

STATUS OF THE HUMAN RIGHTS
OF PERSONS WITH DISABILITIES IN KENYA (CRPD)

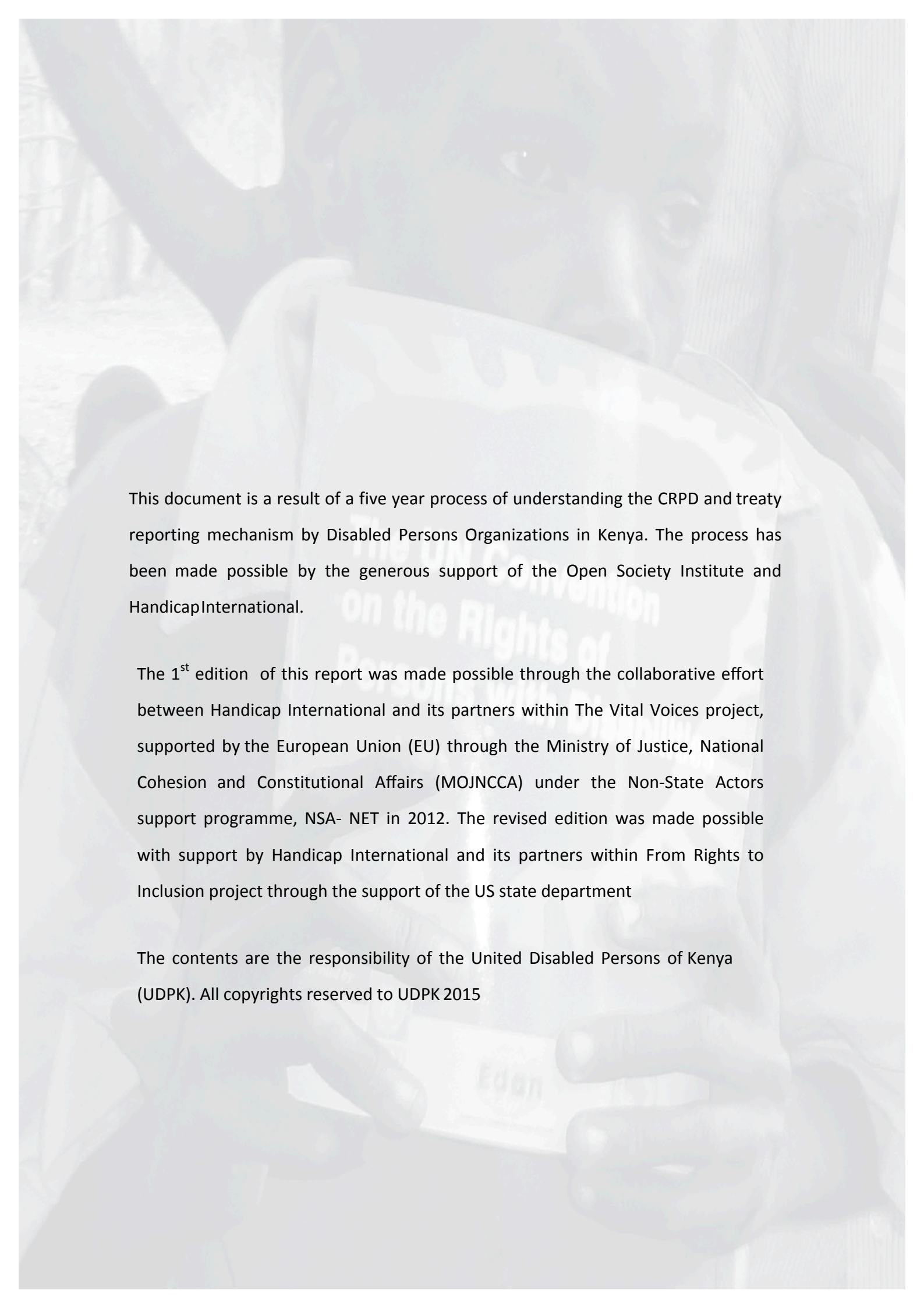
A SHADOW REPORT TO THE INITIAL REPORT ON
THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
(CRPD) TO THE UN COMMITTEE ON
THE RIGHTS OF PERSONS WITH DISABILITIES

PRESENTED BY
UNITED DISABLED PERSONS OF KENYA

United Disabled Persons of

U D P K
Kenya The Voice of
Disability

30 years **HANDICAP
INTERNATIONAL**



This document is a result of a five year process of understanding the CRPD and treaty reporting mechanism by Disabled Persons Organizations in Kenya. The process has been made possible by the generous support of the Open Society Institute and HandicapInternational.

The 1st edition of this report was made possible through the collaborative effort between Handicap International and its partners within The Vital Voices project, supported by the European Union (EU) through the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA) under the Non-State Actors support programme, NSA- NET in 2012. The revised edition was made possible with support by Handicap International and its partners within From Rights to Inclusion project through the support of the US state department

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PART 1. EXECUTIVE SUMMARY

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) aims to promote, protect and ensure all persons with disabilities enjoy human rights and fundamental freedoms on an equal basis with others. It also aims to promote respect for the inherent dignity of persons with disabilities. As a state party of the Convention, Kenya has the absolute responsibility to fulfil the obligation to implement the Convention and realize the rights of persons with disabilities.

United Disabled Persons of Kenya (UDPK) is a non-profit making, non-political and non-partisan organization. As an umbrella body for persons with disabilities, UDPK comprises 120 member organizations being Disabled Persons' Organizations (DPOs), associations and groups of persons with disabilities. UDPK's core mandate is to advocate for the formulation of disability-friendly policies and legislations locally, nationally and internationally geared towards improving the livelihood of persons with disabilities in Kenya. UDPK's mission is to promote non-discrimination, full and effective participation of persons with disabilities in mainstream development processes and programs. The organization's vision is to realize a barrier-free society where persons with disabilities enjoy equal access to opportunities in all spheres of life.

UDPK has since 2010 been implementing a project on raising awareness and monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Through the support of the Open Society Institute, the project aimed at building the capacity of Disabled Persons Organizations to understand Human Rights monitoring through treaty reporting. Three national workshops and eleven regional workshops were held to enhance the understanding of persons with disabilities on the CRPD and treaty reporting, and a validation workshop held on 31 July 2012. In February 2015 UDPK held another workshop to update the Shadow Report in order to reflect the current situation for Persons with Disabilities as the State Party Report was coming up for review in September 2015 after being submitted in 2012. As required by Article 33 of the CRPD on national implementation and monitoring, UDPK and other DPOs participated in the development of the State report.

This report is a joint collaboration of Disabled Persons organizations, and Disability rights organizations in Kenya. In January 2011, UDPK invited stakeholders in the disability sector to participate in the monitoring of the rights of persons with disabilities in Kenya. The process began with a training workshop on the CRPD reporting process and the role of Disabled Persons Organizations in the reporting process. A committee of eleven DPOs was formed to spearhead the process of gathering data. The DPOs include the Kenya National Association of the Deaf (KNAD), The Kenya Union of the Blind (KUB), The Kenya Association of the Intellectually Handicapped (KAIH), Albinism Society of Kenya (ASK), Autism Society of Kenya, Brian Resource Center (Deaf Blind), and United Disabled Empowerment Kenya, Action Network of the Disabled Youth (ANDY), Users and Survivors of Psychiatry in Kenya (USP – Kenya) and Women Challenged to Challenge and united Disabled Empowerment of Kenya (UDEK). The Disability Rights Organizations that were involved in the process, particularly generating information and data are Handicap International, SENSE international and Leonard Cheshire Disability.

The Kenya National Commission on Human Rights, the Secretariat of the African Decade of Persons with Disabilities, and the Eastern Africa Federation of the Disabled (EAFOD) provided technical support to UDPK, through training of UDPK members on the treaty reporting process.

Since the development of a shadow report was a key outcome of this project, UDPK worked closely

with a taskforce to gather relevant information on the status of human rights of persons with disabilities in Kenya. UDPK also sought the services of a consultant to consolidate the information gathered by the

organizations on various thematic areas/clusters of the CRPD. UDPK in collaboration with Handicap International and other DPOs in 2012 implemented a project on the “Vital Voices” of Persons with Disabilities. The project entitled “Raising the Voice and Participation of Kenyans with Disability in Development and Reform Processes” was implemented in the eight provinces in Kenya in conjunction with DPOs as implementing and associate partners. The project engaged and strengthened Disabled Persons Organizations at national and grassroots levels, and enhanced their coordination and networking towards a united voice, thus addressing the need of persons with disability to contribute to the design of policies at a national level to set a framework for an inclusive society. The two year project was funded by European Commission and the contracting agency is Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA). From 2013 UDPK in collaboration with Handicap International have been implementing From Rights to Inclusion project with support from US State Department. The project aims to strengthen DPOs to work with the government and the wider rights community to achieve lasting improvements in the observance of the rights of persons with disabilities and to promote the implementation of CRPD. Through the support of Handicap International the Consultant engaged in further field research, collecting of case studies, analysis of media reports and documentaries on disability. UDPK is indebted to all the taskforce members for volunteering their time, knowledge and skills to make the production of this report successful. We also would like to thank Ms. Monica Mbaru for supporting the drafting of first edition of the report and Ms. Felicia Mburu for supporting the second draft of the report. Since treaty monitoring is a continuous process, we hope that DPOs will be strengthened to monitor the status of human rights on a continuous basis.

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ACRONYMS

ASK	Albinism Society of Kenya
ASK	Autism Society of Kenya
AIDS	Acquired Immunity Deficiency Syndrome
ANDY	Action Network of the Disabled Youth
BRC	Brian Resource Center
CoK	Constitution of Kenya 2010
CRPD	Convention on the Rights of Persons with Disability
DPOs	Disabled Persons Organizations
ECK	Electoral Commission of Kenya
EAFOD	Eastern Africa Federation of the Disabled
HI	Handicap International
HIV	Human immunodeficiency Virus
IEBC	Independent Electoral and Boundaries Commission
KAIH	Kenya Association of the Intellectually Handicapped
KEPI	Kenya Expanded Programme for Immunization
KNAD	Kenya national association of the Deaf
KUB	Kenya Union of the Blind
KNCHR	Kenya National Commission on Human Rights
LCD	Leonard Cheshire Disability
MOJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
NCPWD	National Council for Persons with Disabilities
QUASO	Quality Assurance and Standards Officers
SNE	Special Needs Education
UDEK	United Disabled Empowerment of Kenya
UDPK	United Disabled Persons of Kenya
USP	Users and Survivors of Psychiatry (Kenya)
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WCC	Women Challenged to Challenge
WHO	World Health Organization
NGEC	National Gender and Equality Commission
NCAJ	National Council for Administration of Justice.

PART 2. OVERALL OBSERVATION OF THE KENYA STATE REPORT

It is commendable that Kenya developed and submitted its Initial State Report on the United Nations Convention on the Rights of Persons with Disabilities. This proves that Kenya is open and transparent about its efforts in the realization of the rights of persons with disabilities. It is also important to note that Kenya lived to the spirit of the CRPD, through its involvement of Disabled Persons organizations and disability rights organizations in the development of its report. However, the CRPD Committee expects that DPOs are also submitting a shadow report to provide an insight from their own perspective on the status and realization of the rights of persons with disabilities.

UDPK wishes to commend the Government of Kenya for the efforts it has put in place to address the rights of person with disabilities and particularly the passing of the Constitution of Kenya 2010 that prohibits discrimination on the basis of disability. Further we note other positive measures that the government has addressed particularly; Kenya ratified the United Nations Convention on the Rights of Persons with Disability in May 2008, the passing of the Persons with Disabilities Act 2003 (which is currently under review to domesticate the provisions of the CRPD). The Government has established and operationalized the functions of the National Council for Persons with Disabilities, and the National Development Fund for Persons with Disabilities established under the Persons with Disabilities Act 2003 in support of disability programmes in Kenya including financial support to institutions and organizations that provide services to persons with disabilities. The Fund supports the provision of assistive devices to persons with disabilities, scholarships, enhancing infrastructure and support towards the economic independence of persons with disabilities. The government has also appointed the Kenya National Commission on Human Rights (KNCHR) as the monitoring agency under Article 33(2) of the CRPD which means KNCHR has to integrate or give specific consideration to violations of the rights of persons with disabilities and has to report on its efforts.

This report is based on the assessment of Kenya State Report submitted to the Committee in April 2012 and our review to highlight areas of concern that we hope will inform the Committees' consideration of the Kenyan government's compliance with the Convention on the Rights of Persons with Disabilities (CRPD). This submission discusses non-compliance of the rights of people with disabilities in Kenya that are inconsistent with Articles 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the Convention. This submission is based on ongoing monitoring of the human rights situation in Kenya and interviews with UDPK member organizations, including persons with disabilities who face obstacles in accessing their rights; disability rights and human rights advocates' human rights groups, legal professionals and parents of children with disabilities.

Despite these positive measures undertaken by the Kenyan Government, there are many challenges that the Government should address. These challenges include general and legal illiteracy among the citizens about the rights of persons with disabilities and rights under the Convention, inadequacy of resources, negative attitudes towards disability and lack of information and skills in addressing disability discrimination among service providers. Additionally there is a huge disparity in access to services between the rural and urban divides. Persons with disabilities who reside in rural areas suffer double challenges, yet the Kenya National Survey for Persons with Disabilities indicates that there are more persons with disabilities who reside in rural areas.

In your upcoming consideration of Kenya State Report review, UDPK urges you to engage the Government of Kenya about the following key issues, which at present puts the rights of persons with disabilities in a precarious condition:

1. The State Report as submitted has major statements of intent but lacking in policy and administrative framework on how the rights of persons with disabilities will be protected, promoted and respected. There are disparities between the law and practice in Kenya, with many legal provisions without enforcement modalities. The financing and implementation of these policies and laws remains a challenge. What is the Government doing to bridge the gap between policy and practice?
2. What is the timetable for the harmonization of domestic legislation in relation to the CRPD and the Constitution of Kenya 2010? Since disability is across cutting issue, there is need for a sustained effort to ensure disability mainstreaming in all national legislations.
3. What measures is the State taking to finance disability programmes, such as rehabilitation, education and health? Specifically since the National Council for Persons with Disabilities is the government arm that is providing services, what measures are in place to ensure the decentralization of the council's services? What Measures are in place to operationalize the National Gender and Equality Commission?
4. What steps have been taken to address the heightened risk for girls and women with disabilities of becoming victims of domestic violence and abuse? What measures are being adopted to ensure that both services (including shelters) and information for victims are made accessible to women and girls with disabilities?
5. What measures are in place to ensure that all health care and services provided to persons with disabilities, including all mental health care and services, are based on the free and informed consent of the person concerned (and cannot be substituted by third party decision-makers such as family members or guardians)?
6. What laws and policies are in place to ensure that persons with disabilities enjoy legal capacity on an equal basis with others in accordance with Article 16 ICCPR and as elaborated in Article 12 CRPD?
7. What steps are being taken to update the law with respect to the rights of persons with disabilities, in particular to repeal restrictions to being elected and the right to vote in the Constitution, in particular sections 83(1)(b) and 99(2)(e) which states that a person can be disqualified from voting and being elected as a member of Parliament if the person is of "unsound mind" which is contrary to the latest international standards on political participation (Article 29 of the CRPD)?
8. What measures is the government putting in place to ensure that persons with disabilities access justice on an equal basis with others, and the dignity and respect of persons with disabilities who come into contact with the criminal justice system is maintained?
9. What steps are being taken to ratify the Optional Protocol to the CRPD?

PART3. THE INITIAL KENYA STATE REPORT

The initial State report is commendable as it outlines some positive policy and legal measures taken to address disability discrimination. However we note that the report does not focus on the structural constraints faced by the State in its efforts to realize and implement the rights of persons with disabilities. Persons with disability face enormous hurdles in asserting their rights and the practical realities are captured by case studies captured in this report. UDPK recognizes that the government has set up the National Council for Persons with Disabilities to facilitate the implementation of various frameworks for persons with disabilities but the Council faces challenges in undertaking a holistic approach to all the needs. There is strong need for financing to support the decentralization of the National Council for Persons with Disabilities so that services for persons with disabilities are closer to persons with disabilities.

People with disabilities are doubly marginalized by the legal and social condemnation particularly the legal and social marginalization of women, children, and other minorities, a combination that leads to the constant violation of their human rights. On a daily basis, persons with disabilities face violations to their rights to life, to security, to be free from violence, to privacy, to health, to Education, to employment, to housing, to political representation, and to advocate for human rights. People with mental and intellectual disabilities and those in need of psycho-social support lack legal capacity or a legal mechanism for supported decision-making guaranteed under the Convention.

This report illuminates a number of ways that persons with disabilities are placed at risk. While these recommendations highlight the most urgent interventions, a number of additional suggestions that merit adoption are included by theme throughout this report.

As such, we recommend that the Government of Kenya:

1. Review, repeal and harmonize all legislation to conform to the provisions of the Convention taking into consideration the definition of disability under the convention.
2. Strengthen the national umbrella DPO, the National Council for Persons with Disabilities, to enable it to effectively deliver on its mandate to provide input on consultations and be actively involved in decision making, particularly on raising awareness among the general public on disability discrimination, work and employment and registration of persons with disabilities.
3. Increase the funding of disability programmes especially in education, health, and personal independence, in order to realize the rights of persons with disabilities under the new Constitutional framework.
4. The Government should provide inclusive education of learners with disability through a legal framework, which responds to the diversity among the educational needs and priorities for children with disability by obligatory training of all teachers, incorporation of inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers, ensuring accessible school environments, materials and equipment and the availability of assistive devices and support in classrooms.
5. Investigate all acts of physical and sexual violence against women and girls with disabilities including by state and non-state actors, and hold perpetrators, accountable. Ensure non-discriminatory and accessible victim support services are available to women and girls with disabilities, such as shelters and non-discriminatory medical care in public health facilities.

6. Carry out research to investigate existing challenges and constraints to universal design and accessibility. The research to recommend remedial action.
7. There is need for the development and implementation of a sign language policy within the public service, so that sign language interpretation services can be provided in all government ministries and department and in all media broadcasts. Government needs to budget for the e cost of sign language services for the deaf so that the cost is borne by the state and not by persons with disabilities, or by organizations of persons with disabilities as has been the case.
8. Investigate all cases of the abduction, harassment and kidnapping of persons with albinism and bring perpetrators to justice.
9. Incorporate disability issues in all humanitarian response to disaster management.
10. The Government of Kenya should repeal restrictions on legal capacity based on law, and policy that has been accepted as state practice or arbitrary decision-making by state officials. To combat these abuses Kenya must adopt laws to introduce supported decision making to ensure that individuals' rights, will and preferences are respected.
11. Establish and adequately fund a comprehensive plan to promote supported decision making and inform persons with disabilities of their rights in cooperation with the county government, DPOs and community based organization.
12. Strengthen national public defense systems and improve legal aid for the persons with disabilities.
13. Provide legal information for judges, lawyers, prosecutors and public defenders for sensitivity to persons with disabilities.
14. Repeal disability based detention and institutionalization as well as all forms of forced treatment without the free and informed consent of the individual concerned and prohibit substituted consent by a third party such as a guardian, family member or court.
15. Create mechanism to make it easy and convenient for persons with disabilities to access the relevant identity and nationality documents.
16. Provide increased support to families and build their capacity to provide care and support to children with disabilities and to ensure their inclusion and participation in the family and community. Establish services such as personal assistance to persons with disabilities, including children with disabilities so there are alternatives to the family becoming the default carer of persons with disabilities and to ensure their right to independent living in the community.
17. Implement policies to ensure that healthcare is provided without discrimination on the basis of disability or impairment, particularly as relates to services for HIV & AIDS, sexual and reproductive health.
18. The state should investigate cases of people dismissed from or denied employment on the basis of disability and provide them with a system of redress to recuperate damages.
19. The Constitution must be amended to remove denial and restrictions of the right to vote of persons with psychosocial and intellectual disabilities. The Independent and Electoral Boundaries Commission (IEBC) needs to mainstream disability in the electoral process and respond to the needs of persons with disabilities during the entire electoral process starting from the rules and regulations developed to support the election process, to voter registration, voter education and to the elections

20. Adequate budgetary allocation for the development of sporting facilities for persons with disabilities and also for participation in international competitions and cultural events.
21. Have disability as an integral part of data disaggregation in all national surveys. Disability should be incorporated in all data that is collected by government.
22. There is need for the government to audit the expenditure of grants on disability programmes in relation to the national budget, so as to ensure fair and equitable distribution of funds to disability programmes both at national government and county governments.

PART 4. SUBSTANTIVE INCONSISTENCIES WITH THE CONVENTION ON THE RIGHTS AND WELFARE OF PERSONS WITH DISABILITY.

DOMESTIC LEGISLATION AND THE CONVENTION IN KENYA

The Convention stipulates that the States Parties need to take all appropriate legislative, administrative and other measures to implement the rights recognized in this Convention, Article 4.1 (1). In Kenya, there exist the Persons with Disabilities Act 2003, to protect the rights of persons with disabilities. Though the Act is in place, the challenge remains in the implementation of the rights provided therein.

The Persons with Disabilities Act 2003 came into force in June 2004. This is laudable since Kenya enacted a disability specific legislation long before the CRPD came into force. The Act has very good intentions towards the realization of the rights of persons with disabilities. However some pertinent aspects of the Act were not gazette until 2010. A review of the Act in relation to the Convention by UDPK in February 2010 showed that the good intentions of the Act are watered down by the cautionary and refractory spirit of the Act. Several sections of the Act remained unenforceable until January 2011. The Persons with Disabilities Act is currently under review to make it compliant with the Convention and is currently with the Law Review Commission for approval and presentation before Parliament. The Mental Health Act of Kenya has never been reviewed since its enactment in 1989. The Act uses outdated language and the medical model of disability thus it needs an urgent review. Unfortunately the Mental Health Act has been under review for 7 years now and has not passed the parliamentary stage. Other laws need to be reviewed as well to Comply with the CRPD such as Section 167 of the Penal Code which provides that persons of unsound mind can be imprisoned at the president's pleasure.

The State Report has made numerous references to the enactment of the Constitution of Kenya 2010 as a key milestone. It is notable that there are numerous gains for persons with disabilities in the Constitution of Kenya 2010¹. Apart from an elaborate Bill of Rights that is specific for persons with disabilities in Article 54 (1) and (2), the Constitution provides for participation of persons with disabilities in elective and appointive bodies, and also enhances their participation in the electoral and political process including affirmative action. However, it is anticipated that the development of enabling legislation to bring into effect the realization of the rights of marginalized groups will take 5 years.

The state should fast-track the development and implementation of such legislation since the rights of marginalized groups are often profoundly violated. UDPK and its partners note that although the Constitution provides for express inclusion of persons with disabilities, the spirit of the Constitution is not respected during the process of development of enabling legislation. UDPK and its partners through the Disability Caucus on the Implementation of the Constitution has had to seriously and consistently advocate for the inclusion of persons with disabilities in representation and in participation in elective and appointive officers.

Proposed Questions for list of issues:

1. What/who is the focal point for the implementation of the convention?
2. What is the timetable for the harmonization of domestic legislation in relation to the CRPD and the Constitution of Kenya 2010?
3. What measures have been undertaken to repeal laws that discriminate and or perpetuate discrimination against people on the basis of their disability on their face or in their application?
4. What plans does the State have, in financing the legal provisions especially the Persons with Disabilities Act 2003?

DEFINITION OF DISABILITY

According to the Persons with Disabilities 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. The Constitution of Kenya 2010 defines disability to include 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 the individual’s ability to carry out ordinary day – to – day activities. There is need to harmonize the definition of disability in the Kenyan legal framework, to adopt the provisions of the Convention, which removes the focus on the person or on the disability, focus on the various barriers that hinder full and effective participation of persons with disabilities on an equal basis with others, as well as being an “open-definition”, where the long-term element is not a compulsory requirement (as explained by the CRPD Committee in *S.C. v. Brazil*, para 6.3).

Proposed Questions for List of Issues:

1. What is the government timeline for harmonization of the definition of ‘disability’ to be in tandem with the conceptualisation provided by the Convention in its Preamble, para e, its Article 1 and complemented or further developed by the CRPD Committee jurisprudence, conceptualisation that shall inspire all policies based on the human rights model of disability?

PART 5. EQUALITY AND DISCRIMINATION

ARTICLE 5 OF THE CONVENTION

The Constitution of Kenya 2010 is progressive in recognizing disability as a ground for discrimination and the State recognizes that disability discrimination is entrenched in stereotypes. The government also has the National Council on Person with Disabilities and the National Gender and Equality Commission to monitor matters of equality and non- discrimination in disability as well as addressing any disability discrimination complaints. The law alone, will not change attitudes and misconception especially towards mental health and intellectual/developmental disability. However, there are no specific efforts by the government to raise awareness on disability or review domestic laws that cause discrimination.

Discrimination in this case can also be brought about by the lack of definitions. The Constitution of Kenya Article 54 recognises the right to reasonable access for persons with disabilities but there is no definition of “reasonable accommodation” in any law including the Persons with Disabilities Act. (See: *Paul Pkiach Anupa and another v. Attorney general and Another, 2012, (eKLR)*). As a result, reasonable access is easily confused with reasonable accommodation. Kenya uses the Common law system in the judiciary thus precedent can be used to fill in the gaps created by these laws. Unfortunately, the Courts too have not taken any action to define these terms.

The Judicial Transformation Framework Recently Launched by the Judiciary focuses on creating reasonable accommodation with access to physical environment of the court and language services but has no definition. So far the Courts have ruled on reasonable accommodation under employment law (See: *Anthony Kipkorir Sang v. Attorney General, 2014 (eKLR)*) but no definitions have been provided either. The Courts however should be commended for applying the Convention in deciding cases.

Another challenge is on the issue of language. Kenyan laws still use derogatory terms such as unsound mind to describe persons with disabilities. In addition Kiswahili (National Language) has deeming terms to describe persons with disabilities for example *zeru zeru* to describe albinism. The word *zeru zeru* means ghost in Kiswahili. The government has had successful campaigns on HIV & AIDs, Tuberculosis and other health related initiatives. There is need for a sustained campaign and public education to challenge stereotypes and misconceptions about disability.

Proposed Questions for the List of Issues

1. What is the Government doing to bridge the gap between policy and practice?
2. What is the timetable suggested for the harmonization of domestic legislation in relation to the CRPD and the Constitution of Kenya 2010?

ARTICLE 6: WOMEN WITH DISABILITIES

Research indicates that the consequences of disability are particularly serious for women and girls. The traditional expectations of gender roles have an impact on how women with disabilities are perceived by society. Although both men and women with disabilities face difficulties in fulfilling their expected gender roles, a woman with disability is likely to face intense prejudice through stereotypes and culture. Women with disabilities are sexually violated with impunity and there are high rates of rape, defilements and other forms of gender based violence. "... We are attacked, beaten and raped in the streets and in our homes². Women and girls with disabilities are verbally and physically attacked and raped in the public sphere and in private, by family members, by teachers, by neighbors, by family members, and by strangers. Such violence is rarely addressed by authorities and women and girls with disabilities rarely report crimes against them for fear of further violence by the perpetrators. These represent ever-present threats to our lives and security"².

In 2011, Jane³ a woman with physical disability was evicted from the family land after her fellow siblings sold off the entire parcel of land left to them by their parents. Her brothers shared the family land in disregard to her inheritance rights without due consideration that Jane had the right to live on this land and had nowhere else to go. Upon selling the land the purchaser attempted to evict Jane in a most inhumane manner ignoring her disability. Efforts to involve local administration took long and by the time they intervened, Jane had suffered irreparable loss and damage as the family house had been demolished by the new buyer." I have now been left destitute and without shelter. I used to see people coming to view this land thinking they were only interested in helping me but now I realize⁴ by being disabled all my rights have been taken away. They treat me like an invalid. Even though I have a physical disability I know my rights. I was never called to give up my inheritance. I cannot do that and they know it that is why they went behind my back to sell the land. Those courts that do those succession cases should be thorough in their investigations and ask all those listed in succession cases be called before them and if one has a disability have support to go to court. I have never been to a court before and cannot understand the process especially about land".

There are no official policies or laws on women with disabilities. Thus women with disabilities will be expected to be covered under disabilities in general or women in general. This has led to discrimination in access of government funds by women with disabilities. There are various women group related products introduced by the government to empower women such as the Uwezo fund and Women Funds. They are supposed to encourage more women to be involved in business. However these funds lack individual approaches to access the fund. One must be in a group to access the funds which most women with disabilities are not in groups. Thus they cannot access the funds.

Women with disabilities face a lot of challenges in accessing reproductive health services. There have been cases of forced sterilization⁵ or women with disabilities being discouraged from having children as

² Interview Number 1 with member of WCC

³ Interview Number 2 with member of WCC on August 30,2011 on File with UDPK

⁴ Refer to above interview notes

⁵ Alternative Report in Response to the Second Periodic Report to the Committee Against Torture, Independent Medico Legal

they can pass the disability to their child. Also stereotypes from health workers when women with disabilities attempt to access reproductive health services.

Public ridicule of women with disabilities goes unabated by the public and public officials like the case below illustrates:

Wanjiku⁶ an 18 year old girl with mental disability was assaulted by a public transport operator. She was dragged to the bush in broad day light and sexually assaulted by the man. Members of the public rescued her and took the man to the police. However, he was not charged and the police released him without preferring any charges. This happened in January 2012.

Proposed Questions for the List of Issues

1. What legal measures is the government putting in place to address the lack of policies on women with disabilities as a specific group?
2. How will the government ensure that women and girls with disabilities have access to the police and the judicial system to report and address attacks on their lives and rights without fear of further victimization?
3. In light of the repeated violence against women and girls with disabilities in Kenya, how will the Government protect this vulnerable population from State and non-State perpetrators?
4. What measures have been undertaken to eliminate laws and practices that perpetuate stereotypes of strict gender roles, or that are used in their application to negatively stereotype women with disabilities?

ARTICLE 7: CHILDREN WITH DISABILITIES

The government has taken positive steps to ensure inclusion of children with disabilities in children policies. The Children Act recognises Children with Disabilities as a special group entitled to their rights. The Sexual Offences Act recognises children with disabilities as a vulnerable group. The Childrens Act also empowers the National Council for Children Services to make policies for children and must include children with disabilities as part of child participation. The Council has been effective in implementing this through the Children's parliament which has children with disabilities as representatives.

Children with disabilities suffer violence, lack of education, inhuman and degrading treatment and sexual abuse and violence. The situation of children who are deaf-blind is of concern. Deaf-blindness is the combination of both visual and hearing impairment. Noting that most of what we learn about the world comes through our ears and eyes, Deaf-blind children often face problems with communication, mobility, manipulation of the environment and access to information. Research⁷ has shown that about 36% of cases of deaf blindness in Kenya are as a result of rubella which is a preventable through vaccination. With basic support and education, deaf-blind children can communicate, go to school, support themselves and become valued members of their communities. Currently this support has not been adequately given by the Government for reasons that; there are only ten institutions offering education for learners with deaf-blindness in the whole country, this forces the learners to travel long distances in search for this fundamental right. The current teacher to pupil ratio in the few schools stands at 1:4. These compromises the quality of education since the recommended ratio for effective learning to take place should be 1:1. The National School Health Policy and Guidelines of 2009 developed by the Ministry of Public health

⁶ Not real name, details with Autism Society of Kenya

and Sanitation and the Ministry of Education provides that children with multiple disabilities should be provided with a range of services, including physiotherapy, occupational therapy and orthopaedic services and other relevant interventions while in school. Three years later, there has not been much effort to effect the provisions of the policy and guidelines.

Children with developmental disabilities including autism have also not been able to effectively enjoy their right to education. Most of these children live in deplorable condition without support of facilities to enhance their learning and in several instances face rights abuse and violations by their care-givers. The case of Kamau⁸, a 7 year old boy with autism spectrum disorder is very revealing of their situation. He was sodomised by a person well known to him in January 2012. The perpetrator of this crime is a well-known criminal to the police and the local administration. He abducted Kamau during the day and the boy was not found until midnight. The report from the doctor indicated that the child was repeatedly sodomized until he passed out. When the father found him, he was unconscious and he took him to hospital and to the police. He obtained all the necessary documents from hospital and the police wanted him to pay Kshs. one thousand only, which he did not have. His case was abandoned because he was being threatened, and his family feared more harm forcing them to move away to another part of central Kenya.

There have been reported cases where some children with disabilities are either abandoned and find their ways to child rescue centres, are never collected by their families from school after schooling programmes, or are outrightly rejected by their families condemning them to remain in learning institutions for the rest of their lives. A teacher from the Coastal part of Kenya, has a big challenge to manage transition of children with mental disabilities back to the community. The situation is similar in many special needs learning centers. The government has also ignored the voices of caregivers who attend to children with disabilities. In order for children with disabilities to benefit from the CRPD the caregivers concerns also need to be addressed. In most cases it is the parents or relatives who face various challenges such as the need for respite services. If caregivers could be given respite services, then the needs of children with disabilities would be better addressed.

Proposed Questions for the List of Issues.

1. What measures has the government put in place to ensure access to health for children with disabilities?
2. What policies and strategies does the government have in place specifically targeting children with disabilities?
3. What proposals mechanisms has the government put in place for training and posting of teachers for the deaf-blind to reach the ideal ratio of 1:1?
4. What plans does the government have to address the issue of caregivers for children with disabilities?

ARTICLE 8: AWARENESS RAISING

The government has done very little to create awareness on disability especially in the rural areas. In most cases, Persons with disabilities have little information on their rights, laws or policies affecting persons with disabilities, where to seek services/help or report a complaint, the existence of organizations that provide services for Persons with disabilities or even where to raise complaints where they have faced abused. Noting that the biggest challenge facing disability in Kenya is stereotypes on disability, the government needs to do more to engage the public in the disability discourse. The NCPWD and NGEC have been mandated to create awareness on disability. However both institutions lack the funding to do so.

The CRPD requires that state parties work with the media to raise awareness on disability. The Kenyan media portrays Persons with Disabilities WDs as vulnerable, weak or persons of extra ordinary strength which perpetuates the stereotype on disability as something go be pitied or amazing. The government needs to sensitize the media on how to put the person first before the disability.

Proposed Questions for the List of Issues

1. What is the NCPWD and NGEC doing with regards to awareness creation of the positive image of person with disabilities to government authorities, the general public and to persons with disabilities themselves including about their rights and how to invoke their rights, across the country in particular in rural areas? How are DPOs consulted and involved in the design of awareness raising campaigns and participate in their monitoring and evaluation? What training is conducted to raise awareness of government personnel including through the participation of DPOs?
2. Are current government campaigns also disseminated in accessible formats and languages?

ARTICLE 9: ACCESSIBILITY

Accessibility is core as it brings to life substantive equality, as a continuum and a process. The situation in Kenya is far from the scenario envisaged under the Convention. Physical accessibility and, access to information remain key areas that require immediate action and intervention in order to realize the rights of persons with disability. The Constitution of Kenya 2010 provides for the promotion and development of Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities and under the national Disability policy, the state shall seek to improve access to information and communication by persons with disabilities. Vision 2030 that also supports the development of ICT in Kenya but does not specifically target disability. There is a grave concern on access to information by persons with hearing impairment in Kenya. Deaf persons are excluded in access to information, specifically information and education materials through television. The Persons with Disabilities Act has been in existence since 2003. Section 39 of the Act provides that all television stations shall provide a sign language inset or sub-titles in all newscasts and educational programmes, and in all programmes covering events of national significance. 12 years into the implementation of the Act has not seen any of the television stations (including state owned television the Kenya Broadcasting Corporation) providing information to the deaf in accessible formats. The National Assembly and Kenya Television Network provide sign language interpretation during parliamentary sessions and news briefings. However all news items and education programmes aired in all the TV stations have no provision for sign language insets or sub-titles.

The Government of Kenya in their vision 2030 Plan has implemented a rigorous ICT policy. Thus, the Communications Commission of Kenya has begun with initiatives like the Disability Web Portal. Other regulators – the Kenya Bureau of Standards, the Media Council of Kenya, our parastatals – all these must develop minimum standards and guidelines: on accessible websites; on accessible ATM machines; on accessible computer products. So that while we may commend the inclusion of sign language on TV, there

should be a minimum guideline making it easier for deaf students who are forced to crowd near their television set because the interpretation is limited to a tiny corner of the set.

Physical accessibility remains a challenge. Physical accessibility is lacking within communities, in schools in social places. Workplaces are not designed to allow persons with disabilities access. Although the Persons with Disabilities Act 2003 provides for reasonable accommodation, that can be used as a mean to obtain accessibility in particular cases, there are minimal attempts in challenging physical barriers that persons with disabilities face. The Act states that the NCPWD can issue adjustment orders to a building to ensure physical access but these orders cannot be issued against government buildings.

Sections 21, 22 and 23 of Persons with Disabilities Act, 2003 provide entitlements to a barrier free environment including access to buildings, roads and social amenities. Section 22 requires proprietors of buildings to adapt their buildings to suit the needs of persons with disabilities within five years after the section comes into operation. Additionally section 23 (1) and (2) requires that all public service vehicles should adapt their vehicles to meet the needs of persons with disabilities within two years after the section is operationalized. Buildings, including public offices remain inaccessible to persons with disabilities. Public transportation remains a nightmare for persons with disabilities and in particular wheel chair users, crutches users and the like who have to make alternative arrangements and use Taxis at their own costs or are force to pay double fares and heavy inconveniences if they use public transportation.

‘I struggled and got a job in one of the cell phone companies that were willing to take a person with a disability. To reach where the company offices are located from my house, I had to change two buses from my rented house to the city and then connect to the next stop. On several occasions, I reported late at work since no ‘matatu’ [public bus] was willing to stop and take me and my wheelchair proved a challenge to accommodate. So, a vehicle would stop, pick other passengers and refuse to take me even when I offered to pay for an extra seat so that my wheelchair could be loaded. After some time I opted to stop working as it was taking so much time and by month end, I would save so little it would hardly be enough to pay for my rent and other utilities. I am now jobless even though I am a skilled person’⁹.

Mike¹⁰:’ As a person with disability using a wheelchair, I needed to go to a government office but could not access. In the Ministry I was not able to go to the office up the stairs since there was no provision for a ramp or lift for accessible. I had to give up on my mission which affected me very much. This is not just at the Ministry but most government offices that give public services are not accessible. The building codes should be changed to ensure access for persons with disabilities. Sometimes I have to be carried up the stairs with assistance from strangers and it is very dehumanizing. It is not easy as an adult being carried up stairs which in some cases are very narrow and some people do not give way and imagine I am an inconvenience. It is not good. In some cases when I personally need to access some services up the stairs, I lose so much time just in making efforts to access the place that should have taken a few seconds’.

Proposed Questions for the List of Issues

1. What is the government doing to promote accessibility for persons with disabilities?
2. What has the government done to modify and enforce the Building Code in order to bring it in compliance with the requirements of the Convention?
3. Has the government developed and monitored the implementation of minimum accessibility standards and guidelines that are appropriate to specific context e.g rural/urban areas?

⁹ Maureen, Interview Number 15

¹⁰ Not real name, details with UDPK

4. Who is providing training on accessibility to stakeholders?
5. Who is promoting design; development, production, and distribution of information and communications technologies that address accessibility and that are provided at minimum cost?
6. What research is being done into accessibility issues and challenges in order to address the various challenges facing persons with disabilities in all parts of the country?

ARTICLE 10: RIGHT TO LIFE

Although the state report indicates that all health facilities in Kenya provide services to all persons without discrimination, and that 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, health services and facilities remain inaccessible to persons with disabilities. Distances to health facilities, poor road networks particularly in the rural areas and lack of sign language interpretation services in health services hinder access to health for persons with disabilities. Although the Kenya Demographic Health Survey (2003) established that HIV/AIDS awareness is nearly universal, knowledge of HIV/Aids among persons with disabilities is low owing to factors such as low literacy levels and lack of information in accessible formats such as Braille or sign language. HIV/AIDS interventions fail to recognize that Persons with disabilities are at risk of HIV/AIDS infection. According to the Africa Campaign on Disability and HIV and AIDS, persons with disabilities have poor access to HIV/AIDS information and services. Access to HIV/AIDS services such as HIV testing is limited by social and physical barriers such as physical access, prejudicial attitudes and misconceptions that persons with disabilities are not active.

The case of persons with albinism is most dire as their right to life has been threatened in Kenya and in neighbouring countries. There's a Witchcraft Act that recognises Witchcraft in Kenya as an offense and some sections of the Penal Code as well. However these sections have not been implanted in the Country.

'...As a person with albinism doing advocacy, for the last one year and a half there has been killings in Tanzania and Kenya. The case of Robinson who was sold from Kenya to Tanzania and then rescued. ... There are many recommendations we can make as Albinism Society of Kenya. We took Robinson after his rescue and now he is back in school. He is at Thika School for the Blind. He is progressing well and interacting well with fellow students. Other students actually do not know that he is the one who had been abducted and taken to Tanzania as there are other students with albinism and he does not feel segregated or discriminated against in that environment.

Kenya has the Death Penalty in place but has never implemented it. The last persons to be executed in Kenya under the death Penalty was in 1982. Thus Persons with Disabilities who are handed the Death Penalty end up serving life sentences. This provision of Law in the Penal Code needs to be reviewed as it's against the right to life.

Proposed Questions for the List of Issues

1. How is Kenya handling the vulnerability of persons with disabilities to HIV & AIDS infection?
2. What steps are being made to protect persons with albinism from abduction and murder? What penalties are in place for perpetrators and what training exists for police and awareness raising and education campaigns for the public to eliminate this practice?

ARTICLE 11: SITUATIONS OF RISK AND HUMANITARIAN EMERGENCIES

This article explicitly states what governments should observe as the basic standards in emergency and in risk situations thus ensuring protection and safety of persons with disabilities. Refugees and internally displaced persons with disabilities are state guests thus the government should ensure full enjoyment of their rights just as any other person with a disabilities. A case study of the refugees with disabilities in Dadaab Refugee Camp has shown that they have not yet fully accessed the services delivered by agencies thus denial of basic human rights. According to a survey conducted in May 2011 by Handicap International, refugees with disabilities have a lot of unmet needs, for instance at the food distribution centers. Refugees with disabilities incur expenses to pay for a person to take and carry their food rations to their tents, a factor that sometimes ends up denying them these basic necessities.

The state of insecurity in the refugee camps has deteriorated and thus refugees with disabilities within the camps remain vulnerable and cases of gender based violence have increased due to banditry. Due to the insecurity refugees with disabilities are not accessing education and health services thus making them not participate in community activities? Stigma and discrimination still remains a major challenge for refugees with disabilities in spite of the tremendous work done by organizations such as Handicap International which has resulted into increased participation of persons with disabilities in community activities, leadership, education and employment among others. Persons with disabilities in arid and semi- arid areas face barriers in accessing government support services especially during emergency relief programmes and processes. The Kenya Internally Displaced Persons Bill 2012 has accommodated issues of persons with disabilities; the refugee bill 2011 has also been reviewed to include the needs of refugees with disabilities. These bills through still in draft should be passed into law for enforcement.

Refugees with disabilities also lack access to reproductive health services or information¹¹. The General Perception is that they are refugees and have disabilities thus are not entitled to reproductive health rights. Refugees with disabilities can wait for hours at the healthcare facility to receive services. Women and girls who are refugees with disabilities and pregnant face stigmatization from the health workers and community as they are then viewed as prostitutes. Thus women and adolescents with disabilities lack access to sexual reproductive health services, information on reproductive services and stigmatization.

Recently Kenya has faced a wave of terrorism attacks which have either caused death or lead to a disability. Kenya passed the Security Act which had some sections that violate human right principles but does not have a Terrorism Policy or a Policy on how to address the rights of person with disabilities during an attack. In addition there is no policy on how to give psychosocial support for persons who acquire a disability as a result of the terrorist attack.

Kenya has the Arid and Semi-Arid Land Policy which directs the government on how to handle natural disasters such as perennial drought in arid and semi-arid areas. The Policy gives special attention to education and health services in these areas as priority areas to be addressed. However the government does not address desirability in the arid and semi-arid lands and how persons with disabilities can be assisted to cushion them from drought, access health care and education.

Proposed Questions for the List of Issues

1. How is disability addressed under the Disaster Management Programmes?
2. What efforts have been made to build the capacity of service providers and stakeholders involved in disaster management, to respond to the needs of persons with disabilities?

¹¹ Women Refugee Commission, The Woman Can Decide, THE Intersection of Sexual Reproductive Health Rights and Disability for Refugees in Kakuma Refugee Camp, Kenya, 2014

3. What measures have the government put in place to ensure refugees with disabilities are given priority in access to food, safety and sexual reproductive rights?

ARTICLE 12 - LEGAL CAPACITY

The aim of Article 12 is to ensure that Persons with disabilities are 'subjects' of the law capable of determining their own destinies and entitled to equal respect and not 'objects' to be managed and cared for by others¹². The Constitution of Kenya recognises that all Person are equal under the law but there is no definition of equal recognition or legal capacity for person with disabilities leading to various acts of discrimination through the use of the words "unsound mind" in various laws. The question on legal capacity for person with disabilities is yet to be challenged in the Kenyan Courts.

Kenyan legislation is replete with situations where the legal capacity of persons with disabilities are constrained and either partially or wholly handed over to third parties. Article 83(1) of the Constitution restricts participation in political process of people 'declared to be of unsound mind' when laying the categories of person who qualify to be registered as voters without making provisions or a legal mechanism on who is a person of 'unsound mind' and who makes that determination for purposes of elections. There is also no clarity as to the relationship between Article 83 (3) (b) and Article 12 of the Convention and the contradictions between Article 83 meaning when it is read alongside Article 38 which provides that: "Every adult citizen has the right, without unreasonable restrictions- (a) To be registered as a voter; (b) To vote by secret ballot in any election or referendum; and (c) To be a candidate for public office, ... and, if elected, to hold office¹³."

Kanini¹⁴: lives in Nyeri. She has been homeless and has severe psychosocial disability. She has suffered sexual violence and every time she goes to the police they say she is mad and cannot take up her case. That she does not have the capacity to express herself. The reports to the police are not recorded or taken seriously and never addressed to protect her despite the fact she is still homeless.

Kenya's Mental Health Act has never been reviewed since it was enacted in 1960. Not only do provisions violate Human rights principles but it also uses words such as unsound mind and mentally handicapped which have been banned by the CRPD¹⁵. Section 16 of the Mental Health Act (Cap. 248) provides that a police or administrative officer may take into custody and hand to a mental hospital a person with mental disorder; one who is dangerous to himself or others or who on account of the mental disorder is likely to offend public decency; or one not under proper care and control or is being cruelly treated and neglected by a relative or guardian¹⁶.

Section 107 of the Children Act (No. 8) of 2001 provides that if a child suffers from a mental or physical disability or illness rendering him or her incapable of maintaining himself or herself or managing his own affairs and property without a guardian's assistance, the court may order extension of guardianship for such child. Such order though should be made with the consent of the child if he is capable of giving such consent. Such order may be accompanied by conditions on duration and how the order should be carried out. This provision falls back to type when it provides that an application to vary or revoke its order may be

¹² Gerard Quinn and Theresa Degener, (eds), 'Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability' (Geneva: Office of the United Nations Commissioner of Human Rights, 2002)

¹³ As above

¹⁴ Not her real name. Case with UDPK

¹⁵ Briefing Paper on Legal Capacity, Kenya National Human Rights Commission, 2013

¹⁶ Mental Health Act (Cap 248) Laws of Kenya

lodged by such person's guardian or if he or she marries their spouse.¹⁷

Many persons with psychosocial disability are held in mental health institutions against their will or consent. These practices are also prohibited by Article 14 (liberty) and Article 1 and 25(d) (respect for physical and mental integrity and free and informed consent in health care). The CRDP shift in these areas is fundamental. It means that persons can no longer be subject to legal standards and procedures for deprivation of legal capacity, compulsory treatment or forced institutionalization or hospitalization. Instead such practices must be abolished and replaced with supportive measures that respect the autonomy and integrity of person with disabilities.

Michael Njenga: *I am Psychiatry user and self-advocate for people with psycho-social disability [mental health disability] the term that is used under Convention.*

In our organisation we advocate for supported decision making more so when a person is in a crisis because this is normally the time that incapacity is presumed this is due to medicalization of these kind of situation and no attempt is made at all to initiate dialogue or communication during such a moment to ascertain the wishes and preferences of the concerned person. People with psycho-social disability are presumed to be incapable of making decisions. Their capacity to act is questioned and consequently they are denied the legal capacity to do things that ordinarily they are capable of doing. It is wrong to assume bad decision-making equates to lack of capacity for persons with psychosocial disability.

Section 26 of the Mental Health Act provides that the court may make orders for the management of the estate of a person with mental disorder or for the guardianship of such person¹⁸. Under Section 5 of the Law of Succession Act (Cap. 180), a person who is not of sound mind has no capacity to dispose of his or her free property by will. A person who alleges that another was not of sound mind when he or she made a will has the burden of proof to confirm the allegation¹⁶. Under the Marriage Act, a person of Unsound mind cannot consent to marriage. These includes persons with intellectual disability. Section 8 of the Matrimonial Causes Act (Cap. 152), being of unsound mind is also a ground for a petition for divorce.

Proposed Questions for the List of Issues

1. What has the government done to define legal capacity for person with disabilities?
2. What has the government done to repeal law and practice that undermine legal capacity for person with disabilities and substitute it with supported decision making?
3. What has the government done to ensure the right to access arrangements and support systems essential to exercise legal capacity?
4. What has been done to build the capacity of families and the community to allow person with disabilities to exercise legal capacity and autonomy over their lives?

ARTICLE 13: ACCESS TO JUSTICE

Persons with disabilities like every other member of the society find themselves in the criminal justice system, either as victims, witnesses, people accused or suspected of a crime, and people convicted of a crime.

The Constitution of Kenya, 2010 guarantees the right to access to justice for all persons, including persons with disabilities under Article 48. Article 50 of the Constitution of Kenya, 2010, guarantees the right to a

¹⁷ Children Act (No. 8) of 2001, available at: http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

¹⁸ Mental Health Act

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.

The Judiciary has formed the National Council for Administration of Justice (NCAJ) which monitors and implements matters of access to justice. The Council has a duty to provide legal aid to all persons who can't access justice in the court system. At County level the institution is recognized as the Court Users Committee (CUCs) and is supposed to have representation for persons with disabilities to advocate for disability issues. Not only is this institution unrecognized by the general public but also provides little assistance for persons with disabilities. Also representation of Persons with disabilities in the NCAJ is wanting. Persons with disabilities cannot access Legal Aid through this institution.

Access to justice has been misconstrued to mean access to the court system. However access to justice refers to the justice system from when matter is reported to the police to when the Person is handed over to the correctional bodies. Thus Access to Justice for Persons with disabilities needs to be streamlined from the police, to the courts, lawyers, and probation and prison facilities. The Court system may have created reasonable accommodation systems for Persons with disabilities but other institutions do not have any mechanisms in place leading to lack of access to justice for Persons with disabilities once they leave the court system.

One case we received was this teacher working in Nyeri [high school, he developed a crisis while at his place of work and decided to wait for a relative to come and support him. His colleagues got worried and feared that he would turn violent even though he had already expressed his need to get support from somebody who understood his condition. The colleagues decided that they should take him to a police station, for the police to escort him to the hospital. This was despite the fact that he had not committed any criminal act or made any disruptions at the school.

Once at the police station, they tied him up and opted to pay the police officer to accompany him to the hospital. He made all efforts to convince them that he could make his own decisions but they doubted him¹⁹.

UDPK has undertaken research and consultations on access to justice for persons with Disabilities²⁰. Persons with Disabilities face numerous challenges at the various stages of the criminal justice system. The study indicates that physical access barriers and lack of sign language interpretation services are a major concern in the three institutions in the criminal justice system; namely the Police, the Judiciary and the prison. It is also noted that the prohibitive cost of litigation and lack of knowledge on the legal process is a major impediment to the access to justice by persons with disabilities. Additionally the knowledge levels of the staff on disability equality in the three institutions remains low, a factor that compromises the dignity and rights of persons with disabilities in the criminal justice system.

Proposed Questions for the List of Issues

1. What plans does the state have in ensuring that persons with disabilities access justice on an equal basis with others and to ensure that their dignity and rights are respected?
2. What procedural accommodations are available to ensure accessibility to persons with disabilities during court proceedings?
3. Is the state providing targeted training education on disability equality to officers and staff in the judiciary, lega

¹⁹ Case with Users and Survivors of Psychiatry Kenya

²⁰ Report on File

aid lawyers and wider legal profession, the police and the prisons departments?

ARTICLE 14: LIBERTY AND SECURITY OF THE PERSON

Kenya's Mental Health Act which has been under review for 7 years now has very many provisions on institutionalization of persons with disabilities especially on Mental Health. There has been recorded abuse of the institutionalization procedures where one cannot be released from mental health institutions due to procedures or abandonment by their families²¹. Cases of cruel and degrading treatment of institutionalized persons with disabilities has also been reported and little action has been taken by the government to release persons with disabilities from such institutions.²² Children with disabilities also have their liberty restricted as families abandon them in schools or intuitions leading to a life time of institutionalization.

Kenya's Mental Health Act has never been reviewed since it was enacted in 1960. Not only do provisions violate human rights principles but it also uses words such as unsound mind and mentally handicapped²³. Section 16 of the Mental Health Act (Cap. 248) provides that a police or administrative officer may take into custody and hand to a mental hospital a person with mental disorder; one who is dangerous to himself or others or who on account of the mental disorder is likely to offend public decency; or one not under proper care and control or is being cruelly treated and neglected by a relative or guardian²⁴.

Many persons with psychosocial disability are held in mental health institutions against their will or consent. These practices are also prohibited by Article 14 (liberty) and Article 1 and 25(d) (respect for physical and mental integrity and free and informed consent in health care). The CRPD shift in these areas is fundamental. It means that persons can no longer be subject to legal standards and procedures for deprivation of legal capacity, compulsory treatment or forced institutionalization or hospitalization. Instead such practices must be abolished and replaced with supportive measures that respect the autonomy and integrity of person with disabilities.

Proposed Questions for the List of Issues

1. What steps are being taken to repeal laws which permit the detention of persons based on their disability including "unsound mind"?
2. What has the Government done to ensure persons with disabilities are released from institutions especially those held in mental health institutions?
3. What measures are in place to ensure transitions for persons with disabilities from institutions to inclusion in the society by making available community based services and support?

ARTICLE 16, FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE

Members of WCC report constant attacks, harassment, and threats whenever they go to seek medical attention in public hospitals:

"On the 1st of August 2009, I was attacked as I went home because no matatu [public transport] would take me and my wheel chair...eventually when I had somebody to help me get into the matatu it was late into the night. When I arrived at my bus stop, it was dark and some men hovering in the darkness

²¹ Realizing Sexual and Reproductive Health Rights in Kenya, A myth or a Reality? Kenya National Commission on Human Rights, April 2012.

⁵ Ibid 2

²³ Briefing Paper on Legal Capacity, Kenya National Human Rights Commission, 2013

²⁴ Mental Health Act (Cap 248) Laws of Kenya

*pretended to want to help me but they ended up raping me...I could not scream as they threatened to kill me. I was later abandoned to die on the road and my wheel chair taken away.*²⁵

Children with disabilities have not been spared from exploitation either. Recent reports have indicated that cartels are now using children with disabilities as beggars in urban areas²⁶. They are not fed nor paid. The children are kept in inhumane conditions to worsen their disabilities as these guarantees the cartels more money. The government has done little to control these cartels even after the reports were released.

There are documented reports on cruel and degrading treatment in Kenya's mental health institutions. These reports have been carried out by the Kenya National Commission on Human Rights²⁷ as well as the Independent medical Legal Unit. Both reports show systematic verbal, physical and mental abuse. There have also been sexual abuse which goes unreported. However the government has not done much to regulate and monitor these institutions even after the reports were released.

Article 27 of the Constitution of Kenya guarantees that every person has the right to be treated with dignity and respect. A study carried out by UDPK shows that 46% of person with disabilities are likely to experience verbal abuse with 71% of persons with Mental Health conditions facing more verbal abuse than those with physical disability. 56% of the abuse occurred in the person neighbourhood through neighbours or family members with most of the case going unreported as the person with disabilities were unaware of their rights. Women with disabilities faced more abuse than men including physical violence related to their disability and only 17% reported the cases, to mostly religious leaders. The government needs to do more to create awareness on the dignity of person with disabilities and need to protect them from abuse in the home area. Awareness should also consist of where to seek help in case of abuse²⁸.

Proposed Questions for the List of Issues:

1. What steps have been taken to address the heightened risk for girls and women with disabilities of becoming victims of domestic violence and abuse? What measures are being adopted to ensure that both services (including shelters) and information for victims are made accessible to women and girls with disabilities?
2. Are police trained to assist and communicate with persons with disabilities victims of violence? Are there any targeted measures to prevent exploitation of children with disabilities in the street as beggars?
3. What measures has the government put in place to monitor and collect data on cruelty and degrading treatment of person with disabilities in the street?

ARTICLE 17: PROTECTING THE INTEGRITY OF THE PERSON

The periodic report by Independent Medico-Legal Unit²⁹ showed that whenever persons with mental illnesses do not access adequate treatment and care, that situation can amount to systematized torture and ill-treatment. The Study conducted amongst 226 respondents who were in-patients in nine hospitals from different parts of Kenya revealed that torture of persons with mental illnesses takes place in schools (68 per cent); police stations 38.9 per cent); prisons (58.5 per cent); and hospitals (38.9 per cent).⁷ In hospitals, torture takes the form of physical assault by other patients (28.8%), physical assault by hospital staff (12.8 per cent), and caning as part of treatment (6.2 per cent). Other forms of torture in hospitals include deprivation of food (4.4 per cent) and water (1.3 per cent), sexual abuse (3.5 per cent), hard labor

²⁵ Interview #2 on 2 November 2011 on file.

²⁶ Child trafficking in Urban Areas of Kenya, Terrres des Hommes, April 2014.

²⁷ Kenya National Commission on Human Rights, Universal Periodic Review: Complimentary Report, 2014

²⁸ UDPK and Handicap International, Fact Sheet, 2014

²⁹ Independent Medico Legal Unit, Alternative Report In Response To The Second Periodic Report By Kenya To The Committee Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, 2013

as part of treatment (3.5 per cent), and being denied contact with relatives (2.2 per cent) and doctors (3.1 per cent).

On reproductive health rights, The Kenya Medical Practitioners and Dentist Boards insist that there is no forced sterilization in Kenya. The Law is silent on the issue of forced sterilization. However, women with disabilities in health settings have also had harrowing experiences. The Public Inquiry on Sexual and Reproductive Health Rights undertaken by KNCHR in 2011 found that health workers performed medical procedures on persons with disabilities without first obtaining their informed consent. When a woman with disability inquired from the surgeon why a hysterectomy was performed on her without her consent, she was reportedly told that persons with disabilities should not be allowed to give birth to children because they have no potential to adequately bring up the children. Another woman went through what she deemed an unnecessary caesarean section: the health practitioner assumed this would be in her best interest merely because she had a disability. Instances were narrated to the Inquiry where health care providers forcefully and without the consent of their disabled client's sterilized women with disabilities. This often happened with the collusion of relatives. Some women were even subjected to forced abortions by care givers or relatives

Proposed Questions for the List of Issues:

1. How has the government regulated the issue of reproductive health rights for women with disabilities?
2. What measures will the government put in place to ensure the safety of person with disabilities in institutions?

ARTICLE 18: MOVEMENT AND NATIONALITY

A challenge facing persons with disabilities in Kenya is birth registration. Access to birth registration services has been a challenge and most families especially in rural areas do not see the importance of birth registration especially for children with disabilities. Further government registration offices such as birth and passport offices are physically inaccessible. The Government of Kenya recently introduced the Huduma Service which are one stop shops for registration services in Kenya. One can apply for a National ID at the Center, Birth Certificate amongst other services. However these services are still inaccessible in that they are located on 1st or second floors of buildings. Secondly they are not properly decentralized in that a persons with disabilities has to get their early in the morning or line up for hours in order to access services. It gets worse in rural areas where there are no Huduma centers and services are centralized requiring the persons with disabilities to travel long distances to access registration services.

Proposed Questions for the List of Issues

1. What is the government doing to ensure that every person or child with disability has a birth notification, certificate and national Identity card?
2. What plans are underway by the government to prepare service providers in government charged with the registration process to avoid stigmatizing and ridiculing persons and families of persons with disabilities when they go out to seek for registration papers?

ARTICLE 19: LIVING INDEPENDENTLY

It is the desire of every person to live independently, however for some persons with severe or multiple disabilities, they require support in activities of daily living and in movement. If good and meaningful intervention is undertaken in time, the degree of dependence can considerably be reduced and persons with disabilities be made to live more fulfilling independent lives. Providing support to families and building their capacities contributes greatly towards the independence and social interaction of persons with disabilities. Families need the support of service providers both in rural and urban areas to promote independence among their children. In some families, some family members may miss out on the prospects of

generating income or employment and education as they stay back to provide this much needed personal mobility services to the person with a disability.

Most Kenyan Communities' practice communal living. Even in urban areas, one needs permission from their family before they can live independently. In a rural set up, the family assigns the person a place to live within the ancestral land. Therefore living independently for persons with disabilities is usually affected by cultural practices and norms. The common stereotype is that persons with disabilities cannot take care of themselves thus cannot live independently in the community. Even inclusion in activities is limited to the disability that the person has. Mental disability means that the persons is excluded from community involvement and activities. There needs to be more awareness within the family on how to support persons with disabilities to live independently outside of cultural practices.

Also living in the community has been severely affected by lack of support services such as respite, access to in-home health care services, accessible housing, subsidies on medical services and food, rehabilitation services on living indecently, then Article 19 would be better realized. More funds need to be allocated by the government towards the Cash Transfer program as this would enable caregivers to spend more time on rehabilitation services rather than worrying about finances.

Proposed Questions for the List of Issue:

1. What has been done so far to build the capacity of families that are burdened with the lifelong load of continuous care for their person with a disability?
2. What efforts are underway to avail support services to persons with disability who require a wide variety of mobility support as highlighted here?
3. What systems is the government putting in place to ensure person with disabilities can live independently with adequate monitoring and support services?

ARTICLE 20: PERSONAL MOBILITY

Personal Mobility ensures the independence of a persons with disabilities by creating system where persons with disabilities can move around freely then more persons with disabilities can be independent. Personals mobility in Kenya is mostly affected by lack of universal design to allow movement and lack of awareness. The biggest challenge being posed by the Public transport sector. It is not uncommon for public service vehicles to refuse to offer services to wheelchair users. The public service vehicles are designed in a manner that is not accessible for persons with disabilities thus needing an assistant to carry them into the vehicle. Also persons with disabilities have been ridiculed by public service vehicle operators. The Traffic Act requires that persons with disabilities be treated with dignity and respect, be given priority in accessing public service vehicles and reasonable accommodations included but these have never been implemented by the National Traffic and Safety Authority.

The Building Code is not adhered to as well thus restricting personal mobility for persons with disabilities. The Building Code in urban areas requires that all public buildings should have universal design. This code is supposed to be enforced by the County Government. This has not been adhered to and most buildings still remain inaccessible.

The Government has been lax in seeking innovative ways of ensuring personal mobility. There are improvements being carried out on accessibility aids for persons with disabilities. Yet the government still supplies dated equipment. Training on use of aids is also lacking leading to delayed mobility for persons with disabilities. The Government should include vocational schools in creating more modern accessibility aids for persons with disabilities thus reducing the cost of the aids.

Proposed Questions for the List of Issues:

1. What measures has the government put in place to control the public transport sector?
2. What steps is the government taking to ensure that person with disabilities have access to the latest technology in assistive devices and other equipment?

ARTICLE 21: EXPRESSION, OPINION AND ACCESS TO INFORMATION

Inaccessible information this hinders participation and involvement. The Constitution of Kenya recognises Sign Language as an official language in Kenya. Braille is also recognised by the Constitution as an accessible format. However are many incidences at public sites, offices and facilities where information is not availed in appropriate formats e.g. large print, Braille, sign language services, soft copies audio visual etc. There are various institutions providing training for sign language interpreters and providers but the numbers are still low. Further attitudes view interpreters as a problem for the person with disability and not a service to be provided by the government. As a result a segment of persons with disabilities then effectively get discriminated and excluded.

The private Sector has been left out in enabling access to information for persons with disabilities. The ICT sector in Kenya is growing at a fast past with new products being designed every month. However none of these innovations target persons with disabilities yet this growth is being driven by the Government's Vision 2030 plan. The government therefore has a duty to ensure all ICT material are in a format that can enable persons with disabilities to access information and express their opinions on the same by regulating the private sector.

Proposed Questions for the List of Issues:

1. What steps are being taken to enact legislation to ensure that information provided to the general public is accessible to persons with disabilities, by promoting and facilitating the use of sign languages, plain language, Braille, audio formats, and augmentative and alternative communication in official interactions, and to enact laws to make websites accessible and to ensure that websites are designed and developed according to accessibility guidelines?
2. What has been done so far to build the capacity of families that are burdened with the lifelong load of continuous care for their person with a disability?

ARTICLE 22: RESPECT FOR PRIVACY

Privacy for persons with disabilities is mostly ignored in the private sector especially in Mental Health/Intellectual disability cases. Most employers do not have a disability policy to address privacy of employee records for persons with disabilities or clients/customers who have disability. Private Institutions have to exercise their due diligence but due to lack of awareness, their practices lead to abuse of the right to privacy. This is mostly amongst financial and insurance institutions.

Case 2: One of our members went to the bank and applied for a loan. The bank approved the loan and started processing the payment. When he was going to withdraw the money, he got a crisis which attracted the attention of the bank management who immediately reversed the approval said he was not in a capacity to access the funds in the account. This was done in disregard of procedures, administrative or any recourse to the needs of the person.

After this crisis, he went to another branch of this bank who did not know his condition and they approved the loan.

Khadija³⁰: I went to the hospital feeling unwell. The medical officer instructed me to lie down for examination. It was a male officer. He asked to examine my breasts. He used very bad words on me that I was

³⁰ Not Real name, File with UDPK

pretending to be ill. When he was conducting this examination there was somebody else in the room and they kept on having a conversation about me indicating that I was not sick and just pretending as he continued to fondle my breast which had a lump. The doctor said I was pretending and did not observe me. Speaking directly to the third person in a manner that suggested the medication given was for the third party. It was very dehumanizing. I felt not respected.

Proposed Questions for List of Issues:

1. What measures have been undertaken to educate public and private officers on the right to privacy especially for persons with disabilities?
2. What recourse to persons with disabilities have when their right to privacy is violated?
3. How is the government providing training to service providers especially health service providers and government officers on the right to privacy?

ARTICLE 23: HOME AND FAMILY

The Health Sector workers have various prejudices on the rights of persons with disabilities to have a family. Most women seeking reproductive health services at public hospitals are usually discouraged from having children for as they risk passing the disability to the child. Access to information on reproductive health is strictly limited for persons with disabilities and are not considered as a focus group when government campaigns on reproductive health are carried out. Forced sterilizations in institutions and hospitals for persons with disabilities and persons living with HIV/AIDs is also common.

After the 2013 Election in Kenya, the Health function was devolved to the County Governments. County Governments are ill equipped to deal with reproductive health services for persons with disabilities and there are no directions from the national government as to how this should be implemented. Further the district hospitals are highly understaffed/funded to support access to reproductive health rights for persons with disabilities. Thus persons with disabilities have to seek services elsewhere at a higher fee.

*This is Jane*³¹ and her 3 children [mother pointing to the 3 children]. When I first detected that Jane's stomach was bulging, I asked her who had caused this but knowing that she is insane [Hana akili nzuri] I feared the worst. Jane pointed to the homestead of a man who had had sex with her. As Jane's mother I was so angry and I decided to confront this man as he was married. Two day later I held my daughter by the hand and proceeded his house and confronted him to tell the truth, but he denied ever having sexual intercourse with an insane girl. There was no way I could prove that he was responsible after this incident. Friends advised me to go to Kerugoya police station but the police there advised me to take my insane girl home and wait for the child to be born. That I should be happy my daughter was sexually active even with her handicap [asiyejiweza]. I had nowhere else to go. Sometime later my daughter gave birth and the child looked like the man she had pointed out but I had to help her raise the child alone as in her condition she forgets a lot and may kill the child. Several years later, she got pregnant again and we could not identify the father of the child as well. This last child was also born in similar circumstances and then I decided, since I am old and there is no support from their fathers or the police, I asked the hospital to close her stomach [tubal ligation] to avoid more children being born. Now my fear is she will contact HIV...³²*

Proposed Questions for List of Issues;

1. What is the government doing to prohibit forced sterilization of Women with disabilities in law and in practice?
2. What is the government doing to ensure education, training and awareness raising for persons with

³¹ Not her real name to protect her.

³² Jane's mother being interviewed on 1 December 2011, on file.

disabilities including available and accessible information on reproductive health rights and raise their families without fear of victimization?

ARTICLE 24: EDUCATION

The Government of Kenya passed the Basic Education Act of 2013 which encouraged inclusive education. Public Private Partnerships encouraging inclusive education such as that witnessed at City Primary School Autism Unit are commendable. However, inclusive education as provided by the Convention is far from being achieved. Some of factors that have hindered inclusive education include; lack of physical access in most regular schools because most schools in Kenya have not made adjustments to make the facilities accessible to persons with disabilities. Schools lack ramps and accessible washrooms. Parents who seek admission for their children with disabilities in regular schools fail to because of poor infrastructure. Lack of awareness as most school administrators and especially in regular schools are not aware of various provisions on right to education for children with disabilities and that they have a right to join in any education facility of their choice and schools have to make the necessary accommodation for the well-being of the child in school. People still have a notion that children with disabilities should study in special schools especially in rural areas.

Learners with deaf-blindness and developmental disabilities often require other services beyond the classroom such as medical drugs, therapy and personal care. This requires additional staff which the government has not been able to provide to ensure these children enjoy their right to education and other rights under the Convention. Also, quality assurance is an important component in evaluating the type of education that is provided for these children. Currently, Quality Assurance and Standards Officers (QUASOs) from the Government are not trained to evaluate the education for the deaf-blind learners. Further the government currently allocates Kshs. 1,020 (Kshs. one thousand and twenty shillings only) to all primary school going children and an additional Kshs.2,000 to learners with special needs. This blanket figure is not sufficient for learners with deaf blindness since they have unique needs. Previous recommendations to the government indicate that children with disabilities require a minimum of Kshs.17,000 (Kshs. seventeen thousand only) to meet their diverse needs. The Special Needs Education (SNE) policy which attempts to capture several aspects of education for learners with disabilities was finalized in 2009 is yet to be implemented hence compromising the quality of education as stipulated under the Convention³³.

There is poor coordination of Educational policies due to lack of budgetary allocations. The Government has in place the Special Needs Education Policy and the School Health and Sanitation Policy. Both policies are underfunded leading to poor implementation by government agencies. For example the School Health and Sanitation Policy focuses more on WASH programs and forgets to include access to medical

³³ Case study. Kiambu district with a total number of 10 integrated units for mental disability in the regular primary school and a population of about 300 student, of which 60% are boys, exemplified positive efforts undertaken by the government during the education day which was held on 31 May 2012: these included recognition of special needs education awards which targeted regular schools with special units: the award for the best managed special unit which went to Muchatha primary school, best inclusive award to Gachie primary school and the best integrated school which was awarded to Kiambu primary school. The regular primary schools with special units continue to receive additional capitation grants to free primary education that amounted to 2,000 per child annually. One of the major challenges faced by the

attention while in school for children with disabilities. Both Policies are implemented by different Government agencies leading to poor coordination. For example the SNE is implemented by Kenya Bureau of Standard's while SHSP by Ministry of Health.

Special needs schools are not giving certification to children who attend such institutions especially those with intellectual or multiple disabilities. As a result these children will move through the system, acquire basic vocational skills but do not have any certificate to prove that they have this training. The parents are just called to pick up their children. The Government needs to ensure that vocational institutions. Special needs schools issue certificate to their students.

Finally the Constitution of Kenya decentralized some aspects of education to the County Government level. Early Childhood Education and Vocational Schools are now under the control of county governments. As a result, there is poor management and no ECD or vocational school for special needs has been set up by any county government.

Proposed Questions for the List of Issues;

1. W
 What steps are being taken to recognize and incorporate into the law the obligation to provide inclusive education to children with disabilities and the need to implement it widely (covering the regions and rural areas)?
2. P
 Please indicate the steps being taken to repeal policies and guidelines and eliminate practices which prevent persons with disabilities from exercising their freedom of choice with respect to vocational and secondary education and training and that individuals have an enforceable legal right to non-discrimination with respect to education and vocational training.
3. W
 What steps has the government taken to ensure obligatory training of all teachers (beyond special education teachers) on teaching children with disabilities, and to include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers?
4. A
 Are individual education plans required for all students? How is the availability of assistive devices and support in classrooms, educational materials ensured?
5. W
 What steps has the government taken to ensure free and compulsory education is accessible to children with disabilities?
6. W
 What mechanisms are in place to ensure that learners with disabilities access quality education in appropriate learning settings?
7. W
 What measures has been taken to establish the right to early identification and assessment to ensure that children with disabilities are able to acquire the educational support and services they need from the earliest possible age?
8. W
 What measures have been taken to ensure that school buildings and materials are accessible to children with different types of disability?

9.

s there a clear transition and non-discriminatory policy to ensure that children with disabilities are able to acquire higher education or vocational training on an equal basis with other children including issuing of certificates to children who attend special schools?

ARTICLE 25: THE RIGHT TO HEALTH

Health and the barriers to access adequate health care is one of the most outstanding challenges facing persons with disabilities in Kenya. General Recommendation 24 states that the Convention “requires States to eliminate discrimination... in their access to health-care services throughout the life cycle³⁴.” It also explains that, “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups³⁵.” Furthermore, Article 43 of the Constitution of Kenya states that the government shall take all practical measures to ensure the provision of basic medical services to the population³⁶. The State is failing to address the numerous and total violations of persons with disabilities right to the highest attainable standard of mental and physical health, or even to create access to the most basic elements of health - including the right to life and right to be free from medical treatment without consent. There is no law that expressly provides for free and informed consent to treatment, it is implied. Further the general public do not ask questions on healthcare and would accept what the doctor tells them. The government needs to put guidelines in place on free and informed consent to treatment as the rights of persons with disabilities especially those who are unaware of their rights are being abused. The law assumes that Kenya Medical Practitioners and Dentist Board has policies on requirement for consent

The Kenya National AIDS strategic plan 2015-2019 has been effective in addressing HIV/AIDS needs and awareness creation amongst persons with disabilities. This policy provides for informed consent to testing and disclosure of information in order to address stigmatisation. A Medical practitioner cannot force anyone to undergo a HIV test nor disclose the person’s status without their consent.

Devolution under the Constitution has ensured health care services are more accessible at county level. However there have been challenges in access health care services by persons with disabilities at the local hospital where district hospitals are under staffed, under-budgeted and do not stock the medicine needed by persons with disabilities especially those with Mental Health Conditions. A survey done by UDPK showed that 36% of persons with disabilities could not access health care services due to physical barriers, distance to health facilities, attitude of health staff and lack of family support. In general, more women were unaware of their health rights than men and only 41% were aware off psychiatric services available to women. The Government needs to address these disparities.

For example one mother³⁷ experienced stigma from medical practitioners when she went to seek HIV information:

When my husband died nobody disclosed the nature and the cause of death, everybody around me said it was malaria since he had been ailing for a long time. Since I could not see his condition, I relied on the relatives who were visiting us and the medical personnel attending to him, I was not suspecting it could be anything else. After three months, I went for a checkup in the same hospital where the nurses started talking amongst each other that I was the wife of the man who had died. I think they imagined since I cannot see I

³⁴ CEDAW Committee, General Recommendation No. 24 par 2

³⁵ CEDAW Committee, General Recommendation No. 24 par. 6

³⁶ Constitution of Kenya 2010

³⁷ Interview 10. File with UDPK

also cannot hear. I sought to ask them who they were referring to and they quickly told me it was 'somebody else'. I insisted on taking a HIV test which was positive. I really felt frustrated that all those around me together with my doctors could talk about my health status and that of my late husband so openly but not disclose this fact to me. I was depressed, really suffered which affected my health, but now I have received counseling and dealing with my condition. The trauma has also affected my two children.

A report by Handicap International on Disability and HIV/AIDs indicates that persons with disabilities are more marginalized in HIV and AIDs prevention, care and support. Information is not provided in accessible formats and no consideration for persons with disabilities. Help Age International and Handicap International and other civil society organizations are pushing for data disaggregation in order to plan for persons with disabilities adequately. No access to essential drugs for persons with epilepsy compounds the incidences. Available drugs are mainly Phenobarbital, which are largely outdated.

Proposed questions for List of Issues:

1. What measures will be taken to ensure that health care is provided without overt discrimination particularly to persons with disabilities?
2. What measures is Kenya putting in place to ensure that it captures data on persons with disabilities who are HIV positive to support targeted interventions?
3. How will the issue of distance to health centers be addressed so that persons with disabilities can reach health services?
4. What training programmes are available to ensure health service providers are responding to the needs of persons with disabilities?

ARTICLE 26: HABILITATION AND REHABILITATION

Habilitation and rehabilitation forms a core need for persons with disability. According to the Kenya National Survey for Persons with Disability, assistive devices and support services consist of equipment and appliances used by persons with disability to complement diminished or absence of certain physical functions. Support services are services that PERSONS WITH DISABILITIES need or receive for their disability in relation to health, rehabilitation and welfare It is noted that only 32% of persons with disabilities have access to assistive devices and services, and of these, 41% are in the urban areas, in comparison to 26% in the rural areas.

Habitation and rehabilitation require early identification and a good example is where family members are able to get services within reach for early assessment and placement. A good example has been the Association of The Physically Disabled of Kenya, which works collaboratively with the government to provide assistive devices and rehabilitation to persons with physical disability to promote independence.

The vocational centers highlighted in the State Report lack facilities to retain and attract students and continue to provide skills that have gone out of the market. There is need for the centers to be revamped and supported financially to provide new technologies and skills which will make graduates with disabilities from these centers marketable.

Proposed Questions for the List of Issues:

1. What plans are in place to ensure that rehabilitation services are provided closer to persons with disabilities especially in rural areas?

2. How does the government intend to improve the habilitation of persons with disabilities through vocational training?

ARTICLE 27: THE RIGHT TO WORK

The Persons with Disabilities Act 2003 prohibits discrimination by both public and private employers in all areas of employment including advertisement, recruitment, classification or abolition of posts; the determination of allocation of wages, salaries, pension, accommodation, leave or other benefits, the choice of persons for posts, training, advancement, apprenticeships, transfers and promotion or retirement. The Act also requires that public and private institutions implement a 5% employment quota for persons with disabilities. The NCPWD has the power to fine any institution that does not meet this requirement but this fine does not apply to government institutions. Currently the Government has employed 3% PERSONS WITH DISABILITIES which is below the requirement. There is no data from the private sector. UDPK carried out a study which showed that 66% PERSONS WITH DISABILITIES are engaged in self-employment due to lack of employment. A report by IMLU also shows that hawkers with Disabilities were more likely to be harassed by City Council Workers than hawkers without disability thus interfering with their rights to a livelihood³⁸.

The Ministry of Education liberalized the recruitment and hiring of trained teachers which has exposed teacher with disabilities to be subjected to unfair recruitment practices at district and community level where case of prejudice are very high. This has created unemployment to persons qualified to undertake their work in equal measure like other members of society.

I am Rose³⁹ "I left Kenyatta University in 2008 and still looking for a job. When I graduated, the Teachers Service Commission did not send us to any schools and we were required to look for a school willing to take us with our qualifications and then have the school report to TSC for confirmation. In my village there are two schools that needed a teacher for CRE and languages and when I presented myself for the interview they just ignored me and started talking to my guide. I interjected and asked why they had not called me to the interview and ended up accusing me of being confrontational which was not good for management in the school. I went to a private school, which needed my skills but upon meeting me the school board has never communicated back to me on my interview. Later I learnt that they had taken somebody with less qualification. This being a private business, I had no means of challenging them".

The case of John. "I went to the University of Nairobi and graduated with a Bachelor of Art degree. I looked for a job and even offered to be a volunteer in several places but nobody would take me. I then decided to train as a teacher to increase my chances of getting a job. I did a short course on adult education. I applied for a job and was invited to the interview. I had the paper qualifications they needed but they said they needed to see if I can perform. I offered to volunteer for a month and if they are happy with my work then can proceed to hire me. After two weeks they were impressed with my work and dedication".

Reginald Odour: I am a member of the Society of Professionals with Visual Impairments. I am a lecturer at the University. A year ago, I had a boss who decided that I could not mark my student's examination papers because I am blind. The person instructed me to get somebody to mark these

³⁸ A Cry for Justice, Torture and Ill Treatment of Hawkers and Small Scale Traders in Nairobi City County, Independent Medico Legal Unit, 2014

³⁹ Not real name. File with UDPK

papers and make a confirmation that indeed that person had done the correct marking. That this was to help protect the university in the event they were challenged on my grading of my students and needed to defend any legal challenge. I have taught for years at this very university and this has never happened before. I have had external evaluators who have confirmed my records and approved even without the knowledge of my disability. I have had a helper in reading my printed papers. My boss argument was, to mark these examination papers, my reader needed to have a Masters or be my equivalent. This in essence meant replacing me with somebody who could read and award marks. Rendering me without a job. The readers do not of necessity have the same qualifications as the principal person they are reading for. I asserted my rights.

Proposed Questions for List of Issues:

1. How is the government implementing the 5% rule on employment as stipulated under the Persons with Disabilities Act and the Constitution of Kenya 2010 and enforcing sanctions for non-compliance? What is the percentage of persons with disabilities employed by the government? What are the levels of employment?
2. What measures have been undertaken to repeal laws that discriminate against persons with disabilities at the place of work?
3. What measures have been taken to create incentives stipulated under the Persons with Disabilities Act 2003 to the private sector job creation for persons with disabilities?
4. What measures have been undertaken to implement the employment provisions under the Act?

ARTICLE 28: SOCIAL PROTECTION

We commend the Kenyan government for ongoing measures that facilitate social protection of persons with severe disabilities. Living standards and the social protection programme for persons with severe disabilities is a good initiative. However, it can only reach a very small fraction due to funding limitations and constraints. It would do well to reach every person with a disability without a meaningful income. The government is running several social protection programmes which must create linkages with other overriding issues especially orphaned children with disabilities, older persons with disabilities for an effective outreach. This can be achieved through mainstreaming and inclusion of disability in other existing schemes.

According to the UN Habitat strategy document, Kenya's slums are growing at an unprecedented rate as more and more people move to Kenya's cities and towns in search of employment and other opportunities urban areas offer. Kenya's urban population is at present 40 percent of the total population. More than 70 percent of these urbanites live in slums, with limited access to water and sanitation, housing, and secure tenure. They have poor environmental conditions and experience high crime rates. The Kenya National Survey for Persons with Disabilities (2007) indicates that there are many persons with disabilities who live in urban areas, and given their low level of income, most of them live in slum areas. The Kenya Slum Upgrading Programme (KENSUP) has been set up as a collaborative initiative that draws on the expertise of a wide variety of partners in order to address this issue. The Government of Kenya executes and manages the programme, the Ministry of Housing and the relevant local authorities implement it, and UN-HABITAT, civil society partners, participating local communities, and the private sector complement and support their efforts. KENSUP's aim is to improve the livelihoods of people living and working in slums and informal settlements in the urban areas of Kenya through the provision of security of tenure and physical and social infrastructure, as well as opportunities for housing improvement and income generation. Thus instead of cash transfers, it would be better if the government could provide alternative modes of social protection to alleviate the standards of persons with disabilities. This can include supported living arrangements, subsidies for health care and respite services.

Proposed Questions for the List of Issues:

1. How is the government implementing the 5% rule on employment as stipulated under the Persons with Disabilities Act and the Constitution of Kenya 2010 and enforcing sanctions for non-compliance? What is the percentage of persons with disabilities employed by the government? What are the levels of employment?
2. What measures have been undertaken to repeal laws that discriminate against persons with disabilities at the place of work?
3. What measures have been taken to create incentives stipulated under the Persons with Disabilities Act 2003 to the private sector job creation for persons with disabilities?
4. What measures have been undertaken to implement the employment provisions under the Act?

ARTICLE 29: PARTICIPATION IN POLITICAL PUBLIC LIFE

On the political rights under Article 38 of CoK 2010, every citizen is free to make political choices, which includes the right to form, or participate in forming a political party, the right to participate in the activities of, or recruit members for, a political party, campaign for a political party or cause. The County Government Acts and Elections Act also ensures equal representation of PERSONS WITH DISABILITIES at county level. Currently 2.6% of the National Assembly and 4.7% of the Senate represent leaders with disability⁴⁰. Most however are nominated. At county Level, out of the 47 counties, 3 have no person with disability seated in the assembly. Although the Constitution of Kenya 2010 provides for fair representation, a survey by UDPK on the electoral and political participation of persons with disabilities indicates that violence and discrimination in the electoral process deters the participation of persons with disabilities in political processes. Article 29 of the CRPD lays out rights to participate in political and public life for person with disabilities⁴¹. In Kenya, disabled people's organizations are working hard to ensure equal access to polling stations in forthcoming elections.

The Constitution denies the right to vote of persons of "unsound mind":

- Section 83, subsection (1) states, "A person qualifies for registration as a voter at elections or referenda if the person ...(b) is not declared to be of unsound mind..."
- Section 99, subsection (2) states, "A person is disqualified from being elected a member of Parliament if the person...(e) is of unsound mind."
- Section 194, subsection (2) states, "A person is disqualified from being elected a member of a county assembly if the person...(d) is of unsound mind."

The case of Paul and his Wife both visually impaired is most telling on why accessibility must be addressed by the government. '... during the last elections, we went to the nearest station to vote and were lucky to find a team of party agents to help us vote. Together with my wife who is also blind, we had discussed our preferred candidates and proceeded to different polling booths to vote with assistance from persons we believed were Electoral Commission of Kenya officials. Personally I never felt safe voting in the midst of so many people surrounding me and I could feel the pressure when each person kept on asking me if I was sure of the person I had elected. I felt intimidated. I felt exposed to various interests. I asked for privacy and to be left with one person whom I could tell what I needed, but an argument arose that all present were party agents who needed to confirm that my vote was well marked. I suspect this was against voting procedures but there was no official to protect me. Soon after voting I met my wife who went through a worse experience since she had several votes spoilt when an agent marked for a candidate she did not want. Later there was violence in our area over the results of the elections and we were accused of voting for the wrong person⁴².

Proposed Questions for the List of Issues:

1. What steps are being taken to amend the Constitution to eliminate denials and restrictions to the right to vote and stand for election of persons with disabilities who have been deprived of their legal capacity?
2. What kind of measures are planned to ensure the right to political participation of persons with disabilities, including ensuring secret voting, voting with assistance of a person of one's choice, accessible voting methods, publication of voting materials in accessible formats, regulatory guidelines for access to polling booths?
3. What is the government doing to ensure that persons with disabilities are adequately represented in all levels of governance?

⁴⁰ Towards the 2017 General Elections, UDPK, September 2013

⁴¹ UDPK and Handicap International Documentary

⁴² Interview Number 14

4. What procedures are in place to ensure the protection of the right to vote and to be elected for persons with disabilities?

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

Sports and recreation enhances the quality of life for all citizens. Therefore access for persons with disabilities and to cultural places is of paramount importance. Access to the media programmes and other cultural performances and services, library, are important developments that everyone should enjoy. Person with disabilities are not given equal opportunities to engage in sports, participate in competitions and limited resources are allocated for international events like the Olympics. Only a small contingent is able to travel with limited personnel for training.

The Kenyan Paralympics team is highly under-funded⁴³. Kenyan Athletes are world re-known but the Paralympics team is rarely recognized by the government for their international fetes. The government needs to recognize the efforts put in by the team in order to encourage more sporting and recreation facilities for persons with disabilities.

Kenya is a contracting party to the World Intellectual Property Organization (WIPO). In September 2013, Kenya was a Contracting party to the Marrakesh treaty which recognizes some of the challenges faced by visually impaired people in accessing literary or artistic works that comprise copyright. The Treaty aims to make copyright material more accessible to person with visual disabilities by creating exemptions. Kenya is yet to ratify the Treaty even though Kenya is also reviewing its Copyright Law Act to comply with the Treaty and has the option of ratifying the provisions of the Marrakesh Treaty into national law⁴⁴.

Proposed Questions for the List of Issues:

1. How does the government aim to increase participation of persons with disabilities in sports, cultural events and recreation either for leisure or competition on an equal basis with others?
2. Is the government going to increase funding and awareness creation on the Kenyan Paralympic team?
3. Does the government intend to ratify the Marrakesh Treaty or include its provisions while reviewing the Copyrights Law Act?

ARTICLE 31: DATA AND STATISTICS

There is huge disparity between the global statistics and the government statistics which should in essence be used in rolling out programmes in various sectors and for the government to be able to make informed decisions and offer services that is inclusive – health, finance, education, planning. Whereas the WHO states that the percentage of persons with disabilities currently stands at 15%, the Kenya National Survey for Persons with Disabilities puts the population of persons with disabilities at 4.6% which translates to 1.6 million. The 2009 Kenya population census put the number of males with disabilities at 647,689 (3.4%) and females with disabilities was 682,623, totaling to 1,330,312 (3.5%) of the population. There is need to review Kenyan statistics systems to make them user friendly and appropriate for measuring disability concerns. Lack of correct data of persons with disabilities affects the provision of services.

⁴³ Daily nation, Ire After Team Slashed over Funds, March 14, 2012 <http://www.nation.co.ke/sports/athletics/Ire-after-team-slashed-over-funds-/-/1100/1366480/-/1pqpj/-/index.html>

⁴⁴ World Intellectual Property organization, General Assembly Forty-Third (21st Ordinary) Session Geneva, September 23 To October 2, 2013 Report On The Outcome Of The Marrakesh Diplomatic Conference To Conclude A Treaty To Facilitate Access To Published Works By Visually Impaired Persons And Persons With Print Disabilities, September 2013

The Registration process by the National Council for Persons with Disabilities should collaborate the national data, noting the challenges particularly that people with disabilities are not able to register with ease.

There needs to be a centralized data collection and coordination body for persons with disabilities. There NCPWD is doing their best to register persons with disabilities but the process has been slow and there is no incentive for persons with disabilities to register. If more organizations would hand over their data to the Council as a coordinating body then more persons with disabilities would be registered.

Proposed Questions for the List of Issues:

1. What mechanisms are available to help capture data on persons with disabilities by the government and how are DPOs involved in the design of such a mechanisms and the monitoring of its implementation?
2. Due to stigma, some areas of society are not reached due to lack of information from affluent places/families/social classes. The children in these families remain marginalized. How will the government ensure collection of data from all sectors of society?

ARTICLE 32: INTERNATIONAL CO-OPERATION

The government should be commended on cooperation within the East African Countries especially on the Albinism issue. Disability mainstreaming is crucial in all government sectors. If all assistance to government has this as a condition, this will help in targeting all sectors especially in addressing challenges in health, education, water, etc. by stating how persons with disabilities will benefit from each project funded by international cooperation. Ensure cross cutting issues for disability, and have government subjected to an audit from the funds received on how this has been used to ensure the rights of persons with disabilities. Also seeking alliance with international bodies on funding for disability programs would increase this cooperation. A good example is the report⁴⁵ by the UN that called for coordinated efforts between state parties in management of the Autism Spectrum. The UN was willing to partner with states to provide funds towards such programmes but the Kenyan Government is yet to seek such funding.

However locally the partnership between the government and DPOs has been limited to a few areas. An example of this is the Public-Private Partnership between the government and Association of Physically Disabled Kenya (APDK) to provide assistive devices for persons with physical disabilities. The Disability rights sector is largely NGO driven by both local and international NGOs thus creating some challenges on co-operation.

Proposed Questions for the List of Issues:

1. What steps are being taken to ensure inclusive programmes and projects in Kenya in the context of international cooperation which actively involve DPOs in the drafting, development, implementation and monitoring of such projects?

ARTICLE 33

Under the convention each country should establish one or more Focal points, as a mechanism for

⁴⁵ Comprehensive and Coordinated efforts for the management of Autism Spectrum disorders, 133rd UNCPRD Session, May 30, 2013.

implementation the Convention. Article 33.1 requests the focal point and also give emphasis on the need to establish a coordination mechanism, these two have not happened. KNCHR is a Constitutional Body and the designated government agency to monitor the Convention under Article 33.2, but a/the focal point/s for implementation and the coordination mechanism are still unclear. As a Constitution body, KNCHR receives funding form the government and donors. KNCHR has the power to partner with other organisations to monitor human rights situation in Kenya. The Constitution of Kenya Also Appoints the National Gender and Equality Commission also has a mandate to coordinate discrimination against person with disabilities. The National Council for Persons with Disabilities *de facto* coordinator for disability matters. The Government needs to come out clearly on who is the focal point for disability matters in Kenya.

Proposed Question for the List of Issues:

2. What/Who is the Focal point in Kenya for the Implementation of the CRPD?

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