payment Service Providers as follows;

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Total :			8,758,120,000

The amount was credit to individual beneficiaries' accounts out of which **1,091, 224** beneficiaries accounts were successfully credited while **1327** were failed credits. The amount was refunded to the ministry's holding accounts in the respective bank.

The Kshs.26, 386,000.00 for NICHE was paid together with the normal cash transfer stipends as a top up to 7,908 selected Inua Jamii programme beneficiaries in five counties (Kitui, Kilifi, Turkana West Pokot and Marsabit) where the programme is being implemented.

vi) THAT, majority of the old people who are beneficiaries of the Inua Jamii cash transfer program and who get their payment through Kenya Commercial Bank are yet to receive their latest payment which was released on 6th July 2021.

The Ministry is not aware that majority of Inua Jamii older person's beneficiaries who get their payment through Kenya Commercial Bank are yet to receive their latest payment released on 6th July 2021. However, what is known is that 526 older person's beneficiaries under Kenya Commercial Bank whose accounts had failed credit did not receive their money.

vii) THAT, there is high suspicion that some people in the Government have been receiving money meant for all those old people, orphans and persons living with disability who were enlisted with the Inua Jamii program. Issued with the official Inua Jamii card and had their Bank account opened, but have never received their share of the cash of money.

The Ministry will be glad to receive the details of the Government official(s) who may be engaging in such a corrupt practice.

However, it is important to note that the Programme has put appropriate measures to cap likelihood of such malpractices by introducing a two-factor authentication at the point of payment. That means through the two-factor authentication, recipient beneficiaries or caregivers are required to produce a programme payment card and verify him/her biometrically using finger prints. This ensures only the correct account holder access the funds in the account.

viii) THAT, the Government has caused trauma to all those old people who were enlisted with the Inua Jamii programme and were given the official Inua Jamii card and had their Bank account opened but have never received their share, as

they witness their age mates as well as some people who are younger than them benefitting.

The Ministry is fully aware of this cases. To address this, the Ministry has planned for an account opening exercise for 93,565 registered beneficiaries who for one reason or another, are not in the payroll. The account opening exercise will commence in November, 2021 and the enrolled beneficiaries will be reinstated in the payroll thereafter.

ix) THAT, all over this Country, those old people who have attained the age of 70 years and above and who have been left out by the Inua Jamii cash transfer program have been crying out loudly for assistance from their leaders.

It is true there are some elderly persons who have attained the age of 70 years in the country and are not covered by the programme. According to the 2019 Kenya National Population Census, there are over 250,000 persons who are 70 years and above and who qualify to be in the programme. These cases can only be registered when the Ministry get additional funding for programme expansion.

x) That, many orphans and persons living with disability who are eligible and registered for receiving the social assistance benefits have never been paid while some received the benefits for a short period before it was mysteriously discontinued.

It is true that we have 20,961 caregivers of orphans and vulnerable children's and persons with severe disabilities programme who were registered into the programme and have never been paid due to total IPRS mismatch in their data. These cases are the ones being addressed through the retargeting exercise currently being conducted in the country.

The others who were receiving their benefits for a short period before it was discontinued could have either been due to:

- i. Sharing of caregiver across the programme which requires updates;
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- iv. Bio failures during payments

These cases are being addressed on a continuous basis through case management process.

xi) THAT, the Inua Jamii program is currently very discriminative such that most of the needy, sickly, weak and vulnerable over 80 members of our society have been left out in the program.

The Older Person's Cash Transfer Programme is a universal and voluntary programme. Consequently, all Kenyans citizens who are 70 years and above are eligible to be registered into the programme. The only requirement for registration is a valid National Identification Card to prove one is a Kenyan and above 70 years of age.

The last registration for this cohort was in 2017, meaning that besides those who could have been erroneously left out during the last registration, there are many who have turned 70 years since that time.

xii) THAT, the state has never proved / demonstrated its inability to accommodate all our over 70 years of age people or its inability to gather or allocated enough resources to enable it meet its obligations of giving reasonable care and assistance to majority of old people in our Country.

The Ministry has not been able to undertake any Targeting or Registration of new beneficiaries in the cash transfer program for the last five (5) years. However, the Ministry has been requesting for allocation of additional funding to expand the programme but has not been successful.

xiii) THAT, there is urgent need to investigate Inua Jamii cash transfer program with a view of auditing all records of recipients and beneficiaries of the program to find out whether some ministry officials and or the banking Agents have been taking advantage of the program and stealing the Tax payer's money through its systems.

The Ministry confirm that the Inua Jamii programme is normally audited by the Office of the Auditor General once every year. In addition, the programme on a regular basis receives technical advice from the

Ministry's Internal Audit Department. The aim of these audits is to review the status of implementation of the programme, identify fiduciary risks, operational gaps and provide recommendations to strengthen the systems and operational processes of the programme.

The implementing department also conducts periodic monitoring of the Inua Jamii programme to assess the areas of improvement. Audits conducted on Inua Jamii programme provide recommendations which are operational in nature and they're meant to improve programme operations.



Prof. Margaret Kobia, PhD, MGH
CABINET SECRETARY

SCHEDULE (S.3)

FORM OF PETITION

THE CLERK OF SEANTE
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI
8th August 2021

Clerk Assist J - Labour
Kindly deal
09/09/2021

RE: PETITION TO THE SENATE TO ORDER FOR AN URGENT SPECIAL FORESIC
AUDIT ON THE GOVERNMENT'S SOCIAL SECURITY FUND POPULARLY
REFERRED TO AS INUA JAMIA PROGRAM MINISTRY OF LABOUR AND SOCIAL
PROTECTION.

I, the undersigned,

am a Kenyan Citizens, Nationalists, and a residents of Embu County in the Republic of
Kenya.

DRAW the attention of the Senate to the following:

THAT, I am a human rights defender and protector and I have interacted with many
members of our community and I have received so many complaints in regard to the
management and disbursement of Inua Jamii cash transfer program.

THAT, I have been escalating many complaints from the elderly and orphans and in many
cases my enquiries as to the reasons as to why their complaints are never been appropriately
addressed always hit a snag save for a single incident in which I physically took a list of
complainants to the State department for Social protection in Nairobi concerning people
who had been registered with the INUA Jamii program and who had been left out, where
about 9 of them started receiving their money.

THAT, under the United Nations Principles for Older Persons, Older persons should have
access to health care to help them to maintain or regain the optimum level of physical,
mental and emotional well-being and to prevent or delay the onset of illness.

THAT, under the United Nations Principles for Older Persons, Older persons should benefit
from family and community care and protection in accordance with each society's system of
cultural values.

THAT, as a measure geared towards implementation and actualizing 57(d), our Government
unveiled the Inua Jamii program.

THAT, Inua Jamii is the Government of Kenya's flagship National Safety Net Program
(NSNP) for the beneficiaries of, Cash Transfer for Orphans and Vulnerable Children (CT-

PETITION TO THE SENATE TO ORDER FOR AN URGENT SPECIAL FORESIC AUDIT ON THE
GOVERNMENT'S SOCIAL SECURITY FUND POPULARLY REFERED TO AS INUA JAMIA PROGRAM
UNDER THE MINISTRY OF LABOUR AND SOCIAL PROTECTION

OVC), Older Persons Cash Transfer (OPCT), Persons with Severe Disabilities Cash Transfer (PWSD-CT) as well as Hunger Safety Net Programme (HSNP).

THAT, through the Ministry of Labour and Social Protection the Government runs various social security programs which includes Inua Jamii, Cash Transfer for Orphans and Vulnerable Children program and nutrition improvement through cash and Health Education (NICHE) complementary program.

THAT, Under Section 57, Sub-section c & d, of part 3, Chapter 4 of the Constitution of Kenya 2010, the Government has the responsibility of ensuring the rights of older persons and it is obligated to give reasonable care and assistance to such older people.

THAT, for the last two years, the Government has been falsely indicating that it would unveil its third phase of registering all the older people who were qualified to have been included in Inua Jamii phase 1 and 2 program but were left out and those who have since reached the mandatory age of 70 years.

THAT, many elderly people who were registered for the Inua Jamii program and issued with the relevant cards have never received a single cent from the said program and the complaint to the Department of Social services has never born any fruit.

THAT, about three years ago, all those old people who were enlisted in the Inua jamii program were advised by the Government to register with the National Hospital Insurance fund so that the Government could start its monthly contribution health cover support to those individuals but to date, the said promised contribution is yet to start regardless of the old people registering as advised.

THAT, many of sick elderly people who are over 80 years and who are eligible and registered for receiving the social assistance benefits have never been paid while some received their benefits for a short period before it was mysteriously discontinued.

THAT, on or around 6th July 2021, the government released its latest disbursement of (Eight Billion, Seven hundred and fifty eight Million, One hundred and Twenty thousand (Ksh.8,758,120,000) to the beneficiaries enrolled in Inua Jamii program and a further total of sum of Twenty six Million, three hundred and eighty six thousand (Ksh.26,386,000) towards nutrition improvement through cash and Health Education (NICHE) complementary program.

THAT, majority of the old people who are beneficiaries of the Inua Jamii cash transfer program and who get their payment through Kenya Commercial Bank are yet to receive their latest payment which was released on 6th July 2021.

THAT, there is high suspicion that some people in the Government have been receiving money meant for all those old people, orphans and persons living with disability who were enlisted with the Inua Jamii program, issued with the official Inua Jamii card and had their Bank account opened, but have never received their share of the cash of money.

THAT, the Government has caused trauma to all those old people who were enlisted with the Inua Jamii program and were given the official Inua Jamii card and had their Bank account opened but have never received their share, as they witness their age mates as well as some people who are younger than them benefitting.

THAT, all over this Country, those old people who have attained the age of 70 years and above and who have been left out by the Inua Jamii cash transfer program have been crying out loudly for assistance from their leaders.

THAT, Principal Secretary Mr. Nelson Marwa Sospeter, CBS oversees the design and implementation of policy reforms in Child Protection, Older Persons and Persons with Disability Sector and also provides strategic leadership in the design and execution of innovative programmes that strengthen service delivery to the vulnerable people in the communities across the country.

THAT, none other Principal Secretary Mr. Nelson Marwa Sospeter, CBS than who has been telling the whole world that there are some cartels under his ministry and unscrupulous bank agents who have been stealing from the old people program and coning them respectively.

THAT, Principal Secretary in the Ministry of Labour and Social Protection the Mr. Nelson Marwa Sospeter, CBS, who is also the accounting officer in the ministry has failed in his core duties for being unable to tame the cartels in that Ministry as well as the suspected mega corruption in that Ministry.

THAT, my own father was a victim of use of identity theft whereby his National Identity Card was used to register a female from Kitui and who used to be paid his Inua Jamii cash .

THAT, regardless of the cleanup exercise undertaken by the Ministry in 2019, there is no one who has ever been charged in court for the suspected massive stealing of public money through the Inua Jamii.

THAT, many orphans and persons living with disability who are eligible and registered for receiving the social assistance benefits have never been paid while some received the benefits for a short period before it was mysteriously discontinued.

THAT, the Inua Jamii program is currently very discriminative such that most of the needy, sickly, weak and vulnerable over 80 members of our society have been left out in the program.

THAT, the state has never proved/demonstrated its inability to accommodate all our over 70 years of age people or its inability to gather or allocated enough resources to enable it meet its obligations of giving reasonable care and assistance to majority of old people in our Country.

THAT, there is an urgent need investigate Inua Jamii cash transfer program with a view of:-

- 
- a. Auditing all records of recipients and beneficiaries of the program to find out whether some ministry officials and or the banking Agents have been taking advantage of the program and stealing the Tax payers' money through its systems.

- b. Exposing any weak point(s) in the process of the program which could have been used as avenues for stealing of the money meant for the most vulnerable in our society.
- c. Exposing the cartels in the ministry of Labour and Social Protection and recommending for action
- d. Investigating on whether the money which had been budgeted for medical insurance cover for the older people was released by the treasury to Ministry of Labour and Social Protection and if so why did the ministry stop the program at its initial stage and where did that money go.
- e. Recommending for forensic audit on all the people suspected of stealing or unlawfully benefiting from the Social security fund which is one of our government's flagship programs.
- f. Recommending for forensic audit and or investigation on all the people suspected of stealing or unlawfully benefiting from the Social security fund which is one of our government's flagship programs.
- g. Recommending for the Government disengagement and or termination of its contracts with the Banks which are frustrating our old people or which have their Agents frustrating or stealing from the Inua Jamii cash transfer program beneficiaries.

THAT, I confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.

HEREFORE your humble petitioners Pray that Senate—

- a. Constitute a parliamentary committee to investigate and recommend for a special audit on the public fund expenditure under Inua Jamii cash transfer program in the Ministry of Labour and Social Protection and also to investigate the Management of all the cash transfer programs under the Ministry of Labour and Social Protection.
- b. Recommend for and or take any other legal action deemed appropriate for securing the dignity and the rights of our old people and as well as for safeguarding and protecting public funds from theft, misappropriation of any kind and misuse.

And your PETITIONERS will ever pray.

That their petition heard and considered with a view of having it dealt with in accordance with the law and disposed off appropriately and expeditiously.

	Name of petitioner	Full Address	National ID	Signature
1.	TARATISIO IREH ICWE	BOX 139-60103 RUYENJES	8660483	

PETITION TO THE SENATE TO ORDER FOR AN URGENT SPECIAL FORESIC AUDIT ON THE
GOVERNMENT'S SOCIAL SECURITY FUND POPULARLY REFERED TO AS INUA JAMIA PROGRAM
UNDER THE MINISTRY OF LABOUR AND SOCIAL PROTECTION