



# **Kenya National Commission on Human Rights**

**NHRI information to the 3<sup>rd</sup> Pre-sessional Working Group of the  
Committee on the Rights of Persons with Disabilities**

**For consideration when compiling the List of Issues on the First  
Report of the Republic of Kenya under the Convention on the  
Rights of Persons with Disabilities on 20 April 2015**

## **Introduction**

1. This submission has been prepared by Kenya National Commission on Human Rights. This submission provides information in relation to the Kenyan

Government's implementation of the Convention on the Rights of Persons with Disabilities (CRPD) and in consideration of Kenya's first report under the CRPD.

2. The Kenya National Commission on Human Rights (KNCHR) is an independent Human Rights Institution with 'A status' accreditation. The KNCHR is a Constitutional Commission established under Article 59 of the Constitution of Kenya 2010 and Section 3 of the Kenya National Commission on Human Rights Act No. 14 of 2011. KNCHR main role is to promote and protect human rights in Kenya.
3. In furtherance of its Constitutional and statutory mandate to act as the chief agent in ensuring government's compliance with its obligations under international law, the KNCHR monitored the implementation of the CRPD in Kenya between 2011 and 2013. It published a report<sup>1</sup> whose contents will be the main focus of this information relayed to the Committee on the Rights of Persons with Disability (Committee).
4. This submission demonstrates through various situations and incidences that there are significant areas where the Kenyan government could take steps to tremendously improve implementation of its obligations under UNCRPD. The submission therefore includes recommendations, where appropriate.
5. KNCHR convened a stakeholders meeting in March 2011 to discuss the essence of monitoring under the CRPD and developed a monitoring tool to be used countrywide. The same was subjected to stakeholder consultations and their input incorporated. Subsequently, KNCHR drew a plan for visiting different counties to monitor the implementation of rights of PWDs which commenced in October 2011.
6. The following is information regarding the situation of implementation of specific provisions of the UNCRPD in Kenya for the period between 2011 and 2013.

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<sup>1</sup> KNCHR Report: From Norm to Practice, A Status Report of Implementation of the Rights of Persons with Disabilities in Kenya, 2013 available at <http://knchr.org/Portals/0/Reports/Disability%20Report.pdf> (last visited 20/4/2015)

## **ARTICLE 8: AWARENESS RAISING**

7. Persons with disabilities continue to face stigmatization in the society mostly due to lack of awareness of their rights despite the government policy of mainstreaming disability in all government ministries. While noting that some persons with disabilities have not been aggressive to participate in public life, opportunities to promote positive perception and awareness of their contribution to the society has also been limited. The findings of the surveys indicated that many persons with disabilities were not aware of their rights including the various legislations put in place to protect and promote their rights.

### **Questions for State's response**

- ❖ **What awareness training programmes has the State put in place to show the contribution of Persons with disabilities in society?**
- ❖ **How has the State used the media, workshops, Information, Education and Communication materials to highlight the abilities, skills, and merit of persons with disabilities?**
- ❖ **How has the State mainstreamed public awareness on the rights of persons with disabilities and has it also done so at all levels of the education system?**

## **ARTICLE 9: ACCESSIBILITY**

8. This Article is echoed domestically in section 21 of the Persons with Disabilities Act, 2003 (PDA) which entitles persons with disabilities to a barrier-free and disability-friendly environment. Section 22 of the PDA requires any proprietor of a public building to adapt it to suit persons with disabilities in such manner as may be specified by the National Council for Persons with Disability (NCPWD).
9. Sections 22 and 23 of the PDA oblige proprietors of public buildings and operators of public transport to comply with the provisions on accessibility within 5 years. However, this is not the case. Public buildings and public service vehicles are still inaccessible to persons with disabilities. According to the Act, sections 22 on accessibility of public buildings and 23 on public service vehicles became operational from the 1st of January, 2010. This therefore means that the

timeline for compliance with section 22 is the 31st of December, 2015, while that for section 23 was the 31st of December, 2012.

10. The assessment of both private and public buildings across 12 Counties in Kenya showed that physical accessibility for persons with disabilities remains a far-off target in most cases save for a few noted health facilities which had made relevant improvements and adjustments on their buildings. Several buildings that house national and county government offices, courts, hotels, public toilets, police stations among others do not comply with current accessibility standards. Of key concern was that even houses of persons with disabilities were also inaccessible.

#### **Questions for State's response**

- ❖ **What measures has the State put in place to ensure the implementation of the principle of universal design in Kenya?**
- ❖ **What steps has the State taken in assessing all public and private buildings to ensure that they are accessible to Persons with Disabilities?**
- ❖ **How many adjustment orders have been issued by NCPWD under Section 24 of the Persons with Disability Act and what is the rate of compliance?**
- ❖ **What mechanisms has the State engaged with the authorizing bodies to ensure that both new and old buildings, transport systems and information and communication systems are accessible to Persons with Disabilities?**

#### **ARTICLE 13: ACCESS TO JUSTICE**

11. The CRPD calls for State Parties to ensure effective access to justice for persons with disability on an equal basis with others. Persons with disabilities continue to face a lot challenges when seeking justice with key obstacles being inaccessibility and exercise of legal capacity. Police officers have not been trained on equality and diversity including disability awareness thus they have limited skills to respond more effectively to persons with disability especially those with psycho social disabilities. KNCHR has noted that there are no appropriate services to help the police and other government institutions to communication with persons with psycho-social disabilities and the deaf.

12. The key barriers to effective access to justice by people with disability include: unavailability of community support, inaccessibility to information, social risk factors, negative attitudes and assumptions that persons with disability cannot make decisions.

**Questions for State's response**

- ❖ **What steps is the State taking to implement Article 12 of the CRPD on legal capacity for persons with disabilities?**
- ❖ **What awareness programmes has the State designed for police officers, legal practitioners, court registry staff, judicial officers and corrections officers on access to justice for persons with disabilities?**

**ARTICLE 27: WORK AND EMPLOYMENT**

13. Despite the existence of international and national legal framework for the protection of the rights of persons with disabilities, the findings in the 12 Counties monitored by KNCHR reveal that access to employment and work is still a distant goal for persons with disabilities. Some of the barriers identified during monitoring include low levels of education, poor attitudes by the persons with disabilities, poverty, lack of workplace support, and weak implementation of tax exemptions and more importantly stigma and economic prejudice.

14. The mode of dissemination of information on new job opportunities has been limiting as many advertisements are done in print media i.e. newspapers and via internet which many of the persons with disabilities may not have access to. As a result many fail to apply for certain job opportunities not because they do not qualify but because they lack the necessary information.

**Questions for State's response**

- ❖ **What public participatory processes has the State adopted in the formulation of measures designed to achieve equal opportunities in education and employment for persons with disabilities?**

- ❖ What steps has the State taken to develop a database for Persons with Disability, providing details of their educational skills, professional experience and other qualifications?
- ❖ What measures has the State taken to ensure compliance with the 5% threshold of employment of Persons with Disabilities in public offices and the implementation of the Public Service Disability Mainstreaming code?
- ❖ What universal tax exemption measures has the State taken through Kenya Revenue Authority, for the benefit of Persons with Disabilities regardless of their type of disability?

## **ARTICLE 24: EDUCATION**

15. The policy environment of education is theoretically supportive of education for Learners with disabilities (Learners with disabilities) but faces resounding bottlenecks in implementation. For instance, the inclusion policy in education though advocated for and recognized from human rights based approach; it is yet to be implemented. To date, the implementation framework of the National Policy on Special Needs Education Policy of 2009 has not been developed. The educational outcomes for children and adults with disabilities are still low. Illiteracy rates for Persons with disabilities and for school-age children with disabilities are much higher than the general population. The poor school attendance by children with disabilities is attributed to lack of proper facilities that enhance access, resources that encourage transition and completion, coupled with poverty and stigmatization.
16. Access to education remains a big challenge to Learners with disabilities. According to the school mapping data set, there are 3,464 special needs institutions in the country of which 2,713 are integrated institutions and 751 are special schools. Among these, there are 10 public secondary schools for learners with hearing impairments, 3 for learners with physical disabilities and 4 for learners with visual impairments making a total of 17 special secondary schools in the country. These figures show that access and participation of Learners with disabilities is relatively low across the country and explains why transition (from primary to secondary to tertiary levels) is a great challenge as most Learners with disabilities cannot afford private schools and regular schools are not accommodative.

### **Questions for State's response**

- ❖ What is the extent of the implementation of the Special Needs Education Policy and how much money has been directed to implanting it?
- ❖ What measures has the State taken, through the Ministry of Education and the Teachers Service Commission (TSC) to make it compulsory for all teachers to be trained in the basics of special needs education?

## **ARTICLE 28: ADEQUATE STANDARDS OF LIVING AND SOCIAL PROTECTION**

17. The government commendably has established a social protection system for persons with disabilities through the Cash Transfer Programme. The beneficiaries of the scheme have gradually increased in the past financial years to the current number being 94 persons with severe disabilities per constituency. The government also enacted the Social Assistance Act No, 24 of 2013, which provides that a person with disability is entitled to social assistance.
18. Though this is commendable, most persons with disabilities continue to experience a lot challenges as they are unable to afford basic needs like housing, food, clean water and education. The cash transfer program only provides Kshs 4000 bi-monthly which is very little to cater for daily needs. Further, the programme is not consistent and sometimes persons with disabilities have to wait for a period of six months before the next disbursement.
19. The State has also established two funds: National Development Fund for the Disabled and National Fund for the Disabled, which are aimed at improving livelihood of persons with disabilities. However, this has not been the case for many persons with disabilities in the rural areas who know little about the administration of the funds and most of those who have submitted their proposals for funding have not been successful. Persons with disabilities expressed their dissatisfaction in how the NCPWD administering the funds.

### **Questions for State's response**

- ❖ What steps has the State taken to monitor the effectiveness and impact of the Cash Transfer Funds?
- ❖ What measures has the State taken to ensure the Cash Transfer Fund its proper utilization by the Persons with Disabilities?

- ❖ What awareness creation mechanisms has the State put in place to ensure that the National Fund for the Disabled meets its intended purposes?
- ❖ What measures has the State taken to ensure decentralization of the the operations of NCPWD to the Counties in keeping with the devolved structure of governance?