



**Convention on the Rights
of Persons with Disabilities**

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Committee on the Rights of Persons with Disabilities

**Consideration of reports submitted by States
parties under article 35 of the Convention**

Initial reports of State parties due in 2010

Kenya*

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List of abbreviations

AIDS	Acquired Immune Deficiency Syndrome
APDK	Association of Persons with Disabilities in Kenya
CBR	Community Based Rehabilitation
COTU	Central Organization of Trade Unions
DPO	Disabled Persons Organizations
EARCs	Educational Assessment Resource Centers
EFA	Education for All
FPE	Free Primary Education
GJLOS	Governance, Justice, Law and Order Sector Reform Programme
HIV	Human Immuno Virus
HoDs	Heads of Departments
IIEC	Interim Independent Electoral Commission
ILO	International Labour Organization
JAB	Joint Admissions Board
JAWS	Job Access With Speech
KANU	Kenya African National Union
KES	Kenya Shillings
KESSP	Kenya Education Sector and Support Programme
KIE	Kenya Institute of Education
KISE	Kenya Institute of Special Education
KNHREC	Kenya National Human Rights and Equality Commission
KSB	Kenya Society for the Blind
KSL	Kenyan Sign Language
MDG	Millennium Development Goal
MoGCSD	Ministry of Gender, Children and Social Development
MoH	Ministry of Health
NALEAP	National Legal Education and Awareness Programme
NARC	National Rainbow Coalition
NASCOP	National AIDS and STI Control Programme
NCPWDs	National Council for People with Disabilities
NDFPWDs	National Development Fund for Persons with Disabilities
NGOs	Non Governmental Organization
OAU	Organization of African Unity
PMST	Provincial Medical Services Team

PWD	Persons with Disabilities
SMEs	Small and Medium Size Enterprises
TIVET	Technical Industrial Vocational Education and Training
UNDP	United Nations Development Programme

I. General introduction

1. The Government of the Republic of Kenya has the honour and pleasure to submit to the Committee on the Rights of Persons with Disabilities, in conformity with Article 35 Paragraph 1 of the Convention on the Rights of Persons with Disabilities its initial State Party report.
2. The report has been prepared with reference to the Committee's guidelines on the form and content of reports to be submitted by State Parties.¹
3. Kenya is further honoured that one of its experts is a member of the Committee on the Rights of Persons with Disabilities and proud that it was one of the first States to ratify the Convention. Kenya signed and ratified the Convention in March 2007 and May 2008 respectively.

Consultation with Stakeholders

4. The report has been prepared under the leadership of the Ministry of Gender, Children and Social Development (MoGCSD) and is a result of wide consultations within the Government of Kenya, Civil Society Organizations, the Kenya National Human Rights and Equality Commission (KNHREC), organizations of and for persons with disabilities and other national institutions and non-Governmental Organizations working on promoting the realization of the rights of persons with disabilities to ensure that the report is representative of the *de facto* situation prevailing in the country at the time of reporting.
5. The report therefore reflects the contributions which were received by the MoGCSD.
6. The report has been prepared in the context of dramatic changes in Kenya's Constitutional, political, social, cultural and economic environments ensuing from the political crisis that was witnessed after the disputed 2007 presidential elections that led to an unprecedented political violence which spread all over the country and lasted until March 2008. This resulted in the death of at least 1,133 people, destruction of property worth billions of Kenya Shillings and internal displacement of at least 350,000 people in Kenya.
7. The report provides an overview of the major progress Kenya has made in respect to improving the situation of persons with disabilities and the Constitutional, legislative, judicial, administrative and other measures that the Government has taken to comply with the Convention on the Rights of Persons with Disabilities. While recognizing the challenges and difficulties that face Kenya, the report also highlights the difficulties and the shortfalls observed in giving effect to the provisions of the Convention and the strategies currently in place or underway to address any existing gaps.

¹ *Guidelines on treaty-specific document to be submitted by States Parties under Article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* UN Doc CRPD/C/2/3 (2009).

II. Background information on Kenya

A. Land and People

8. Kenya is an East African country that lies astride the Equator covering a total area of 582,650 km² of which 560,250 km² constitutes dry land while water takes the rest of about 13,400 km². Approximately 80 per cent of the land area is arid or semi-arid, and only 20 per cent is arable.

9. The total population of Kenya is estimated at 40,000,000 people (2009 estimates), 75 per cent – 80 per cent of whom live in the rural areas. The population distribution varies from 230 persons per km² in high potential areas to three persons per km² in arid areas. Only about 20 per cent consists of high to medium potential agricultural land, and supports 80 per cent of the population. The remaining 20 per cent of the population lives in the 80 per cent of the land, which is arid and semi-arid.

10. The country's population is characterised by high infant mortality rates (54.7 deaths/1000 live births), low and declining life expectancy (between 47 and 55 years), and total fertility rate (4.56), all 2009 estimates. Kenya is also faced with a high dependency burden, with over 42 per cent of the population below 15 years.

11. The national language is Kiswahili while the official language is English. With the new Constitutional dispensation, the State shall promote and protect the diversity of language of the people of Kenya; and the development and use of indigenous languages, Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities.

12. Kenya is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. People of African descent constitute about 90 per cent of the population; divided into 42 main ethnic groups. These groups belong to three linguistic families: Bantu, Cushitic, and Nilotic. The main groups comprise of: Bantus consist the Kikuyu (22 per cent), Luhya (14 per cent), Kamba (11 per cent), Meru (6 per cent), Embu (1.20 per cent), Kisii (6 per cent) and the Mijikenda (4.7 per cent), Taita (0.95 per cent), Pokomo (0.27 per cent), Bajuni (0.20 per cent), Boni-Sanye (0.05 per cent), Taveta (0.07 per cent); Kuria (0.52 per cent), Mbeere (0.47 per cent), Basuba (0.50 per cent), Nilotes include the Luo (13 per cent), Kalenjin (12 per cent), Turkana (1.32 per cent), Teso, (0.83 per cent), Samburu (0.50 per cent), and the Maasai (1.8 per cent); and the Cushites, include the Somali (0.21 per cent), Oromo (0.21 per cent), Rendile (0.12 per cent), Boran (0.37) per cent, Gabra (0.17 per cent). It should be noted that these major groups are further grouped into many smaller sub tribes.

13. The major religious orientations include Christianity (78 per cent), Islam (10 per cent), African Traditional Religions (10 per cent), Hinduism and Sikhism (1 per cent). Religion is increasingly perceived by some minorities in Kenya as a major factor in the determination of citizenship and the acquisition of citizenship entitlements. For example, some adherents of the Islamic faith argue that Kenya is governed as a Christian country. Those who adhere to the African traditional beliefs often complain that rights given under the English system of laws take precedence over those obtainable under customary laws which are intertwined with traditional religious convictions.

14. Poverty remains a major impediment to both the fulfillment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. According to the 2009 Population Census, the population in absolute poverty is estimated at 45.9 per cent mainly due to the expected negative impact of the post-election violence witnessed in the country at the beginning of 2008 and the global crisis.

15. Kenya's economy has been characterized by stagnation in economic growth in the last two decades. Between 1997 and 2002, the economy grew by an annual average rate of only 1.5 per cent, below the population growth estimated at 2.5 per cent per annum, thus leading to a decline in per capita incomes. Currently, approximately 56 per cent of Kenyans live below the international poverty line of less than \$1 per day. The economy however has been registering some modest improvement in some sectors. In 2005, economic growth rate was 5.8 per cent, and this rate grew to 6.7 per cent by the end of May, 2007. The postelection violence, 2008, has been a major setback to this growth.

16. According to the Kenya National Population Census, 2009, the overall disability rate in Kenya is 3.5% which translates to 1,330,312 million persons with Disabilities. Of this, the largest proportion is physical impairment (413,698) followed by visual impairment (331,594). Others are shown below:

Table 1. Population by Main Type of Disability and Sex, 2009

<i>Disability</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>%</i>
Visual	153,783	177,811	331,594	53.6
Hearing	89,840	97,978	187,818	52.2
Speech	86,783	75,020	161,803	46.4
Physical	198,071	215,627	413,698	52.1
Mental	75,139	60,954	136,093	44.8
Others	44,073	55,233	99,306	55.6
Total	647,689	682,623	1,330,312	51.3
% With Disability	3.4	3.5	3.5	-

Source: National Population Census 2009 (KNBS).

17. The socio-economic situation of persons with disabilities in Kenya, the widespread economic hardship being experienced in the country does not augur well for persons with disabilities. Most persons with disabilities depend on their families for social, financial, material and psychological support. Therefore, under the current situation persons with disabilities are more likely to have less access to resources than other members of the family.

B. General Political Structure

18. Kenya gained independence in 1963 and has, in the last two decades, evolved into a multi-party electoral democracy. After years under a single-party state system, the Constitution of Kenya was first amended in 1991 and the first multi-party elections were held in 1992. The change to a multi-party system was a political transition, which involved fundamental constitutional re-engineering aimed at transforming the state apparatus from instruments of repression and exploitation to agents of African development and self-actualization. Before then, the Kenya African National Union (KANU) had not only won the independence elections in 1964 but also managed to retain power for 39 years through 8 general elections. Only in 2002 did KANU lose the general elections for the first time to the National Rainbow Coalition (NARC), a grouping of 14 political parties.

19. Kenya now has a new Constitution that was promulgated on 27th August 2010. As a result of this, there is renewed hope that with good governance, improved relationships with bilateral and multi-lateral development partners and targeted social and economic

interventions, the chances of progressive realization of human rights in general, will improve.

C. The Government

20. There are three arms of the Government: the Legislature, Executive, and Judiciary. Chapter Eight of the Constitution of Kenya, 2010 establishes the Parliament. Article 94 provides that the legislative authority of the Republic is derived from the people. Kenya shall have a bicameral legislature after the next General Elections where at the national level, legislative authority shall be vested in and exercised by Parliament. Parliament shall consist of the National Assembly at the national level and the Senate which shall be representing the counties and their governments.

21. The National Assembly shall consist of two hundred and ninety (290) members, elected from the constituencies; forty-seven women (47) elected from the counties each from the constituencies; twelve members (12) nominated by parliamentary political parties according to their proportion of members of the National Assembly to represent special interests including persons with disabilities; and the Speaker.

22. The Senate shall consist of forty-seven (47) members elected from the counties, each county constituting a single member constituency; sixteen (16) women members nominated by political parties according to their proportion of members of the Senate; two (2) members, being one man and one woman, representing the youth; two (2) members, being one man and one woman, representing persons with disabilities; and the Speaker.

23. Under the Constitution of Kenya, 2010, Chapter Nine establishes the Executive which shall be made up of two levels of government, the national government and the county government. The national executive shall comprise the President, the Deputy President and the Cabinet and shall reflect the regional and ethnic diversity of the people of Kenya. Every county will be headed by an elected governor and will have a county assembly and a county executive committee.

24. Presently, the Executive acts through a Cabinet which at the time of writing this report consists of the President, the Prime Minister, Vice President, two Deputy Prime Ministers, and other Ministers. The function of the Cabinet is to aid and advise the President in the governance of the country. However, this has been reviewed under the new Constitutional dispensation.

25. The Constitution of Kenya, 2010 provides for the devolution of power including county governments, and the equitable sharing of national and local resources throughout Kenya. The stated objective of devolution is the decentralization of State organs, their functions and service and enhancing checks and balances and the separation of powers.

26. Ministers are designated as Cabinet Secretaries of which there can be no less than fourteen (14) or more than twenty-two (22).

D. General legal framework within which Human Rights are protected

27. The protection of human rights and fundamental freedoms, including economic and social rights, is safeguarded under Chapter Four of the Constitution of Kenya, 2010, which sets out a progressive Bill of Rights enjoyable by all individuals in Kenya. The Constitution of Kenya, 2010 promotes equality and non-discrimination.

28. The Constitution of Kenya, 2010 further provides special safeguard on the protection of individuals or groups who may be discriminated and in this regard, among the

national values and principles of governance which binds all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions is the consideration of non discrimination.

29. Chapter Ten of the Constitution of Kenya, 2010, establishes the Judiciary. The superior Courts include the Supreme Court, the Court of Appeal and the High Court. Article 163 provides for the Supreme Court as the highest Court in the country and shall have exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of President, appellate jurisdiction to hear and determine appeals from the Court of Appeal; and any other court or tribunal as prescribed by national legislation. The Supreme Court may give an advisory opinion at the request of the national government, any State organ, or any county government with respect to any matter concerning county government. All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court. The Supreme Court shall consist of the Chief Justice, who shall be the president of the court; the Deputy Chief Justice, who shall deputize for the Chief Justice; and be the vice-president of the court; and five other judges.

30. Article 164 establishes the Court of Appeal, which shall have jurisdiction to hear appeals from the High Court; and any other court or tribunal as prescribed by an Act of Parliament. The court of Appeal shall consist of the number of judges, being not fewer than twelve, as may be prescribed by an Act of Parliament. There shall be a president of the Court of Appeal who shall be elected by the judges of the Court of Appeal from among themselves.

31. Article 165 provides for the High Court, which has unlimited original jurisdiction in criminal and civil matters; jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144; to hear any question respecting the interpretation of the any other jurisdiction, original or appellate, conferred on it by legislation. Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice. The High Court shall also have supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior. The High Court shall consist of the number of judges and be organized and administered in the manner prescribed by an Act of Parliament. There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

32. The Judiciary is headed by the Chief Justice, and consists of judges of the superior courts, magistrates, other judicial officers and staff.

33. Judges of the Court of Appeal and High Court, as well as magistrates courts, which are subordinate courts to the High Court established by Parliament in accordance with the Constitution. These are the courts martial, magistrates' courts and tribunals. Such courts only have such jurisdiction and powers as law may confer on them.

34. Article 169 establishes subordinate courts which shall include: the Magistrates courts; the Kadhis' courts; the Courts Martial; and any other court or local tribunal as may be established by an Act of Parliament.

35. The Constitution of Kenya, 2010, guarantees every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. No fee may be charged for commencing the proceedings. Court proceedings can be instituted by a person acting in their own interest, by a person acting on behalf of another person who cannot act in their own name, a person

acting as a member of, or in the interest of, a group or class of persons, a person acting in the public interest; or an association acting in the interest of one or more of its members.

E. Legislative authority

36. The Parliament of Kenya is vested with the power to enact legislation. In the field of human rights, Parliament has established the following institutions:

- National Council for Persons with Disabilities (NCPWD);
- Kenya National Human Rights and Equality Commission (KNHREC);
- The Kenya National Commission on Gender and Development;
- The Kenya Anti-Corruption Commission (KACC);
- National Council for Children Services (NCCS);
- The Kenya Law Reform Commission (KLRC);
- The National Legal Education and Awareness Programme (NALEAP);
- The National Cohesion and Integration Commission (NCIC);
- The Office of the Ombudsman;
- The CIC.

F. The extent to which Human Rights Treaties have been domesticated

37. The Constitution of Kenya, 2010, provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya and that general rules of international law shall form part of the law of Kenya under the Constitution therefore once ratified International Instruments can be directly applied by the courts, tribunals or administrative authorities in the absence of domestic legislation on the same.

38. International instruments that have been fully domesticated in Kenya via an Act of Parliament include: the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child through the Children's Act (Chapter 586 of the Laws of Kenya); the Convention relating to the Status of Refugees and the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the Refugees Act (No. 13 of 2006); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol) through the Counter Trafficking in Persons Act, 2010. The provisions of these laws are closely modeled on those of the international and regional instruments, with necessary exceptions as necessitated by the circumstances of Kenya. The country has also fully domesticated the four Geneva Conventions of 1949 through The Geneva Conventions Act (Chapter 198 of the Laws of Kenya).

39. Further, Parliament passed the International Crimes Act, 2008, domesticating the Rome Statute of the International Criminal Court. Many other international instruments are given effect in different laws. While some instruments are given effect by a single law, others are given effect through more than one law. For example, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination have substantially been domesticated through different legislation. The National Cohesion and Integration

Act, 2008, is an Act of Parliament to promote national cohesion and integration by outlawing discrimination on ethnic grounds

40. Kenya has ratified the following international human rights instruments:

- (a) The International Covenant on Civil and Political Rights;
- (b) The International Covenant on Economic, Social and Cultural Rights;
- (c) The International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) The Convention on the Elimination of All Forms of Discrimination against Women;
- (e) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (f) The Convention on the Rights of Persons with Disabilities;
- (g) The Convention on the Rights of the Child;
- (h) The Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity;
- (i) The United Nations Convention against Corruption;
- (j) The Convention relating to the Status of Refugees;
- (k) The Optional Protocol to Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- (l) The Rome Statute of the International Criminal Court;
- (m) The 49 ILO Conventions, with 43 of them in force.

41. At the regional level, Kenya has ratified the following key human rights Instruments:

- (a) The African Charter on Human and Peoples' Rights;
- (b) The African Charter on the Rights and Welfare of the Child;
- (c) The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
- (d) The African Union Convention on Preventing and Combating Corruption;
- (e) The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights;
- (f) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

G. Individual redress mechanisms at the international level

42. The Government in conjunction with the Kenya National Commission for Human Rights (which is currently being changed to the Kenya Nation Human Rights and Equality Commission) is in the process of assessing its position in relation to individual complaints mechanism to the United Nations Treaty Bodies. It is worth noting that Kenya has not had a major issue with the individual Regional Mechanisms that are currently in place.

III. General provisions of the Convention

Articles 1-4: Purpose, Definitions, General principles and General obligations

43. Disability has been defined both in the Constitution of Kenya, 2010 and the PWD Act, 2003. The definition of disability in the Constitution of Kenya, 2010 has been given a similar meaning as that which it has been assigned under the Convention on the Rights of Persons with Disabilities which is that 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"².

44. Suffice it to say, the PWD Act, 2003 predated the Convention on the Rights of Persons with Disabilities. Under the PWD Act, 2003, "disability" means "physical, sensory, mental or other impairments, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation."

1. Communication and Language

45. The Constitution of Kenya recognizes under Article 7 that Kiswahili and English are the official language of Kenya. In addition, it further provides that the State shall promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities. This is further guaranteed under Article 54 of the Constitution of Kenya, 2010.

46. Under the National Disability Policy, the Government recognises the fact that different disabilities require specific approaches to meet their information and communication needs and thereby through the hopes to create an environment that enables stakeholders in the information and communication industry function effectively and efficiently and makes a policy statement that the Government shall seek to improve access to information or communication by persons with disabilities. The PWD Act, 2003 therefore further seeks to promote the use of communication and language for persons with disabilities in education institutions, Television programmes, traffic facilities, newspapers and print media, telephone services and facilities in public buildings.

2. Discrimination on the basis of Disability

47. The Government recognises that the discrimination against persons with disabilities is entrenched in stereotypes prevailing in Kenyan society that portray persons with disabilities as burdens and curses. This has often led to instances where individuals or families that have persons with disabilities have shied away from revealing such persons.

48. Some of the measures that the Government of Kenya has taken to modify or abolish existing laws that discriminate against persons with disabilities include, the express prohibition of discrimination on the basis of disabilities which has been expressly prohibited under the Constitution of Kenya, 2010 under Article 27(4), which provides that "the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth".

² Article 260 of the Constitution of Kenya, 2010.

3. Reasonable Accommodation and Universal Designs

49. The concept of reasonable accommodation for persons with disabilities is recognised under Article 54 of the Constitution of Kenya, 2010 which provides that a person with any disability is entitled to among other things, to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person, to reasonable access to all places, public transport and information; to use Sign language, Braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability.

50. Reasonable accommodation is also addressed under the PWD Act, 2003 under Section 15(5) which provides that 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 disabilities. Section 16(2) provides incentives to a private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities.

51. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, further provides incentives for a person(s) who sells materials, articles and equipment designed for use by persons with disabilities and provides that the same shall be eligible to apply for such tax reliefs as may be determined by the council and approved by the Minister.

52. In order to ensure that the rights of persons with disabilities are safeguarded country wide, the NCPWD, the MoGCSD has offices in every district that deals with issues of persons with disabilities.

4. The Constitution of Kenya, 2010

53. The Constitution of Kenya, 2010 was promulgated on 27th August 2010 as the supreme law of the Republic of Kenya and is applicable country wide and if any other law is inconsistent with the Constitution, then the Constitution shall prevail and the other law is, to the extent of the inconsistency, void.

54. The rights of persons with disabilities have further been given Constitutional recognition and safeguard under Article 54, which provides substantive provisions for the rights of persons with disabilities. In giving effect to the provisions found in the Convention on the Rights of Persons with Disabilities, the text of the Constitution is further couched in specific terms designed to minimize barriers to equalization of opportunities in all aspects of social-cultural, economic and political life. Article 54 provides *inter alia* that a person with disabilities is entitled to be treated with dignity and respect.

5. International Law

55. The signature and ratification by the Government of Kenya, is an expression of the willingness and readiness of the Government of Kenya to be bound by the Convention and to take legislative and administrative measures to give effect to its provisions.

56. The human rights and fundamental freedoms guaranteed under the Constitution of Kenya, 2010 are among others recognized or conferred by law, unless they are inconsistent with the Constitution. Pursuant to Article 2(5) and (6), the general rules of international law and any treaty or convention ratified by Kenya shall form part of Kenyan law under the Constitution. By virtue of these provisions, international instruments to which Kenya is a signatory including the Convention on the Rights of Persons with Disabilities binds Kenya, which is obliged to take policy, legislative or administrative measures to give effect to their provisions.

6. National Laws

57. At the national level, Kenya has put in place the following legislative measures, and is in the process of amending its laws to give effect to the provisions of the Convention on the Rights of Persons with Disabilities.

7. Persons with Disabilities Act, 2003

58. Under national law, the rights of persons with disabilities are recognized under the PWD Act, 2003, which came into effective in June 2004, even before Kenya ratified the Convention on the Rights of Persons with Disabilities. This was following recommendations of a taskforce appointed by the Attorney General in 1993 to collect views from the public at large, and persons with disabilities with a view to reviewing laws relating to persons with disabilities.

59. The PWD Act, 2003, Act No. 14 of 2003 was assented to on the 31st December, 2003 and came into force (with the exception of Sections 22, 23, 24, 35(2), 39 and 40) on the 16th June, 2004 through Legal Notice No. 64 of 2004. However, the pending sections were gazetted in January, 2010 and they are now operational. The main objectives of the act are to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the NCPWD; and for connected purposes.

60. The Kenya Law Reform Commission in collaboration with the NCPWD and the MoGCSD and other stakeholders is currently working on amending the PWD Act, 2003 and to this end has drafted The Persons with Disabilities (Amendment) Bill to ensure that the provisions of the Act are harmonized with international instruments and in particular with the Convention on the Rights of Persons with Disabilities and the Kenya Constitution, 2010.

61. Other legislations that have a bearing on the rights of persons with disabilities include:

(a) The Children Act, 2001 (Act No. 8 of 2001)

62. The Children's Act provides for the protection and welfare of the rights of all children in Kenya and explicitly prohibits discrimination against a child on the ground of disability.

(b) The Employment Act, (Chapter 22 of the Laws of Kenya)

63. Employment Act 2007 (Act No. 11 of 2007) contains elaborate provisions aimed at protecting persons from discrimination in the employment which explicitly prohibits an employer to discriminate directly or indirectly, against an employee or prospective employee, or harass an employee or prospective employee on grounds of disability.³

(c) The Sexual Offences Act (Act No. 3 of 2006)

64. This extends special protection to persons with disability by providing that in sexual offences where the alleged victim is a person with mental disabilities, the concept of a "complainant" is extended to include a person who lodges a complaint on behalf of the

³ Section 5 of the Employment Act.

alleged victim where the alleged victim is on account of the disability unable or inhibited from lodging and following up a complaint of sexual abuse.⁴

(d) The Penal Code (Chapter 63 of the Laws of Kenya)

65. The Penal Code affords protection to persons with mental disabilities. Indeed, Section 146 protects persons with mental disability from sexual abuse.

(e) The Witness Protection Act (Chapter 79 of the Laws of Kenya)

66. The Witness Protection Act establishes the Witness Protection Unit which is obliged to give due regard to the particular needs persons with disabilities.

67. The Kenya Law Reform Commission is currently reviewing several laws that have a bearing on persons with disabilities. These include an amendment to the Evidence Act which, among other issues, proposes the inclusion of a provision relating to the legal capacities of persons with mental disabilities together with the issue of evidence of witnesses with disabilities who need the assistance of sign language interpreters and intermediaries. The amendment to the Law of Succession Act will include a provision that touches on the right to inheritance by persons with disabilities. With regard to the proposed Reproductive Health Bill, a draft has been developed and presented to the Office of the Prime Minister, which when enacted will support the National Reproductive Health Policy. Further, a Public Service Bill and a Devolved Government Bill have been drafted both of which provide that in the event of retrenchment from public service, then priority with regard to retention shall be given to qualified persons with disabilities.

8. Subsidiary Legislation

68. In order to further implement the provisions of the PWD Act, 2003 and give greater effect to the Convention on the Rights of Persons with Disabilities, the Minister responsible for matters relating to persons with disabilities has made the following pieces of subsidiary legislation:

(a) The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009;

(b) The Persons with Disabilities (Cost Care, Support and Maintenance) Regulations, 2009;

(c) The Persons with Disabilities (Registration) Regulations, 2009;

(d) The Persons with Disabilities (Income Tax Deductions and Exemptions) Order, 2010;

(e) The Persons with Disabilities (National Development Fund for Persons with Disabilities) (Conduct of Business and Affairs of the Board of Trustees) Regulations, 2009.

9. Policies

69. In addition to the legislative measures, the Government of Kenya has in place, and is in the process of developing policy instruments that have a bearing on the rights of person with disabilities. It is worth noting that the Government now requires that all policies that are being developed must mainstream and take into consideration issues relating to the rights of persons with disabilities. Some of the policies that are in place or currently being developed include:

⁴ Section 2 of the Sexual Offenses Act 2006.

(a) **The National Disability Policy**

70. The National Disability Policy seeks to establish a framework within which the Governments shall provide services and further protect persons with disabilities while according them an environment conducive for the enjoyment of their freedoms, liberties and pursuit of happiness. The Government is currently developing a Sessional Paper for the National Policy on Persons with Disabilities that is due to be presented to Parliament for approval.

(b) **The Draft Special Needs Education Policy**

71. The Government is at an advanced stage of the development of a Draft Special Needs Education Policy which is intended “to enable persons with disabilities to gain a living by engaging in employment on an equal basis with others”. It acknowledges that where the right to education is guaranteed, the rights of persons with disabilities to access to and enjoyment of other rights are better secured.

(c) **The Draft National Social Protection Policy**

72. There is also in place a draft National Social Protection Policy. This draft Policy presents the Government’s vision of creating an all-inclusive society through the provision of sustainable mechanisms for the protection of persons living in situations of extreme poverty and vulnerability. The draft has been finalized and it is awaiting cabinet approval.

73. The policy was developed after wide consultations. Among the vulnerable in the population who are identified in this draft Policy are those whose vulnerability is related to demographic characteristics or lifecycle events. In particular, the draft Policy identifies orphans and vulnerable children, people with disabilities, older persons, the urban poor living in slum areas, people living in the streets in urban areas, people living with dilapidating illness, the internally displaced persons, among others as vulnerable and qualifying for social protection.

(d) **Draft Human Rights Policy**

74. The goal of the policy is to provide a framework for the integration and mainstreaming of human rights in development planning, implementation and evaluation in all sectors in order to fully implement the provisions of the Constitution of Kenya, 2010 and the Kenya Vision 2030. The Policy recognizes the challenges that currently face persons with disabilities in Kenya. It goes ahead to make policy recommendations that will afford better protection to persons with disabilities.

(e) **The National Land Policy**

75. Section 3.6.5 Clause 194 of the National Land Policy makes provision for land rights of vulnerable groups who include persons with disabilities. This in recognition of the fact that they lack power, voice and representation in society, which limits their opportunities to own land based resources. To secure their rights the Policy provides for the development of mechanisms for identifying, monitoring and assessing the vulnerable groups; establish mechanisms for redistribution of land and resettlement; facilitate their participation in decision making over land and land based resources; and protect their land rights from unjust and illegal expropriation. The Policy also seeks to resolve historical land injustices, especially those perpetrated to persons with disabilities, among others.

10. Institutions

The National Council for Persons with Disabilities

76. The PWD Act, 2003 established the NCPWD in 2004, which is a semi-autonomous Government Body Agency whose parent is the Ministry, is the MoGCSD and is currently composed of 21 members who represent various disability organizations and government ministries. The role of the Council is to promote the rights of persons with disabilities and mainstream these rights in all aspects of national development.

77. The Council is mandated under Section 7(2) (d) of the Persons with Disabilities Act, 2003, to oversee the implementation of the and further to co-ordinate the provision of services to persons with disabilities and advise the Minister in charge of disability issues accordingly. The Council is also mandated to; 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 disabilities.

78. Similarly, under the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, the NCPWD in collaboration with the relevant Government departments, research institutions, development partners and local authorities is required to undertake, promote and sponsor research, in the following areas as they relate to persons with disabilities, namely: prevention of disability; rehabilitation including community based rehabilitation; development of assistive devices including their psycho-social aspects; job identification for persons with disability; on site modifications in offices and factories. The Council is further required to undertake research and baseline surveys to ensure availability of disaggregated data on persons with disability.

79. The NCPWD in collaboration with the MoGCSD and other stakeholders is implementing the action plan of the African Decade of Persons with Disabilities 1999-2009 which was recently extended until 2019.

IV. Realization of specific rights and freedoms

Article 5: Equality and Non-discrimination

80. The Constitution of Kenya, 2010, confers upon its citizens, including persons with disabilities, the right to enjoyment of all human rights and fundamental freedoms. The basis of these protections is spelt out in the national values and principles of governance. Article 10 binds all State organs, State officers, public officers and all persons applying or interpreting the Constitution to make or implement public policy decisions that among other things promote non discrimination. The Constitution of Kenya, 2010, also seeks to minimize barriers to equalization of opportunities for persons with disabilities in all aspects including socio-cultural, economic, and political life. Article 27 further guarantees the right to equality and freedom from discrimination and expressly prohibits discrimination on the ground of disability.

81. Under Article 232 of the Constitution of Kenya, 2010, the values and principles of public service include affording adequate and equal opportunities for appointment, training and advancement, at all levels of public service of- persons with disabilities, among others.

82. To enable persons with disabilities access their rights, Section 15 of PWD Act, 2003, specifically prohibits discrimination by employers against persons with disabilities. Section 38 requires the Attorney General to make regulations for the provision of free legal services for persons with disabilities with respect to the violation of their rights. To give

greater effects to the Act, Section 44 also requires the relevant Minister to make regulations specifying and describing the nature of acts of discrimination against persons with disabilities. Under Section 49(1), the NCPWD may request the Attorney General to take appropriate legal action if it believes that a person or group of persons is engaged in a practice, which is discriminatory and the discrimination is a significant and substantial infringement of the rights of persons with disabilities.

83. The principles of equality and non-discrimination have received legislative recognition in other Statutes. This includes the Employment Act, 2007 that seeks to ensure that persons with disabilities achieve equalization in employment. Sections 5(1) and (2) of the Act imposes a duty on the Minister, labour officers, and Industrial Court to promote and guarantee equality of opportunity in order to eliminate discrimination in employment and to promote equal opportunity. Children with disabilities are also particularly vulnerable and therefore have further protection from discrimination under Section 5 of the Children's Act, 2001.

84. The Government of Kenya has since realized that these laws are not adequate. To this end, there is an ongoing process to amend the PWD Act, 2003, to afford better protection for persons with disabilities. These proposed amendments are contained in the Persons with Disabilities (Amendment) Bill which, among other things, imposes a duty upon the Government to take steps to the maximum available resources with a view to achieving the full realization of the rights of persons with disabilities and in particular those of women and girls with disabilities who are subject to multiple discrimination so as to ensure their full development and advancement. The Amendment Bill also makes provisions that seek to eliminate discrimination against persons with disabilities in matters relating to marriage, family, and personal relations.

85. The National Disability Policy recognizes the fundamental rights of persons with disabilities with a view to abolish all forms of discrimination and provide equal opportunities to enable persons with disabilities realize their full potential. Further, it seeks to facilitate the development and implementation of legislation on equity in employment to protect job seekers and workers with disabilities against discrimination.

86. The Government seeks to establish special measures which are crucial in overcoming and ameliorating inequity, systemic denial, or infringement of a right or fundamental freedom. Article 27(6) of the Constitution of Kenya, 2010 specifically places a duty on the State to develop programmes and policies on affirmative action that enhance equality and non discrimination. One example of affirmative action that is constitutionally protected is found under Article 54(2), which places requirement that 5% of representation in elective and appointive bodies be persons with disabilities.

87. There are various institutions charged with the duty to ensure that persons with disabilities are protected from discrimination. Key among these institutions is the National Council for Person with Disabilities, which is required under Section 7(b)(iv) of the PWD Act, 2003, to recommend measures to prevent discrimination against persons with disabilities.

88. The Government of Kenya has also established programmes such as the Free Primary Education programme. In addition to this, students with disabilities have secured university admission with lower grades through the policy of the (Universities) Joint Admission Board (JAB).

89. The Government through the Office of the Attorney General, the Law Society of Kenya, and the Kenya Law Reform Commission, is currently developing a Legal Aid Policy Paper for Persons with Disabilities which shall establish a framework to enable lawyers to deal with cases involving persons with disabilities.

Article 8: Awareness raising

90. Disability in Kenya was and still is viewed by some members in society as a curse, taboo and a burden. Persons with disabilities are often concealed from the public and subjected to physical and psychological abuse due to ignorance, poverty and lack of awareness. In order to counteract this, the Government declared 1980 the National Year for Persons with Disabilities. This was ahead of the 1981 United Nations International Year of the Disabled Persons. The global awareness created during the 1981 International Year for Disabled Persons (IYDP) expanded social participation and equality for disabled persons.

91. There has been a slow but noticeable improvement in public perception towards and treatment of persons with disabilities even in employment, as persons with disabilities are increasingly holding more positions of responsibility in society. However, a lot still needs to be done to ensure that all Kenyans recognize and uphold the rights of persons with disabilities and develop initiatives to address disability issues through mainstreaming.

92. Since then, the Government has continued to create awareness on the rights of persons with disabilities. The National Disability Policy takes cognizance of the importance of awareness raising in minimizing marginalization and exclusion of persons with disabilities from the social, development and political spheres. The Policy states that the Government shall seek to increase the levels of public awareness on the needs, aspirations and capacities of persons with disabilities so as to enhance their acceptance, participation and integration in society. It shall also seek to do this in collaboration with organizations of persons with disabilities, parents groups and other service providers. Some of the key areas of awareness-raising in the policy include: awareness on the different types of disabilities; where parents and families can seek support or services; promoting inclusive societies and equality of opportunities and participation of persons with disabilities in socio-economic and political spheres; promoting access to education, health and employment of persons with disabilities; challenging myths and misconceptions about disability that often give rise to stigma and discrimination; providing information on prevention of disability; the vulnerability of persons with disabilities to HIV infection and the need to make HIV and AIDS intervention responsive to the needs of persons with disabilities.

93. The PWD Act, 2003, established the NCPWD whose mandate includes undertaking advocacy and raising public awareness regarding persons with disabilities; training and capacity building; and disability mainstreaming. This can be done through the resources available under the NDFPWDs. To this end, the Government, through relevant State authorities, has designed, printed/published and disseminated campaign posters that seek to create awareness to the public on issues related to the needs and rights of persons with disabilities, prevention of disability causing diseases, and social activities or behaviors that might lead or cause the effects of disabilities, among others.

94. The MoGCSD, through the NCPWD and Disabled Persons Organizations, is currently undertaking an awareness campaign and training on disability equality for Government staff. The campaign is organized to use strategies such as sensitization meetings, disability equality trainings and support for the development of disability policies in workplaces. The MoGCSD has also taken the lead in using among others the United Nations Day for Persons with Disabilities as a vehicle for raising awareness on issues of disability. Other awareness raising initiatives include the White Cane Day and the Deaf Awareness week.

95. In the financial year 2009/2010, Government Ministries were required to mainstream disability in their programmes by formulating Disability Mainstreaming Policies as part of their performance contracts. They were also required to undertake a baseline survey on disability mainstreaming and to produce a report that recommends among others the training needs for the staff to enable them render effective service to

persons with disabilities. Gender Officers have been appointed in Ministries, parastatals and other institutions, to deal with matters relating to disabilities. The Government has also put in place disability mainstreaming trainings to capacitate public servants on the rights of persons with disabilities.

Article 9: Accessibility

96. The Government of Kenya recognizes that persons with disabilities face various barriers in their day to day life. These barriers range from environmental, communication, social and economic. In this regard, the Government has put in place legislative, policy and administrative measures that seek to mitigate these challenges and further assist persons with disabilities to live an acceptable and dignified quality of life. These measures seek to promote equalization of opportunities for the full and effective participation of persons with disabilities in economic, social, cultural and political life.

97. The rights of persons with disabilities have been safeguarded under Article 54 of the Constitution of Kenya, 2010, which guarantees that persons with disabilities are entitled to reasonable access to all places, public transport and information; access to educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.

98. The National Disability Policy, recognizes accessibility as a cross cutting concern which should remain an underlying consideration in the built environment, information and services. To this end, it provides a policy framework that seeks to create an environment that is conducive for persons with disabilities to realize their full potential and contribute to the development of society.

99. Section 21 of the PWD Act, 2003, provides for the rights of persons with disability to accessibility and mobility and provides that persons with disabilities 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.

100. Section 22(1) of the PWD Act, 2003, further requires proprietors of buildings to modify and adapt their buildings. Section 24 of the PWD Act, 2003 mandates the NCPWD to serve Adjustment Order upon the owner of the premises or the provider of the services, or amenities concerned an adjustment order if it considers that any premises, services or amenities are inaccessible to persons with disabilities. The same became operational on 1st January 2010, which means that proprietors of premises now have five (5) years to comply with the provisions. The NCPWD is undertaking an audit of buildings and institutions that have complied with the requirement on accessibility.

101. In order to better implement the provisions in the PWD Act, 2003, on access, the Act has adopted the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, which seeks to promote accessibility to education (Regulation 9), employment (Regulations 10 and 11), sports, recreation and social integration (Regulation 9). Transport (Regulations 12 and 13), buildings, information, communication, technology, income maintenance and social security, family life and personal integrity, culture and provides support and relief in certain cases. Regulation 14 requires that facilities in public buildings should provide for suitable ramps, adapt all public toilets for wheel chair users and other persons with disability, provide for Braille symbols and auditory signals in elevators or lifts and provide for ramps in health and educational institutions among others.

102. With regard to access to transportation for persons with disabilities in Kenya, the Government recognizes that a lot needs to be done in order to make it more disability

friendly. Roads within cities generally do not have pedestrian friendly walkways let alone disability friendly ones. There are further instances where vehicles drive on the pedestrian walkways in order to avoid traffic jams. The traffic lights in the city are often broken due to poor maintenance and careless driving. This situation puts all pedestrians and more so persons with disabilities in grave danger. In a bid to correct this situation, the Ministry of Roads requires that all roads that are currently being constructed make provisions for pathways for persons with disabilities and other pedestrians.

103. In addition, the Ministry of Transport in 2003 launched the National Transport Policy Committee on 2nd April 2003. Its sole mandate was to formulate an Integrated National Transport Policy. The process was conducted on a consultative basis punctuated with modeling of solutions based on international best practice to bridge the gap between local challenges and planned interventions. A *Report on Integrated National Transport Policy: Moving a Working Nation* identifies a number of challenges inhibiting the transport sector from performing its facilitative role in respect of national and regional economies was developed by the committee. Among the challenges identified in the current transport system is that it does not cater for consumers with special needs. The report recommends the development of a transport system and infrastructure that is accessible to persons with disabilities.

104. The Ministry of Transport also has in place a Sessional Paper on Integrated National Transport Policy. Once it has been approved, there shall be amendments to the Transport Licensing Board Act and the Traffic Act to take into consideration the needs of persons with disabilities. Other areas proposed for amendment include the curriculum used to administer driving tests persons who are physically challenged to ensure they get driving licensees.

105. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, further calls for the installation of auditory signals at red lights in the public roads for the benefit of persons who are visually impaired; the provision of kerb cuts and slopes to be made in pavements for the easy access of wheel chair users; the engraving on the surface of pedestrians crossings and the edges of railway platforms for persons who are visually impaired; the posting of appropriate symbols of disability; and the posting of warning signals and symbols at appropriate places.

106. Section 23 of the PWD Act, 2003, requires operators of public service vehicles to adapt them to suit persons with disabilities in such manner as may be specified by the Council within two years of coming into effect of the section. Currently, the Government is in the process of phasing out the 14 seater public transport vehicles known as “*matatus*”. Discussions are underway to see how the rights for persons with disabilities to access public transport vehicles shall be safeguarded. Further, Regulation 12 of The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, requires owners of public service vehicles to adapt rail compartments, buses, vessels and aircrafts so as to permit easy access to persons with disabilities and to further adapt toilets in these places including their waiting rooms so as to permit wheel chair users and other persons with disabilities to use them conveniently.

107. With regard to information and communications, including information and communications technologies and systems, Article 7(3) (b) of the Constitution of Kenya, 2010, makes it a Constitutional requirement for the Government to promote the development and use of Braille and other communication formats and technologies accessible to persons with disabilities. There are ongoing efforts through the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, to incorporate Kenyan Sign Language in television programming. The regulations also require that newspapers and other print media be made available in electronic form while telephone

facilities and other services should incorporate assistive aids for persons with hearing, speech and visual disabilities.

108. Section 41(a) of the PWD Act, 2003, provides for exemption from payment of postal charges on printed and recorded literature, articles, equipment and other devices for the use of persons with disabilities which are sent by mail within and outside Kenya; and aids and orthopedic devices for persons with disabilities sent outside Kenya by mail for repair. However, it is only Braille matter that is currently subject to this exemption.

109. The NCPWD has put in place a facility that allows persons with disabilities to send their documents to the Council through the EMS Postal Service at no cost to the sender with the charges being borne by the Council. This has gone a long way in ensuring that persons with disabilities register with the Council from any part of the country. It has also enabled the Council to start a record for all people with disabilities in Kenya. This has gone a long way to ensuring that persons with disabilities register (membership) and communicate with the Council.

110. The Government of Kenya is committed to providing training for stakeholders on accessibility issues facing persons with disabilities. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, requires that the Government undertakes information, education and communication, disseminate the provisions of the PWD Act, 2003, and promote public awareness about the rights of persons with disabilities, through a comprehensive nation-wide education and information campaign conducted by the Government through the relevant Ministries, departments, authorities and other agencies. It further requires the Government to provide training, sensitization and awareness programmes on the rights of persons with disabilities for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons to enable them acquire skills for proper information, dissemination and education on the rights of persons with disabilities. In this regard, the Government through its performance contracts with Ministries requires all of them to enhance capacity and raise awareness on to accessibility for persons with disabilities. Disabilities Mainstreaming Committees have been set up in respective ministries and one of the key activities they have implemented is conducting awareness trainings on persons with disabilities.

111. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009 provides for tax exemption on assistive devices such as wheelchairs, and the modification of vehicles, among others.

Article 10: Right to life

112. Every person in Kenya, including persons with disabilities, has a right to life. This is guaranteed under Article 26(1) of the Constitution of Kenya, 2010, which states that life begins at conception and can only be terminated in accordance with the law. No person can therefore be deprived of their right to life on account of their disability. The Constitution of Kenya, 2010, has declared that abortion is illegal unless there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law as provided under Article 26(4) of the Constitution of Kenya, 2010. Article 43(1) of the said Constitution further guarantees everyone the right to the highest attainable standard of health which includes the right to health care services, including reproductive health care. The Constitution further provides that a person should not be denied emergency medical care. Article 53(1) (c) guarantees all children, including children with disabilities, the right to basic nutrition, shelter and health care.

113. The right to life is further protected under the Penal Code, Chapter 63 of the Laws of Kenya, also criminalizes manslaughter, murder, suicide, infanticide and failure by any

person charged with the duty of providing for another the necessities of life to so provide thus occasioning the life or the health of that person to be endangered.

114. The right to life and survival for children with disabilities is specifically recognized under Section 4(1) of the Children's Act, No. 8 of 2001 which provides that every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child. Section 12 of the Children's Act, No. 8 of 2001, provides that a child with disabilities has the right to be accorded medical treatment free of charge and at a reduced cost whenever possible. To this end, the Government offers prenatal services to pregnant mothers, runs the Expanded Safe Motherhood programme and undertakes immunization against preventable diseases that cause disabilities in its health facilities.

115. The Ministries of Health approach to health care is promotional, preventive, curative and rehabilitative. Therefore, in addition to its curative and preventive service, they provide specialized services for persons with disabilities through the Divisions of Rehabilitative Health Services in Ministry of Medical Services and the Division of Child and Adolescent Health in the Ministry of Public Health which provides assistive and supportive services, physiotherapy and occupational therapy. The Divisions of Rehabilitative Health Services and nurses have been trained on early identification and management of disability including how to sensitize the community on the same.

116. In its effort to ensure the survival and development of children with disabilities, the Government of Kenya through the Ministry of Education runs Education Assessment Resource Centers (EARCs), which work with communities to identify children with disabilities at an early stage for appropriate assessment, placement and referral. The Ministry of Health is currently working on the development of National Guidelines and manual for early identification of children with disabilities and special needs. The Ministry further provides specialized treatment of people, including persons with disabilities of all ages against disease, injury/trauma, and birth related deformities/malformations, old age complications, infirmities and disability.

117. The Government through the MoGCS and the NCPWD is undertaking awareness raising campaigns on the rights of persons with disabilities including their right to life. These campaigns seek to among other things, encourage families with persons with disability to bring them forward, not only to be registered but to also to be assisted.

Article 11: Situations of risk and humanitarian emergencies

118. The 2007 Post Election Violence and other humanitarian emergencies have presented Kenya with unprecedented challenges on how to deal with person with disabilities. Indeed, in most crises, the Government's responses have consistently taken into account the special needs for the persons with disabilities by facilitating the provision of emergency aid and supplies to them in camps and host communities. The Government has also established Disaster Management Committees at various levels to oversee implementation of emergency relief operations and facilitate protection of the displaced. These committees have representation from the disabilities sector.

119. The Government through the Ministry of Special Programmes is currently developing a Draft National Disaster Management Policy and a draft National Internal Displaced Persons Policy. The policies take into cognizance the rights of persons with disabilities during situations of emergency or disaster and in particular provide for priority in assistance and support to be offered to the more vulnerable groups which include women, children and persons with disabilities.

120. The Children's Act, No. 8 of 2001, safeguards the rights and welfare of all children, including children with disabilities. Among the category of children recognized as being in need of care and protection are children who have been displaced as a consequence of war, civil disturbances or natural disasters. Section 10(2) of the Act prohibits the involvement of children in hostilities and armed conflict. However, in cases where armed conflict occurs, respect for and the protection and care of children should be maintained in accordance with the law.

121. The Government further has an obligation to provide protection, rehabilitation care, recovery and re-integration into normal social life for any child, including a child who may become a victim of armed conflict or natural disaster. Courts of law are empowered to make an order requiring the Director of Children Services to take the necessary steps to ensure that a child is provided with care, and where possible, is reunited with his family. Section 63(1) allows Charitable Children's Institutions to receive children into their custody in emergency situations.

122. In instances where there are emergency situations in neighboring countries occasioning the entry of refugees into Kenya, Kenya is a party to the Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which it has domesticated into its Refugees Act No. 13 of 2006. The provisions of these laws are closely modeled on those of the international and regional instruments, with necessary exceptions as necessitated by the circumstances of Kenya.

Article 12: Equal recognition before the law

123. Article 27(1) of the Constitution of Kenya, 2010 recognizes that every person, including those with disabilities, are equal before the law and have the right to equal protection and equal benefit of the law. It further guarantees equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Article 50 recognizes that every person has a right to a fair and public hearing.

124. Every Kenyan citizen has legal capacity in civil proceedings. However, where exceptions have to be made then the same is done in accordance with the law. The Civil Procedure Rules make provisions with regard to instances where a person is considered not to have legal capacity. Where a person is incapable of protecting their interests when suing or being sued, then a case may be filed or defended on their behalf by the "next friend". However, it is for the Court to adjudge a person to be of unsound mind in which case the consent to act as "next friend" must be in writing, signed and filed in accordance with Order 1 Rule 10(2) and Order 32 Rule 1(2) of Civil Procedure Rules, 2010. Where there is no other person fit and willing to act as a next friend, the Court may appoint any of its officers to act as one.

125. Further, the Civil Procedure Rules, 2010, recognize that children with disabilities may sue and be sued through their guardian *ad litem* whose role, in the legal proceedings, is to safeguard the interests of the minor. The Court must grant orders for the next friend to receive any money or other movable property on behalf of the persons in whose behalf they are acting. The same also applies in instances where the next friend is seeking to enter into any agreement or compromise on behalf of the person they act for. Thus, the role of the next friend is regarded as that of an agent or officer of the Court to protect the rights of the person with disabilities.

126. However, due to lack of awareness on the rights of persons with disabilities, the issue of legal capacity still remains a challenge to some persons with disabilities, particularly to those with mental and cognitive disabilities, where decisions are made on their behalf without consulting them. In an effort to overcome this, the Government is

pushing for a shift from substituted decision making to supported decision making for persons with disabilities and that there be a distinction between legal capacity which all persons with disabilities enjoy and capacity to act where they may require support.

127. Section 107 of the Children's Act, No. 8 of 2001 makes exception to the provision for the appointment of a guardian to end upon the child attaining the age of eighteen years. Therefore, in the case where the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or of managing his own affairs and his property without the assistance of a guardian, the guardianship can be extended after the eighteenth (18) birthday.

128. Persons with disabilities also often find themselves victims and/or witnesses in criminal cases that then require them to provide evidence. This usually presents different challenges depending on the nature of disability and severity of the effect of the offence. Courts in most cases find it difficult to convict suspects in these cases where the victim or witness either could not see or hear thus making their evidence to lack credibility thereby leading to dismissal of cases. However, this challenge is being addressed in the ongoing review of the Evidence Act.

129. The Sexual Offences Act, 2006 provides for intermediaries to support vulnerable witnesses as they give their evidence. Indeed, Section 2 of the Act defines complainant to mean the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse. Section 31(4)(b) enables a Court to direct that a vulnerable witness, who has been defined to include a person with mental disability, shall give evidence through an intermediary.

130. The Government of Kenya has put in place Constitutional guarantees that ensure the equal right of persons with disabilities to own or inherit property. This is contained in Article 40 of the Constitution of Kenya, 2010, which guarantees the rights of every person, including persons with disabilities, to acquire and own property. The Government of Kenya acknowledges that the issue of inheritance, especially of land, for persons with disabilities is still a major challenge as they are often disinherited of their property by their kin or guardians. However, this is being addressed under the ongoing review of the Law of Succession Act to among other things protect the rights of persons with disabilities to inherit property.

131. Section 37 of the PWD Act, 2003, which deals with setting up a system that will encourage credit unions, co-operatives and other lending institutions to extend credit to persons with disabilities. The Government has also provided a budget of KES 200 million in the last financial year (2010/2011), part of which monies was used towards the provision of grants to persons with disabilities to start up their own business, grants to empower persons with disabilities, scholarships and purchase of assistive devices, among others. In order to make the loan accessible to persons with disabilities, minimum collateral is required and there is no interest charged. Further, the Youth Enterprise Fund and the Women's Enterprise Fund provides that at least 10% of the resources should be set aside for persons with disabilities.

Article 13: Access to justice

132. The Constitution of Kenya, 2010 guarantees the right to access to justice for all persons, including persons with disabilities under Article 48. It further guarantees that if any fee is required, then the same should be reasonable and shall not impede access to justice. Article 159 requires justice to be done to all, irrespective of status, that justice shall

not to be delayed and that justice should be administered without undue regard to procedural technicalities.

133. Article 50 of the Constitution of Kenya, 2010, guarantees the right to a fair trial and public hearing for all persons, including persons with disabilities. This includes the right to be informed in advance of the evidence the prosecution is intending to rely on and to have reasonable access to that evidence. Article 50(m) guarantees the right to an interpreter without payment. This is in line with Article 54 which guarantees a person with disabilities the right to use Kenyan Sign Language, Braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability.

134. Under Section 38 of the PWD Act, 2003, the Attorney General in consultation with the NCPWD is required to make regulations on free legal services for persons with disabilities and in particular on matters affecting the violation of the rights of person with disabilities or the deprivation of their property; in cases involving capital punishment of persons with disabilities; regulations on the exemption, for persons with disabilities, from the payment of fees in relation to the aforementioned instances and the provision, to persons with disabilities who attend court, of free Kenyan Sign Language interpretation, Braille services and physical guide assistance. Section 38(4) further requires the Judiciary to make an effort to ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

135. The Government has taken measures to ensure effective training of personnel in the national justice and prison system. To this end, under the National Disability Policy, the Government has committed to sensitize the public on the rights of persons with disabilities, including sensitizing law enforcement agencies, legal practitioners, medical personnel and other actors in handling cases affecting persons with disabilities. Various other institutions including the NCPWD, KNHREC, among others have been undertaking their mandate of creating awareness among key stakeholders and training key personnel in the national justice and prison system with respect to human rights and in particular the rights of persons with disabilities.

136. Article 22(1) of the Constitution of Kenya, 2010, recognizes the right of every person, including persons with disabilities, to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. It further allows Court proceedings to be instituted by a person acting as a member of, or in the interest of, a group or class of persons, including persons with disabilities. Article 22(3) (b) allows commencement of proceedings to be kept to the minimum and if necessary, entertain proceedings on the basis of informal documentation. It also allows for the waiver of fees for commencing such proceedings. When interpreting the Bill of Rights, Article 20(4) (a) demands that due regard must be given to the need for the Courts to promote the values that underlie an open and democratic society based on human dignity which includes, among others, the principle of equality. Further, Article 21(3) obligates all state organs and all public officers to address the needs of vulnerable groups within society, including persons with disabilities.

137. The Criminal Law (Amendment) Act, 2003, amended the Penal Code, the Evidence Act and the Criminal Procedure Code. It made the language in the Acts to be sensitive by deleting such derogatory terms as imbecile and idiot.

138. The rights of children with disabilities are specifically catered for under the PWD Act, 2003. The Act establishes The Persons with Disabilities (Cost, Care, Support and Maintenance) Regulations, 2009, which creates regulations for institutions that cater for persons with severe disabilities and provides that the NCPWD shall promote and advise in the development and implementation by local authorities, community based organizations

and other stakeholders, of suitable community based rehabilitation and welfare programs for the inclusion, integration, maintenance, care and support of children and persons with disabilities, including offenders with disabilities who may at the material time be serving a probationary sentence and ex-prisoners, in the respective communities. Among the areas of trainings offered under the community rehabilitation programme is capacity building of children and persons with disabilities for their effective rehabilitation and inclusion in the community.

139. The judiciary is in the process of putting in place age-related accommodations to ensure effective participation of children and young persons with disabilities. Courts are currently being adapted to suit the accessibility challenges of persons with disabilities including children with disabilities. To this end, the newly constructed Milimani Court in Nairobi has been made disability friendly. Section 186 of the Act requires, among other things that if the child offender who is accused of having infringed any law is a child with a disability, s/he be given special care and be treated with the same dignity as a child with no disability. The National Disability Policy calls upon the development of programs to train service providers and personnel on disability related specialized areas. The Government is training of law enforcement agencies on handling children with disabilities.

140. The Government has been piloting the National Legal Education and Awareness Programme (NALEAP) through the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme. NALEAP targets the poor and marginalized in the society and seeks to among others, cover legal advice, awareness and representation particularly in those cases where it is most needed. Further, the Ministry of Justice, National Cohesion and Constitutional Affairs and the Kenya Law Reform Commission are in the process of reviewing the country's laws and policies to harmonize the PWD Act, 2003 with the Constitution of Kenya, 2010 and the Convention on the Rights of Persons with Disabilities.

Article 14: Liberty and security of the person

141. Article 29 of the Constitution of Kenya, 2010, guarantees every person, including persons with disabilities, the right to freedom and security of the person, which includes the right not to be deprived of one's freedom arbitrarily or without just cause, be detained without trial, not be subjected to any form of violence, torture, to corporal punishment; or treated or punished in a cruel, inhumane or degrading manner. Article 30 further guarantees all persons the right not be held in slavery or servitude. In instances where the liberty of a person may be deprived then the same must be in accordance with the laid down law. A person with disabilities therefore cannot have his liberty and security of persons curtailed on the mere basis that she/he has a disability.

142. In instances where an accused person is arrested, Article 49 of the Constitution of Kenya, 2010, guarantees one the right to be informed promptly, in a language that the she/he understands: the reason for the arrest; the right to remain silent and the consequences of not remaining silent; the right to communicate with an advocate, and other persons whose assistance is necessary; not to be compelled to make any confession or admission that could be used in evidence against the person; to be held separately from persons who are serving a sentence; to be brought before a court as soon as reasonably possible and the rights to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons. For those offenses that attract a punishment of a fine or imprisonment for a period not exceeding six months, then a person charged for such an offense has the right not to be remanded in custody.

143. For children with disabilities, Article 53(f) of the Constitution of Kenya, 2010, guarantees every child, including a child with disabilities, the right not to be detained, except as a measure of last resort. It further requires that they be held for the shortest

appropriate period of time; be separate from adults and be kept in conditions that take account of the child's sex and age. The above positions have been reaffirmed under the Children's Act, No. 8 of 2001. Section 4 of the Children's Act provides that in all actions concerning children, whether taken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Institutionalization of children in general and children with disabilities in particular is usually considered as a last resort. Section 18 of the same Act further provides that all children have the right not to be deprived of their liberty, unlawfully arrested or subjected to torture, cruel treatment or punishment. Section 18(4) of the Children's Act further provides that a child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with his family.

144. Section 186 of the Children's Act, No. 8 of 2001 requires that in instances where a child with disabilities has been accused of infringing the law then she/he should be given special care and be treated with the same dignity as a child with no disability. Section 76 places an obligation of the Courts when considering whether or not to make an order with regard to a child to *inter alia* consider the child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child.

145. In an effort to further ensure reasonable accommodation to children with disabilities in custody, the Children's Act (Amendment) Bill proposes to amend the Children's Act, No. 8 of 2001 so as to ensure that a child with disabilities be held in facilities that adequately cater for their special needs. In cases where a child with disabilities is adjudicated to be one in need of care and attention, Section 125(f) of the Children's Act, No. 8 of 2001 requires the Court to make an order which requires the Director to take the necessary steps to ensure that the child is provided with care commensurate with his special needs. In cases where an order is made or a child with disabilities is received into a Charitable Children's Institution.

146. Under Section 45 of the PWD Act, 2003, it is an offense for parents, guardians and next of kin to conceal persons with disabilities in such a manner as to deny them the opportunities and services available. This attracts a punishment of a fine not exceeding KES 20,000.

147. The Government of Kenya is committed to ensuring that persons with disabilities who have been deprived of their liberty are provided with the required reasonable accommodation, and benefit from the same procedural guarantees as all other persons to enjoy fully their remaining human rights. Further, Section 38 of the PWD Act, 2003, also requires that persons with disabilities who are accused of an offense and who have been denied bail be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister. The Prisons Department is also currently developing a policy on the use of assistive devices in prisons.

148. The National Disability Policy seeks to create a conducive environment for persons with disabilities to realize their full potential and contribute to the development of society, recognizes that persons with disabilities are part and parcel of the society and that they should be fully included in all aspects of life and their special needs be met within their communities instead of being isolated by institutional service delivery approaches.

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

149. Article 29 of the Constitution of Kenya, 2010, guarantees every person, including persons with disabilities, the right to freedom and security of the person, which includes the

right not to be subjected to torture, corporal punishment, or treated or punished in a cruel, inhumane or degrading manner. This is similarly the position as regards children with disabilities under Section 18 of the Children's Act.

150. Persons with disabilities still face stigmatization from the society which has led them to be subjected to abuse and exploitation even by their own families. In order to address this challenge, the PWD Act, 2003, makes it an offense for any parent, guardian or next of kin to conceal a person with disabilities. The MoGCSD in conjunction with the NCPWD has been undertaking awareness raising campaigns on the rights of persons with disabilities at the national, provincial and district level targeting DPOs, persons with disabilities, the community and government departments and ministries.

151. With regard to measures taken to protect persons with disabilities from medical or scientific experimentation, medical practitioners adhere to a very strict Code of Professional Conduct which requires that before any medical or scientific experimentation can be made to any one, then their free and informed consent must first be sought. All medics are required before any treatment can be given to explain to the patient the benefits and the dangers of the treatment in order for the patient to make an informed choice.

Article 16: Freedom from exploitation, violence and abuse

152. Persons with disabilities are often exposed to many forms of exploitation, violence and abuse that take many different forms. This can be largely attributed to the high levels of poverty in Kenya. The high poverty levels together with ignorance on the rights of persons with disabilities often expose them to exploitation, violence and abuse. They often do not get formal education and are seen as a burden to the family. They often end up being trafficked and forced into exploitative circumstances such as begging to provide for themselves and their family members.

153. The Government has enacted numerous laws and developed policies and programmes that seek to minimize exposure of persons with disabilities to incidences of exploitation, violence and abuse. With regard to the protection of children from abuse, the Government has established Area Advisory Councils (AACs) at the local level to deal with cases of exploitation and abuse of children in need of care and protection including children with disabilities. The Department of Children Service has also established offices at the district level that deal with child victims of abuse. To further protect children from abuse, the Government has also established the Toll Free Child Help Line (116) where children can call to report cases of abuse. There are also rehabilitation centers, children homes and other statutory institutions that empower and protect children with disabilities.

154. The Government, in collaboration with the private sector and development partners, has facilitated the establishment of Gender Violence Recovery Centers in Nairobi, Mombasa and Eldoret for victims of gender based violence. The Government has also trained doctors on how to deal with victims of violence. Indeed, persons with disabilities also benefit from these services.

Article 17: Protecting the integrity of the person

155. The privacy and integrity of all persons in Kenya is constitutionally protected in the Constitution of Kenya, 2010, which under Article 31 guarantees all citizens their right to privacy. It protects all individuals from arbitrary searches of their person, home or property; the seizure of their property or the unnecessary demand of information regarding ones family or private affairs or the interference with communication. Article 54(1) states that a person with any disability is entitled to be treated with dignity and respect and to be

addressed and referred to in a manner that is not demeaning. However, despite these Constitutional guarantees, persons with disabilities still face a lot of challenges which can mainly be attributed to the low levels of awareness, lack of knowledge, and limited understanding on the part of key service providers on the issues relating to or affecting persons with disabilities and their rights. To counteract this, there is ongoing awareness to sensitize the public including Government officials and medical personnel on how to deal with persons with disabilities with integrity.

Article 18: Liberty of movement and nationality

156. The Constitution of Kenya, 2010, has very progressive provisions with regard to liberty of movement and nationality. Article 39 guarantees the freedom of movement and the right to leave, enter and remain in and reside in Kenya. Article 14 further guarantees the right to a nationality and provides that a person can become a citizen of Kenya by birth, registration and nationality; and Kenyans can now hold dual citizenship. With regard to a child who is found in Kenya and is or appears to be under eight years and whose nationality and parents are not known, then he or she is presumed to be a Kenyan citizen by birth. All the above provisions include persons with disabilities.

157. There are several departments that deal with issues of movement and nationality. They fall under the Ministry of Immigration and Registration of Persons and they include the Department of Immigration, the National Bureau of Registration, the Department of Civil Registration, the Department of Refugees and the Department of Integrated Population Registration Services. The Government through the Ministry of Immigration and Registration of Persons implemented several programmes that enhance levels of awareness and improve the provision of services to persons with disabilities.

158. To this end, the Ministry of Immigration and Registration of Persons has decentralized its services and even established mobile units that enhance the issuance of national identity cards and birth certificates. This has consequently reduced the distances that persons with disabilities have to travel to secure these documents. The Ministry is also in the process of decentralizing the issuance of passports to the county levels and at border entry points. This too will go a long way in ensuring that persons with disabilities who wish to travel do not have to travel to Nairobi, Mombasa or Kisumu to secure the same but can do so at the various country headquarters. The Ministry intends to review all applications form for the services offered by the Ministry to collect data on nature and forms of disabilities.

Article 19: Living independently and being included in the community

159. The Government of Kenya is committed to ensuring that persons with disabilities live independently and that they are included within the community. The PWD Act, 2003 prohibits discrimination thereby ensuring that persons with disabilities live within their communities. There is also the Persons with Disabilities (Cost, Care, Support and Maintenance) Regulations, 2009, which provides a legal framework for the development of community rehabilitation programs for persons with disabilities that train on vocational and trade skills, independent living skills and capacity building of children and persons with disabilities and thereby enhance effective rehabilitation, independent living and inclusion within the community.

160. The Government has also put in place numerous programmes that will progressively help persons with disabilities realize greater self reliance. These programmes include giving persons with disabilities life skills and education, providing them with assistive devices at a

subsidized rate among other interventions. However, these efforts are hampered by the high levels of poverty and lack of awareness on issues that affect persons with disabilities in Kenya.

161. The Government also supports and works with development partners and NGOs to promote independent living by persons with disabilities. Further, the Government encourages Public Private Partnership (PPP) initiatives that seek to provide additional services aimed at improving the lives of persons with disabilities. To this end, the Association of Persons with Disabilities in Kenya (APDK) is collaborating very closely with the Government by providing rehabilitation services within Government hospitals.

162. The Government has established educational facilities and rehabilitation centers that offer life skills and vocational trainings to persons with disabilities. Further, the State through the MoGCSD, the NCPWD and Disabled Persons Organizations has embarked on programmes that enhance public acceptance of persons with disabilities thus enabling them live among the community.

163. Further, the Government is running training programmes for specialists who empower persons with disabilities to gain life skills and assistive devices that enable them live independently. The Kenya Medical Training Colleges, Jomo Kenyatta University of Agriculture and Technology, the PCEA University and Moi University run training programmes for occupational therapists, physiotherapists and orthopedic technicians all of whom play a major role in empowering persons with disabilities.

164. The Government has put in place mechanisms to empower persons with disabilities to live independently and within their communities by providing them with financial support. The NDFPWDs empowers persons with disabilities to be independent by providing and contributing to the cost of assistive devices and services. It also pays allowances to persons with severe disabilities as they have no other source of income and are not trainable in any skills; aged persons with severe disabilities; and single parents with children with disabilities and who cannot therefore seek employment.

165. The Government, through the Department of Children Services has also established the OVC Cash Transfer programme for children, including those with disabilities, by empowering the care takers and guardians both socially and economically. Other funds include one established under the Kenya Society for the Blind Act for persons with visual disability and the National Fund for the Disabled of Kenya which provides start up kits for promoting independence.

Article 20: Personal mobility

166. The need and importance of personal mobility cannot be overstated. The Government is undertaking steps to enforce the laws and regulations on accessibility and personal mobility without which persons with disabilities cannot fully participate in all aspects of life or enjoy their freedom of movement. Section 21 of the PWD Act, 2003, deals with accessibility and mobility and it states that persons with disabilities are entitled to have a barrier free environment to enable them to have access to buildings, road and other social amenities, and assistive devices and other equipment to promote their mobility while and Section 22(1) requires that buildings be adapted to suit persons with disabilities. The Government acknowledges that the cost of assistive devices is very high and beyond many persons with disabilities. For that reason, it contributes to the cost of providing assistive devices and services among other things through the NDFPWDs. Further, it has granted tax exemptions on these devices under the Customs and Excise Act.

167. The Government has made tremendous efforts in networking and collaborating with the private sector to overcome the challenge of mobility for persons with disabilities. It is

for this reason that institutions such as Kenyatta University and the Kenya Institute of Special Education train mobility instructors. Government hospitals have also established units that run orthopedic and physiotherapy services that train on personal mobility and assess the suitable devices for an individual.

168. The Government also works closely with other institutions that provide and produce mobility appliances. The private sector has also made contributions towards making the appliances available at an affordable rate to persons with disabilities. The Government has leased land in its property in Kabete, Nairobi to the Association for Persons with Disabilities in Kenya (APDK) to put up an Orthopedic Workshop that is producing assistive devices and mobility appliances such as crutches, manual and motorized wheelchairs, calipers, among others. Further, this collaboration is also working towards reviving the Orthopedic Workshops in the Provincial hospitals. The Government is currently recruiting technical staff within the various line ministries to produce orthopedic appliances. The Government has also leased land to the Rotary Club of Nairobi South that runs the Jaipur Foot Project, which has since 1990 enabled over 5,000 individuals to walk again with the help of prosthesis.

Article 21: Freedom of expression and opinion, and access to information

169. Every Kenyan has a freedom of expression and opinion and access to information, which is protected under various articles of the Constitution of Kenya, 2010. Article 35(1)(b) states that every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom. Article 54(1)(c) further provides that persons with disabilities are entitled to information while Article 54(1)(d) guarantees a person with disability the right to use Kenyan Sign Language, Braille or other appropriate means of communication; and finally to access materials and devices to overcome constraints arising from the person's disability. Article 32 guarantees freedom of conscience, religion, belief and opinion while Article 33 guarantees freedom of expression and Article 34 guarantees freedom of the media. Article 7 places an obligation on the Government to promote the development and use of Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities. It further requires that the business of Parliament be carried out in English, Kiswahili and Kenyan Sign Language.

170. Under Section 19 of PWD Act, 2003, the NCPWD is required to make provisions for an integrated system of special and non-formal education for persons with all forms of disabilities and further, to establish, where possible, Braille and recorded libraries for persons with visual disabilities. Further, Section 39 required all television stations to provide a Kenyan Sign Language inset or subtitles in all newscast and educational programmes and in all programmes covering events of national significance.

171. With regard to communication, Section 40 provides that all persons providing public telephone services shall as far as possible 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.

172. The Parliamentary proceedings broadcast on televisions always have Kenyan Sign Language interpreters thereby enabling those with hearing challenges to access information. Further, the Government has zero rated taxes on Braille matter and equipment.

Article 22: Respect for privacy

173. All Kenyans have a right to privacy as guaranteed by Article 31 of the Constitution of Kenya, 2010, which protects one from having their person, home or property searched; their possessions seized; any information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed.

Article 23: Respect for home and the family

174. The Government of Kenya regards the family as the foundation of society as it provides the basic environment for the care, support and emotional security for any individual and for that reason is committed to eliminate discrimination against persons with disabilities in matters relating to marriage, family and personal relations. The Government is committed to preserving and strengthening the family unit. Article 45(1) of the Constitution of Kenya, 2010, recognizes the family as the natural and fundamental unit of society. It is the necessary basis of social order, and shall enjoy the recognition and protection of the State. Article 45(2) further allows every adult the right to marry a person of the opposite sex, based on the free consent of the parties while Article 45(3) provides that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. However, negative societal perceptions on marriage of persons with disabilities have made it difficult for them to realize their right to found a family.

175. The National Survey on Persons with Disabilities in Kenya found that over 58% of the persons with disabilities who were surveyed reported that they were married or in a relationship. Further, 72% of persons with disabilities that were surveyed reported having children.

Article 24: Education

176. Kenya National Survey for Persons with Disabilities published in March 2008 by the National Coordinating Agency for Population and Development revealed that about 67% of persons with disabilities had a primary education and 19% attained a secondary education. A small proportion of persons with disabilities had attained a middle level of education. But only 2% had reached a university level. From the institutional data, 75% of persons with disabilities had attained at least primary level education. Persons with disabilities in the rural areas had a higher proportion (52%) of those with primary education compared with their urban counterparts (38%). 39% of the persons with disabilities have attended a mainstream/regular preschool. This is followed closely by those who had attended a mainstream primary school (37%). Only 9% had attended a mainstream secondary school, and females are particularly disadvantaged here: except at tertiary levels, males were significantly more likely than females to have attended mainstream schools. Overall, only 4% of persons with disabilities had attended some form of special education institutions, with a larger proportion of persons with disabilities in urban areas having done so than those in rural areas. Less than 2% of persons with disabilities had attended special classes in mainstream institutions at all levels. Most of them (1.2%) attended special classes at preschool or primary level.

177. The Government of Kenya recognizes that learners with disabilities have a right of education without discrimination and based on equal opportunities. It also recognizes that they have a right to access quality education. It further acknowledges the importance of education as a vehicle to enable persons with disabilities to participate in society and combat marginalization.

178. The adoption of the Constitution of Kenya, 2010 marked one of the most important milestones with regard to education for learners with disabilities. Article 43 (1) (f) guarantees every citizen a right to education while Article 53 (1) (b) states that every child has a right to free and compulsory basic education. Article 54 makes access to inclusive education by persons with disabilities a Constitutional right. This Article appreciates the challenges faced by persons with disabilities in accessing education and therefore requires educational institutions to modify its facilities to ensure integration of and greater access to learners with disabilities. Article 56 further places an obligation on the State to develop and implement affirmative action programmes.

179. The Children's Act, 2001, obligates parents to provide educational needs for their children. It provides under Section 5 that no child will be discriminated based on disability. Section 7(2) provides that every child shall be entitled to free basic education, which shall be compulsory. The Government of Kenya introduced free and compulsory primary education in 2003, which was meant to ensure that every child gets basic education, including children with disabilities.

180. The Government of Kenya has made tremendous progress with regard to education of children with special needs. In January 2005, the Government published Sessional Paper No. 1 of 2005, which set a Policy Framework for Education, Training and Research, titled "Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century". It underscored the importance of special needs education in human capital development, which if enforced would empower those most likely to be marginalized to participate in the mainstream education sector. It also stated the overall government policy direction on learners with special needs and disabilities and further underscored the Government's commitment to ensuring that learners with special needs and disabilities enjoy equal access to quality and relevant education.

181. The Draft Special Needs Education Policy seeks to provide guidance to staff of the Ministry of Education and other stakeholders on the provision of education to learners with special needs to ensure that these learners were treated equally in learning activities at all levels. It seeks to address issues of equity and improvement of learning environment in schools to ensure inclusive education through regular schools as opposed to using special schools and special units attached to regular schools. It has also set several target areas including assessment and intervention; access to quality and relevant education; conducive environment, health and safety (adaptation of facilities); specialized facilities and technology; inclusive education; curriculum development; capacity building and development; participation and involvement; advocacy and awareness creation; partnerships and collaboration; gender mainstreaming in special needs education; research and documentation; disaster preparedness; resource mobilization; guidance and counseling; and assessment and intervention.

182. In another bid to enhance programmes geared towards enhancing equal opportunities in education and the realization of the right to education for learners with disabilities, the Government of Kenya, through the Ministry of Education, is implementing the Kenya Education Sector and Support Programme (KESSP) which brings together several global initiatives including Education for All (EFA), the Millennium Development Goals (MDG), among others and national initiatives contained in the Constitution of Kenya, 2010, the Kenya Vision 2030 and the Special Needs Education Policy, among others.

183. The Government has progressively established programmes in various institutions to cater for these learners. There are presently 1,882 primary and secondary schools in Kenya that provide education for learners with special needs. These schools have 50,744 enrolled learners with disabilities. 24,000 of these learners are in special schools while the rest are in regular schools. This increase has been realized as a result of the efforts made to include

learners with disabilities in regular schools through the free primary education. There are also 15 secondary special schools and integrated programmes.

184. There has been progress made with regard to budgetary allocations. Between the year 2003 and 2010, the Ministry of Education received KES 2,966,850,000 to cater for all special programmes. These funds are provided to institutions to enable institutions to acquire appropriate teaching/learning materials and assistive devices; employ support staff; undertake infrastructure improvement and modification to enable accessibility and placement of learners with disabilities. The Education Assessment and Resource Centers (EARC) have also seen a significant increase in their budgetary allocation in the last two years from KES 98,000,000 to KES 420,000,000 per year.

185. The Government started the Free Primary Education (FPE) Programme in 2003 where it provides money to schools to ensure that all children access basic education. In the 2010/2011 financial year the Government allocated KES 1,020 per child while each learner with disability was allocated KES 2,000 more than children without disability so as to cater for their specific educational needs and is also meant to improve the facilities in the school so as to cater for them. The NDFPWDs also disburses funds institutions directly to enable them rehabilitate and adapt their institutions to cater for learning for persons with disabilities. There are also the bursary funds available for needy children in higher education.

186. The Educational Assessment Resource Centers (EARC) also assesses the educational needs of children with disabilities so as to facilitate the identification, assessment, referrals and placement of children with disabilities. It has also supported the development of special schools and units to cater for children with special needs in the areas of hearing, visual, mental or physical challenges to ensure that all children, irrespective of categories or severity of their disabilities have access to appropriate education within settings that best suit them.

187. Through the Kenya Institute of Special Education (KISE), the Ministry undertakes the training of teachers for learners with disabilities at diploma level and in-service training of up to three months. In total 6,765 teachers have received Diploma Certificates and a number have been trained to degree level. There are three (3) Teacher Training Colleges that have facilities for training teachers with disabilities. This ensures that qualified teachers and teachers with disabilities work at different levels of education. There is at least one teacher in all the 1,882 programmes offering education for learners with disabilities. They also serve as resource person in the schools. Special attention has recently been given to Kenyan Sign Language where currently 115 teachers have undergone the three months in-service course.

188. The Government is currently revising the Education Act to address the special needs of children with disabilities. Through the Kenya Institute of Education (KIE), the Government of Kenya has adapted, adopted or specialized several curriculum materials to meet the needs of learners with disabilities in primary and secondary schools. The African Braille Centre continues to produce and disseminate Braille materials to schools and units for use by blind learners. Diagrams and illustrations are used as teaching aids together with songs and games that have also been composed to enhance easy learning alongside practical lessons. Kenyan Sign Language (KSL) is considered the natural language of the deaf in Kenya and has been adopted as a medium of communication. There is a KSL dictionary available in both print and CD.

189. The Kenya National Examination Council (KNEC) has also ensured appropriate measures to cater for the needs of different disability groups when setting and administering national examinations. Indeed, learners with disabilities are given slightly more time when sitting for examinations. KNEC has established a desk, which deals specifically with

examinations for persons with disabilities. It sets examinations for the blind candidates using Braille language, which is thereafter transcribed then marked alongside others.

190. With regard to admission of learners with disabilities into university education, the Kenyan universities Joint Admissions Board (JAB) has put in place affirmative action programmes on university admission where learners with disabilities secure admission with relatively lower grades compared to other students. This is often one (1) point less than that of other candidates.

191. Several universities run programmes for learners with disabilities. These include Kenyatta University, Nairobi University and Maseno University, among others. Kenyatta University not only trains teachers but also takes care of the needs of students with special needs for example by providing free transport for them within the campus. It has also established resource services, provides assistive devices like wheel chairs and crutches. The Kenyatta University offers a Bachelor in Education Degree (Special Needs Education – Primary option or Secondary Option). The degree programme also enables the teachers to identify children “at risk” early enough during the foundation years and stop the condition from making the child worse and basically helping the child to live a better life. As an incentive for teachers to take up special needs education, the Government has set up a programme of promoting teachers who have undergone training in special needs education.

192. The NDFPWDs has been funding universities and colleges to enhance education of persons with disabilities.

193. The Government acknowledges that the cost of education for children with disabilities is very high. Therefore, greater level of planning and coordination is needed to ensure progressive realization of the right to education by persons with disabilities. Further, the Government will seek to determine the number of school going children with disabilities both in and out of school and also to determine the kind of specialized equipment available and needed in special programmes. This education specific data will be used for gap analysis, planning and resource allocation.

194. The Government through the Kenya Institute of Education intends to improve the curriculum and the facilities. It will also increase the teaching and assessment procedures so as to enhance provision of quality education through the Kenya Institute of Special Education (KISE).

Article 25: Health

195. All health facilities in Kenya provide services to all persons without discrimination. The Constitution of Kenya, 2010 provides that every person has the right to the highest attainable standard of health and to health care services as guaranteed under Article 43(a) and in the case of children under Article 53(1)(c). Further, Article 56 has placed an obligation on the State to put in place affirmative action programmes designed to ensure that minorities and marginalized groups including persons with disabilities have reasonable access to health services.

196. Section 20 of the PWD Act, 2003 mandates the NCPWD to monitor the provision of health care to persons with disabilities so as to ensure that the services are devoid of any form of discrimination. It also ensures that the programmes of the Ministry of Health are geared towards prevention of disability; early identification of disability; early rehabilitation of persons with disabilities; enabling persons with disabilities to receive affordable rehabilitation and medical services in public and privately owned health institutions; availing essential health services to persons with disabilities at an affordable cost; and availing field medical personnel to local health institutions for the benefit of persons with disabilities. The Government’s commitment can also be found in several

policies. Indeed, the National Reproductive Health Policy, 2008 recognizes that women with disabilities are also entitled to access reproductive health services. It has identified the need to improve the sexual and reproductive health of youth with disabilities.

197. The Ministry of Health is implementing an integrated approach in its services and disability prevention and rehabilitation is a priority as expressed in the 2005-2010 Strategic Plans. It further offers trainings to its occupational therapists, physiotherapists and other service providers for three years. The trainings prepare them to adequately serve the needs of people with disabilities. There are 265 government hospitals, 460 health centers and 1,600 dispensaries that are run by the Ministry of Health countrywide. Of these, there are two major referral hospitals namely the Kenyatta National Hospital, the National Spinal Injury and Mathare District Hospital in Nairobi and the Moi Educational and Referral Hospital in Eldoret. These health care facilities are divided into different levels based on their size, bed capacity, services they offer and geographical coverage. The major hospitals are level 4 and above, health centers level 3, dispensary level 2, nursing and maternity homes level 3 and health clinics and medical centers level 2. All the facilities offer curative, rehabilitative, preventive and promotional health services across the nation. Level 4 to level 5 hospitals provide integrated health care services to all Kenyans and ensure that no one is denied health services. The Government works very closely with churches, non-governmental and private healthcare organizations to ensure that health services reach a greater number of citizens and is determined to establish health facilities at a distance of 5 km apart.

198. The Ministry of Health implements pro-poor health policies and interventions all of which have improved access to basic health care for a large population of Kenyans and ensure that those that are unable to pay are not denied access health services. This is done through cost sharing and waiver of costs. One such programme is the provision of free medical services to children of age of 5 years, including those with disabilities.

199. The Government has also established a comprehensive Community Based Rehabilitation (CBR) program for persons with disabilities, which has been entrenched into normal healthcare service delivery system through outreach, facility based rehabilitation services. The CBR covers disability prevention, community sensitization on disability, and early identification and intervention services with emphasis amongst the child population.

200. The Division of Child and Adolescent Health of the Ministry of Health has also developed National Guidelines and Manual for the Identification and Referral of children with disabilities to help sensitize health workers and stakeholders in the provision of services to children with disabilities. The Government also has the Expanded Safe Motherhood programme in health facilities whose purpose is to ensure early identification and intervention in disability management in childhood to forestall disability in life and reduce its impact in adulthood.

201. The Ministries of Health also undertake training of local communities and (Community Health Extension Workers (CHEWs) on disability issues, early detection and referral of children and persons with disabilities to health facilities. There is also the Enhanced Occupational Safety at workplace through the Public Health Act and Occupational Health and Safety Act.

202. There are hospitals that provide specialized services. These include Kenyatta National Hospital's Ear, Nose and Throat (ENT) clinic, which screens persons with hearing impairment; the Mathare Hospital and Moi Teaching and Referral Hospital and all L4 and L5 hospitals such as Mbagathi District Hospital which provides rehabilitation services to persons with disabilities; The National Spinal Injuries Hospital in Nairobi is a rehabilitation institution that provides services to persons with severe injuries to the spine. In addition to curative and preventive services, the Ministry of Health provides specialized services for

persons with disabilities through the Division of Rehabilitative Health Services, which provides assistive devices, physiotherapy and occupational therapy.

203. The Government of Kenya recognizes that these efforts are by no means sufficient and is therefore determined to meet the set threshold for provision of health services including persons with disabilities. To this end, the Government's services are supplemented by private hospitals and dispensaries, which are sponsored by Christian missionaries, other faith based organizations and philanthropists. These include the Kijabe Mission Hospital, which offers rehabilitation services to persons with physical disabilities; the Kikuyu Eye Hospital, the Lions Eye Hospital, the Friends Mission Hospital in Sabatia, Western Province, all of which provide eye care services. There is also the Association of Physically Disabled of Kenya (APDK) which makes and supplies assistive/supportive devices such as crutches, motorized and non motorized wheelchairs for persons with physical disability. There is also the Rotary Club of Nairobi South that runs the Jaipur Foot Project and seeks to give amputees artificial legs. The programme used to conduct camps all over the country but these have since stopped due to limited resources.

204. The Ministry of Health has set up 100 Disability Mainstreaming Committees based at the Headquarter, PMST and the health facilities whose role is to mainstream disability. There are also 100 Disability Assessment Committees, which carry out medical assessment of persons with disabilities. These assessments are necessary for registration with the NCPWD. The Ministry of Health has trained health workers on early identification and management of disability. Disability has also been mainstreamed into the health professional curriculum while there are continuous professional development courses which are done periodically to sensitize health workers.

205. Improved pre-natal services can eradicate pregnancy-related disabling conditions while better hygiene and sanitation can rid the environment of disability causing ailments. The Government offers pre-natal services to pregnant mothers thus reducing the number of children born with disabilities. Kenya has a comprehensive immunization programme with a national coverage of over 80% through the National Expanded Programme on Immunization. These programmes target immunization of children against diseases, which could result into disability such as polio, whooping cough, tetanus, measles, tuberculosis, and diphtheria. Mothers are also encouraged to exclusively breast feed their children until they are six months old. Further, there is a mechanism for surveillance under the Ministry of Public Health and Sanitation.

206. The PWD Act, 2003 makes provisions for the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009. The regulations provide that education and information dissemination on the rights of persons with disabilities shall form part of health care services by healthcare providers. In this regard, the State has provided training for healthcare providers to acquire skills for proper information dissemination and education on the rights of persons with disabilities through the Disability Mainstreaming Committees, whose mandate include facilitating the training of health workers and Heads of Departments (HoDs) on the rights of persons with disabilities. The Committee has also sought to train some of their workers on Kenyan Sign Language.

207. Under Regulation 14 of the Persons with Disabilities (Access To Employment, Services and Facilities) Regulations, 2009, all public toilets should be adapted facilities in public toilets, for wheel chair users and other persons with disability, provide for Braille symbols and auditory signals in elevators or lifts and provide for ramps in hospitals, health centers and other medical care and rehabilitation institutions. Most healthcare centers are accessible to persons with disabilities. However, in a bid to comply with Section 21 of the PWD Act, 2003, health facilities that were constructed before the early 80's have been undergoing renovations while new health care facilities are complying with the same, for example, the Kayole District Hospital that is being constructed in Nairobi.

208. Persons with disabilities in Kenya are exposed to gender based violence and are usually unable to protect themselves. This can be attributed to lack of information and knowledge. The Government through the NCPWD and other stakeholders has taken measures to increase awareness on diseases such as HIV/Aids and malaria among persons with disabilities.

209. Some of the challenges with regard to the provision of health services in Kenya, which also affects the care and treatment of persons with disabilities, has been the brain drain in the country where qualified doctors are attracted by lucrative salaries in the West. There is also the fact that doctors dislike working in rural and remote areas of the country, thus reducing the reach of qualified personnel.

Article 26: Habilitation and rehabilitation

210. The Government through the MoGCSD has established and coordinates 12 Vocational Rehabilitation Centers in various parts of the country. These centers offer vocational training in different kinds of trades that seek to empower persons with disabilities to enable them to enter into formal, informal and/or self employment.

211. The Government has been offering rehabilitation for the visually impaired person through The Kenya Society for the Blind, (KSB), a charitable organization established in 1956 through an Act of Parliament. It seeks to fight against blindness and promote education and rehabilitation of the irreversibly blind. It also seeks to create an environment that encourages the inclusion of visually impaired persons and promote the prevention of avoidable blindness. It works in partnership with the corporate companies, Government, international and local Non-Governmental Organizations and the community to execute its mandate. The Kenya Society for the Blind offers independent living skills on mobility and orientation skills (including use of public transportation), protection techniques, clothing selection and clothing care, personal care, nutrition, fitness, and health care, money management and consumer skills, time management, communication (Braille, adaptive computer skills in JAWS, MAGIC, Open Source software), among others. The Society in conjunction with the Machakos Technical Institute for the Blind also offers technical courses on clothing technology; carpentry/joinery/masonry; tannery and leatherwork.

212. The NCPWD has the mandate to provide, to the maximum extent possible assistive devices, appliances and other equipment to persons with disabilities. Equipments are imported duty free. The Association of Person with Disabilities in Kenya (APDK) has been manufacturing different kinds of assistive devices including manual and motorized wheelchairs for several years. Also, the Rotary Club of Nairobi-South implements the Jaipur Foot Project that was established in Kenya in 1990 to provide cheap and affordable means of mobility for people who would otherwise not be able to afford them.

Article 27: Work and employment

213. The Constitution of Kenya, 2010 prohibits any form of discrimination against all persons including persons with disabilities in any setting. This is the same position held by the Employment Act and the PWD Act, 2003. Section 13 of the Act creates a 5% reservation of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities.

214. Further, Article 41(1) of the Constitution of Kenya, 2010, further guarantees workers, including those with disabilities, the right to fair labour practices, fair remuneration; to reasonable working conditions; to form, join or participate in the activities and programmes of a trade union; and to go on strike. To ensure that the interests of

persons with disabilities are taken into consideration in trade union matters, there is a representative of the Central Organization of Trade Unions (COTU) sitting in the Board of the NCPWD.

215. Kenya enacted new Labour Laws in 2007 that overhauled the labour sector. These laws are now more sensitive to the rights of persons with disabilities. Indeed, Section 2 of the Employment Act has defined disability as a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person's social and economic participation. Section 5(3) provides that no employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV/Aids status. Section 46(g) provides that the following do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty - an employee's race, colour, tribe, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability. With regards to injuries in the workplace, Kenya has enacted the Workman Compensations Act that deals with compensation to persons injured in the workplace many of whom become persons with disabilities. In case of any labour disputes, the same are dealt with by the Labour Officers in the Ministry of Labour or heard by the Industrial Court.

216. The Ministry of Labour is currently conducting a Man Power Survey in order to develop a skills inventory in the country. This will guide the planning of future manpower requirements for the industry. The survey intends to capture the distribution and characteristics of skills and occupations currently available *vis-à-vis* the future manpower requirements. The data collection tool (questionnaire) includes the details of gender, occupation, disability and nationality.

217. The Government has put in place several programmes to assist persons with disabilities to secure employment. The NCPWD undertakes placements for persons with disabilities in Government institutions and private organizations. Under this programme, persons with disabilities forward their Curriculum Vitae to the Council which then reaches out to these organizations which then interview and select suitable candidates. The Council also undertakes capacity building on management, book keeping, communication, project management, proposal writing among others. Other private sector institutions that have employed persons with disabilities include Safaricom which has employed 78 persons with disabilities; Synovate Research which has a policy that at least 1% of its employees must be persons with disabilities; while K-Rep Bank provides loans to groups of person with disabilities. Further, the retirement age for persons with disabilities in public service was pegged at 60 years while that for other public employees was 55 years.

218. The Government through the MoGCSD has established and coordinates 12 Vocational Rehabilitation Centers in various parts of the country. These centers offer vocational training in different kinds of trades that seek to empower persons with disabilities to enable them to enter into formal, informal or self employment. The centers include the Industrial Rehabilitation Center in Nairobi; Bura Rehabilitation Centre, Embu Rehabilitation Centre, Muriranjias Rehabilitation Centre, Nyandarua Rehabilitation Centre, Kabarnet Rehabilitation Centre, Kericho Rehabilitation Centre, Kisii Rehabilitation Centre, Itando Rehabilitation Centre, Kakamega Rehabilitation Centre, Odiado Rehabilitation Centre and Machakos Vocational Rehabilitation Centre. The current total enrolment in the Vocational Centers is at 500 students. In order to achieve integration, the Centers have adopted integration policy where 60% of the students are persons with disabilities while 40% are able bodied.

219. The MoGCSD has progressively increased funding to the Vocational Centers that are directed towards infrastructure development, refurbishment, the construction of

workshops, dormitories, staff houses, the purchase of equipment and educational aids. Further, the Ministry is determined to make these institutions more visible so as to attract higher trainee enrolment from all over Kenya.

220. Previously, these Vocational Centers offered courses in welding and fabrication, hairdressing and beauty therapy, tailoring and dress making, leather work and shoe making, and electrical installation. But, the Government acknowledges that there have been great technological advancements in the recent past. Therefore, in order to match these advancements, the MoGCSD intends to adopt a new curriculum on National Vocational Certificate of Education which is under the Technical Industrial Vocational Education and Training (TIVET) system. The curriculum provides flexibility and upward mobility for those keen on advancing their technical skill up to tertiary and university level. So far, the Government has recruited Technical/Commercial Managers together with 53 Technical Instructors with Diploma Certificates to facilitate implementation of the intended curriculum.

221. Other organizations that have programmes in place to prepare persons with disabilities for full and productive employment include the Kenya Institute for Special Education, (KISE), the Ministry of Health, the Ministry of Youth Affairs, The Kenya National Deaf Association, and Kenya Society for the Blind, the Ministry of Education, among others.

222. The Government has provided further incentives for all persons with disabilities in formal employment by providing tax exemptions to those earning below KES 150,000. This was provided for under the Kenya Subsidiary Legislation, 2010 through the Kenya Gazette Supplement No.16 Legislative Supplement No. 11 of 26th March 2010 which exempts them from paying income tax. Other benefits include the fact that persons with disabilities are exempted from paying import duty for disability customized motor vehicles that are imported thus making them affordable. However, to benefit from this, one is required to register with the NCPWD which then processes and secures the Tax Exemption Certificate from the Kenya Revenue Authority (KRA).

223. The Government has established Women Enterprise Fund, the Youth Enterprise Fund, the National Development Fund for Persons with Disabilities and National Fund for Persons with Disability, which provide startup capital for women, youth and persons with disabilities. The Government through UNDP undertakes capacity building on entrepreneurship for persons with disabilities who are street vendors. ILO is also working with women with disabilities on building entrepreneurship skills. Further, the Government is currently developing a Draft Small & Medium-Size Enterprises (SMEs) Bill which recognizes disabilities. The *Kazi Kwa Vijana* (Jobs for Youth) programme also has a component for persons with disabilities. This programme was meant to be a short-term six month project to promote employment among the youth in Kenya. However, the programme has been extended for the next four years and by December 2009 over 298,000 youth had benefitted.

224. The Government has introduced compulsory National Health Insurance Fund cover that would be a must for all the persons with disability in employment. The Government has also proposed a pension contribution whereby the employer pays higher pension contribution to persons with disability pension in contrast to ordinary persons.

225. Improvement for employees is currently taken care of through the Industrial Training Act which mandates the Ministry of Labour through the Directorate of Industrial Training to collect Industrial Training levy from employers. The levy collected is used to fund specific apprenticeships training as identified by the employers. The Industrial Training Act is being reviewed to be in line with the Constitution of Kenya, 2010 and the PWD Act, 2003.

Article 28: Adequate standard of living and social protection

226. The Basic Report on well-being in Kenya which is based on Kenya Integrated Household Budget Survey of 2005/2006 indicates that the overall poverty level in Kenya stood at 45.9% against a target of 21.7% by the year 2015. Majority of persons with disabilities live in extreme poverty. This exposes them to serious economic hardships. Most persons with disabilities depend on their families for social, financial, material and psychological support. Therefore, under the current situation, persons with disabilities are more likely to have less access to resources than other members of the family.

227. The Government has put in place measures to improve standards of living and also to cushion persons with disabilities through the following initiatives.

1. National Development Fund for Persons with Disabilities

228. Part 5 of the PWD Act, 2003 established the National Development Fund for Persons with Disabilities to provide allowances to persons with severe disabilities or aged persons with disabilities or single parents with children with disabilities and who cannot seek employment. So far, the Government of Kenya set aside KES 200 million in the 2009/2010 financial year and KES 200 Million in Financial Year 2010/2011 for the NDFPWDs and KES 250 Million in financial Year 2011/12. As a permanent fund, it will continue to grow annually. Basic guidelines and criteria to qualify for assistance have been developed. Under the Fund, the government has just designed a cash transfer programme for Persons with Severe Disabilities (PWSDs).

2. Persons with Severe Disabilities Cash Transfer Programme

229. The MoGCSD in collaboration with NCPWDs has designed the Cash Transfer for Persons with Severe Disabilities (CTPWSDs) whose main objective is to enhance the capacities of the care givers through Cash Transfer thereby improving the livelihoods of Persons with Severe Disabilities (PWSDs) and mitigate the effect of disabilities to the households.

230. At the pilot stage, 10 persons were targeted from each of the 210 constituencies in Kenya, totaling 2,100 persons who have severe disabilities and are very poor benefited by receiving a monthly cash transfer of KES 1,500 per month. In the 2011/2012 financial year, the Government has increased the amount from KES 25 million to KES 385 million and the number from 14,700. The transfer amount has since increased to KES 2,000 per person per month.

231. Additionally, for purposes of regional balancing in disbursement of funds, the Council will decentralize disbursement of the NDFPWDs to the Constituencies starting from the current financial year. For accountability to the tax payers and for transparency purposes, the NCPWD will endeavor to, develop and to disseminate an annual report on the expenditure of the NDFPWDs to the public.

232. The programme targets all severe disability categories such as cerebral palsy, autism, deaf-blindness, spinal bifida, quadriplegia, mental disability, spinal injury, paraplegia, down syndrome, muscular dystrophy, other multiple disabilities among others. For purposes of the program, a person with severe disability has been defined as an individual who depends on a care taker for feeding, toiletry, sanitary needs and other needs who requires round the clock care thus denying a member of the household an opportunity to earn a livelihood. The program will therefore target households in which the person with severe disability lives. In addition, the program will build capacity of Disabled Persons Organizations (DPOs) and parent groups in each province through training as a way of facilitating the success of the program.

3. The Draft National Social Protection Policy

233. Kenya has a Draft National Social Protection Policy, which is yet to receive cabinet approval. The policy seeks to ensure that all Kenyans live in dignity and are facilitated to exploit their capabilities for social and economic development. It further seeks to promote the protection of the poor and vulnerable individuals including persons with disabilities. It aims at cushioning citizens against the ravages of poverty. The policy identifies orphans, vulnerable children, persons with disabilities and older persons as the priority targets for social protection. The Policy also aims at improving the coordination, scope and effectiveness of social protection interventions. All this in recognition of the fact that 45.9% of all Kenyans live below the poverty line while 19% live in extreme poverty. Thus, in line with its poverty reduction policy, the Government is developing strategies to empower persons with disabilities, reduce their poverty and make them self reliant and able to participate in national development.

4. Free Primary Education

234. Kenya has been running the Free Primary Education (FPE) Programme since 2003. This is crucial to the attainment of Universal Primary Education as per the Millennium Development Goal No. 2. The system removes all levies that previously prevented vulnerable children from accessing education. When it was introduced, every school was allocated some funds to make the physical infrastructure disability friendly. The scheme has been extended to special education and schools for children with disabilities, through the provision of additional funding to meet the needs of children with disabilities in schools.

5. Older Persons Cash Transfer Programme

235. Kenya has established the Older Persons Cash Transfer programme which targets older persons aged 65 years and above. An older person with disability is given preference during targeting. The programme started with 300 households in 3 districts and has since been scaled up to cover 33,000 households in 44 Districts in Kenya.

6. National Youth Development Fund

236. The National Youth Development Fund was established in 2006 to disburse enterprise loans to young people aged between 18 years and 35 years. 10% of the funds disbursed through the constituencies have been set aside to be accessed by persons with special needs who include persons with disabilities. Currently, election guidelines are being revised to ensure that youth with disabilities are represented in the National Youth Council.

7. Women Enterprise Fund

237. The Government of Kenya has set aside 10% of the funds that are disbursed through the constituencies for women with disabilities.

8. The Orphans and Vulnerable Children Cash Transfer

238. The Government of Kenya established the Orphaned Vulnerable Children (OVC) Cash Transfer programme in 2004 to target OVCs and families living with orphans and vulnerable children through regular cash transfer to encourage fostering and retention of OVCs within their families and communities as well as to promote capital development. It started with 500 households and has since increased to cover 105,000 households nationally. Children with disabilities are among those treated as vulnerable.

9. Tax exemption for Persons with Disabilities

239. Under Section 12(3) of the PWD Act, 2003, any person earning less than KES 150,000 per month is entitled to exemption from taxation thus increasing their disposable income. Further, persons with disabilities are also exempted from paying import duty for disability modified cars.

10. The National Disability Policy

240. The National Disability Policy recognizes disability as a development issue. It also acknowledges there is a link between poverty and disability that creates a vicious cycle as disability and poverty reinforce each other wherein poverty leads to disability and disability often leads to poverty. To alleviate the plight of persons with disabilities, the Government has progressively made deliberate efforts to mainstream and integrate persons with disabilities in national development programmes that aim at reducing poverty. This will help break the cycle of poverty among persons with disabilities.

Article 29: Participation in political and public life

241. The Government of Kenya has made progress towards improving participation in political and public life by persons with disabilities. There are several Statutes that guarantee persons with disabilities these rights and which when fully implemented will enable persons with disabilities to overcome the limitations that hinder them from enjoying these rights. Key among them is contained in Chapter Seven of the Constitution of Kenya, 2010, which deals with representation of the people with Part 1 specifically providing for the Electoral System and Process. It states in Article 81 that the electoral system shall comply with, among other principles, the fair representation of persons with disabilities. Article 82 further requires Parliament to enact legislation to ensure that voting is made simple, transparent and takes into account the special needs of persons with disabilities and other persons or groups with special needs.

242. Article 54(2) makes it a Constitutional requirement that 5% of members of public in elective and appointing bodies are reserved for persons with disabilities. This signifies the Government's commitment to the progressive implementation of this principle. However, the Government of Kenya acknowledges that there have been challenges in institutionalizing this issue of representation by persons with disabilities. The Government of Kenya has appointed several persons with disabilities to various senior positions. During the constitutional review process, two persons with disabilities were appointed as Commissioners in the Constitution of Kenya Review Commission. The Kenya National Commission on Human Rights (KNCHR) (which shall soon be called the Kenya National Human Rights and Equality Commission), there are two Commissioners and several employees who are persons with disabilities. The Government however, acknowledges that this is a far cry from the required 5% representation.

243. Article 38 of the Constitution of Kenya, 2010, guarantees all Kenyans above the age of 18 years, the right to be registered as a voter and to vote in an election or referendum. To this end, the Government has put in place measures to ensure that persons with disabilities enjoy their right to vote on their own and to be assisted to vote and make their own choice in an election or referendum. During the 2010 referendum on the new Constitution, the Interim Independent Electoral Commission (IIEC) established a mechanism that allowed persons with disability to vote for a candidate of their choice through another person who must do so under oath. The IIEC has also undertaken massive voter education and encouraged persons with disabilities to come out and vote. It has also provided guidelines for voting at the polling stations that protect persons with disability while voting.

244. During the 2007 general elections, a number of candidates with disabilities stood for elective positions as Members of Parliament and one person with disability was actually nominated as a councilor in the Nairobi City Council. Further, it must be noted that all the major political parties had disability within their agenda in their manifestos in the last general elections. However, despite intense lobbying for political parties to undertake affirmative action by supporting candidates with disabilities as was contained in their 2007 election manifestos, the political parties failed to live up to these promises.

245. The Government supports persons with disabilities to establish and maintain organizations that represent their rights and interest at different levels. The Government is at the moment registering Disabled Persons Organizations and persons with disabilities at the District level through the MoGCSD and the NCPWD and as at April 2011, the Council had registered over 60,000 persons with disabilities. The purpose of this is to ensure that among other things, persons with disabilities are funded by the Government to spearhead implementation of disability issues at the national level. To this end, the Government has established the NDFPWDs, the Youth Enterprise Fund, as well as other devolved funds that seek to empower persons with disabilities.

V. Specific situation of women and children with disabilities

Article 6: Women with disabilities

246. Women in Kenya constitute over 50 per cent of the total population, yet they remain largely marginalized. They face a number of challenges including the fact that they have limited access to and control of resources and other socio-economic opportunities; they have lower literacy levels compared to men; fewer of them enroll in mainstream education; they are generally poorer than men; fewer of them are in formal employment compared to men; where they do work then it is under deplorable conditions; they earn lower incomes; they have poor access to quality healthcare and advice on family planning; and are more vulnerable to gender-based violence; there are high levels of stigma around women with disability in communities. The Government recognizes that to overcome the above, there is need for targeted interventions that would, among other things, enhance access to education and employment by women and girls with disabilities.

247. The above situation is worse for women with disabilities as they are a more vulnerable, neglected and deprived segment of the society. This vulnerability stems from negative cultural practices and attitude towards disability and gender biases, among others. The situation is complicated by traditional and conservative views on the position and the role of women in society, which reinforce the misconception about the ability of women and girls with disabilities to adequately perform their roles as other peers.

248. According to the Kenya Population Census, 2009, there are 682,623 women with disabilities in Kenya. The table below shows the spread of women with disabilities per province as per the last population census.

Table 2

<i>Province</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>% female</i>
Kenya	647,689	682,623	1,330,312	51.3
Nairobi	34,293	32,077	66,370	48.3
Central	54,625	60,338	114,963	52.5
Coast	49,313	49,435	98,748	50.1

<i>Province</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>% female</i>
Eastern	98,681	105,819	204,500	51.7
North Eastern	37,231	30,225	67,456	44.8
Nyanza	139,172	163,338	302,510	54.0
Rift Valley	132,168	131,343	263,591	49.8
Western	102,206	110,048	212,254	51.8

Source: Kenya Population Census, 2009, Volume 2.

249. The Government has put in place several legislative, policy and programmatic measures to address the challenges that face women, including women with disabilities, and thereby improve their general welfare and development.

250. Article 27(3) of the Constitution of Kenya, 2010, guarantees all citizens, (including women and men with disabilities) the right to equal treatment. This includes the right to equal opportunities in political, economic, cultural and social spheres. It also expressly prohibits discrimination on the grounds of sex and disability. The Article further recognizes that equality includes the full and equal enjoyment of all rights and fundamental freedoms for both women and men, which includes (both women and girls with disabilities and men and boys) all persons with disabilities.

251. The Government notes that the PWD Act, 2003, does not specifically provide for the peculiar needs of women and girls with disabilities. There are ongoing discussions on the proposed Persons with Disabilities (Amendment) Bill. One of the proposed amendments is the inclusion of a new section that recognizes that women and girls with disabilities are subject to multiple forms of discrimination. The section will require the Government to respond appropriately to ensure their full development and advancement. The Children's Act, No. 8 of 2001 on its part provides for the protection of the rights and welfare of the child in which special emphasis is placed on the girl child and children with disabilities.

252. The National Disability Policy also recognizes that women with disabilities face numerous challenges. One such challenge is that of discrimination. Indeed, women with disabilities are first discriminated as women and secondly as persons with disabilities. The policy seeks to promote gender equality for both women and men with disabilities but lays special emphasis on women with disabilities due to their special circumstances. It provides that the Government shall seek to protect persons with disabilities, especially women with disabilities and persons with intellectual impairments from all forms of neglect, abuse and violence. The Government shall seek to provide access to business loans for both men and women with disabilities and encourage employers to provide necessary adaptive equipment to enable men and women employees with disabilities to effectively do their jobs.

253. The Government has also developed a draft National Policy on Gender and Development that seeks to ensure the full development of women. It focuses on the removal of existing gender disparities by putting in place strategies to reduce the misunderstandings that arise from reproductive and productive roles of women and men. It further highlights the social, cultural, economic and political factors that perpetuate inequality as far as access to and control of development resources are concerned.

254. The National Women's Enterprise Fund that was initiated in August 2007 marked an important milestone in the Government's efforts towards addressing gender related economic imbalances in Kenya. The Fund seeks to serve as an alternative source of finance for women who cannot easily access the formal financial sector. Apart from providing subsidized credit for business start-up and /or expansion, the Fund promotes an enterprise culture among women. It must be noted that the Fund has an allocation of 10% in every

constituency for women with disabilities. The Women Enterprise Fund has to date funded approximately 26 groups of women with disabilities. The loans given are interest free, save for a 5% administration fee. However, the challenge is that not many women with disabilities are aware of the availability of this service.

255. The National Youth Enterprise Development Fund was established in 2006 with the aim of reducing the high unemployment rate among the youth, who account for 61% of the unemployed population in Kenya. This Fund falls under the Ministry of Youth and Sports but uses the institutional financing strategy as a way of providing income generation opportunities for youth. It has mainstreamed disability issues in all its programs. Since a person with special needs includes a youth with disabilities, measures have been put in place to ensure youth with disabilities are not over shadowed.

256. Women with disabilities encounter numerous barriers to accessing quality reproductive health care services. Some of the barriers include inaccessible equipment and service points, limited contraceptive options and insensitivity by health care workers among others. In October 2007, the cabinet approved and adopted the country's first National Reproductive Health Policy, which was launched in July 2008. With the theme "Enhancing the Reproductive Health Status for All Kenyans" the policy provides a framework for equitable, efficient, and effective delivery of high-quality Reproductive Health services throughout the country and emphasizes reaching those in greatest need and most vulnerable. It addresses key emerging issues, such as Reproductive Health commodity security, the prevention of mother-to-child transmission of HIV, emergency obstetric care, gender-based violence, the Reproductive Health needs of persons with disabilities, and Reproductive Health/HIV integration. The successful implementation of this Policy will go a long way to promote the inclusion of women with disabilities in reproductive health. The development and implementation of the Policy is guided by among other things, the respect for human rights and freedoms and the need to eliminate factors that impede access to reproductive health services for vulnerable members of the population including persons with disabilities.

257. The Ministry of Public Health and Sanitation's–Reproductive Health Division Strategic Plan 2010 – 2015, reinforces the National Reproductive Health Policy, 2008. Other Policy measures that are currently being implemented by the Government that also assist women with disabilities access reproductive health care include: the Adolescent Reproductive Health and Development Policy, 2003; the National Family Planning Guidelines for Service providers, 2010, and the Expanded Safe Motherhood Programs in the health facilities to assist women of child bearing age.

258. There have been many reported cases of gender based violence against women with disabilities. To counter this, the Government enacted the Sexual Offences Act, 2006, which prescribes severe punishments for sexual offenders. The Ministry of Health has established a programme to care for and manage the victims using the National Guidelines for Victims of Sexual Offences which was developed in 2009.

Article 7: Children with disabilities

259. The Government has put in place several legislative, policy and administrative measures to protect the rights and welfare children of children with disabilities. Key to all these interventions is the recognition that persons with disabilities, including children with disabilities, are to be treated with dignity, respect, to be addressed and referred to in a manner that is not demeaning. To this end, the Constitution of Kenya, 2010 at Article 54 recognizes the rights of persons with disabilities while Article 53 provides a Bill of Rights specifically for children.

260. Kenya has a Children's Act, 2001, which domesticated the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child and came into force on 1st March, 2002. It must however be noted that the Children's Act was enacted prior to the coming into force of the Convention on the Rights of Persons with Disabilities and the PWD Act, 2003. The Government, through the Kenya Law Reform Commission, has commenced a process of the amendment of this legislation with the aim of, among other things, giving specific expression in its text of the provisions of the Convention on children with disabilities. In this regard, the draft Children's Act (Amendment) Bill spearheaded by the Commission is at an advanced stage of development. The Government is also in the process of amending the Education Act, which will among other things address the needs of children with disabilities.

261. The Children's Act protects all children and prohibits all forms of discrimination and violence against children. It provides remedies in case of such violations. Section 5 of the Act provides that "no child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, color, birth, social, political, economic or other status, race, disability, tribe, residence or local connection." Section 12 provides that children with disabilities have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible. Additional protection is found under Section 186 which requires, among other things, that if a child offender is one with a disability, then they should be given special care and treated with dignity. Under Section 107 of the Act, Courts are allowed to make an order for the extension of care beyond the eighteenth birthday by appointing a guardian where the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or of managing his own affairs and his property without the assistance of a guardian.

262. The Children's Act establishes the National Council for Children's Services (NCCS). Its mandate includes supervising, controlling, financing and coordinating child rights and welfare in Kenya. It therefore designs programmes that seek to alleviate the challenges faced by children with special needs, who include children with disabilities. To this end, the Government has progressively increased the budgetary allocation over the years from KES 9 Million to KES 50 million in 2010. The Act also establishes Area Advisory Councils which perform similar functions as the NCCS but at the county and local level. The Children's Act also provides a legal framework for the management of Charitable Children Institutions (CCIs). They receive grants of KES 125,000 from the NCCS for infrastructure development. Preference is given to CCIs that are exclusively for children with disabilities or those that include children with disabilities in their programmes. Of the 22 CCIs that have been assisted since the programme started in 2008/09, 2 were for children with disabilities while majority of the others had at least a child with disability in their programmes.

263. The rights of children with disabilities are specifically catered for under the PWD Act, 2003. The Persons with Disabilities (Cost, Care, Support and Maintenance) Regulations, 2009, creates regulations for institutions that cater for persons with severe disabilities and provides that the NCPWD shall promote and advise in the development and implementation by local authorities, community based organizations and other stakeholders, of suitable community based rehabilitation and welfare programs for the inclusion, integration, maintenance, care and support of children and persons with disabilities. The Act is currently under review through the Persons with Disabilities (Amendment) Bill, and one of the amendments proposed is that there be an inclusion of a provision that specifically requires the Government to take steps that would achieve the full realization of the rights of children with disabilities.

264. The MoGCSD has a social protection initiative where 100 households with orphans and vulnerable children are given KES 1,500 every month to cater for their needs. The initiative is implemented on a pilot basis in Nyando District of Nyanza Province. The beneficiaries are identified by the District Social Development Committee. A similar initiative targeting children with disabilities is also currently being implemented by the Department of Children Services in 17 districts.

265. There is also in place a draft National Social Protection Policy that is currently being considered by the cabinet. It presents the Government's vision of creating an all-inclusive society through the provision of sustainable mechanisms for the protection of persons living in situations of extreme poverty and vulnerability. It identifies orphans and vulnerable children, people with disabilities, older persons, the urban poor living in slum areas, people living in the streets in urban areas, people living with dilapidating illness, and the internally displaced persons, among others, as qualifying for social protection. The PWD Act, 2003, also established the NDFPWDs. One of the payments that can be made from the Fund is provide allowances to single parents of children with disabilities and who therefore cannot seek employment.

266. In January 2003, the Government of Kenya declared free primary education with the intention of removing all levies that previously prevented children especially those from poor backgrounds from accessing education. This means that no child may be excluded from obtaining education because of his/her inability to pay the required fees. This resulted in a large increase in the number of children accessing primary education. The government has extended this scheme to special education and schools for children with disabilities, which are currently receiving a slightly higher amount of money than other schools.

267. Children with disabilities were involved in the 10 regional forums that were conducted to collect views on the National Children Policy and the National Plan of Action for children.

268. The Special Education Section of the Ministry of Education was set up in 1975 to coordinate education for children with special needs. It has specialized staff that are responsible for every category of disabilities were later hired within the inspectorate and curriculum development arms of the Ministry of Education. There is now a policy that seeks integration of children with disabilities into other schools.

269. The Kenya Institute of Special Education (KISE) was established through Legal Notice No. 7 of 1986 to cater for the educational training needs of children and adults with disabilities. Its main functions include the training of teachers and other personnel to work in the field of special education; conducting of research on special education; provision, production, and repair of special education materials and equipments; production and dissemination of information on disabilities to personnel involved in special education and the general public; and provision of educational and physiological assessment for children with disabilities. The Institute provides specialized training at diploma level to teachers already trained to teach ordinary schools but with interest in special education. It also introduced short-term certificate courses for teachers in special schools, units and integrated programmes. It has recently introduced distant learning programmes with a current enrolment of more than 7,000. Special Education Degree courses are also now being offered in public universities namely Kenyatta University, Maseno University and Moi University.

270. The Ministry of Education and the Department of Social Services have been collaborating in Community Based Rehabilitation activities to encourage parents not to hide their children with disabilities and take them for assessment and early intervention. There is also the Educational Assessment and Resource Services (EARS) which has greatly improved the growth and quality of educational services for children with special

educational needs. EARS centers were initially opened in 22 districts and were closely linked to District Education Offices. EARS embraced a multi-sectoral approach by different professionals such as teachers, social workers and medical workers. It involved the community in the early identification, assessment, intervention and placement in educational services. This programme has enhanced the inclusive education delivery strategy which promotes placing of children with disabilities in integrated programmes. This has increased educational placements for children with special needs beyond the capacity of residential schools and opened the special educational residential schools to learners with difficulties or those with multiple disabilities.

271. African Braille Centre continues to produce and disseminate Braille materials to schools and units for use by blind learners. Equipment and assistive devices for children and persons with disabilities are exempted from taxes when imported through organizations of or for the disabled persons.

272. To ensure the right to health, the Ministry of Health (MoH) has a waiver system which gives free health care to children below 5 years of age regardless of whether they are disabled or not upon recommendation of a social worker. Children with disabilities are given priority in care delivery. The Government also has a programme on early detection/identification and intervention in disability management in childhood to forestall disability in life and reduce its impact in adulthood. There is also an expanded programme on immunization in all health facilities which seeks to immunize all children against preventable diseases that cause disabilities. Under the Division of Child Health, Unit of Children with Disabilities, the Ministry of Health is developing a comprehensive and responsive policy for children with disabilities. The Ministry of Health (MOH) is also addressing the issue of children with disabilities and HIV/Aids in its interventions through NASCOP.

273. Section 4 of the Children's Act provides that in all actions concerning children, whether undertaken by public, or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The Act further provides that all judicial and administrative institutions shall treat the interests of the child as the first and paramount consideration. In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account, as may be appropriate taking into account the child's age and the degree of maturity. Where the Court is considering whether or not to make an order with regard to a child, Section 76 of the Act requires the Court should have particular regard to a child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child. Under Section 186(h) where a disabled child is accused of an offense, he will be accorded special care and be treated with the same dignity as a child with no disability.

274. The NCCS has developed Child Participation Guidelines, which specifically state that any individual or organization planning to hold a children's event, while selecting the venue should ensure "it is accessible to children with disabilities, and have ramps and clear pathways. It should also provide facilities for the visually, hearing and intellectually impaired."

275. One of the challenges that face the implementation of the rights for children with disabilities is inadequate resources both financial and human. The MoGCSD had a budget allocation of KES. 2 million to support activities in disability. However, in the 2008/2009 financial period, there was no allocation for disability activities in the ministry. This proves challenging as there is an ever increasing number of Children with Disabilities vis-a-vis the available resources. This makes it challenging to have a sustained programme for children with disabilities. Services for children with disabilities are further scattered in many line

ministries thereby making it difficult to have an integrated system of monitoring the rights of children with disabilities. In a bid to address the above challenges, the MoGCSD is in the process of considering ways of harmonizing service delivery and developing a sector wide approach to ensure that persons with disabilities realize their rights.

VI. Specific obligations

Article 30: Participation in cultural life, recreation, leisure and sport

276. All Kenyans are allowed to access places of cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance without discrimination.

277. The preamble of the Constitution of Kenya, 2010, takes cognizance of Kenya's cultural diversity as strength and states that the people of Kenya are "proud of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation". Chapter Two further recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. Therefore, the cultural diversity is a reflection of the nations' individual diversity which is to be harnessed positively for the enrichment of humanity.

278. Section 28 of PWD Act, 2003, provides that the Government shall provide support to artists and athletes with disabilities to participate in local, international and special games, as well as cultural exchange programmes organized by the respective federations, committees, unions, associations, bilateral and multilateral partners. To this end, the Government encourages cultural exchange programmes, the promotion of deaf culture and mainstreaming disability concerns in its programmes. This underscores the Government's commitment to ensuring that cultural activities, leisure, tourism and sporting facilities are accessible to persons with disabilities. The challenge however has been that of lack of awareness and inadequate resources.

279. The Government encourages persons with disabilities to participate in sports and cultural activities thereby providing a platform through which persons with disabilities can develop and utilize their creative, artistic and intellectual potential. This is mainly done within institutions. The Government has signed various memoranda of understanding that espouse principles of inclusivity that have been clearly outlined including exchange of expertise, administrators and artists. To this end, the Government has adopted the Cultural and Heritage Policy, 2009 which sets priorities on how to deal with issues of culture and heritage. The Government has also developed flagship cultural-sporting programmes that have interactive activities to cater for the special needs of persons with disability across the country. With regards to encouraging persons with disability to participate in musical and cultural activities, the Government has established classes in the Kenya Music and Cultural Festival (KMCF) syllabus on the rights of persons with disability. The private sector has also developed programmes that target persons with special needs. One such institution is the Godown Arts Centre in Nairobi which trains performing artists with special needs.

280. Kenya participates in the Special Paralympics games that are held every four years which are organized by the Kenya Paralympics Sport Association. The Association runs sports programmes which are used to select athletes from the grassroots to the national level. In recognizing the need for teachers that can train persons with disabilities to enable them take part in these sports activities, Kenyatta University has established a training programme for teachers in Special Olympics and sports for persons with disabilities. Each class of disability participates in the same games, thereby ensuring that persons of disability are treated equally. The Government provides budgetary allocation and has given

recognition and financial rewards for youth with disabilities who compete in international competitions.

Article 31: Statistics and data collection

281. The Government is committed to collecting data on person with disabilities in Kenya. To this end, the Government has made attempts to determine the status of disability within the population. This has been done through the Kenya National Survey for Persons with Disabilities that was released in 2007 and the Kenya National Census in 2009. The Government, through the Kenya National Bureau of Statistics (KNBS) in collaboration with the NCPWD and other stakeholders, commenced the Kenya National Survey for Persons with Disabilities in 2003. The objective of the Survey was to establish and secure upto date and comprehensive data and information on the number of persons with disabilities in Kenya for purposes of planning, monitoring and evaluating the various activities, programmes and projects thereby improve the wellbeing of persons with disabilities in Kenya. The Survey entailed interviews with members of nearly 15,000 households across all of Kenya's 69 districts as per the 1999 population census. The Survey which was finalized in 2007, provided estimates on the number of persons with disabilities, their distribution in the country, demographic, socio-economic and cultural characteristics and the nature of services available to them. The other variables captured included the nature, types and causes of their disabilities, the problems that persons with disabilities face and the nature of devices they use to cope with their disabilities.

282. As a result of the study, the Government recognized that disability cuts across all sectors of development and should therefore be considered during national planning and development. The Government therefore continues to create an environment that is conducive for different players to enable them to incorporate disability issues into their policies and programs. The Government identified policy targets and stated 5 principles to guide its implementation and monitoring. These include the equalization of opportunities where persons with disabilities should be accorded opportunities on an equal basis through affirmative action; Mainstreaming – where persons with disabilities should be fully included in all aspects of life and their special needs addressed; Accessibility – where the provision of accessibility should be a cross cutting concern to all underlying consideration in the built environment, information and services; and with regard to Gender, that the policy should apply equally to both men and women, boys and girls with disabilities.

283. Some of the key findings of the survey indicated that 4.6% of Kenyans, which translates to approximately 1.7 million people, experience some form of disability. It also established that there are more persons with disabilities residing in the rural area as compared to urban areas. Presently, 80% of persons with disabilities live in the rural area, which translates to 1.4 million Kenyans. Other findings were that 15% of persons with disabilities are likely to be affected by environmental barriers on a daily basis and 3% on a weekly basis while 65% persons with disabilities regard the environment as a major problem in their daily lives.

284. Some of the causes of disability as per the Survey are listed in the table below.

Table 3.

<i>Age group</i>	<i>Hearing Impairment</i>	<i>Speech Impairment</i>	<i>Visual Impairment</i>	<i>Mental Impairment</i>	<i>Physical Impairment</i>	<i>Self care Impairment</i>	<i>Other Impairment</i>
0-14	1.6	0.8	1.1	0.6	1.9	0.8	0.6
15-24	0.7	0.5	2.2	0.4	2.2	0.6	0.6
25-54	2.6	0.4	14.2	2.5	12.2	2.1	1.4
55+	4.8	0.8	20.6	2.4	25.8	3.4	1.6
Don't know	2.3	0.3	7.4	0.9	11.0	5.4	0.1

Source: Kenya National Survey on Persons with Disabilities, 2007.

285. Kenya conducted its national population census in 2009 which for the first time sought to establish the population of persons with disabilities. The findings of the preliminary census report are hereunder

Table 4. Population by Province and Sex, 2009

<i>Province</i>	<i>Total male population in the country</i>	<i>Total male population with disability</i>	<i>Total female population</i>	<i>Total female population with disability</i>	<i>Total population</i>	<i>Total population with disability</i>
Kenya	19,192,458	647,689	19,417,639	682,623	38,610,097	1,330,312
Nairobi	1,605,230	34,293	1,533,139	32,077	3,138,369	66,370
Central	2,152,983	54,625	2,230,760	60,338	4,383,743	114,963
Coast	1,656,679	49,313	1,668,628	49,435	3,325,307	98,748
Eastern	2,783,347	98,681	2,884,776	105,819	5,668,123	204,500
North Eastern	1,258,648	37,231	1,052,109	30,225	2,310,757	67,456
Nyanza	2,617,734	139,172	2,824,977	163,338	5,442,711	302,510
Rift Valley	5,026,462	132,168	4,980,343	131,343	10,006,805	263,591
Western	2,091,375	102,206	2,242,907	110,048	4,334,282	212,254

Table 5. Population of Persons with Disabilities by Province and Sex, 2009

<i>Province</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>% female</i>
Kenya	64,7689	682,623	1,330,312	51.3
Nairobi	34,293	32,077	66,370	48.3
Central	54,625	60,338	114,963	52.5
Coast	49,313	49,435	98,748	50.1
Eastern	98,681	105,819	204,500	51.7
North Eastern	37,231	30,225	67,456	44.8
Nyanza	139,172	163,338	302,510	54.0
Rift Valley	132,168	131,343	263,591	49.8
Western	102,206	110,048	212,254	51.8

Source: Kenya Population Census, 2009, Volume 2.

286. The number of persons with disabilities disaggregated by types of disability and gender as per the census.

Table 6. Population of Persons with Disabilities by Sex and Type of Disability in Kenya, 2009

<i>Types</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>% female</i>
Visual	153,783	177,811	331,594	53.6
Hearing	89,840	97,978	187,818	52.2
Speech	86,783	75,020	161,803	46.4
Physical/Self Care	198,071	215,627	413,698	52.1
Mental	75,139	60,954	136,093	44.8
Others	44,073	55,233	99,306	55.6
Total	647,689	682,623	1,330,312	51.3

Source: Kenya Population Census, 2009, Volume 2.

Article 32: International co-operation

287. Kenya has received immense international support that target and are geared towards improving the lives of persons with disabilities. For instance under the Ministry of Culture and Heritage has programmes where persons with disabilities in Kenya get opportunities to travel to foreign countries to enhance their skills.

288. With regard to housing, the Kenya Slum Upgrading Project in Nairobi has taken into consideration the challenges that face persons with disabilities. This project is being implemented by the Ministry of Housing and is supported by Habitat for Humanity.

289. Handicap International which is an independent international aid organisation working in situations of poverty and exclusion, conflict and disaster, has supported the UDPK. Handicap International receives funding from organizations such as USAID and European Union. Handicap International's support includes building capacity among DPOs with regard to general institutional capacity, advocacy, institutional strengthening and raising awareness on disability issues.

290. The European Union has also support to DPOs through the Non- State Actors facility that is available through the MoJNCCA. This has come in the form of technical assistance to the Disability Caucus on the Implementation of the Constitution (DCIC) which is a coalition of organizations of and for persons with disabilities.

291. The Open Society Institute (OSI) has also supported organizations in raising awareness among DPOs on reporting and monitoring mechanisms under the Convention on the Rights of Persons with Disabilities.