



COMPENDIUM ON SUBMISSIONS TO

**CRPD** 2016

Compendium on Convention on the Rights of  
Persons with Disabilities



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ISBN: 978-9966-040-28-2

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Printed in Kenya by: Kul Graphics Ltd

Cover design and layout: Kul Graphics Ltd

KNCHR would appreciate receiving a copy of any materials in which information from this report is used.

This publication was made possible by the financial support of Royal Norwegian Embassy



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It means a great deal to those who are oppressed to know that they are not alone. Never let anyone tell you that what you are doing is insignificant."

Desmond Tutu,  
South African civil rights activist



# Acknowledgements



## The Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) wishes to recognize and thank all organizations that have been involved in championing the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in Kenya. Many organizations were involved in the negotiations that led up to the adoption of the CRPD. They were also involved in the work that led to Kenya signing and ratifying the CRPD. There has also been a concerted effort by the State, Disabled Peoples Organisations and Civil Society to propel the implementation of the CRPD in Kenya.

KNCHR greatly acknowledges the organizations that sent information and were involved in the review of Kenya's report to the Committee on the Rights of Persons with Disabilities (Committee). These organizations include; United Disabled Persons of Kenya (UDPK), Users and Survivors of Psychiatry-Kenya (USP-K), Mental Disability Advocacy Centre (MDAC), Albinism Foundation of East Africa (AFEA), Albinism Society of Kenya (ASK), Under The Same Sun (UTSS) and Kenya Association of the Intellectually Handicapped (KAIH).

KNCHR also acknowledges the State for sending its initial report to the Committee and participating in the review.

KNCHR anticipates that this Compendium will be useful in providing a one-stop reference for anyone seeking information on Kenya's implementation of the CRPD.

These organizations include; United Disabled Persons of Kenya (UDPK), Users and Survivors of Psychiatry-Kenya (USP-K), Mental Disability Advocacy Centre (MDAC), Albinism Foundation of East Africa (AFEA), Albinism Society of Kenya (ASK), Under The Same Sun (UTSS) and Kenya Association of the Intellectually Handicapped (KAIH).



# Introduction



## Committee on the Rights of the Child

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

Kenya was among the countries that signed the CRPD when it first opened for signature and a subsequent ratification of the CRPD as a State Party to the Convention was done on May 19, 2008<sup>2</sup>.

There exists an Optional Protocol to the Convention which gives the Committee competence to examine individual complaints with regard to any alleged violation of the Convention by a State party to the Protocol. Kenya however did not sign or ratify this Protocol, thus making it difficult for the Committee on the Rights of Persons with Disabilities (Committee) to receive and hear individual complaints from the country as one of the ratifying member States.

The Committee is a body of 18 independent experts which monitors implementation of the Convention by the States Parties, which are obliged to submit reports regularly to the Committee on how the CRPD is being implemented. The reporting is within two years of accepting the Convention and thereafter every four years. The Committee examines each report and makes general recommendations to the State Party concerned in the form of concluding observations. Thus, in accordance with Article 35, paragraph 1, of the CRPD each State Party undertakes to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on measures taken to give effect to its obligations under the Convention: (a) within two years after the entry into force of the Convention for the State concerned, and (b) thereafter at least every four years and whenever the Committee so requests.<sup>3</sup> Under this guidance, Kenya initially owed its first State report in 2010, but did not submit it to the CRPD Committee until April 2012<sup>4</sup>.

Kenya's report on the CRPD was reviewed by the Committee during its 14<sup>th</sup> Session on August 2015<sup>5</sup>. This was after the submission of the List of Issues (LOIs) from the initial State Party Report. The Committee raised issues that Kenya had to address or indicate which measures were being undertaken to enhance the realization of the rights of persons with disabilities. For instance, it sought information about the situation of persons with disabilities who belong to minority communities and indigenous groups and indication of

The Committee examines each report and makes general recommendations to the State Party concerned in the form of concluding observations.

2 Committee on the Rights of Persons with Disabilities available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en) (last visited 30/5/2016)

3 Convention on the Right of Persons with Disabilities available at [http://www.bayefsky.com/treaties/disability\\_convention.php](http://www.bayefsky.com/treaties/disability_convention.php) (last visited on 30/5/2016)

4 Formal Operation of the CRPD in Kenya available at <http://www.globaldisabilityrightsnow.org/law/kenyacrpdc> (last visited on 30/5/2016)

5 International Disability Alliance available at <http://www.internationaldisabilityalliance.org/en/article/crpd-committee-opens-its-14th-session> (last visited on 30/5/2016)





what measures had been taken to ensure that Kenyan disability legislation and policies included and protected them and ascertainment whether the CRPD had been translated into Swahili<sup>6</sup>.

Kenya's interaction with the Committee is evident w DPOs in Kenya play an important role in giving information to the Committee on the implementation of the CRPD. The organizations focus much on the rights of persons with disabilities and advocate against discrimination. They also played a great role in assisting the Committee in formulating the LOIs that Kenya needed to address.

The Kenya National Commission on Human Rights (KNCHR), the National Human Rights Institution (NHRI) also plays an important role in monitoring the implementation of the CRPD. KNCHR is an autonomous, constitutional body with the mandate to promote the respect, protection and fulfilment of human rights in Kenya. KNCHR monitors compliance with treaties ratified by Kenya, CRPD, being among them. It engages stakeholders in monitoring Kenya's compliance with its obligations under the CRPD. KNCHR also conducts monitoring and assesses disability issues countrywide. KNCHR was also instrumental in its submission on the LOIs to the Committee and its disability report<sup>7</sup>. Thus the Commission plays a critical role in the monitoring of the implementation of the CRPD in Kenya.

Kenya is expected to submit its CRPD State Party's Report to the Committee for review in June 2022 as per the reporting circle<sup>8</sup>. The period of time between 2015 when the concluding observations were published and the expected due date is intended to give Kenya time to review its policies and streamline them to the CRPD standards. Kenya will be expected to have addressed all hindrances that negates the realization of rights of persons with disabilities and thus be able to comply with the ratified treaty.

6 List of Issues in Relation to the Initial Report of Kenya available at [http://www.globaldisabilityrightsnow.org/sites/default/files/related-files/260/LOIs\\_for\\_Kenya.pdf](http://www.globaldisabilityrightsnow.org/sites/default/files/related-files/260/LOIs_for_Kenya.pdf) (Last visited on 31/5/2016)

7 From Norm to Practice-A Status Report on the Implementation of the Rights of Persons with Disabilities in Kenya available at <http://www.knchr.org/Portals/0/Reports/Disability%20Report.pdf> (Last visited on 31/5/2016)

8 Treaty Bodies Countries- Reporting Status for Kenya available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN) (Last visited on 31/5/2016)







# State Report

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

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

Distr.: General

28 July 2014

Original: English

Committee on the Rights of Persons with Disabilities

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

Initial reports of State parties due in 2010  
Kenya\*

[Date received: 3 April 2012]

\* The present document is being issued without formal editing.



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# List of Abbreviations

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

# 1. General Introduction

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

## Consultation with Stakeholders

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

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

## 2. Background information on Kenya

### A. Land and People

8. Kenya is an East African country that lies astride the Equator covering a total area of 582,650 km<sup>2</sup> of which 560,250 km<sup>2</sup> constitutes dry land while water takes the rest of about 13,400 km<sup>2</sup>. Approximately 80 per cent of the land area is arid or semi-arid, and only 20 per cent is arable.
9. The total population of Kenya is estimated at 40,000,000 people (2009 estimates), 75 per cent – 80 per cent of whom live in the rural areas. The population distribution varies from 230 persons per km<sup>2</sup> in high potential areas to three persons per km<sup>2</sup> in arid areas. Only about 20 per cent consists of high to medium potential agricultural land, and supports 80 per cent of the population. The remaining 20 per cent of the population lives in the 80 per cent of the land, which is arid and semi-arid.
10. The country's population is characterised by high infant mortality rates (54.7 deaths/1000 live births), low and declining life expectancy (between 47 and 55 years), and total fertility rate (4.56), all 2009 estimates. Kenya is also faced with a high dependency burden, with over 42 per cent of the population below 15 years.
11. The national language is Kiswahili while the official language is English. With the new Constitutional dispensation, the State shall promote and protect the diversity of language of the people of Kenya; and the development and use of indigenous languages, Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities.
12. Kenya is a multi-racial, multi-ethnic, multi-cultural and multi-religious society. People of African descent constitute about 90 per cent of the population; divided into 42 main ethnic groups. These groups belong to three linguistic families: Bantu, Cushitic, and Nilotic. The main groups comprise of: Bantus consist the Kikuyu (22 per cent), Luhya (14 per cent), Kamba (11 per cent), Meru (6 per cent), Embu (1.20 per cent), Kisii (6 per cent) and the Mijikenda (4.7 per cent), Taita (0.95 per cent), Pokomo (0.27 per cent), Bajuni (0.20 per cent), Boni-Sanye (0.05 per cent), Taveta (0.07 per cent); Kuria (0.52 per cent), Mbeere (0.47 per cent), Basuba (0.50 per cent), Nilotes include the Luo (13 per cent), Kalenjin (12 per cent), Turkana (1.32 per cent), Teso, (0.83 per cent), Samburu (0.50 per cent), and the Maasai (1.8 per cent); and the Cushites, include the Somali (0.21 per cent), Oromo (0.21 per cent), Rendile (0.12 per cent), Boran (0.37 per cent), Gabra (0.17 per cent). It should be noted that these major groups are further grouped into many smaller sub tribes.
13. The major religious orientations include Christianity (78 per cent), Islam (10 per cent), African Traditional Religions (10 per cent), Hinduism and Sikhism (1 per cent). Religion is increasingly perceived by some minorities in Kenya as a major factor in the determination of citizenship and the acquisition of citizenship entitlements. For example, some adherents of the Islamic faith argue that Kenya is governed as a Christian country. Those who adhere to the African traditional beliefs often complain that rights given under the English system of laws take precedence over those obtainable under customary laws which are intertwined with traditional religious convictions.
14. Poverty remains a major impediment to both the fulfillment of basic needs and the realization of the full potential of many Kenyans, particularly women and children. According to the 2009 Population Census, the population in absolute poverty is estimated at 45.9 per cent mainly due to the expected negative impact of the post-election violence witnessed in the country at the beginning of 2008 and the global crisis.
15. Kenya's economy has been characterized by stagnation in economic growth in the last two decades. Between 1997 and 2002, the economy grew by an annual average rate of only 1.5 per cent, below the population growth estimated at 2.5 per cent per annum, thus leading to a decline in per capita incomes. Currently, approximately 56 per cent of Kenyans live below the international poverty line of less than \$1 per day. The economy however has been registering some modest improvement in some sectors. In 2005, economic growth rate was 5.8 per cent, and this rate grew to 6.7 per cent by the end of May, 2007. The postelection violence, 2008, has been a major setback to this growth.
16. According to the Kenya National Population Census, 2009, the overall disability rate in Kenya is 3.5% which translates to 1,330,312 million persons with Disabilities. Of this, the largest proportion is physical impairment (413,698) followed by visual impairment (331,594). Others are shown below:

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

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

Source: National Population Census 2009 (KNBS).

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

## B. General Political Structure

18. Kenya gained independence in 1963 and has, in the last two decades, evolved into a multi-party electoral democracy. After years under a single-party state system, the Constitution of Kenya was first amended in 1991 and the first multi-party elections were held in 1992. The change to a multi-party system was a political transition, which involved fundamental constitutional re-engineering aimed at transforming the state apparatus from instruments of repression and exploitation to agents of African development and selfactualization. Before then, the Kenya African National Union (KANU) had not only won the independence elections in 1964 but also managed to retain power for 39 years through 8 general elections. Only in 2002 did KANU lose the general elections for the first time to the National Rainbow Coalition (NARC), a grouping of 14 political parties.
19. Kenya now has a new Constitution that was promulgated on 27th August 2010. As a result of this, there is renewed hope that with good governance, improved relationships with bilateral and multi-lateral development partners and targeted social and economic interventions, the chances of progressive realization of human rights in general, will improve.

## C. The Government

20. There are three arms of the Government: the Legislature, Executive, and Judiciary. Chapter Eight of the Constitution of Kenya, 2010 establishes the Parliament. Article 94 provides that the legislative authority of the Republic is derived from the people. Kenya shall have a bicameral legislature after the next General Elections where at the national level, legislative authority shall be vested in and exercised by Parliament. Parliament shall consist of the National Assembly at the national level and the Senate which shall be representing the counties and their governments.
21. The National Assembly shall consist of two hundred and ninety (290) members, elected from the constituencies; forty-seven women (47) elected from the counties each from the constituencies; twelve members (12) nominated by parliamentary political parties according to their proportion of members of the National Assembly to represent special interests including persons with disabilities; and the Speaker.
22. The Senate shall consists of forty-seven (47) members elected from the counties, each county constituting a single member constituency; sixteen (16) women members nominated by political parties according to their proportion of members of the Senate; two (2) members, being one man and one woman, representing the youth; two (2) members, being one man and one woman, representing persons with disabilities; and the Speaker.
23. Under the Constitution of Kenya, 2010, Chapter Nine establishes the Executive which shall be made up of two levels of government, the national government and the county government. The national executive shall comprise the President, the Deputy President and the Cabinet and shall reflect the regional and ethnic diversity of the people of Kenya. Every county will be headed by an elected governor and will have a county assembly and a county executive committee.
24. Presently, the Executive acts through a Cabinet which at the time of writing this report consists of the President, the Prime Minister, Vice President, two Deputy Prime Ministers, and other Ministers. The function of the Cabinet is to aid and advise the President in the governance of the country. However, this has been reviewed under the new Constitutional dispensation.
25. The Constitution of Kenya, 2010 provides for the devolution of power including county governments, and the equitable sharing of national and local resources throughout Kenya. The stated objective of devolution is the decentralization of State organs, their functions and service and enhancing checks and balances and the separation of powers.
26. Ministers are designated as Cabinet Secretaries of which there can be no less than fourteen (14) or more than twenty-two (22).

## D. General legal framework within which Human Rights are protected

27. The protection of human rights and fundamental freedoms, including economic and social rights, is safeguarded under Chapter Four of the Constitution of Kenya, 2010, which sets out a progressive Bill of Rights enjoyable by all individuals in Kenya. The Constitution of Kenya, 2010 promotes equality and non-discrimination.
28. The Constitution of Kenya, 2010 further provides special safeguard on the protection of individuals or groups who may be discriminated and in this regard, among the national values and principles of governance which binds all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions is the consideration of non discrimination.
29. Chapter Ten of the Constitution of Kenya, 2010, establishes the Judiciary. The superior Courts include the Supreme Court, the Court of Appeal and the High Court. Article 163 provides for the Supreme Court as the highest Court in the country and shall have exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of President, appellate jurisdiction to hear and determine appeals from the Court of Appeal; and any other court or tribunal as prescribed by national legislation. The Supreme Court may give an advisory opinion at the request of the national government, any State organ, or any county government with respect to any matter concerning county government. All courts, other than the Supreme Court, are bound by the decisions of the Supreme Court. The Supreme Court shall consist of the Chief Justice, who shall be the president of the court; the Deputy Chief Justice, who shall deputize for the Chief Justice; and be the vice-president of the court; and five other judges.
30. Article 164 establishes the Court of Appeal, which shall have jurisdiction to hear appeals from the High Court; and any other court or tribunal as prescribed by an Act of Parliament. The court of Appeal shall consist of the number of judges, being not fewer than twelve, as may be prescribed by an Act of Parliament. There shall be a president of the Court of Appeal who shall be elected by the judges of the Court of Appeal from among themselves.
31. Article 165 provides for the High Court, which has unlimited original jurisdiction in criminal and civil matters; jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144; to hear any question respecting the interpretation of the any other jurisdiction, original or appellate, conferred on it by legislation. Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice. The High Court shall also have supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior. The High Court shall consist of the number of judges and be organized and administered in the manner prescribed by an Act of Parliament. There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.
32. The Judiciary is headed by the Chief Justice, and consists of judges of the superior courts, magistrates, other judicial officers and staff.
33. Judges of the Court of Appeal and High Court, as well as magistrates courts, which are subordinate courts to the High Court established by Parliament in accordance with the Constitution. These are the courts martial, magistrates' courts and tribunals. Such courts only have such jurisdiction and powers as law may confer on them.
34. Article 169 establishes subordinate courts which shall include: the Magistrates courts; the Kadhis' courts; the Courts Martial; and any other court or local tribunal as may be established by an Act of Parliament.
35. The Constitution of Kenya, 2010, guarantees every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. No fee may be charged for commencing the proceedings. Court proceedings can be instituted by a person acting in their own interest, by a person acting on behalf of another person who cannot act in their own name, a person acting as a member of, or in the interest of, a group or class of persons, a person acting in the public interest; or an association acting in the interest of one or more of its members.

## E. Legislative authority

36. The Parliament of Kenya is vested with the power to enact legislation. In the field of human rights, Parliament has established the following institutions:
  - National Council for Persons with Disabilities (NCPWD);
  - Kenya National Human Rights and Equality Commission (KNHREC);
  - The Kenya National Commission on Gender and Development;
  - The Kenya Anti-Corruption Commission (KACC);
  - National Council for Children Services (NCCS);
  - The Kenya Law Reform Commission (KLRC);
  - The National Legal Education and Awareness Programme (NALEAP);
  - The National Cohesion and Integration Commission (NCIC);
  - The Office of the Ombudsman;
  - The CIC.



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

37. The Constitution of Kenya, 2010, provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya and that general rules of international law shall form part of the law of Kenya under the Constitution therefore once ratified International Instruments can be directly applied by the courts, tribunals or administrative authorities in the absence of domestic legislation on the same.
38. International instruments that have been fully domesticated in Kenya via an Act of Parliament include: the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child through the Children's Act (Chapter 586 of the Laws of Kenya); the Convention relating to the Status of Refugees and the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the Refugees Act (No. 13 of 2006); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol) through the Counter Trafficking in Persons Act, 2010. The provisions of these laws are closely modeled on those of the international and regional instruments, with necessary exceptions as necessitated by the circumstances of Kenya. The country has also fully domesticated the four Geneva Conventions of 1949 through The Geneva Conventions Act (Chapter 198 of the Laws of Kenya).
39. Further, Parliament passed the International Crimes Act, 2008, domesticating the Rome Statute of the International Criminal Court. Many other international instruments are given effect in different laws. While some instruments are given effect by a single law, others are given effect through more than one law. For example, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination have substantially been domesticated through different legislation. The National Cohesion and Integration Act, 2008, is an Act of Parliament to promote national cohesion and integration by outlawing discrimination on ethnic grounds
40. Kenya has ratified the following international human rights instruments:
- (a) The International Covenant on Civil and Political Rights;
  - (b) The International Covenant on Economic, Social and Cultural Rights;
  - (c) The International Convention on the Elimination of All Forms of Racial Discrimination;
  - (d) The Convention on the Elimination of All Forms of Discrimination against Women;
  - (e) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
  - (f) The Convention on the Rights of Persons with Disabilities;
  - (g) The Convention on the Rights of the Child;
  - (h) The Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity;
  - (i) The United Nations Convention against Corruption;
  - (j) The Convention relating to the Status of Refugees;
  - (k) The Optional Protocol to Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
  - (l) The Rome Statute of the International Criminal Court;
  - (m) The 49 ILO Conventions, with 43 of them in force.
41. At the regional level, Kenya has ratified the following key human rights Instruments:
- (a) The African Charter on Human and Peoples' Rights;
  - (b) The African Charter on the Rights and Welfare of the Child;
  - (c) The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
  - (d) The African Union Convention on Preventing and Combating Corruption;
  - (e) The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights;
  - (f) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

## G. Individual redress mechanisms at the international level

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

# 3. General provisions of the Convention

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

43. Disability has been defined both in the Constitution of Kenya, 2010 and the PWD Act, 2003. The definition of disability in the Constitution of Kenya, 2010 has been given a similar meaning as that which it has been assigned under the Convention on the Rights of Persons with Disabilities which is that disability includes "...any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long term effect on an individual's ability to carry out ordinary day-to-day activities"<sup>2</sup>.
44. Suffice it to say, the PWD Act, 2003 predated the Convention on the Rights of Persons with Disabilities. Under the PWD Act, 2003, "disability" means "physical, sensory, mental or other impairments, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation."

### 1. Communication and Language

45. The Constitution of Kenya recognizes under Article 7 that Kiswahili and English are the official language of Kenya. In addition, it further provides that the State shall promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities. This is further guaranteed under Article 54 of the Constitution of Kenya, 2010.
46. Under the National Disability Policy, the Government recognises the fact that different disabilities require specific approaches to meet their information and communication needs and thereby through the hopes to create an environment that enables stakeholders in the information and communication industry function effectively and efficiently and makes a policy statement that the Government shall seek to improve access to information or communication by persons with disabilities. The PWD Act, 2003 therefore further seeks to promote the use of communication and language for persons with disabilities in education institutions, Television programmes, traffic facilities, newspapers and print media, telephone services and facilities in public buildings.

### 2. Discrimination on the basis of Disability

47. The Government recognises that the discrimination against persons with disabilities is entrenched in stereotypes prevailing in Kenyan society that portray persons with disabilities as burdens and curses. This has often led to instances where individuals or families that have persons with disabilities have shied away from revealing such persons.
48. Some of the measures that the Government of Kenya has taken to modify or abolish existing laws that discriminate against persons with disabilities include, the express prohibition of discrimination on the basis of disabilities which has been expressly prohibited under the Constitution of Kenya, 2010 under Article 27(4), which provides that "the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth".

### 3. Reasonable Accommodation and Universal Designs

49. The concept of reasonable accommodation for persons with disabilities is recognised under Article 54 of the Constitution of Kenya, 2010 which provides that a person with any disability is entitled to among other things, to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person, to reasonable access to all places, public transport and information; to use Sign language, Braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability.
50. Reasonable accommodation is also addressed under the PWD Act, 2003 under Section 15(5) which provides that an employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities. Section 16(2) provides incentives to a private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities.

<sup>2</sup> Article 260 of the Constitution of Kenya, 2010.

51. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, further provides incentives for a person(s) who sells materials, articles and equipment designed for use by persons with disabilities and provides that the same shall be eligible to apply for such tax reliefs as may be determined by the council and approved by the Minister.
52. In order to ensure that the rights of persons with disabilities are safeguarded country wide, the NCPWD, the MoGCSD has offices in every district that deals with issues of persons with disabilities.

## 4. The Constitution of Kenya, 2010

53. The Constitution of Kenya, 2010 was promulgated on 27th August 2010 as the supreme law of the Republic of Kenya and is applicable country wide and if any other law is inconsistent with the Constitution, then the Constitution shall prevail and the other law is, to the extent of the inconsistency, void.
54. The rights of persons with disabilities have further been given Constitutional recognition and safeguard under Article 54, which provides substantive provisions for the rights of persons with disabilities. In giving effect to the provisions found in the Convention on the Rights of Persons with Disabilities, the text of the Constitution is further couched in specific terms designed to minimize barriers to equalization of opportunities in all aspects of social-cultural, economic and political life. Article 54 provides inter alia that a person with disabilities is entitled to be treated with dignity and respect.

## 5. International Law

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

## 6. National Laws

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

## 7. Persons with Disabilities Act, 2003

58. Under national law, the rights of persons with disabilities are recognized under the PWD Act, 2003, which came into effective in June 2004, even before Kenya ratified the Convention on the Rights of Persons with Disabilities. This was following recommendations of a taskforce appointed by the Attorney General in 1993 to collect views from the public at large, and persons with disabilities with a view to reviewing laws relating to persons with disabilities.
59. The PWD Act, 2003, Act No. 14 of 2003 was assented to on the 31st December, 2003 and came into force (with the exception of Sections 22, 23, 24, 35(2), 39 and 40) on the 16th June, 2004 through Legal Notice No. 64 of 2004. However, the pending sections were gazetted in January, 2010 and they are now operational. The main objectives of the act are to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the NCPWD; and for connected purposes.
60. The Kenya Law Reform Commission in collaboration with the NCPWD and the MoGCSD and other stakeholders is currently working on amending the PWD Act, 2003 and to this end has drafted The Persons with Disabilities (Amendment) Bill to ensure that the provisions of the Act are harmonized with international instruments and in particular with the Convention on the Rights of Persons with Disabilities and the Kenya Constitution, 2010.
61. Other legislations that have a bearing on the rights of persons with disabilities include:  
  
**(a) The Children Act, 2001 (Act No. 8 of 2001)**
62. The Children's Act provides for the protection and welfare of the rights of all children in Kenya and explicitly prohibits discrimination against a child on the ground of disability.  
  
**(b) The Employment Act, (Chapter 22 of the Laws of Kenya)**
63. Employment Act 2007 (Act No. 11 of 2007) contains elaborate provisions aimed at protecting persons from discrimination in the employment which explicitly prohibits an employer to discriminate directly or indirectly, against an employee or prospective employee, or harass an employee or prospective employee on grounds of disability.<sup>3</sup>

<sup>3</sup> Section 5 of the Employment Act.

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

64. This extends special protection to persons with disability by providing that in sexual offences where the alleged victim is a person with mental disabilities, the concept of a "complainant" is extended to include a person who lodges a complaint on behalf of the alleged victim where the alleged victim is on account of the disability unable or inhibited from lodging and following up a complaint of sexual abuse.<sup>4</sup>

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

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

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

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

## 8. Subsidiary Legislation

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

- (a) The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009;
- (b) The Persons with Disabilities (Cost Care, Support and Maintenance) Regulations, 2009;
- (c) The Persons with Disabilities (Registration) Regulations, 2009;
- (d) The Persons with Disabilities (Income Tax Deductions and Exemptions) Order, 2010;
- (e) The Persons with Disabilities (National Development Fund for Persons with Disabilities) (Conduct of Business and Affairs of the Board of Trustees) Regulations, 2009.

## 9. Policies

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

**(a) The National Disability Policy**

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

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

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

<sup>4</sup> Section 2 of the Sexual Offences Act 2006.

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

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

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

### **(d) Draft Human Rights Policy**

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


### **(e) The National Land Policy**

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

## **10. Institutions**

### **The National Council for Persons with Disabilities**

76. The PWD Act, 2003 established the NCPWD in 2004, which is a semi-autonomous Government Body Agency whose parent is the Ministry, is the MoGCSD and is currently composed of 21 members who represent various disability organizations and government ministries. The role of the Council is to promote the rights of persons with disabilities and mainstream these rights in all aspects of national development.
77. The Council is mandated under Section 7(2) (d) of the Persons with Disabilities Act, 2003, to oversee the implementation of the and further to co-ordinate the provision of services to persons with disabilities and advise the Minister in charge of disability issues accordingly. The Council is also mandated to; with the approval of the Minister, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.
78. Similarly, under the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, the NCPWD in collaboration with the relevant Government departments, research institutions, development partners and local authorities is required to undertake, promote and sponsor research, in the following areas as they relate to persons with disabilities, namely: prevention of disability; rehabilitation including community based rehabilitation; development of assistive devices including their psycho-social aspects; job identification for persons with disability; on site modifications in offices and factories. The Council is further required to undertake research and baseline surveys to ensure availability of disaggregated data on persons with disability.
79. The NCPWD in collaboration with the MoGCSD and other stakeholders is implementing the action plan of the African Decade of Persons with Disabilities 1999-2009 which was recently extended until 2019.



# 4. Realization of specific rights and freedoms

## Article 5: Equality and Non-discrimination

80. The Constitution of Kenya, 2010, confers upon its citizens, including persons with disabilities, the right to enjoyment of all human rights and fundamental freedoms. The basis of these protections is spelt out in the national values and principles of governance. Article 10 binds all State organs, State officers, public officers and all persons applying or interpreting the Constitution to make or implement public policy decisions that among other things promote non discrimination. The Constitution of Kenya, 2010, also seeks to minimize barriers to equalization of opportunities for persons with disabilities in all aspects including socio-cultural, economic, and political life. Article 27 further guarantees the right to equality and freedom from discrimination and expressly prohibits discrimination on the ground of disability.
81. Under Article 232 of the Constitution of Kenya, 2010, the values and principles of public service include affording adequate and equal opportunities for appointment, training and advancement, at all levels of public service of- persons with disabilities, among others.
82. To enable persons with disabilities access their rights, Section 15 of PWD Act, 2003, specifically prohibits discrimination by employers against persons with disabilities. Section 38 requires the Attorney General to make regulations for the provision of free legal services for persons with disabilities with respect to the violation of their rights. To give greater effects to the Act, Section 44 also requires the relevant Minister to make regulations specifying and describing the nature of acts of discrimination against persons with disabilities. Under Section 49(1), the NCPWD may request the Attorney General to take appropriate legal action if it believes that a person or group of persons is engaged in a practice, which is discriminatory and the discrimination is a significant and substantial infringement of the rights of persons with disabilities.
83. The principles of equality and non-discrimination have received legislative recognition in other Statutes. This includes the Employment Act, 2007 that seeks to ensure that persons with disabilities achieve equalization in employment. Sections 5(1) and (2) of the Act imposes a duty on the Minister, labour officers, and Industrial Court to promote and guarantee equality of opportunity in order to eliminate discrimination in employment and to promote equal opportunity. Children with disabilities are also particularly vulnerable and therefore have further protection from discrimination under Section 5 of the Children's Act, 2001.
84. The Government of Kenya has since realized that these laws are not adequate. To this end, there is an ongoing process to amend the PWD Act, 2003, to afford better protection for persons with disabilities. These proposed amendments are contained in the Persons with Disabilities (Amendment) Bill which, among other things, imposes a duty upon the Government to take steps to the maximum available resources with a view to achieving the full realization of the rights of persons with disabilities and in particular those of women and girls with disabilities who are subject to multiple discrimination so as to ensure their full development and advancement. The Amendment Bill also makes provisions that seek to eliminate discrimination against persons with disabilities in matters relating to marriage, family, and personal relations.
85. The National Disability Policy recognizes the fundamental rights of persons with disabilities with a view to abolish all forms of discrimination and provide equal opportunities to enable persons with disabilities realize their full potential. Further, it seeks to facilitate the development and implementation of legislation on equity in employment to protect job seekers and workers with disabilities against discrimination.
86. The Government seeks to establish special measures which are crucial in overcoming and ameliorating inequity, systemic denial, or infringement of a right or fundamental freedom. Article 27(6) of the Constitution of Kenya, 2010 specifically places a duty on the State to develop programmes and policies on affirmative action that enhance equality and non discrimination. One example of affirmative action that is constitutionally protected is found under Article 54(2), which places requirement that 5% of representation in elective and appointive bodies be persons with disabilities.
87. There are various institutions charged with the duty to ensure that persons with disabilities are protected from discrimination. Key among these institutions is the National Council for Person with Disabilities, which is required under Section 7(b)(iv) of the PWD Act, 2003, to recommend measures to prevent discrimination against persons with disabilities.
88. The Government of Kenya has also established programmes such as the Free Primary Education programme. In addition to this, students with disabilities have secured university admission with lower grades through the policy of the (Universities) Joint Admission Board (JAB).



89. The Government through the Office of the Attorney General, the Law Society of Kenya, and the Kenya Law Reform Commission, is currently developing a Legal Aid Policy Paper for Persons with Disabilities which shall establish a framework to enable lawyers to deal with cases involving persons with disabilities. Article 8: Awareness raising

## Article 8: Awareness raising

90. Disability in Kenya was and still is viewed by some members in society as a curse, taboo and a burden. Persons with disabilities are often concealed from the public and subjected to physical and psychological abuse due to ignorance, poverty and lack of awareness. In order to counteract this, the Government declared 1980 the National Year for Persons with Disabilities. This was ahead of the 1981 United Nations International Year of the Disabled Persons. The global awareness created during the 1981 International Year for Disabled Persons (IYDP) expanded social participation and equality for disabled persons.
91. There has been a slow but noticeable improvement in public perception towards and treatment of persons with disabilities even in employment, as persons with disabilities are increasingly holding more positions of responsibility in society. However, a lot still needs to be done to ensure that all Kenyans recognize and uphold the rights of persons with disabilities and develop initiatives to address disability issues through mainstreaming.
92. Since then, the Government has continued to create awareness on the rights of persons with disabilities. The National Disability Policy takes cognizance of the importance of awareness raising in minimizing marginalization and exclusion of persons with disabilities from the social, development and political spheres. The Policy states that the Government shall seek to increase the levels of public awareness on the needs, aspirations and capacities of persons with disabilities so as to enhance their acceptance, participation and integration in society. It shall also seek to do this in collaboration with organizations of persons with disabilities, parents groups and other service providers. Some of the key areas of awareness-raising in the policy include: awareness on the different types of disabilities; where parents and families can seek support or services; promoting inclusive societies and equality of opportunities and participation of persons with disabilities in socio-economic and political spheres; promoting access to education, health and employment of persons with disabilities; challenging myths and misconceptions about disability that often give rise to stigma and discrimination; providing information on prevention of disability; the vulnerability of persons with disabilities to HIV infection and the need to make HIV and AIDS intervention responsive to the needs of persons with disabilities.
93. The PWD Act, 2003, established the NCPWD whose mandate includes undertaking advocacy and raising public awareness regarding persons with disabilities; training and capacity building; and disability mainstreaming. This can be done through the resources available under the NDFPWDs. To this end, the Government, through relevant State authorities, has designed, printed/published and disseminated campaign posters that seek to create awareness to the public on issues related to the needs and rights of persons with disabilities, prevention of disability causing diseases, and social activities or behaviors that might lead or cause the effects of disabilities, among others.
94. The MoGCSD, through the NCPWD and Disabled Persons Organizations, is currently undertaking an awareness campaign and training on disability equality for Government staff. The campaign is organized to use strategies such as sensitization meetings, disability equality trainings and support for the development of disability policies in workplaces. The MoGCSD has also taken the lead in using among others the United Nations Day for Persons with Disabilities as a vehicle for raising awareness on issues of disability. Other awareness raising initiatives include the White Cane Day and the Deaf Awareness week.
95. In the financial year 2009/2010, Government Ministries were required to mainstream disability in their programmes by formulating Disability Mainstreaming Policies as part of their performance contracts. They were also required to undertake a baseline survey on disability mainstreaming and to produce a report that recommends among others the training needs for the staff to enable them render effective service to persons with disabilities. Gender Officers have been appointed in Ministries, parastatals and other institutions, to deal with matters relating to disabilities. The Government has also put in place disability mainstreaming trainings to capacitate public servants on the rights of persons with disabilities.

## Article 9: Accessibility

96. The Government of Kenya recognizes that persons with disabilities face various barriers in their day to day life. These barriers range from environmental, communication, social and economic. In this regard, the Government has put in place legislative, policy and administrative measures that seek to mitigate these challenges and further assist persons with disabilities to live an acceptable and dignified quality of life. These measures seek to promote equalization of opportunities for the full and effective participation of persons with disabilities in economic, social, cultural and political life.
97. The rights of persons with disabilities have been safeguarded under Article 54 of the Constitution of Kenya, 2010, which guarantees that persons with disabilities are entitled to reasonable access to all places, public transport and information; access to educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.
98. The National Disability Policy, recognizes accessibility as a cross cutting concern which should remain an underlying consideration in the built environment, information and services. To this end, it provides a policy framework that seeks to create an environment that is conducive for persons with disabilities to realize their full potential and contribute to the development of society.

99. Section 21 of the PWD Act, 2003, provides for the rights of persons with disability to accessibility and mobility and provides that persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.
100. Section 22(1) of the PWD Act, 2003, further requires proprietors of buildings to modify and adapt their buildings. Section 24 of the PWD Act, 2003 mandates the NCPWD to serve Adjustment Order upon the owner of the premises or the provider of the services, or amenities concerned an adjustment order if it considers that any premises, services or amenities are inaccessible to persons with disabilities. The same became operational on 1<sup>st</sup> January 2010, which means that proprietors of premises now have five (5) years to comply with the provisions. The NCPWD is undertaking an audit of buildings and institutions that have complied with the requirement on accessibility.
101. In order to better implement the provisions in the PWD Act, 2003, on access, the Act has adopted the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, which seeks to promote accessibility to education (Regulation 9), employment (Regulations 10 and 11), sports, recreation and social integration (Regulation 9). Transport (Regulations 12 and 13), buildings, information, communication, technology, income maintenance and social security, family life and personal integrity, culture and provides support and relief in certain cases. Regulation 14 requires that facilities in public buildings should provide for suitable ramps, adapt all public toilets for wheel chair users and other persons with disability, provide for Braille symbols and auditory signals in elevators or lifts and provide for ramps in health and educational institutions among others.
102. With regard to access to transportation for persons with disabilities in Kenya, the Government recognizes that a lot needs to be done in order to make it more disability friendly. Roads within cities generally do not have pedestrian friendly walkways let alone disability friendly ones. There are further instances where vehicles drive on the pedestrian walkways in order to avoid traffic jams. The traffic lights in the city are often broken due to poor maintenance and careless driving. This situation puts all pedestrians and more so persons with disabilities in grave danger. In a bid to correct this situation, the Ministry of Roads requires that all roads that are currently being constructed make provisions for pathways for persons with disabilities and other pedestrians.
103. In addition, the Ministry of Transport in 2003 launched the National Transport Policy Committee on 2<sup>nd</sup> April 2003. Its sole mandate was to formulate an Integrated National Transport Policy. The process was conducted on a consultative basis punctuated with modeling of solutions based on international best practice to bridge the gap between local challenges and planned interventions. A Report on Integrated National Transport Policy: Moving a Working Nation identifies a number of challenges inhibiting the transport sector from performing its facilitative role in respect of national and regional economies was developed by the committee. Among the challenges identified in the current transport system is that it does not cater for consumers with special needs. The report recommends the development of a transport system and infrastructure that is accessible to persons with disabilities.
104. The Ministry of Transport also has in place a Sessional Paper on Integrated National Transport Policy. Once it has been approved, there shall be amendments to the Transport Licensing Board Act and the Traffic Act to take into consideration the needs of persons with disabilities. Other areas proposed for amendment include the curriculum used to administer driving tests persons who are physically challenged to ensure they get driving licensees.
105. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, further calls for the installation of auditory signals at red lights in the public roads for the benefit of persons who are visually impaired; the provision of kerb cuts and slopes to be made in pavements for the easy access of wheel chair users; the engraving on the surface of pedestrians crossings and the edges of railway platforms for persons who are visually impaired; the posting of appropriate symbols of disability; and the posting of warning signals and symbols at appropriate places.
106. Section 23 of the PWD Act, 2003, requires operators of public service vehicles to adapt them to suit persons with disabilities in such manner as may be specified by the Council within two years of coming into effect of the section. Currently, the Government is in the process of phasing out the 14 seater public transport vehicles known as "matatus". Discussions are underway to see how the rights for persons with disabilities to access public transport vehicles shall be safeguarded. Further, Regulation 12 of The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, requires owners of public service vehicles to adapt rail compartments, buses, vessels and aircrafts so as to permit easy access to persons with disabilities and to further adapt toilets in these places including their waiting rooms so as to permit wheel chair users and other persons with disabilities to use them conveniently.
107. With regard to information and communications, including information and communications technologies and systems, Article 7(3) (b) of the Constitution of Kenya, 2010, makes it a Constitutional requirement for the Government to promote the development and use of Braille and other communication formats and technologies accessible to persons with disabilities. There are ongoing efforts through the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, to incorporate Kenyan Sign Language in television programming. The regulations also require that newspapers and other print media be made available in electronic form while telephone facilities and other services should incorporate assistive aids for persons with hearing, speech and visual disabilities.
108. Section 41(a) of the PWD Act, 2003, provides for exemption from payment of postal charges on printed and recorded literature, articles, equipment and other devices for the use of persons with disabilities which are sent by mail within and outside Kenya; and aids and orthopedic devices for persons with disabilities sent outside Kenya by mail for repair. However, it is only Braille matter that is currently subject to this exemption.

109. The NCPWD has put in place a facility that allows persons with disabilities to send their documents to the Council through the EMS Postal Service at no cost to the sender with the charges being borne by the Council. This has gone a long way in ensuring that persons with disabilities register with the Council from any part of the country. It has also enabled the Council to start a record for all people with disabilities in Kenya. This has gone a long way to ensuring that persons with disabilities register (membership) and communicate with the Council.
110. The Government of Kenya is committed to providing training for stakeholders on accessibility issues facing persons with disabilities. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009, requires that the Government undertakes information, education and communication, disseminate the provisions of the PWD Act, 2003, and promote public awareness about the rights of persons with disabilities, through a comprehensive nation-wide education and information campaign conducted by the Government through the relevant Ministries, departments, authorities and other agencies. It further requires the Government to provide training, sensitization and awareness programmes on the rights of persons with disabilities for community workers, social workers, media professionals, educators, decision makers, administrators and other concerned persons to enable them acquire skills for proper information, dissemination and education on the rights of persons with disabilities. In this regard, the Government through its performance contracts with Ministries requires all of them to enhance capacity and raise awareness on to accessibility for persons with disabilities. Disabilities Mainstreaming Committees have been set up in respective ministries and one of the key activities they have implemented is conducting awareness trainings on persons with disabilities.
111. The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009 provides for tax exemption on assistive devices such as wheelchairs, and the modification of vehicles, among others.

## Article 10: Right to life

112. Every person in Kenya, including persons with disabilities, has a right to life. This is guaranteed under Article 26(1) of the Constitution of Kenya, 2010, which states that life begins at conception and can only be terminated in accordance with the law. No person can therefore be deprived of their right to life on account of their disability. The Constitution of Kenya, 2010, has declared that abortion is illegal unless there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law as provided under Article 26(4) of the Constitution of Kenya, 2010. Article 43(1) of the said Constitution further guarantees everyone the right to the highest attainable standard of health which includes the right to health care services, including reproductive health care. The Constitution further provides that a person should not be denied emergency medical care. Article 53(1) (c) guarantees all children, including children with disabilities, the right to basic nutrition, shelter and health care.
113. The right to life is further protected under the Penal Code, Chapter 63 of the Laws of Kenya, also criminalizes manslaughter, murder, suicide, infanticide and failure by any person charged with the duty of providing for another the necessities of life to so provide thus occasioning the life or the health of that person to be endangered.
114. The right to life and survival for children with disabilities is specifically recognized under Section 4(1) of the Children's Act, No. 8 of 2001 which provides that every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child. Section 12 of the Children's Act, No. 8 of 2001, provides that a child with disabilities has the right to be accorded medical treatment free of charge and at a reduced cost whenever possible. To this end, the Government offers prenatal services to pregnant mothers, runs the Expanded Safe Motherhood programme and undertakes immunization against preventable diseases that cause disabilities in its health facilities.
115. The Ministries of Health approach to health care is promotional, preventive, curative and rehabilitative. Therefore, in addition to its curative and preventive service, they provide specialized services for persons with disabilities through the Divisions of Rehabilitative Health Services in Ministry of Medical Services and the Division of Child and Adolescent Health in the Ministry of Public Health which provides assistive and supportive services, physiotherapy and occupational therapy. The Divisions of Rehabilitative Health Services and nurses have been trained on early identification and management of disability including how to sensitize the community on the same.
116. In its effort to ensure the survival and development of children with disabilities, the Government of Kenya through the Ministry of Education runs Education Assessment Resource Centers (EARCs), which work with communities to identify children with disabilities at an early stage for appropriate assessment, placement and referral. The Ministry of Health is currently working on the development of National Guidelines and manual for early identification of children with disabilities and special needs. The Ministry further provides specialized treatment of people, including persons with disabilities of all ages against disease, injury/trauma, and birth related deformities/malformations, old age complications, infirmities and disability.
117. The Government through the MoGCSD and the NCPWD is undertaking awareness raising campaigns on the rights of persons with disabilities including their right to life. These campaigns seek to among other things, encourage families with persons with disability to bring them forward, not only to be registered but to also to be assisted.

## Article 11: Situations of risk and humanitarian emergencies

118. The 2007 Post Election Violence and other humanitarian emergencies have presented Kenya with unprecedented challenges on how to deal with person with disabilities. Indeed, in most crises, the Government's responses have consistently taken into account the special needs for the persons with disabilities by facilitating the provision of emergency aid and supplies to them in camps and host communities. The Government has also established Disaster Management Committees at various levels to oversee implementation of emergency relief operations and facilitate protection of the displaced. These committees have representation from the disabilities sector.
119. The Government through the Ministry of Special Programmes is currently developing a Draft National Disaster Management Policy and a draft National Internal Displaced Persons Policy. The policies take into cognizance the rights of persons with disabilities during situations of emergency or disaster and in particular provide for priority in assistance and support to be offered to the more vulnerable groups which include women, children and persons with disabilities.
120. The Children's Act, No. 8 of 2001, safeguards the rights and welfare of all children, including children with disabilities. Among the category of children recognized as being in need of care and protection are children who have been displaced as a consequence of war, civil disturbances or natural disasters. Section 10(2) of the Act prohibits the involvement of children in hostilities and armed conflict. However, in cases where armed conflict occurs, respect for and the protection and care of children should be maintained in accordance with the law.
121. The Government further has an obligation to provide protection, rehabilitation care, recovery and re-integration into normal social life for any child, including a child who may become a victim of armed conflict or natural disaster. Courts of law are empowered to make an order requiring the Director of Children Services to take the necessary steps to ensure that a child is provided with care, and where possible, is reunited with his family. Section 63(1) allows Charitable Children's Institutions to receive children into their custody in emergency situations.
122. In instances where there are emergency situations in neighboring countries occasioning the entry of refugees into Kenya, Kenya is a party to the Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which it has domesticated into it Refugees Act No. 13 of 2006. The provisions of these laws are closely modeled on those of the international and regional instruments, with necessary exceptions as necessitated by the circumstances of Kenya.

## Article 12: Equal recognition before the law

123. Article 27(1) of the Constitution of Kenya, 2010 recognizes that every person, including those with disabilities, are equal before the law and have the right to equal protection and equal benefit of the law. It further guarantees equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Article 50 recognizes that every person has a right to a fair and public hearing.
124. Every Kenyan citizen has legal capacity in civil proceedings. However, where exceptions have to be made then the same is done in accordance with the law. The Civil Procedure Rules make provisions with regard to instances where a person is considered not to have legal capacity. Where a person is incapable of protecting their interests when suing or being sued, then a case may be filed or defended on their behalf by the "next friend". However, it is for the Court to adjudge a person to be of unsound mind in which case the consent to act as "next friend" must be in writing, signed and filed in accordance with Order 1 Rule 10(2) and Order 32 Rule 1(2) of Civil Procedure Rules, 2010. Where there is no other person fit and willing to act as a next friend, the Court may appoint any of its officers to act as one.
125. Further, the Civil Procedure Rules, 2010, recognize that children with disabilities may sue and be sued through their guardian ad litem whose role, in the legal proceedings, is to safeguard the interests of the minor. The Court must grant orders for the next friend to receive any money or other movable property on behalf of the persons in whose behalf they are acting. The same also applies in instances where the next friend is seeking to enter into any agreement or compromise on behalf of the person they act for. Thus, the role of the next friend is regarded as that of an agent or officer of the Court to protect the rights of the person with disabilities.
126. However, due to lack of awareness on the rights of persons with disabilities, the issue of legal capacity still remains a challenge to some persons with disabilities, particularly to those with mental and cognitive disabilities, where decisions are made on their behalf without consulting them. In an effort to overcome this, the Government is pushing for a shift from substituted decision making to supported decision making for persons with disabilities and that there be a distinction between legal capacity which all persons with disabilities enjoy and capacity to act where they may require support.
127. Section 107 of the Children's Act, No. 8 of 2001 makes exception to the provision for the appointment of a guardian to end upon the child attaining the age of eighteen years. Therefore, in the case where the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or of managing his own affairs and his property without the assistance of a guardian, the guardianship can be extended after the eighteenth (18) birthday.

128. Persons with disabilities also often find themselves victims and/or witnesses in criminal cases that then require them to provide evidence. This usually presents different challenges depending on the nature of disability and severity of the effect of the offence. Courts in most cases find it difficult to convict suspects in these cases where the victim or witness either could not see or hear thus making their evidence to lack credibility thereby leading to dismissal of cases. However, this challenge is being addressed in the ongoing review of the Evidence Act.
129. The Sexual Offences Act, 2006 provides for intermediaries to support vulnerable witnesses as they give their evidence. Indeed, Section 2 of the Act defines complainant to mean the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse. Section 31(4)(b) enables a Court to direct that a vulnerable witness, who has been defined to include a person with mental disability, shall give evidence through an intermediary.
130. The Government of Kenya has put in place Constitutional guarantees that ensure the equal right of persons with disabilities to own or inherit property. This is contained in Article 40 of the Constitution of Kenya, 2010, which guarantees the rights of every person, including persons with disabilities, to acquire and own property. The Government of Kenya acknowledges that the issue of inheritance, especially of land, for persons with disabilities is still a major challenge as they are often disinherited of their property by their kin or guardians. However, this is being addressed under the ongoing review of the Law of Succession Act to among other things protect the rights of persons with disabilities to inherit property.
131. Section 37 of the PWD Act, 2003, which deals with setting up a system that will encourage credit unions, co-operatives and other lending institutions to extend credit to persons with disabilities. The Government has also provided a budget of KES 200 million in the last financial year (2010/2011), part of which monies was used towards the provision of grants to persons with disabilities to start up their own business, grants to empower persons with disabilities, scholarships and purchase of assistive devices, among others. In order to make the loan accessible to persons with disabilities, minimum collateral is required and there is no interest charged. Further, the Youth Enterprise Fund and the Women's Enterprise Fund provides that at least 10% of the resources should be set aside for persons with disabilities.

## Article 13: Access to justice

132. The Constitution of Kenya, 2010 guarantees the right to access to justice for all persons, including persons with disabilities under Article 48. It further guarantees that if any fee is required, then the same should be reasonable and shall not impede access to justice. Article 159 requires justice to be done to all, irrespective of status, that justice shall not to be delayed and that justice should be administered without undue regard to procedural technicalities.
133. Article 50 of the Constitution of Kenya, 2010, guarantees the right to a fair trial and public hearing for all persons, including persons with disabilities. This includes the right to be informed in advance of the evidence the prosecution is intending to rely on and to have reasonable access to that evidence. Article 50(m) guarantees the right to an interpreter without payment. This is in line with Article 54 with guarantees a person with disabilities the right to use Kenyan Sign Language, Braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability.
134. Under Section 38 of the PWD Act, 2003, the Attorney General in consultation with the NCPWD is required to make regulations on free legal services for persons with disabilities and in particular on matters affecting the violation of the rights of person with disabilities or the deprivation of their property; in cases involving capital punishment of persons with disabilities; regulations on the exemption, for persons with disabilities, from the payment of fees in relation to the aforementioned instances and the provision, to persons with disabilities who attend court, of free Kenyan Sign Language interpretation, Braille services and physical guide assistance. Section 38(4) further requires the Judiciary to make an effort to ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and suffering of such persons.
135. The Government has taken measures to ensure effective training of personnel in the national justice and prison system. To this end, under the National Disability Policy, the Government has committed to sensitize the public on the rights of persons with disabilities, including sensitizing law enforcement agencies, legal practitioners, medical personnel and other actors in handling cases affecting persons with disabilities. Various other institutions including the NCPWD, KNHREC, among others have been undertaking their mandate of creating awareness among key stakeholders and training key personnel in the national justice and prison system with respect to human rights and in particular the rights of persons with disabilities.
136. Article 22(1) of the Constitution of Kenya, 2010, recognizes the right of every person, including persons with disabilities, to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. It further allows Court proceedings to be instituted by a person acting as a member of, or in the interest of, a group or class of persons, including persons with disabilities. Article 22(3) (b) allows commencement of proceedings to be kept to the minimum and if necessary, entertain proceedings on the basis of informal documentation. It also allows for the waiver of fees for commencing such proceedings. When interpreting the Bill of Rights, Article 20(4) (a) demands that due regard must be given to the need for the Courts to promote the values that underlie an open and democratic society based on human dignity which includes, among others, the principle of equality. Further, Article 21(3) obligates all state organs and all public officers to address the needs of vulnerable groups within society, including persons with disabilities.
137. The Criminal Law (Amendment) Act, 2003, amended the Penal Code, the Evidence Act and the Criminal Procedure Code. It made the language in the Acts to be sensitive by deleting such derogatory terms as imbecile and idiot.



138. The rights of children with disabilities are specifically catered for under the PWD Act, 2003. The Act establishes The Persons with Disabilities (Cost, Care, Support and Maintenance) Regulations, 2009, which creates regulations for institutions that cater for persons with severe disabilities and provides that the NCPWD shall promote and advise in the development and implementation by local authorities, community based organizations and other stakeholders, of suitable community based rehabilitation and welfare programs for the inclusion, integration, maintenance, care and support of children and persons with disabilities, including offenders with disabilities who may at the material time be serving a probationary sentence and ex-prisoners, in the respective communities. Among the areas of trainings offered under the community rehabilitation programme is capacity building of children and persons with disabilities for their effective rehabilitation and inclusion in the community.
139. The judiciary is in the process of putting in place age-related accommodations to ensure effective participation of children and young persons with disabilities. Courts are currently being adapted to suit the accessibility challenges of persons with disabilities including children with disabilities. To this end, the newly constructed Milimani Court in Nairobi has been made disability friendly. Section 186 of the Act requires, among other things that if the child offender who is accused of having infringed any law is a child with a disability, s/he be given special care and be treated with the same dignity as a child with no disability. The National Disability Policy calls upon the development of programs to train service providers and personnel on disability related specialized areas. The Government is training of law enforcement agencies on handling children with disabilities.
140. The Government has been piloting the National Legal Education and Awareness Programme (NALEAP) through the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme. NALEAP targets the poor and marginalized in the society and seeks to among others, cover legal advice, awareness and representation particularly in those cases where it is most needed. Further, the Ministry of Justice, National Cohesion and Constitutional Affairs and the Kenya Law Reform Commission are in the process of reviewing the country's laws and policies to harmonize the PWD Act, 2003 with the Constitution of Kenya, 2010 and the Convention on the Rights of Persons with Disabilities.

## Article 14: Liberty and security of the person

141. Article 29 of the Constitution of Kenya, 2010, guarantees every person, including persons with disabilities, the right to freedom and security of the person, which includes the right not to be deprived of one's freedom arbitrarily or without just cause, be detained without trial, not be subjected to any form of violence, torture, to corporal punishment; or treated or punished in a cruel, inhumane or degrading manner. Article 30 further guarantees all persons the right not be held in slavery or servitude. In instances where the liberty of a person may be deprived then the same must be in accordance with the laid down law. A person with disabilities therefore cannot have his liberty and security of persons curtailed on the mere basis that she/he has a disability.
142. In instances where an accused person is arrested, Article 49 of the Constitution of Kenya, 2010, guarantees one the right to be informed promptly, in a language that the she/he understands: the reason for the arrest; the right to remain silent and the consequences of not remaining silent; the right to communicate with an advocate, and other persons whose assistance is necessary; not to be compelled to make any confession or admission that could be used in evidence against the person; to be held separately from persons who are serving a sentence; to be brought before a court as soon as reasonably possible and the rights to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons. For those offenses that attract a punishment of a fine or imprisonment for a period not exceeding six months, then a person charged for such an offense has the right not to be remanded in custody.
143. For children with disabilities, Article 53(f) of the Constitution of Kenya, 2010, guarantees every child, including a child with disabilities, the right not to be detained, except as a measure of last resort. It further requires that they be held for the shortest appropriate period of time; be separate from adults and be kept in conditions that take account of the child's sex and age. The above positions have been reaffirmed under the Children's Act, No. 8 of 2001. Section 4 of the Children's Act provides that in all actions concerning children, whether taken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Institutionalization of children in general and children with disabilities in particular is usually considered as a last resort. Section 18 of the same Act further provides that all children have the right not to be deprived of their liberty, unlawfully arrested or subjected to torture, cruel treatment or punishment. Section 18(4) of the Children's Act further provides that a child who is arrested and detained shall be accorded legal and other assistance by the Government as well as contact with his family.
144. Section 186 of the Children's Act, No. 8 of 2001 requires that in instances where a child with disabilities has been accused of infringing the law then she/he should be given special care and be treated with the same dignity as a child with no disability. Section 76 places an obligation of the Courts when considering whether or not to make an order with regard to a child to inter alia consider the child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child.
145. In an effort to further ensure reasonable accommodation to children with disabilities in custody, the Children's Act (Amendment) Bill proposes to amend the Children's Act, No. 8 of 2001 so as to ensure that a child with disabilities be held in facilities that adequately cater for their special needs. In cases where a child with disabilities is adjudicated to be one in need of care and attention, Section 125(f) of the Children's Act, No. 8 of 2001 requires the Court to make an order which requires the Director to take the necessary steps to ensure that the child is provided with care commensurate with his special needs. In cases where an order is made or a child with disabilities is received into a Charitable Children's Institution.



146. Under Section 45 of the PWD Act, 2003, it is an offense for parents, guardians and next of kin to conceal persons with disabilities in such a manner as to deny them the opportunities and services available. This attracts a punishment of a fine not exceeding KES 20,000.
147. The Government of Kenya is committed to ensuring that persons with disabilities who have been deprived of their liberty are provided with the required reasonable accommodation, and benefit from the same procedural guarantees as all other persons to enjoy fully their remaining human rights. Further, Section 38 of the PWD Act, 2003, also requires that persons with disabilities who are accused of an offense and who have been denied bail be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister. The Prisons Department is also currently developing a policy on the use of assistive devices in prisons.
148. The National Disability Policy seeks to create a conducive environment for persons with disabilities to realize their full potential and contribute to the development of society, recognizes that persons with disabilities are part and parcel of the society and that they should be fully included in all aspects of life and their special needs be met within their communities instead of being isolated by institutional service delivery approaches.

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

149. Article 29 of the Constitution of Kenya, 2010, guarantees every person, including persons with disabilities, the right to freedom and security of the person, which includes the right not to be subjected to torture, corporal punishment, or treated or punished in a cruel, inhumane or degrading manner. This is similarly the position as regards children with disabilities under Section 18 of the Children's Act.
150. Persons with disabilities still face stigmatization from the society which has led them to be subjected to abuse and exploitation even by their own families. In order to address this challenge, the PWD Act, 2003, makes it an offense for any parent, guardian or next of kin to conceal a person with disabilities. The MoGCSD in conjunction with the NCPWD has been undertaking awareness raising campaigns on the rights of persons with disabilities at the national, provincial and district level targeting DPOs, persons with disabilities, the community and government departments and ministries.
151. With regard to measures taken to protect persons with disabilities from medical or scientific experimentation, medical practitioners adhere to a very strict Code of Professional Conduct which requires that before any medical or scientific experimentation can be made to any one, then their free and informed consent must first be sought. All medics are required before any treatment can be given to explain to the patient the benefits and the dangers of the treatment in order for the patient to make an informed choice.

## Article 16: Freedom from exploitation, violence and abuse

152. Persons with disabilities are often exposed to many forms of exploitation, violence and abuse that take many different forms. This can be largely attributed to the high levels of poverty in Kenya. The high poverty levels together with ignorance on the rights of persons with disabilities often expose them to exploitation, violence and abuse. They often do not get formal education and are seen as a burden to the family. They often end up being trafficked and forced into exploitative circumstances such as begging to provide for themselves and their family members.
153. The Government has enacted numerous laws and developed policies and programmes that seek to minimize exposure of persons with disabilities to incidences of exploitation, violence and abuse. With regard to the protection of children from abuse, the Government has established Area Advisory Councils (AACs) at the local level to deal with cases of exploitation and abuse of children in need of care and protection including children with disabilities. The Department of Children Service has also established offices at the district level that deal with child victims of abuse. To further protect children from abuse, the
154. Government has also established the Toll Free Child Help Line (116) where children can call to report cases of abuse. There are also rehabilitation centers, children homes and other statutory institutions that empower and protect children with disabilities. The Government, in collaboration with the private sector and development partners, has facilitated the establishment of Gender Violence Recovery Centers in Nairobi, Mombasa and Eldoret for victims of gender based violence. The Government has also trained doctors on how to deal with victims of violence. Indeed, persons with disabilities also benefit from these services.

## Article 17: Protecting the integrity of the person

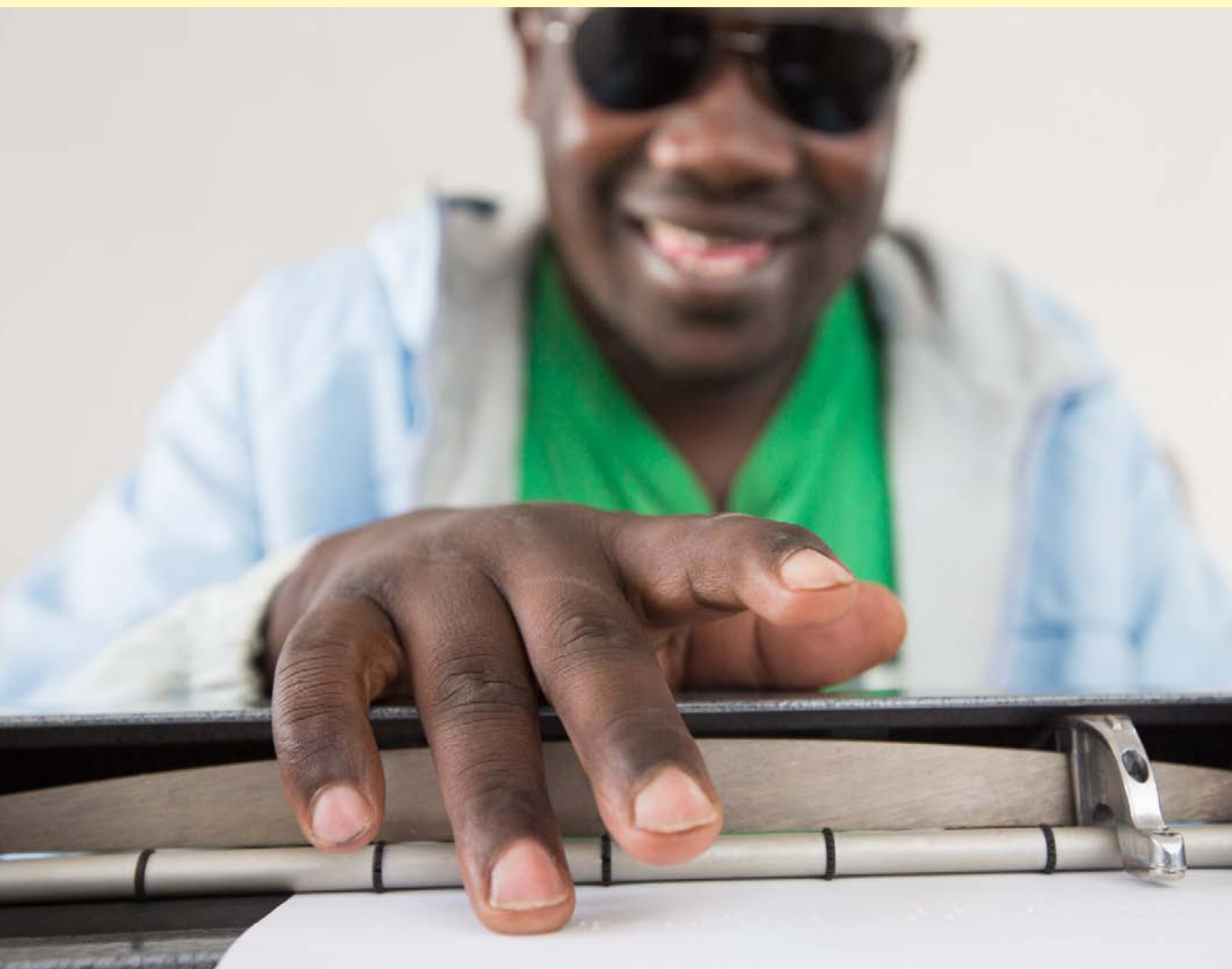
155. The privacy and integrity of all persons in Kenya is constitutionally protected in the Constitution of Kenya, 2010, which under Article 31 guarantees all citizens their right to privacy. It protects all individuals from arbitrary searches of their person, home or property; the seizure of their property or the unnecessary demand of information regarding ones family or private affairs or the interference with communication. Article 54(1) states that a person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning. However, despite these Constitutional guarantees, persons with disabilities still face a lot of challenges which can mainly be attributed to the low levels of awareness, lack of knowledge, and limited understanding on the part of key service providers on the issues relating to or affecting persons with disabilities and their rights. To counteract this, there is ongoing awareness to sensitize the public including Government officials and medical personnel on how to deal with persons with disabilities with integrity.

## Article 18: Liberty of movement and nationality

156. The Constitution of Kenya, 2010, has very progressive provisions with regard to liberty of movement and nationality. Article 39 guarantees the freedom of movement and the right to leave, enter and remain in and reside in Kenya. Article 14 further guarantees the right to a nationality and provides that a person can become a citizen of Kenya by birth, registration and nationality; and Kenyans can now hold dual citizenship. With regard to a child who is found in Kenya and is or appears to be under eight years and whose nationality and parents are not known, then he or she is presumed to be a Kenyan citizen by birth. All the above provisions include persons with disabilities.
157. There are several departments that deal with issues of movement and nationality. They fall under the Ministry of Immigration and Registration of Persons and they include the Department of Immigration, the National Bureau of Registration, the Department of Civil Registration, the Department of Refugees and the Department of Integrated Population Registration Services. The Government through the Ministry of Immigration and Registration of Persons implemented several programmes that enhance levels of awareness and improve the provision of services to persons with disabilities.
157. To this end, the Ministry of Immigration and Registration of Persons has decentralized its services and even established mobile units that enhance the issuance of national identity cards and birth certificates. This has consequently reduced the distances that persons with disabilities have to travel to secure these documents. The Ministry is also in the process of decentralizing the issuance of passports to the county levels and at border entry points. This too will go a long way in ensuring that persons with disabilities who wish to travel do not have to travel to Nairobi, Mombasa or Kisumu to secure the same but can do so at the various country headquarters. The Ministry intends to review all applications form for the services offered by the Ministry to collect data on nature and forms of disabilities.

## Article 19: Living independently and being included in the community

159. The Government of Kenya is committed to ensuring that persons with disabilities live independently and that they are included within the community. The PWD Act, 2003 prohibits discrimination thereby ensuring that persons with disabilities live within their communities. There is also the Persons with Disabilities (Cost, Care, Support and Maintenance) Regulations, 2009, which provides a legal framework for the development of community rehabilitation programs for persons with disabilities that train on vocational and trade skills, independent living skills and capacity building of children and persons with disabilities and thereby enhance effective rehabilitation, independent living and inclusion within the community.
160. The Government has also put in place numerous programmes that will progressively help persons with disabilities realize greater self reliance. These programmes include giving persons with disabilities life skills and education, providing them with assistive devices at a subsidized rate among other interventions. However, these efforts are hampered by the high levels of poverty and lack of awareness on issues that affect persons with disabilities in Kenya.
161. The Government also supports and works with development partners and NGOs to promote independent living by persons with disabilities. Further, the Government encourages Public Private Partnership (PPP) initiatives that seek to provide additional services aimed at improving the lives of persons with disabilities. To this end, the Association of Persons with Disabilities in Kenya (APDK) is collaborating very closely with the Government by providing rehabilitation services within Government hospitals.
162. The Government has established educational facilities and rehabilitation centers that offer life skills and vocational trainings to persons with disabilities. Further, the State through the MoGCSD, the NCPWD and Disabled Persons Organizations has embarked on programmes that enhance public acceptance of persons with disabilities thus enabling them live among the community.
163. Further, the Government is running training programmes for specialists who empower persons with disabilities to gain life skills and assistive devices that enable them live independently. The Kenya Medical Training Colleges, Jomo Kenyatta University of Agriculture and Technology, the PCEA University and Moi University run training programmes for occupational therapists, physiotherapists and orthopedic technicians all of whom play a major role in empowering persons with disabilities.
164. The Government has put in place mechanisms to empower persons with disabilities to live independently and within their communities by providing them with financial support. The NDFPDs empowers persons with disabilities to be independent by providing and contributing to the cost of assistive devices and services. It also pays allowances to persons with severe disabilities as they have no other source of income and are not trainable in any skills; aged persons with severe disabilities; and single parents with children with disabilities and who cannot therefore seek employment.
165. The Government, through the Department of Children Services has also established the OVC Cash Transfer programme for children, including those with disabilities, by empowering the care takers and guardians both socially and economically. Other funds include one established under the Kenya Society for the Blind Act for persons with visual disability and the National Fund for the Disabled of Kenya which provides start up kits for promoting independence.



## Article 20: Personal mobility

166. The need and importance of personal mobility cannot be overstated. The Government is undertaking steps to enforce the laws and regulations on accessibility and personal mobility without which persons with disabilities cannot fully participate in all aspects of life or enjoy their freedom of movement. Section 21 of the PWD Act, 2003, deals with accessibility and mobility and it states that persons with disabilities are entitled to have a barrier free environment to enable them to have access to buildings, road and other social amenities, and assistive devices and other equipment to promote their mobility while and Section 22(1) requires that buildings be adapted to suit persons with disabilities. The Government acknowledges that the cost of assistive devices is very high and beyond many persons with disabilities. For that reason, it contributes to the cost of providing assistive devices and services among other things through the NDFPWDs. Further, it has granted tax exemptions on these devices under the Customs and Excise Act.
167. The Government has made tremendous efforts in networking and collaborating with the private sector to overcome the challenge of mobility for persons with disabilities. It is for this reason that institutions such as Kenyatta University and the Kenya Institute of Special Education train mobility instructors. Government hospitals have also established units that run orthopedic and physiotherapy services that train on personal mobility and assess the suitable devices for an individual.
168. The Government also works closely with other institutions that provide and produce mobility appliances. The private sector has also made contributions towards making the appliances available at an affordable rate to persons with disabilities. The Government has leased land in its property in Kabete, Nairobi to the Association for Persons with Disabilities in Kenya (APDK) to put up an Orthopedic Workshop that is producing assistive devices and mobility appliances such as crutches, manual and motorized wheelchairs, calipers, among others. Further, this collaboration is also working towards reviving the Orthopedic Workshops in the Provincial hospitals. The Government is currently recruiting technical staff within the various line ministries to produce orthopedic appliances. The Government has also leased land to the Rotary Club of Nairobi South that runs the Jaipur Foot Project, which has since 1990 enabled over 5,000 individuals to walk again with the help of prosthesis.

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

169. Every Kenyan has a freedom of expression and opinion and access to information, which is protected under various articles of the Constitution of Kenya, 2010. Article 35(1)(b) states that every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom. Article 54(1)(c) further provides that persons with disabilities are entitled to information while Article 54(1)(d) guarantees a person with disability the right to use Kenyan Sign Language, Braille or other appropriate means of communication; and finally to access materials and devices to overcome constraints arising from the person's disability. Article 32 guarantees freedom of conscience, religion, belief and opinion while Article 33 guarantees freedom of expression and Article 34 guarantees freedom of the media. Article 7 places an obligation on the Government to promote the development and use of Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities. It further requires that the business of Parliament be carried out in English, Kiswahili and Kenyan Sign Language.
170. Under Section 19 of PWD Act, 2003, the NCPWD is required to make provisions for an integrated system of special and non-formal education for persons with all forms of disabilities and further, to establish, where possible, Braille and recorded libraries for persons with visual disabilities. Further, Section 39 required all television stations to provide a Kenyan Sign Language inset or subtitles in all newscast and educational programmes and in all programmes covering events of national significance.
171. With regard to communication, Section 40 provides that all persons providing public telephone services shall as far as possible install and maintain telephone devices or units for persons with hearing disabilities and tactile marks on telephone sets to enable persons with visual disabilities to communicate through the telephone system.
172. The Parliamentary proceedings broadcast on televisions always have Kenyan Sign Language interpreters thereby enabling those with hearing challenges to access information. Further, the Government has zero rated taxes on Braille matter and equipment.

## Article 22: Respect for privacy

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

## Article 23: Respect for home and the family

174. The Government of Kenya regards the family as the foundation of society as it provides the basic environment for the care, support and emotional security for any individual and for that reason is committed to eliminate discrimination against persons with disabilities in matters relating to marriage, family and personal relations. The Government is committed to preserving and strengthening the family unit. Article 45(1) of the Constitution of Kenya, 2010, recognizes the family as the natural and fundamental unit of society. It is the necessary basis of social order, and shall enjoy the recognition and protection of the State. Article 45(2) further allows every adult the right to marry a person of the opposite sex, based on the free consent of the parties while Article 45(3) provides that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. However, negative societal perceptions on marriage of persons with disabilities have made it difficult for them to realize their right to found a family.
175. The National Survey on Persons with Disabilities in Kenya found that over 58% of the persons with disabilities who were surveyed reported that they were married or in a relationship. Further, 72% of persons with disabilities that were surveyed reported having children.

## Article 24: Education

176. Kenya National Survey for Persons with Disabilities published in March 2008 by the National Coordinating Agency for Population and Development revealed that about 67% of persons with disabilities had a primary education and 19% attained a secondary education. A small proportion of persons with disabilities had attained a middle level of education. But only 2% had reached a university level. From the institutional data, 75% of persons with disabilities had attained at least primary level education. Persons with disabilities in the rural areas had a higher proportion (52%) of those with primary education compared with their urban counterparts (38%). 39% of the persons with disabilities have attended a mainstream/regular preschool. This is followed closely by those who had attended a mainstream primary school (37%). Only 9% had attended a mainstream secondary school, and females are particularly disadvantaged here: except at tertiary levels, males were significantly more likely than females to have attended mainstream schools. Overall, only 4% of persons with disabilities had attended some form of special education institutions, with a larger proportion of persons with disabilities in urban areas having done so than those in rural areas. Less than 2% of persons with disabilities had attended special classes in mainstream institutions at all levels. Most of them (1.2%) attended special classes at preschool or primary level.
177. The Government of Kenya recognizes that learners with disabilities have a right of education without discrimination and based on equal opportunities. It also recognizes that they have a right to access quality education. It further acknowledges the importance of education as a vehicle to enable persons with disabilities to participate in society and combat marginalization.

178. The adoption of the Constitution of Kenya, 2010 marked one of the most important milestones with regard to education for learners with disabilities. Article 43 (1) (f) guarantees every citizen a right to education while Article 53 (1) (b) states that every child has a right to free and compulsory basic education. Article 54 makes access to inclusive education by persons with disabilities a Constitutional right. This Article appreciates the challenges faced by persons with disabilities in accessing education and therefore requires educational institutions to modify its facilities to ensure integration of and greater access to learners with disabilities. Article 56 further places an obligation on the State to develop and implement affirmative action programmes.
179. The Children's Act, 2001, obligates parents to provide educational needs for their children. It provides under Section 5 that no child will be discriminated based on disability. Section 7(2) provides that every child shall be entitled to free basic education, which shall be compulsory. The Government of Kenya introduced free and compulsory primary education in 2003, which was meant to ensure that every child gets basic education, including children with disabilities.
180. The Government of Kenya has made tremendous progress with regard to education of children with special needs. In January 2005, the Government published Sessional Paper No. 1 of 2005, which set a Policy Framework for Education, Training and Research, titled "Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century". It underscored the importance of special needs education in human capital development, which if enforced would empower those most likely to be marginalized to participate in the mainstream education sector. It also stated the overall government policy direction on learners with special needs and disabilities and further underscored the Government's commitment to ensuring that learners with special needs and disabilities enjoy equal access to quality and relevant education.
181. The Draft Special Needs Education Policy seeks to provide guidance to staff of the Ministry of Education and other stakeholders on the provision of education to learners with special needs to ensure that these learners were treated equally in learning activities at all levels. It seeks to address issues of equity and improvement of learning environment in schools to ensure inclusive education through regular schools as opposed to using special schools and special units attached to regular schools. It has also set several target areas including assessment and intervention; access to quality and relevant education; conducive environment, health and safety (adaptation of facilities); specialized facilities and technology; inclusive education; curriculum development; capacity building and development; participation and involvement; advocacy and awareness creation; partnerships and collaboration; gender mainstreaming in special needs education; research and documentation; disaster preparedness; resource mobilization; guidance and counseling; and assessment and intervention.
182. In another bid to enhance programmes geared towards enhancing equal opportunities in education and the realization of the right to education for learners with disabilities, the Government of Kenya, through the Ministry of Education, is implementing the Kenya Education Sector and Support Programme (KESSP) which brings together several global initiatives including Education for All (EFA), the Millennium Development Goals (MDG), among others and national initiatives contained in the Constitution of Kenya, 2010, the Kenya Vision 2030 and the Special Needs Education Policy, among others.
183. The Government has progressively established programmes in various institutions to cater for these learners. There are presently 1,882 primary and secondary schools in Kenya that provide education for learners with special needs. These schools have 50,744 enrolled learners with disabilities. 24,000 of these learners are in special schools while the rest are in regular schools. This increase has been realized as a result of the efforts made to include learners with disabilities in regular schools through the free primary education. There are also 15 secondary special schools and integrated programmes.
184. There has been progress made with regard to budgetary allocations. Between the year 2003 and 2010, the Ministry of Education received KES 2,966,850,000 to cater for all special programmes. These funds are provided to institutions to enable institutions to acquire appropriate teaching/learning materials and assistive devices; employ support staff; undertake infrastructure improvement and modification to enable accessibility and placement of learners with disabilities. The Education Assessment and Resource Centers (EARC) have also seen a significant increase in their budgetary allocation in the last two years from KES 98,000,000 to KES 420,000,000 per year.
185. The Government started the Free Primary Education (FPE) Programme in 2003 where it provides money to schools to ensure that all children access basic education. In the 2010/2011 financial year the Government allocated KES 1,020 per child while each learner with disability was allocated KES 2,000 more than children without disability so as to cater for their specific educational needs and is also meant to improve the facilities in the school so as to cater for them. The NDFPWDs also disburses funds institutions directly to enable them rehabilitate and adapt their institutions to cater for learning for persons with disabilities. There are also the bursary funds available for needy children in higher education.
186. The Educational Assessment Resource Centers (EARC) also assesses the educational needs of children with disabilities so as to facilitate the identification, assessment, referrals and placement of children with disabilities. It has also supported the development of special schools and units to cater for children with special needs in the areas of hearing, visual, mental or physical challenges to ensure that all children, irrespective of categories or severity of their disabilities have access to appropriate education within settings that best suit them.
187. Through the Kenya Institute of Special Education (KISE), the Ministry undertakes the training of teachers for learners with disabilities at diploma level and in-service training of up to three months. In total 6,765 teachers have received Diploma Certificates and a number have been trained to degree level. There are three (3) Teacher Training Colleges that have facilities for training teachers with disabilities. This ensures that qualified teachers and teachers with disabilities work at different levels of education. There is at least one teacher in all the 1,882 programmes offering education for learners with disabilities. They also serve as resource person in the schools. Special attention has recently been given to Kenyan Sign Language where currently 115 teachers have undergone the three months in-service course.





188. The Government is currently revising the Education Act to address the special needs of children with disabilities. Through the Kenya Institute of Education (KIE), the Government of Kenya has adapted, adopted or specialized several curriculum materials to meet the needs of learners with disabilities in primary and secondary schools. The African Braille Centre continues to produce and disseminate Braille materials to schools and units for use by blind learners. Diagrams and illustrations are used as teaching aids together with songs and games that have also been composed to enhance easy learning alongside practical lessons. Kenyan Sign Language (KSL) is considered the natural language of the deaf in Kenya and has been adopted as a medium of communication. There is a KSL dictionary available in both print and CD.
189. The Kenya National Examination Council (KNEC) has also ensured appropriate measures to cater for the needs of different disability groups when setting and administering national examinations. Indeed, learners with disabilities are given slightly more time when sitting for examinations. KNEC has established a desk, which deals specifically with examinations for persons with disabilities. It sets examinations for the blind candidates using Braille language, which is thereafter transcribed then marked alongside others.
190. With regard to admission of learners with disabilities into university education, the Kenyan universities Joint Admissions Board (JAB) has put in place affirmative action programmes on university admission where learners with disabilities secure admission with relatively lower grades compared to other students. This is often one (1) point less than that of other candidates.
191. Several universities run programmes for learners with disabilities. These include Kenyatta University, Nairobi University and Maseno University, among others. Kenyatta University not only trains teachers but also takes care of the needs of students with special needs for example by providing free transport for them within the campus. It has also established resource services, provides assistive devices like wheel chairs and crutches. The Kenyatta University offers a Bachelor in Education Degree (Special Needs Education – Primary option or Secondary Option). The degree programme also enables the teachers to identify children “at risk” early enough during the foundation years and stop the condition from making the child worse and basically helping the child to live a better life. As an incentive for teachers to take up special needs education, the Government has set up a programme of promoting teachers who have undergone training in special needs education.
192. The NDFPWDs has been funding universities and colleges to enhance education of persons with disabilities.
193. The Government acknowledges that the cost of education for children with disabilities is very high. Therefore, greater level of planning and coordination is needed to ensure progressive realization of the right to education by persons with disabilities. Further, the Government will seek to determine the number of school going children with disabilities both in and out of school and also to determine the kind of specialized equipment available and needed in special programmes. This education specific data will be used for gap analysis, planning and resource allocation.
194. The Government through the Kenya Institute of Education intends to improve the curriculum and the facilities. It will also increase the teaching and assessment procedures so as to enhance provision of quality education through the Kenya Institute of Special Education (KISE).



## Article 25: Health

195. All health facilities in Kenya provide services to all persons without discrimination. The Constitution of Kenya, 2010 provides that every person has the right to the highest attainable standard of health and to health care services as guaranteed under Article 43(a) and in the case of children under Article 53(1)(c). Further, Article 56 has placed an obligation on the State to put in place affirmative action programmes designed to ensure that minorities and marginalized groups including persons with disabilities have reasonable access to health services.
196. Section 20 of the PWD Act, 2003 mandates the NCPWD to monitor the provision of health care to persons with disabilities so as to ensure that the services are devoid of any form of discrimination. It also ensures that the programmes of the Ministry of Health are geared towards prevention of disability; early identification of disability; early rehabilitation of persons with disabilities; enabling persons with disabilities to receive affordable rehabilitation and medical services in public and privately owned health institutions; availing essential health services to persons with disabilities at an affordable cost; and availing field medical personnel to local health institutions for the benefit of persons with disabilities. The Government's commitment can also be found in several policies. Indeed, the National Reproductive Health Policy, 2008 recognizes that women with disabilities are also entitled to access reproductive health services. It has identified the need to improve the sexual and reproductive health of youth with disabilities.
197. The Ministry of Health is implementing an integrated approach in its services and disability prevention and rehabilitation is a priority as expressed in the 2005-2010 Strategic Plans. It further offers trainings to its occupational therapists, physiotherapists and other service providers for three years. The trainings prepare them to adequately serve the needs of people with disabilities. There are 265 government hospitals, 460 health centers and 1,600 dispensaries that are run by the Ministry of Health countrywide. Of these, there are two major referral hospitals namely the Kenyatta National Hospital, the National Spinal Injury and Mathare District Hospital in Nairobi and the Moi Educational and Referral Hospital in Eldoret. These health care facilities are divided into different levels based on their size, bed capacity, services they offer and geographical coverage. The major hospitals are level 4 and above, health centers level 3, dispensary level 2, nursing and maternity homes level 3 and health clinics and medical centers level 2. All the facilities offer curative, rehabilitative, preventive and promotional health services across the nation. Level 4 to level 5 hospitals provide integrated health care services to all Kenyans and ensure that no one is denied health services. The Government works very closely with churches, nongovernmental and private healthcare organizations to ensure that health services reach a greater number of citizens and is determined to establish health facilities at a distance of 5 km apart.
198. The Ministry of Health implements pro-poor health policies and interventions all of which have improved access to basic health care for a large population of Kenyans and ensure that those that are unable to pay are not denied access health services. This is done through cost sharing and waiver of costs. One such programme is the provision of free medical services to children of age of 5 years, including those with disabilities.
199. The Government has also established a comprehensive Community Based Rehabilitation (CBR) program for persons with disabilities, which has been entrenched into normal healthcare service delivery system through outreach, facility based rehabilitation services. The CBR covers disability prevention, community sensitization on disability, and early identification and intervention services with emphasis amongst the child population.
200. The Division of Child and Adolescent Health of the Ministry of Health has also developed National Guidelines and Manual for the Identification and Referral of children with disabilities to help sensitize health workers and stakeholders in the provision of services to children with disabilities. The Government also has the Expanded Safe Motherhood programme in health facilities whose purpose is to ensure early identification and intervention in disability management in childhood to forestall disability in life and reduce its impact in adulthood.
201. The Ministries of Health also undertake training of local communities and (Community Health Extension Workers (CHEWs) on disability issues, early detection and referral of children and persons with disabilities to health facilities. There is also the Enhanced Occupational Safety at workplace through the Public Health Act and Occupational Health and Safety Act.
202. There are hospitals that provide specialized services. These include Kenyatta National Hospital's Ear, Nose and Throat (ENT) clinic, which screens persons with hearing impairment; the Mathare Hospital and Moi Teaching and Referral Hospital and all L4 and L5 hospitals such as Mbagathi District Hospital which provides rehabilitation services to persons with disabilities; The National Spinal Injuries Hospital in Nairobi is a rehabilitation institution that provides services to persons with severe injuries to the spine. In addition to curative and preventive services, the Ministry of Health provides specialized services for persons with disabilities through the Division of Rehabilitative Health Services, which provides assistive devices, physiotherapy and occupational therapy.
203. The Government of Kenya recognizes that these efforts are by no means sufficient and is therefore determined to meet the set threshold for provision of health services including persons with disabilities. To this end, the Government's services are supplemented by private hospitals and dispensaries, which are sponsored by Christian missionaries, other faith based organizations and philanthropists. These include the Kijabe Mission Hospital, which offers rehabilitation services to persons with physical disabilities; the Kikuyu Eye Hospital, the Lions Eye Hospital, the Friends Mission Hospital in Sabatia, Western Province, all of which provide eye care services. There is also the Association of Physically Disabled of Kenya (APDK) which makes and supplies assistive/supportive devices such as crutches, motorized and non motorized wheelchairs for persons with physical disability. There is also the Rotary Club of Nairobi South that runs the Jaipur Foot Project and seeks to give amputees artificial legs. The programme used to conduct camps all over the country but these have since stopped due to limited resources.

204. The Ministry of Health has set up 100 Disability Mainstreaming Committees based at the Headquarter, PMST and the health facilities whose role is to mainstream disability. There are also 100 Disability Assessment Committees, which carry out medical assessment of persons with disabilities. These assessments are necessary for registration with the NCPWD. The Ministry of Health has trained health workers on early identification and management of disability. Disability has also been mainstreamed into the health professional curriculum while there are continuous professional development courses which are done periodically to sensitize health workers.
205. Improved pre-natal services can eradicate pregnancy-related disabling conditions while better hygiene and sanitation can rid the environment of disability causing ailments. The Government offers pre-natal services to pregnant mothers thus reducing the number of children born with disabilities. Kenya has a comprehensive immunization programme with a national coverage of over 80% through the National Expanded Programme on Immunization. These programmes target immunization of children against diseases, which could result into disability such as polio, whooping cough, tetanus, measles, tuberculosis, and diphtheria. Mothers are also encouraged to exclusively breast feed their children until they are six months old. Further, there is a mechanism for surveillance under the Ministry of Public Health and Sanitation.
206. The PWD Act, 2003 makes provisions for the Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009. The regulations provide that education and information dissemination on the rights of persons with disabilities shall form part of health care services by healthcare providers. In this regard, the State has provided training for healthcare providers to acquire skills for proper information dissemination and education on the rights of persons with disabilities through the Disability Mainstreaming Committees, whose mandate include facilitating the training of health workers and Heads of Departments (HoDs) on the rights of persons with disabilities. The Committee has also sought to train some of their workers on Kenyan Sign Language.
207. Under Regulation 14 of the Persons with Disabilities (Access To Employment, Services and Facilities) Regulations, 2009, all public toilets should be adapted facilities in public toilets, for wheel chair users and other persons with disability, provide for Braille symbols and auditory signals in elevators or lifts and provide for ramps in hospitals, health centers and other medical care and rehabilitation institutions. Most healthcare centers are accessible to persons with disabilities. However, in a bid to comply with Section 21 of the PWD Act, 2003, health facilities that were constructed before the early 80's have been undergoing renovations while new health care facilities are complying with the same, for example, the Kayole District Hospital that is being constructed in Nairobi.
208. Persons with disabilities in Kenya are exposed to gender based violence and are usually unable to protect themselves. This can be attributed to lack of information and knowledge. The Government through the NCPWD and other stakeholders has taken measures to increase awareness on diseases such as HIV/Aids and malaria among persons with disabilities.
209. Some of the challenges with regard to the provision of health services in Kenya, which also affects the care and treatment of persons with disabilities, has been the brain drain in the country where qualified doctors are attracted by lucrative salaries in the West. There is also the fact that doctors dislike working in rural and remote areas of the country, thus reducing the reach of qualified personnel.

## Article 26: Habilitation and rehabilitation

210. The Government through the MoGCSD has established and coordinates 12 Vocational Rehabilitation Centers in various parts of the country. These centers offer vocational training in different kinds of trades that seek to empower persons with disabilities to enable them to enter into formal, informal and/or self employment.
211. The Government has been offering rehabilitation for the visually impaired person through The Kenya Society for the Blind, (KSB), a charitable organization established in 1956 through an Act of Parliament. It seeks to fight against blindness and promote education and rehabilitation of the irreversibly blind. It also seeks to create an environment that encourages the inclusion of visually impaired persons and promote the prevention of avoidable blindness. It works in partnership with the corporate companies, Government, international and local Non-Governmental Organizations and the community to execute its mandate. The Kenya Society for the Blind offers independent living skills on mobility and orientation skills (including use of public transportation), protection techniques, clothing selection and clothing care, personal care, nutrition, fitness, and health care, money management and consumer skills, time management, communication (Braille, adaptive computer skills in JAWS, MAGIC, Open Source software), among others. The Society in conjunction with the Machakos Technical Institute for the Blind also offers technical courses on clothing technology; carpentry/joinery/masonry; tannery and leatherwork.
212. The NCPWD has the mandate to provide, to the maximum extent possible assistive devices, appliances and other equipment to persons with disabilities. Equipments are imported duty free. The Association of Person with Disabilities in Kenya (APDK) has been manufacturing different kinds of assistive devices including manual and motorized wheelchairs for several years. Also, the Rotary Club of Nairobi-South implements the Jaipur Foot Project that was established in Kenya in 1990 to provide cheap and affordable means of mobility for people who would otherwise not be able to afford them.



## Article 27: Work and employment

213. The Constitution of Kenya, 2010 prohibits any form of discrimination against all persons including persons with disabilities in any setting. This is the same position held by the Employment Act and the PWD Act, 2003. Section 13 of the Act creates a 5% reservation of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities.
214. Further, Article 41(1) of the Constitution of Kenya, 2010, further guarantees workers, including those with disabilities, the right to fair labour practices, fair remuneration; to reasonable working conditions; to form, join or participate in the activities and programmes of a trade union; and to go on strike. To ensure that the interests of persons with disabilities are taken into consideration in trade union matters, there is a representative of the Central Organization of Trade Unions (COTU) sitting in the Board of the NCPWD.
215. Kenya enacted new Labour Laws in 2007 that overhauled the labour sector. These laws are now more sensitive to the rights of persons with disabilities. Indeed, Section 2 of the Employment Act has defined disability as a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person's social and economic participation. Section 5(3) provides that no employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV/Aids status. Section 46(g) provides that the following do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty -an employee's race, colour, tribe, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability. With regards to injuries in the workplace, Kenya has enacted the Workman Compensations Act that deals with compensation to persons injured in the workplace many of whom become persons with disabilities. In case of any labour disputes, the same are dealt with by the Labour Officers in the Ministry of Labour or heard by the Industrial Court.
216. The Ministry of Labour is currently conducting a Man Power Survey in order to develop a skills inventory in the country. This will guide the planning of future manpower requirements for the industry. The survey intends to capture the distribution and characteristics of skills and occupations currently available vis-à-vis the future manpower requirements. The data collection tool (questionnaire) includes the details of gender, occupation, disability and nationality.



217. The Government has put in place several programmes to assist persons with disabilities to secure employment. The NCPWD undertakes placements for persons with disabilities in Government institutions and private organizations. Under this programme, persons with disabilities forward their Curriculum Vitae to the Council which then reaches out to these organizations which then interview and select suitable candidates. The Council also undertakes capacity building on management, book keeping, communication, project management, proposal writing among others. Other private sector institutions that have employed persons with disabilities include Safaricom which has employed 78 persons with disabilities; Synovate Research which has a policy that at least 1% of its employees must be persons with disabilities; while K-Rep Bank provides loans to groups of person with disabilities. Further, the retirement age for persons with disabilities in public service was pegged at 60 years while that for other public employees was 55 years.
218. The Government through the MoGCSD has established and coordinates 12 Vocational Rehabilitation Centers in various parts of the country. These centers offer vocational training in different kinds of trades that seek to empower persons with disabilities to enable them to enter into formal, informal or self employment. The centers include the Industrial Rehabilitation Center in Nairobi; Bura Rehabilitation Centre, Embu Rehabilitation Centre, Muriranjias Rehabilitation Centre, Nyandarua Rehabilitation Centre, Kabarnet Rehabilitation Centre, Kericho Rehabilitation Centre, Kisii Rehabilitation Centre, Itando Rehabilitation Centre, Kakamega Rehabilitation Centre, Odiado Rehabilitation Centre and Machakos Vocational Rehabilitation Centre. The current total enrolment in the Vocational Centers is at 500 students. In order to achieve integration, the Centers have adopted integration policy where 60% of the students are persons with disabilities while 40% are able bodied.
219. The MoGCSD has progressively increased funding to the Vocational Centers that are directed towards infrastructure development, refurbishment, the construction of workshops, dormitories, staff houses, the purchase of equipment and educational aids. Further, the Ministry is determined to make these institutions more visible so as to attract higher trainee enrolment from all over Kenya.
220. Previously, these Vocational Centers offered courses in welding and fabrication, hairdressing and beauty therapy, tailoring and dress making, leather work and shoe making, and electrical installation. But, the Government acknowledges that there have been great technological advancements in the recent past. Therefore, in order to match these advancements, the MoGCSD intends to adopt a new curriculum on National Vocational Certificate of Education which is under the Technical Industrial Vocational Education and Training (TIVET) system. The curriculum provides flexibility and upward mobility for those keen on advancing their technical skill up to tertiary and university level. So far, the Government has recruited Technical/Commercial Managers together with 53 Technical Instructors with Diploma Certificates to facilitate implementation of the intended curriculum.
221. Other organizations that have programmes in place to prepare persons with disabilities for full and productive employment include the Kenya Institute for Special Education, (KISE), the Ministry of Health, the Ministry of Youth Affairs, The Kenya National Deaf Association, and Kenya Society for the Blind, the Ministry of Education, among others.
222. The Government has provided further incentives for all persons with disabilities in formal employment by providing tax exemptions to those earning below KES 150,000. This was provided for under the Kenya Subsidiary Legislation, 2010 through the Kenya Gazette Supplement No.16 Legislative Supplement No. 11 of 26th March 2010 which exempts them from paying income tax. Other benefits include the fact that persons with disabilities are exempted from paying import duty for disability customized motor vehicles that are imported thus making them affordable. However, to benefit from this, one is required to register with the NCPWD which then processes and secures the Tax Exemption Certificate from the Kenya Revenue Authority (KRA).
223. The Government has established Women Enterprise Fund, the Youth Enterprise Fund, the National Development Fund for Persons with Disabilities and National Fund for Persons with Disability, which provide startup capital for women, youth and persons with disabilities. The Government through UNDP undertakes capacity building on entrepreneurship for persons with disabilities who are street vendors. ILO is also working with women with disabilities on building entrepreneurship skills. Further, the Government is currently developing a Draft Small & Medium-Size Enterprises (SMEs) Bill which recognizes disabilities. The Kazi Kwa Vijana (Jobs for Youth) programme also has a component for persons with disabilities. This programme was meant to be a short-term six month project to promote employment among the youth in Kenya. However, the programme has been extended for the next four years and by December 2009 over 298,000 youth had benefitted.
224. The Government has introduced compulsory National Health Insurance Fund cover that would be a must for all the persons with disability in employment. The Government has also proposed a pension contribution whereby the employer pays higher pension contribution to persons with disability pension in contrast to ordinary persons.
225. Improvement for employees is currently taken care of through the Industrial Training Act which mandates the Ministry of Labour through the Directorate of Industrial Training to collect Industrial Training levy from employers. The levy collected is used to fund specific apprenticeships training as identified by the employers. The Industrial Training Act is being reviewed to be in line with the Constitution of Kenya, 2010 and the PWD Act, 2003.

## Article 28: Adequate standard of living and social protection

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

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

#### **1. National Development Fund for Persons with Disabilities**

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

#### **2. Persons with Severe Disabilities Cash Transfer Programme**

229. The MoGCSD in collaboration with NCPWDs has designed the Cash Transfer for Persons with Severe Disabilities (CTPWSDs) whose main objective is to enhance the capacities of the care givers through Cash Transfer thereby improving the livelihoods of Persons with Severe Disabilities (PWSDs) and mitigate the effect of disabilities to the households.
230. At the pilot stage, 10 persons were targeted from each of the 210 constituencies in Kenya, totaling 2,100 persons who have severe disabilities and are very poor benefited by receiving a monthly cash transfer of KES 1,500 per month. In the 2011/2012 financial year, the Government has increased the amount from KES 25 million to KES 385 million and the number from 14,700. The transfer amount has since increased to KES 2,000 per person per month.
231. Additionally, for purposes of regional balancing in disbursement of funds, the Council will decentralize disbursement of the NDFPWDs to the Constituencies starting from the current financial year. For accountability to the tax payers and for transparency purposes, the NCPWD will endeavor to, develop and to disseminate an annual report on the expenditure of the NDFPWDs to the public.
232. The programme targets all severe disability categories such as cerebral palsy, autism, deaf-blindness, spinal bifida, quadriplegia, mental disability, spinal injury, paraplegia, down syndrome, muscular dystrophy, other multiple disabilities among others. For purposes of the program, a person with severe disability has been defined as an individual who depends on a care taker for feeding, toiletry, sanitary needs and other needs who requires round the clock care thus denying a member of the household an opportunity to earn a livelihood. The program will therefore target households in which the person with severe disability lives. In addition, the program will build capacity of Disabled Persons Organizations (DPOs) and parent groups in each province through training as a way of facilitating the success of the program.

#### **3. The Draft National Social Protection Policy**

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

#### **4. Free Primary Education**

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

#### **5. Older Persons Cash Transfer Programme**

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

#### **6. National Youth Development Fund**

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

## 7. Women Enterprise Fund

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

## 8. The Orphans and Vulnerable Children Cash Transfer

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

## 9. Tax exemption for Persons with Disabilities

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

## 10. The National Disability Policy

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

## Article 29: Participation in political and public life

241. The Government of Kenya has made progress towards improving participation in political and public life by persons with disabilities. There are several Statutes that guarantee persons with disabilities these rights and which when fully implemented will enable persons with disabilities to overcome the limitations that hinder them from enjoying these rights. Key among them is contained in Chapter Seven of the Constitution of Kenya, 2010, which deals with representation of the people with Part 1 specifically providing for the Electoral System and Process. It states in Article 81 that the electoral system shall comply with, among other principles, the fair representation of persons with disabilities. Article 82 further requires Parliament to enact legislation to ensure that voting is made simple, transparent and takes into account the special needs of persons with disabilities and other persons or groups with special needs.
242. Article 54(2) makes it a Constitutional requirement that 5% of members of public in elective and appointing bodies are reserved for persons with disabilities. This signifies the Government's commitment to the progressive implementation of this principle. However, the Government of Kenya acknowledges that there have been challenges in institutionalizing this issue of representation by persons with disabilities. The Government of Kenya has appointed several persons with disabilities to various senior positions. During the constitutional review process, two persons with disabilities were appointed as Commissioners in the Constitution of Kenya Review Commission. The Kenya National Commission on Human Rights (KNCHR) (which shall soon be called the Kenya National Human Rights and Equality Commission), there are two Commissioners and several employees who are persons with disabilities. The Government however, acknowledges that this is a far cry from the required 5% representation.
243. Article 38 of the Constitution of Kenya, 2010, guarantees all Kenyans above the age of 18 years, the right to be registered as a voter and to vote in an election or referendum. To this end, the Government has put in place measures to ensure that persons with disabilities enjoy their right to vote on their own and to be assisted to vote and make their own choice in an election or referendum. During the 2010 referendum on the new Constitution, the Interim Independent Electoral Commission (IIEC) established a mechanism that allowed persons with disability to vote for a candidate of their choice through another person who must do so under oath. The IIEC has also undertaken massive voter education and encouraged persons with disabilities to come out and vote. It has also provided guidelines for voting at the polling stations that protect persons with disability while voting.
244. During the 2007 general elections, a number of candidates with disabilities stood for elective positions as Members of Parliament and one person with disability was actually nominated as a councilor in the Nairobi City Council. Further, it must be noted that all the major political parties had disability within their agenda in their manifestos in the last general elections. However, despite intense lobbying for political parties to undertake affirmative action by supporting candidates with disabilities as was contained in their 2007 election manifestos, the political parties failed to live up to these promises.
245. The Government supports persons with disabilities to establish and maintain organizations that represent their rights and interest at different levels. The Government is at the moment registering Disabled Persons Organizations and persons with disabilities at the District level through the MoGCSD and the NCPWD and as at April 2011, the Council had registered over 60,000 persons with disabilities. The purpose of this is to ensure that among other things, persons with disabilities are funded by the Government to spearhead implementation of disability issues at the national level. To this end, the Government has established the NDFPWDs, the Youth Enterprise Fund, as well as other devolved funds that seek to empower persons with disabilities.



# 5. Specific situation of women and children with disabilities

## Article 6: Women with disabilities

246. Women in Kenya constitute over 50 per cent of the total population, yet they remain largely marginalized. They face a number of challenges including the fact that they have limited access to and control of resources and other socio-economic opportunities; they have lower literacy levels compared to men; fewer of them enroll in mainstream education; they are generally poorer than men; fewer of them are in formal employment compared to men; where they do work then it is under deplorable conditions; they earn lower incomes; they have poor access to quality healthcare and advice on family planning; and are more vulnerable to gender-based violence; there are high levels of stigma around women with disability in communities. The Government recognizes that to overcome the above, there is need for targeted interventions that would, among other things, enhance access to education and employment by women and girls with disabilities.
247. The above situation is worse for women with disabilities as they are a more vulnerable, neglected and deprived segment of the society. This vulnerability stems from negative cultural practices and attitude towards disability and gender biases, among others. The situation is complicated by traditional and conservative views on the position and the role of women in society, which reinforce the misconception about the ability of women and girls with disabilities to adequately perform their roles as other peers.
248. According to the Kenya Population Census, 2009, there are 682,623 women with disabilities in Kenya. The table below shows the spread of women with disabilities per province as per the last population census.

Table 2

Province	Male	Female	Total	% female
Kenya	647,689	682,623	1,330,312	51.3
Nairobi	34,293	32,077	66,370	48.3
Central	54,625	60,338	114,963	52.5
Coast	49,313	49,435	98,748	50.1
Eastern	98,681	105,819	204,500	51.7
North Eastern	37,231	30,225	67,456	44.8
Nyanza	139,172	163,338	302,510	54.0
Rift Valley	132,168	131,343	263,591	49.8
Western	102,206	110,048	212,254	51.8

Source: Kenya Population Census, 2009, Volume 2.

249. The Government has put in place several legislative, policy and programmatic measures to address the challenges that face women, including women with disabilities, and thereby improve their general welfare and development.
250. Article 27(3) of the Constitution of Kenya, 2010, guarantees all citizens, (including women and men with disabilities) the right to equal treatment. This includes the right to equal opportunities in political, economic, cultural and social spheres. It also expressly prohibits discrimination on the grounds of sex and disability. The Article further recognizes that equality includes the full and equal enjoyment of all rights and fundamental freedoms for both women and men, which includes (both women and girls with disabilities and men and boys) all persons with disabilities.
251. The Government notes that the PWD Act, 2003, does not specifically provide for the peculiar needs of women and girls with disabilities. There are ongoing discussions on the proposed Persons with Disabilities (Amendment) Bill. One of the proposed amendments is the inclusion of a new section that recognizes that women and girls with disabilities are subject to multiple forms of discrimination. The section will require the Government to respond appropriately to ensure their full development and advancement. The Children's Act, No. 8 of 2001 on its part provides for the protection of the rights and welfare of the child in which special emphasis is placed on the girl child and children with disabilities.

252. The National Disability Policy also recognizes that women with disabilities face numerous challenges. One such challenge is that of discrimination. Indeed, women with disabilities are first discriminated as women and secondly as persons with disabilities. The policy seeks to promote gender equality for both women and men with disabilities but lays special emphasis on women with disabilities due to their special circumstances. It provides that the Government shall seek to protect persons with disabilities, especially women with disabilities and persons with intellectual impairments from all forms of neglect, abuse and violence. The Government shall seek to provide access to business loans for both men and women with disabilities and encourage employers to provide necessary adaptive equipment to enable men and women employees with disabilities to effectively do their jobs.
253. The Government has also developed a draft National Policy on Gender and Development that seeks to ensure the full development of women. It focuses on the removal of existing gender disparities by putting in place strategies to reduce the misunderstandings that arise from reproductive and productive roles of women and men. It further highlights the social, cultural, economic and political factors that perpetuate inequality as far as access to and control of development resources are concerned.
254. The National Women's Enterprise Fund that was initiated in August 2007 marked an important milestone in the Government's efforts towards addressing gender related economic imbalances in Kenya. The Fund seeks to serve as an alternative source of finance for women who cannot easily access the formal financial sector. Apart from providing subsidized credit for business start-up and /or expansion, the Fund promotes an enterprise culture among women. It must be noted that the Fund has an allocation of 10% in every constituency for women with disabilities. The Women Enterprise Fund has to date funded approximately 26 groups of women with disabilities. The loans given are interest free, save for a 5% administration fee. However, the challenge is that not many women with disabilities are aware of the availability of this service.
255. The National Youth Enterprise Development Fund was established in 2006 with the aim of reducing the high unemployment rate among the youth, who account for 61% of the unemployed population in Kenya. This Fund falls under the Ministry of Youth and Sports but uses the institutional financing strategy as a way of providing income generation opportunities for youth. It has mainstreamed disability issues in all its programs. Since a person with special needs includes a youth with disabilities, measures have been put in place to ensure youth with disabilities are not over shadowed.
256. Women with disabilities encounter numerous barriers to accessing quality reproductive health care services. Some of the barriers include inaccessible equipment and service points, limited contraceptive options and insensitivity by health care workers among others. In October 2007, the cabinet approved and adopted the country's first National Reproductive Health Policy, which was launched in July 2008. With the theme "Enhancing the Reproductive Health Status for All Kenyans" the policy provides a framework for equitable, efficient, and effective delivery of high-quality Reproductive Health services throughout the country and emphasizes reaching those in greatest need and most vulnerable. It addresses key emerging issues, such as Reproductive Health commodity security, the prevention of mother-to-child transmission of HIV, emergency obstetric care, gender-based violence, the Reproductive Health needs of persons with disabilities, and Reproductive Health/HIV integration. The successful implementation of this Policy will go a long way to promote the inclusion of women with disabilities in reproductive health. The development and implementation of the Policy is guided by among other things, the respect for human rights and freedoms and the need to eliminate factors that impede access to reproductive health services for vulnerable members of the population including persons with disabilities.
257. The Ministry of Public Health and Sanitation's-Reproductive Health Division Strategic Plan 2010 - 2015, reinforces the National Reproductive Health Policy, 2008. Other Policy measures that are currently being implemented by the Government that also assist women with disabilities access reproductive health care include: the Adolescent Reproductive Health and Development Policy, 2003; the National Family Planning Guidelines for Service providers, 2010, and the Expanded Safe Motherhood Programs in the health facilities to assist women of child bearing age.
258. There have been many reported cases of gender based violence against women with disabilities. To counter this, the Government enacted the Sexual Offences Act, 2006, which prescribes severe punishments for sexual offenders. The Ministry of Health has established a programme to care for and manage the victims using the National Guidelines for Victims of Sexual Offences which was developed in 2009.

## Article 7: Children with disabilities

259. The Government has put in place several legislative, policy and administrative measures to protect the rights and welfare children of children with disabilities. Key to all these interventions is the recognition that persons with disabilities, including children with disabilities, are to be treated with dignity, respect, to be addressed and referred to in a manner that is not demeaning. To this end, the Constitution of Kenya, 2010 at Article 54 recognizes the rights of persons with disabilities while Article 53 provides a Bill of Rights specifically for children.
260. Kenya has a Children's Act, 2001, which domesticated the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child and came into force on 1st March, 2002. It must however be noted that the Children's Act was enacted prior to the coming into force of the Convention on the Rights of Persons with Disabilities and the PWD Act, 2003. The Government, through the Kenya Law Reform Commission, has commenced a process of the amendment of this legislation with the aim of, among other things, giving specific expression in its text of the provisions of the Convention on children with disabilities. In this regard, the draft Children's Act (Amendment) Bill spearheaded by the Commission is at an advanced stage of development. The Government is also in the process of amending the Education Act, which will among other things address the needs of children with disabilities.

261. The Children's Act protects all children and prohibits all forms of discrimination and violence against children. It provides remedies in case of such violations. Section 5 of the Act provides that "no child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, color, birth, social, political, economic or other status, race, disability, tribe, residence or local connection." Section 12 provides that children with disabilities have the right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible. Additional protection is found under Section 186 which requires, among other things, that if a child offender is one with a disability, then they should be given special care and treated with dignity. Under Section 107 of the Act, Courts are allowed to make an order for the extension of care beyond the eighteenth birthday by appointing a guardian where the child suffers from a mental or physical disability or from an illness that will render him incapable of maintaining himself, or of managing his own affairs and his property without the assistance of a guardian.
262. The Children's Act establishes the National Council for Children's Services (NCCS). Its mandate includes supervising, controlling, financing and coordinating child rights and welfare in Kenya. It therefore designs programmes that seek to alleviate the challenges faced by children with special needs, who include children with disabilities. To this end, the Government has progressively increased the budgetary allocation over the years from KES 9 Million to KES 50 million in 2010. The Act also establishes Area Advisory Councils which perform similar functions as the NCCS but at the county and local level. The Children's Act also provides a legal framework for the management of Charitable Children Institutions (CCIs). They receive grants of KES 125,000 from the NCCS for infrastructure development. Preference is given to CCIs that are exclusively for children with disabilities or those that include children with disabilities in their programmes. Of the 22 CCIs that have been assisted since the programme started in 2008/09, 2 were for children with disabilities while majority of the others had at least a child with disability in their programmes.
263. The rights of children with disabilities are specifically catered for under the PWD Act, 2003. The Persons with Disabilities (Cost, Care, Support and Maintenance) Regulations, 2009, creates regulations for institutions that cater for persons with severe disabilities and provides that the NCPWD shall promote and advise in the development and implementation by local authorities, community based organizations and other stakeholders, of suitable community based rehabilitation and welfare programs for the inclusion, integration, maintenance, care and support of children and persons with disabilities. The Act is currently under review through the Persons with Disabilities (Amendment) Bill, and one of the amendments proposed is that there be an inclusion of a provision that specifically requires the Government to take steps that would achieve the full realization of the rights of children with disabilities.
264. The MoGCSD has a social protection initiative where 100 households with orphans and vulnerable children are given KES 1,500 every month to cater for their needs. The initiative is implemented on a pilot basis in Nyando District of Nyanza Province. The beneficiaries are identified by the District Social Development Committee. A similar initiative targeting children with disabilities is also currently being implemented by the Department of Children Services in 17 districts.
265. There is also in place a draft National Social Protection Policy that is currently being considered by the cabinet. It presents the Government's vision of creating an all-inclusive society through the provision of sustainable mechanisms for the protection of persons living in situations of extreme poverty and vulnerability. It identifies orphans and vulnerable children, people with disabilities, older persons, the urban poor living in slum areas, people living in the streets in urban areas, people living with dilapidating illness, and the internally displaced persons, among others, as qualifying for social protection. The PWD Act, 2003, also established the NDFPWDs. One of the payments that can be made from the Fund is provide allowances to single parents of children with disabilities and who therefore cannot seek employment.
266. In January 2003, the Government of Kenya declared free primary education with the intention of removing all levies that previously prevented children especially those from poor backgrounds from accessing education. This means that no child may be excluded from obtaining education because of his/her inability to pay the required fees. This resulted in a large increase in the number of children accessing primary education. The government has extended this scheme to special education and schools for children with disabilities, which are currently receiving a slightly higher amount of money than other schools.
267. Children with disabilities were involved in the 10 regional forums that were conducted to collect views on the National Children Policy and the National Plan of Action for children.
268. The Special Education Section of the Ministry of Education was set up in 1975 to coordinate education for children with special needs. It has specialized staff that are responsible for every category of disabilities were later hired within the inspectorate and curriculum development arms of the Ministry of Education. There is now a policy that seeks integration of children with disabilities into other schools.
269. The Kenya Institute of Special Education (KISE) was established through Legal Notice No. 7 of 1986 to cater for the educational training needs of children and adults with disabilities. Its main functions include the training of teachers and other personnel to work in the field of special education; conducting of research on special education; provision, production, and repair of special education materials and equipments; production and dissemination of information on disabilities to personnel involved in special education and the general public; and provision of educational and physiological assessment for children with disabilities. The Institute provides specialized training at diploma level to teachers already trained to teach ordinary schools but with interest in special education. It also introduced short-term certificate courses for teachers in special schools, units and integrated programmes. It has recently introduced distant learning programmes with a current enrolment of more than 7,000. Special Education Degree courses are also now being offered in public universities namely Kenyatta University, Maseno University and Moi University.

270. The Ministry of Education and the Department of Social Services have been collaborating in Community Based Rehabilitation activities to encourage parents not to hide their children with disabilities and take them for assessment and early intervention. There is also the Educational Assessment and Resource Services (EARS) which has greatly improved the growth and quality of educational services for children with special educational needs. EARS centers were initially opened in 22 districts and were closely linked to District Education Offices. EARS embraced a multi-sectoral approach by different professionals such as teachers, social workers and medical workers. It involved the community in the early identification, assessment, intervention and placement in educational services. This programme has enhanced the inclusive education delivery strategy which promotes placing of children with disabilities in integrated programmes. This has increased educational placements for children with special needs beyond the capacity of residential schools and opened the special educational residential schools to learners with difficulties or those with multiple disabilities.
271. African Braille Centre continues to produce and disseminate Braille materials to schools and units for use by blind learners. Equipment and assistive devices for children and persons with disabilities are exempted from taxes when imported through organizations of or for the disabled persons.
272. To ensure the right to health, the Ministry of Health (MoH) has a waiver system which gives free health care to children below 5 years of age regardless of whether they are disabled or not upon recommendation of a social worker. Children with disabilities are given priority in care delivery. The Government also has a programme on early detection/identification and intervention in disability management in childhood to forestall disability in life and reduce its impact in adulthood. There is also an expanded programme on immunization in all health facilities which seeks to immunize all children against preventable diseases that cause disabilities. Under the Division of Child Health, Unit of Children with Disabilities, the Ministry of Health is developing a comprehensive and responsive policy for children with disabilities. The Ministry of Health (MOH) is also addressing the issue of children with disabilities and HIV/Aids in its interventions through NASCOP.
273. Section 4 of the Children's Act provides that in all actions concerning children, whether undertaken by public, or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The Act further provides that all judicial and administrative institutions shall treat the interests of the child as the first and paramount consideration. In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account, as may be appropriate taking into account the child's age and the degree of maturity. Where the Court is considering whether or not to make an order with regard to a child, Section 76 of the Act requires the Court should have particular regard to a child's physical, emotional and educational needs and in particular, where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child. Under Section 186(h) where a disabled child is accused of an offense, he will be accorded special care and be treated with the same dignity as a child with no disability.
274. The NCCS has developed Child Participation Guidelines, which specifically state that any individual or organization planning to hold a children's event, while selecting the venue should ensure "it is accessible to children with disabilities, and have ramps and clear pathways. It should also provide facilities for the visually, hearing and intellectually impaired."
275. One of the challenges that face the implementation of the rights for children with disabilities is inadequate resources both financial and human. The MoGCSD had a budget allocation of KES. 2 million to support activities in disability. However, in the 2008/2009 financial period, there was no allocation for disability activities in the ministry. This proves challenging as there is an ever increasing number of Children with Disabilities vis-a-vis the available resources. This makes it challenging to have a sustained programme for children with disabilities. Services for children with disabilities are further scattered in many line ministries thereby making it difficult to have an integrated system of monitoring the rights of children with disabilities. In a bid to address the above challenges, the MoGCSD is in the process of considering ways of harmonizing service delivery and developing a sector wide approach to ensure that persons with disabilities realize their rights.

# 6. Specific obligations

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

276. All Kenyans are allowed to access places of cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance without discrimination.
277. The preamble of the Constitution of Kenya, 2010, takes cognizance of Kenya's cultural diversity as strength and states that the people of Kenya are "proud of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation". Chapter Two further recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. Therefore, the cultural diversity is a reflection of the nations' individual diversity which is to be harnessed positively for the enrichment of humanity.
278. Section 28 of PWD Act, 2003, provides that the Government shall provide support to artists and athletes with disabilities to participate in local, international and special games, as well as cultural exchange programmes organized by the respective federations, committees, unions, associations, bilateral and multilateral partners. To this end, the Government encourages cultural exchange programmes, the promotion of deaf culture and mainstreaming disability concerns in its programmes. This underscores the Government's commitment to ensuring that cultural activities, leisure, tourism and sporting facilities are accessible to persons with disabilities. The challenge however has been that of lack of awareness and inadequate resources.
279. The Government encourages persons with disabilities to participate in sports and cultural activities thereby providing a platform through which persons with disabilities can develop and utilize their creative, artistic and intellectual potential. This is mainly done within institutions. The Government has signed various memoranda of understanding that espouse principles of inclusivity that have been clearly outlined including exchange of expertise, administrators and artists. To this end, the Government has adopted the Cultural and Heritage Policy, 2009 which sets priorities on how to deal with issues of culture and heritage. The Government has also developed flagship cultural-sporting programmes that have interactive activities to cater for the special needs of persons with disability across the country. With regards to encouraging persons with disability to participate in musical and cultural activities, the Government has established classes in the Kenya Music and Cultural Festival (KMCF) syllabus on the rights of persons with disability. The private sector has also developed programmes that target persons with special needs. One such institution is the Godown Arts Centre in Nairobi which trains performing artists with special needs.
280. Kenya participates in the Special Paralympics games that are held every four years which are organized by the Kenya Paralympics Sport Association. The Association runs sports programmes which are used to select athletes from the grassroots to the national level. In recognizing the need for teachers that can train persons with disabilities to enable them take part in these sports activities, Kenyatta University has established a training programme for teachers in Special Olympics and sports for persons with disabilities. Each class of disability participates in the same games, thereby ensuring that persons of disability are treated equally. The Government provides budgetary allocation and has given recognition and financial rewards for youth with disabilities who compete in international competitions.

## Article 31: Statistics and data collection

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

282. As a result of the study, the Government recognized that disability cuts across all sectors of development and should therefore be considered during national planning and development. The Government therefore continues to create an environment that is conducive for different players to enable them to incorporate disability issues into their policies and programs. The Government identified policy targets and stated 5 principles to guide its implementation and monitoring. These include the equalization of opportunities where persons with disabilities should be accorded opportunities on an equal basis through affirmative action; Mainstreaming – where persons with disabilities should be fully included in all aspects of life and their special needs addressed; Accessibility – where the provision of accessibility should be a cross cutting concern to all underlying consideration in the built environment, information and services; and with regard to Gender, that the policy should apply equally to both men and women, boys and girls with disabilities.
283. Some of the key findings of the survey indicated that 4.6% of Kenyans, which translates to approximately 1.7 million people, experience some form of disability. It also established that there are more persons with disabilities residing in the rural area as compared to urban areas. Presently, 80% of persons with disabilities live in the rural area, which translates to 1.4 million Kenyans. Other findings were that 15% of persons with disabilities are likely to be affected by environmental barriers on a daily basis and 3% on a weekly basis while 65% persons with disabilities regard the environment as a major problem in their daily lives.
284. Some of the causes of disability as per the Survey are listed in the table below.

Table 3.

Age group	Hearing Impairment	Speech Impairment	Visual Impairment	Mental Impairment	Physical Impairment	Self care Impairment	Other Impairment
		Impairment	Impairment	Impairment	Impairment	Impairment	Impairment
0-14	1.6	0.8	1.1	0.6	1.9	0.8	0.6
15-24	0.7	0.5	2.2	0.4	2.2	0.6	0.6
25-54	2.6	0.4	14.2	2.5 1	2.2	2.1	1.4
55+	4.8	0.8	20.6	2.4	25.8	3.4	1.6
Don't know	2.3	0.3	7.4	0.9	11.0	5.4	0.1

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

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

Table 4. Population by Province and Sex, 2009

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

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

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

Source: Kenya Population Census, 2009, Volume 2.

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



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

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

Source: Kenya Population Census, 2009, Volume 2.

## Article 32: International co-operation

287. Kenya has received immense international support that target and are geared towards improving the lives of persons with disabilities. For instance under the Ministry of Culture and Heritage has programmes where persons with disabilities in Kenya get opportunities to travel to foreign countries to enhance their skills.
288. With regard to housing, the Kenya Slum Upgrading Project in Nairobi has taken into consideration the challenges that face persons with disabilities. This project is being implemented by the Ministry of Housing and is supported by Habitat for Humanity.
289. Handicap International which is an independent international aid organisation working in situations of poverty and exclusion, conflict and disaster, has supported the UDPK. Handicap International receives funding from organizations such as USAID and European Union. Handicap International's support includes building capacity among DPOs with regard to general institutional capacity, advocacy, institutional strengthening and raising awareness on disability issues.
290. The European Union has also support to DPOs through the Non-State Actors facility that is available through the MoJNCCA. This has come in the form of technical assistance to the Disability Caucus on the Implementation of the Constitution (DCIC) which is a coalition of organizations of and for persons with disabilities.
291. The Open Society Institute (OSI) has also supported organizations in raising awareness among DPOs on reporting and monitoring mechanisms under the Convention on the Rights of Persons with Disabilities.



# DPOs Reports

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# Persons With Albinism In Kenya

## A. Introduction

1. Persons with albinism (PWA) in Kenya suffer terribly from pervasive myths and misconceptions about their condition. This negative public perception relegates most of them into isolation that locks them in a vicious cycle of poverty.
2. While Kenya has taken steps to improve the lives of PWA including the ongoing attempt to expressly capture albinism into its laws on disability, an affirmative action program in the public service and an attempt has been made to create a sunscreen distribution program, it remains to be seen whether these steps will be followed-through and concretized so that benefits are clearly seen in the lives of PWA.
3. Persons with albinism in the country continue to suffer from stigma and discrimination particularly in the education system where they are often mocked for their appearance and their low vision remains un-accommodated. The result causes a high dropout rate amongst PWA. This in turn leaves most of them un-skilled and un-equipped for jobs and relegates them to menial jobs, including jobs that expose them to the sun and subsequently to skin cancer which is the primary killer of persons with albinism in the region of Sub Saharan Africa.
4. On the extreme end of stigma and discrimination against PWA are physical attacks and subsequent impunity leaving perpetrators undeterred.

## B. Methodology

5. This report is written based on extensive research on the lives of PWA in Kenya. It is based on data gathered by UTSS and its agents on the ground. UTSS' agents have visited PWA who have been victims of attacks to interview them and their families, document their account of what happened.
6. This report is also based on written contributions from civil society groups based in Kenya including the Albinism Foundation of East Africa and Albinism Society of Kenya, both NGOs. Written contributions have also come from the Kenya National Commission on Human Rights, an active National Human Right Institute in Kenya. Some information have also come from Contributions from these bodies are classifiable as primary sources as well as extensive research using focus group discussions and work from experts in the field.<sup>1</sup>
7. Data from the media have rarely been relied on without additional confirmation from at least one contributor to this report.
8. Limitations: Regarding records of attacks, information on attacks reported here was received directly from victims by UTSS in 2013. No comprehensive follow up on these cases have occurred since. This is because there is no unified legal monitoring of these cases whether by the State or civil society. Local civil society groups are often ill-equipped and underfunded and therefore unable to carry out these necessary tasks. Comprehensive and unified information on records of attacks post 2013 is therefore unavailable and meagre at best.

## C. Albinism

9. Albinism is a rare, non-contagious, genetically inherited condition occurring in both genders regardless of ethnicity, in all countries of the world. Both the father and mother must carry the gene for it to be passed on even if they do not have albinism themselves.
10. The condition results in a lack of pigmentation in the skin, hair and eyes, causing vulnerability to sun exposure and bright light. Almost all PWA are visually impaired, with the majority being classified as "legally blind." Skin cancer is common amongst a majority of PWA living in the region of Sub Saharan Africa including Kenya.

## D. Albinism in Kenya

11. PWA in Kenya clearly stand out because nearly all others around them have a dark-pigmented skin tone. The result of this should not be underestimated because it means that PWA cannot hide even if they tried to and are therefore exposed to unusual attention and all the discrimination and stigma that comes with such attention everywhere they go.
12. There are no exact data or statistics on the number of PWA in Kenya. However, given the available range of estimates in the Africa region, the number of PWA in Kenya could be anywhere from thousands to tens of thousands.

13. There is a fundamental lack of understanding about albinism in Kenya. Myths are therefore the default school of knowledge and these myths are reinforced in the absence of adequate public awareness and education on the scientific and objective bases of the condition.
14. PWA face high challenges in receiving services within the public and private sectors. Access to basics such as education, health services and employment remains very difficult.

## E. Government Response

15. **Taking the disability approach:** There are ongoing efforts to amend the definition of disability in the current *Persons with Disability Act (2003)* to include persons with albinism. This is being done to oblige reasonable accommodation for persons with disabilities in key settings such as school and the workplace.
16. Also, in 2011 the government of Kenya commissioned the National Council of Persons with Disability and employed at least one PWA. This Council registers PWA and has a fund allocated to them.
17. **Sunscreen Program:** The government has launched a sunscreen program which aims to provide sunscreen to all PWA in Kenya. It is not clear how this is unfolding so far although some public hospitals are reported to have limited sunscreen available.
18. **Affirmative Action:** The constitution of Kenya provides that at least 5% of members of elected and appointed bodies should be persons with disabilities.<sup>2</sup> This has led to the appointment of a few high profile PWA including one Member of Parliament, Hon. Isaac Mwaura, one judge of the high court, Madam Justice Mumbi Ngugi and two county assembly representatives.

## F. Economic Social and Cultural Rights:

### Education

19. Families frequently neglect the education of children with albinism as they see their child with as a source of shame and believe their education is a waste of resources.<sup>2</sup>
20. Even when families take their child(ren) with albinism to school, they are sometimes turned away due to the myths and misconceptions held by the school. For example, the vision impairment of PWA has led to the assumption that they are all blind. This has frequently resulted in children with albinism being forced to enroll in special schools for the blind and forced to learn braille which in turn affects their employability.
21. In mainstream schools, children with albinism tend to drop out due to the absence of reasonable accommodation. The effect being low education levels and the subsequent loss of the necessary social or economic tools to live productive lives.
22. This is a fundamental issue that ought to be addressed, taking into account the correlation between education and acquisition of employment. Lack of proper education and skills has left many PWA living in abject poverty and having to depend on their relatives for sustenance.

### Social Issues: Name-Calling, Bullying and Discrimination

23. Persons with albinism in Kenya, both in schools and on the streets, often suffer from incessant teasing and bullying from classmates. Some of these names are used by teachers and other persons in authority causing grave demoralization and psychosocial issues in children and students as a whole.<sup>3</sup>
24. These names are often deeply derogatory and dehumanizing. These include names such as “*dili*” which means a monetary deal that can be earned from ritual killing of the PWA or “*Zeru Zeru*” which refers to mystical or ghostlike beings. Another common term is “*mzungu*” which is a name typically used to refer to Caucasians. All of these names show a lack of understanding about albinism and in the former examples, a general perception of PWA as lesser beings.
25. The effect of name-calling should not be under-estimated as it is pervasive across Kenya, even amongst figures of authority and agents of the state.<sup>4</sup> As stated by a Kenyan woman with albinism:  
  
“People just see you on the street [and say] ‘its that albino!’ instead of thinking ‘that is Jayne’...[because] they don’t see us like a person [sic] ; ... I’ve been a victim of discrimination, I have been a victim of not getting resources, and , I’ve been a victim of ignorance ...You are called money or walking bank notes.<sup>5</sup>”
26. Even the rare PWA who has managed to beat the odds and become a contributing member of society has not been spared from publicly accepted derision. For example, Lady Justice Judge Mumbi Ngugi a woman with albinism recently appointed as Justice of the High Court was derided in public by a politician who attacked the fact that she had albinism.
27. A member of parliament with albinism appointed relatively recently, Hon. Isaac Mwaura, was also mocked by a fellow member of parliament. The words of mockery were directed at Hon Mwaura’s wide-brimmed hat which PWA tend to use as a shield from the sun.

<sup>2</sup> Article 54(2).

28. These incidents directed against successful PWA shows a clear indication of low awareness about albinism in Kenya and the amount of public awareness work that remains to be done.
29. In public settings, PWA must constantly endure the awkward gawks, stares and distances people form away from them. These public responses are linked to the myths and misconceptions about them including the erroneous myths that they are accursed and that they are contagious. Further, these public responses, amongst other social factors mentioned above, mean that PWA tend to prefer a private life rather than engaging with the public. A private life of self-seclusion guarantees less public abuse but often consigns PWA to isolation, a failure to integrate into their society and poverty.

## Employment

30. While the constitution of Kenya enshrines affirmative action by providing that at least 5% of elected and appointed bodies are persons with disabilities, this has not been realized.<sup>6</sup> In most cases, PWA tend to be passed over for persons with other types of disabilities as most employers, government included, do not regard them as properly belonging to the category of persons with disabilities.
31. Persons with albinism also suffer double discrimination in the field of employment as employers assume that their capacity to deliver within the workplace is below par. Sometimes they may also be subject to conditions that are hostile to their condition such as working directly under the hot sun or bright light which puts them at risk of skin cancer and /or further eye impairment.<sup>7</sup>

## Health

32. The government has launched a free sunscreen program which aims to provide sunscreen to all PWA in Kenya. This is highly commendable because skin cancer is the number one killer of PWA in the Sub Saharan Africa region. Sunscreen distribution could reverse this trend. Yet, information about the program is sparse and whether the program has officially taken effect is unclear at this point.

## G. Life, Security of Person, Torture and other Cruel Inhuman and Degrading Treatment

33. Twelve attacks have been documented against PWA in Kenya. Some of them qualify as torture given the extreme pain inflicted on the victim and the intent of the perpetrator. These attacks are discriminatory, witchcraft based beliefs that the body parts of a PWA can bring wealth and good luck when used in potions or amulets.<sup>8</sup>
34. Most attacks against PWA go unreported due to the `code of silence` and overall secretive nature of witchcraft.<sup>9</sup>
35. Further, attacks go unreported because the body parts of PWA are sold on a black market for thousands of dollars. Specifically, a limb can be sold for thousands of US dollars and a "complete set" of body parts goes for upwards of \$75,000.<sup>10</sup> In a country where the average annual income (using GDP per capita) is roughly \$1,800 US dollars per year, the only people that can afford such prices are likely the rich elite who are also better placed to purchase the silence of perpetrators and police alike.<sup>11</sup>
36. These following cases of attacks in Kenya and are reported cases only. We believe that there are possibly more attacks that remain unreported.

## Murdered Victims

37. We have records of the following PWA murdered for their body parts in Kenya. Most of these cases were confirmed by UTSS. *(Except where a case was widely reported in the media and has effectively become a matter of public record, the victim's surname has been deleted to protect his or her identity):*
  - a. **ESTHER MORAA:** On August 2, 2010, a 4 month old baby girl with albinism by the name of Esther Moraa was killed by her mother, Sara Kemunto Nyabuto, age 23, at Bokimweri sub location in Nyamache district, Kenya. The father was threatening divorce and had convinced her to kill the baby since she was born with albinism, hence a bad omen and a disgrace to the family. The mother has been sentenced to serve one year in jail in a Gucha court by Ogembo Resident Magistrate Richard Koech saying "the accused killed her child for being an albino."<sup>12</sup>
  - b. **MARGARET K.:** In January of 2008, Margaret was abducted by three men. Her body was found the following morning with her legs, genitals, breasts and hands removed.<sup>13</sup>
  - c. **JOYCE M.:** On Sunday, March 4th, 2012 Joyce`s mother, Mrs. Mzungu took her daughter Joyce with her to church for the evening prayers. After prayers Mrs. Mzungu couldn't find Joyce. She approached the pastor to enquire on the whereabouts of Joyce since he had ordered all children to be taken out of the church. The pastor responded by telling her to be patient and wait for Joyce by the rock outside the church and keep praying. The evening became darker Joyce`s mother couldn't wait any longer, she went to the neighborhood looking for Joyce but there was no success. The next day, Monday, the Pastor called Mrs. Mzungu stating he has Joyce and they should meet on Thursday afternoon. That Thursday afternoon all the villagers gathered at the church. Instead of the Pastor coming he sent his assistant, which provoked the villagers to beat him. The Pastor sought police protection which triggered the villagers to burn down the church. Up to today Joyce has never been found. The pastor relocated to another place.<sup>14</sup>



## Survivors of Attacks & Attempts of Attack

38. We have records of the following persons with albinism attacked with the aim of using their body parts. They survived the attack:

- a. **UNKNOWN:** On March 15, 2013, a 7 year old boy with albinism in Embu, Kenya managed to escape relatives who tried to sell him for ritual purposes. He was kidnapped by his uncle together with other relatives who attempted to take off to an unknown destination where they were to meet the buyers. The boy said that the kidnappers threw him out of the window of a moving vehicle when he screamed for help and was rescued.<sup>15</sup>
- b. **UNKNOWN:** On August 16, 2011 a near death experience occurred for a girl with albinism when her father was caught in the act and charged with human trafficking. The arrest revealed that he was in the process of selling his daughter to a Tanzanian buyer for an undisclosed amount of money. This case was still before the courts on the date of the newspaper report.<sup>16</sup>
- c. **ROBINSON MUKWHANA:** Robinson used to work as a night guard at a shop in Kitale town and his best friend Nathan Mutai had promised to look for a better paying job for him in Nairobi. On 12th August 2010 Nathan tricked Robinson that he found a job for him in Tanzania and that they had to go there together. Robinson complied. Once in Tanzania, Nathan tried to sell Robinson in secret by negotiating with willing buyers. Unbeknown to him, the willing buyers were police undercover. Nathan was arrested and charged. His trial occurred after which he was sentenced to serve in Jail. Robinson was taken back to Kenya a free man but psychologically disturbed.<sup>17</sup>
- d. **BETTYLYN A.:** In the year 2008 “Betty” was two years old and used to love playing with umbrellas. One day in a market a stranger enticed her with an umbrella and due to her love of umbrellas she followed the stranger. Before she could leave the market with the stranger, a neighbor who knew her took Betty back to her mother. This incident caused her mother to take Betty to school earlier than the recommended age for her safety.

In 2011 while Betty was leaving home to school with other children, they noticed some men trailing them. The kids reported the incident to the school management. When her mother heard of the occurrence she decided to move to secretly to another place to find privacy and safety for her daughter.

In a third incident in September of 2012 Betty was playing with other kids when a car with tinted windows parked outside their residence. They started sending passing-by kids to call for them the “Mzungu” (a reference to Betty being a PWA). One of the kids who was sent immediately reported to Betty’s Mom. When the occupants of the car saw Betty’s Mom approaching, the car sped off before she could check the number plate. She moved to another residential area and enrolled Betty for boarding school.<sup>18</sup>

- e. **HENNERINAH BEATRICE:** Beatrice runs a small business by the roadside near her home. One evening in March 2012 while walking home from her business with a friend, they noticed a car stopped abruptly in front of them and started reversing in their direction. Beatrice ran into a nearby cassava plantation and two men jumped out of the vehicle and ran after her. They didn’t bother with Beatrice’s friend and when she realized they were in pursuit of Beatrice she ran towards her home and informed neighbors. The neighbors were able to chase off the men in the car.<sup>19</sup>

## H. Impunity

39. Very little information is available as to the legal status of the above cases. The monitoring of court proceedings concerning these crimes by civil society actors is very rare, and associations of PWA often lack the financial means and expertise to conduct legal monitoring activities.
40. Aside from the widely published case of Robinson Mukhwana in 2010 very little is known on the legal proceedings that should have occurred in every reported attack and murder.
41. The impact of Impunity is twofold. First, it creates no deterrence for possible perpetrators. Second, it increases insecurity and fear amongst PWA. Without prosecution, PWA are unable to live without fear, including fear of entering proper relationships which they need to build an adequate social ring of protection and support.

## I. Recommendations

### 42. Economic, Social and Cultural Rights

- a. **Awareness-Raising:** Government should intensify awareness-raising campaigns to educate the public on albinism as a way of curbing prejudice, stigma, discrimination and attacks
- b. **Education:** Teachers and social welfare workers need to be trained on dealing with children with albinism in the classroom, and support NGOs that provide such training services
- c. **Employment:** The constitutionally-protected affirmative action to hire persons with disabilities which has now been extended to include PWA needs to be enforced.

- d. **Healthcare:** Government, particularly the Ministry of Health, should ensure and facilitate programs to enhance health for PWA and prevent early death due to skin cancer. These include :
  - i. ensuring that the announced sunscreen program is effective;
  - ii. supporting initiatives for producing sun protection cream locally;
  - iii. permitting free skin cancer treatments at all hospitals across the country;
  - iv. providing free or low cost visual aids so that PWA can be accommodated in their classrooms.

#### 43. Life, Security of Person, Torture and Other Cruel Inhuman and Degrading Treatment

- e. Adopt positive and specific measures to protect and preserve the rights to life, to security of person and the right not to be subject to torture or ill-treatment;

#### 44. Impunity

- f. Increase efforts to put an end to the various forms of crimes affecting PWA, strengthen the legal response to such crimes and bring perpetrators to justice through prompt and impartial investigations; and
- g. Guarantee victims' right to justice and redress, and provide medical, psychosocial and legal support to victims of attacks.

#### (Endnotes)

- <sup>1</sup> The most helpful data in terms of qualitative & quantitative measures came from Hannah M. Njenga, Publics Perceptions of Albinism And Their Impact On Persons With The Condition: A Case Study Of Nairobi City (January 2011) as cited in AFEA, Rapid Study on The Extent of Marginalisation of Women with and Affected by Albinism in Kenya. (in partnership with the Ford Foundation, Kenya). [Henceforth "Njenga Study, 2011]
- <sup>2</sup> Persons with Albinism, UN Preliminary Report of the United Nations High Commissioner for Human Rights, 12 September 2013 ["UN Report"], at paragraph 68.
- <sup>3</sup> Njenga Study, 2011, note 1 above, at p.14.
- <sup>4</sup> See note 5 below.
- <sup>5</sup> See On Beauty Webisode: Jayne Waithera, YouTube, accessed May 28, 2014, <http://www.youtube.com/watch?v=aFfU8czbUoE>
- <sup>6</sup> Article 54(2).
- <sup>7</sup> Njenga Study, 2011, note 1 above, at p.11.
- <sup>8</sup> Definition taken from article 1 of the Convention Against Torture and the assistive document for interpretation: Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies, OHCHR, at p.3 [http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf), Accessed May 21, 2014.
- <sup>9</sup> "Code of silence" is from Simon Fellows, "Trafficking Body Parts in Mozambique and South Africa (2008)," Human Rights League, Mozambique, <http://www.scribd.com/doc/23729111/Trafficking-Body-Parts-in-Mozambique-and-South-Africa-Mozambique-Human-Rights-League>, accessed August 3, 2010.
- <sup>10</sup> International Federation of Red Cross and Red Crescent Societies, Through Albino Eyes (Advocacy Report), IFRC, accessed May 27, 2014, <http://www.ifrc.org/Global/Publications/general/177800-Albinos-Report-EN.pdf>
- <sup>11</sup> Facts on GDP is from CIA World FactBook, accessed April 7, 2014, <https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html>. On the strong likelihood of the involvement of the rich in the economy of attacks against persons with albinism, see orbiter dicta comments in Masumbuko et al v. Tanzania (United Republic of), Criminal Appeal No. 318, 319 & 320 of 2009 (23rd September, 2009) per Ramadhani C.J., at p.23 (second to last paragraph).
- <sup>12</sup> Also see "Woman kills albino child to avoid bad omen," Standard Digital, August 25, 2010, accessed June 26, 2013, <http://www.standardmedia.co.ke/?articleID=2000016790&pageNo=1>
- <sup>13</sup> Agent of Under The Same Sun in Kenya who visited and interviewed survivors of the victim (July, 2013).
- <sup>14</sup> Agent of Under The Same Sun in Kenya who visited and interviewed survivors of the victim (July, 2013).
- <sup>15</sup> See, "7 Year Old Escapes Deathly Ritual," Citizen News, March 15, 2013, accessed June 26, 2013, <http://www.citizennews.co.ke/news/2012/local/item/8667-7-year-old-escapes-deathly-ritual>.
- <sup>16</sup> See, "Child Traffickers on the Prowl," The Standard, August 17, 2011, accessed June 26, 2013, [https://www.standardmedia.co.ke/?articleID=2000040932&story\\_title=child-traffickers-on-the-prowl&pageNo=1](https://www.standardmedia.co.ke/?articleID=2000040932&story_title=child-traffickers-on-the-prowl&pageNo=1)
- <sup>17</sup> Source: UTSS Agent, Kenya, July 2013. See also: "Kenyan arrested by Tanzania police over 'albino sale'," BBC News, August 17, 2010, accessed June 26, 2013, <http://www.bbc.co.uk/news/world-africa-11001791>.
- <sup>18</sup> UTSS Agent, Kenya, July 2013.
- <sup>19</sup> UTSS Agent, Kenya, July 2013.

# Users and Survivors of Psychiatry-Kenya

## 1. Introduction

1. Users and Survivors of Psychiatry in Kenya (USP-Kenya) is a non-governmental organization that was established and registered in Kenya in the year 2007.
2. It is a membership organization whose major objective is to promote and advocate for the rights of persons with psychosocial disabilities (mental health conditions) in Kenya. The organization is affiliated with the World Network of Users and Survivors of Psychiatry and its African affiliate the Pan-African Network of People with Psychosocial Disabilities.
3. USP-Kenya has been operating in Kenya for the past 7 years and has transformed the lives of persons with psychosocial disabilities in Kenya especially through influencing policy and legislation, rights-based advocacy and also through participatory public education programs using different media such as TV, radio, newspapers, magazines and internet on mental health issues. The organization has also participated in international conferences and other forums.
4. USP-Kenya submits this brief to the CRPD committee in relation to the upcoming review of initial reports of States Parties report in line with article 35 of the UNCPRD during which Kenya will be reviewed in August 2015. To this end, USP-Kenya submits the following information on implementation of the rights of persons with psychosocial disability in Kenya in light of the List of Issues to the initial report of Kenya 2015. In its submission, USP Kenya recognizes that all rights are equally paramount as provided for in the UN Convention on Rights of Persons with Disabilities (UNCRPD), indivisible and interdependent. The organization however wishes to lay emphasis on key issues that affects persons with psychosocial disabilities disproportionately and responds to those particular issues in the list of issues. This brief therefore focuses on Paragraph 1, 11, 14, 27 and 23 of the List of the Issues
5. We would like to appreciate the Technical support of Ms Miriam Nthenge from the National University of Ireland Galway in the preparation of this brief.

### Information on Implementation of the UNCRPD at the national Level

#### A. Purpose and general obligations (arts. 1-4)

##### Paragraph 1 of the list of issues

6. The CRPD committee requested for information on harmonization of laws specifically on the concept of disability, removal of derogatory terms referring to persons with disabilities such as 'unsound mind', mental incapacity" and "mental infirmity" specifically in the Constitution, Local Government Act 2010, the Election Act 2011 and the Marriage Act 2014.
7. Article 260 of the Constitution of Kenya 2010 and Section 2 of the Persons with Disabilities Act 2003 defines disability to include those with mental or psychological impairment. However due to lack of awareness, psychosocial disability or mental disability is still interpreted as a medical condition especially when it comes to tax exemption. Initially people with psychosocial disability were denied tax exemption forcing them to appeal to Kenya Revenue Authority with the support of Kenya National Commission on Human Rights (KNCHR) and National Council for Persons with Disabilities (NCPWD). Currently, positive progress has been recorded and so far no tax exemptions have been denied. This can be attributed to the interventions by KNCHR, NCPWD, USP-K and the National Gender and Equality Commission on Equality (NGEC) which is currently creating awareness and harmonising tax exemptions.
8. Regarding harmonisation of legislation and removal of derogatory terms, the Constitution and subsidiary legislations enacted 2011-2015 continues to use derogatory terms. Positive progress can only be reported on the Persons with Disabilities Amendment Bill 2015 which if passed will repeal the Persons with Disabilities Act, 2003. The Bill has proposed use of neutral language for removal of public officers from office. Section 12 (viii) provides that a member of the Council shall be removed from the Office 'if one is unable or unfit to discharge his or her functions'. Positive change can also be reported with appointment of the first person with psychosocial disability as a member of the National Council for Persons with Disabilities.

The Committee should however take cognizance of the fact that these positive strides are only in disability specific legislations or practices in organization requiring appointment of persons with disabilities and not the mainstream legislations which are the majority. The ongoing trend of use of derogatory language in mainstream legislations which in most cases are used in clauses related to appointment of members of board of public bodies is worrying. Article 54 (2) of the Constitution provides for 5% of members of elective and appointive bodies be persons with disabilities. Use of such derogatory terms disproportionately marginalizes persons with psychosocial disability for such appointments which is inconsistent with article 27 on work and employment of the UNCRPD.

#### **Recommendations to CRPD committee**

**We urge the Committee to recommend to the State to increase awareness raising programmes to both state and non-state actors on rights of persons with psychosocial disability.**

**We also urge the Committee to recommend to State to initiate amendment measures of all legislations that uses derogatory terms.**

#### **B. Specific rights**

##### **Paragraph 11, Paragraph 14 and Paragraph 27 of the List of Issues**

9. The Committee requested for information on steps being taken to repeal legislation and practices that restrict legal capacity on the basis of impairment and to establish supported decision making regimes. The committee also requested for information on steps to repeal laws and practices that permit the detention of persons based on actual or perceived impairment/disability, including “unsound mind”.
10. To this end, a number of initiatives have been realized. The Kenya National Commission on Human Rights (KNCHR) which is the national human institution in Kenya in 2012 with support of the Open Society Initiative for East Africa, conducted a research on ‘*how to implement article 12 of the UNCRPD in Kenya- A briefing Paper (2013)*’ in which among other Disabled People Organizations, USP- Kenya participated as a member of the technical committee. The briefing paper provides details on existing laws which contravene article 12 and enabling legislations as well. Laws that introduce deprivation of legal capacity and require amendment or repeal include: Constitution of Kenya 2010, Art 83 (1) b, 99 (2) e, 193 (2) d; Matrimonial Causes Act, Section 8; Criminal Procedure Act, Section 162, 163, 164, 280; Evidence Act, section 125; Marriage Act 2014, Section 11; HIV and AIDs and Control, Section 22 and the Law of Succession Act, Section 5.
11. The research also documented on- going good practices at the national level such as the peer groups that USP-Kenya runs as forms of support. It also highlighted local models of supported decision making which involves peers, networks of friends and also families.
12. The initiative by KNCHR on article 12 also includes joint and separate activities to create awareness on article 12 to members of the justice system including judges, police and local administration. USP-K has been involved in advocacy initiatives towards raising the right to legal capacity for example by training staff in the Judicial Training Institute. These initiatives are mainly aimed at promoting positive attitude in society and enhancing the capacity of members of the justice system to understand the concept of legal capacity. From these programmes, progressive judgements are being realised. In a recent judgement HCCR APPEAL No. 17 OF 2014 Wilson Morara Siringi v. Republic of Kenya, one of the judges who participated in the awareness programmes made reference to article 12 of the UNCRPD.
13. The Committee should however note that while there are positive promotional initiatives, initiatives to repeal and amend laws that allow deprivation of legal capacity and deprivation of liberty are yet to be realised. The Mental Health Bill 2014 which is the law meant to repeal the current mental health act 1989 remains a draft to date. The Bill has enabling provisions in relation to implementation of article 12. It recognizes people with psychosocial disability as having legal capacity, the need for provision of support for free, prohibits exploitation, abuse, torture and degrading treatment and prohibits chemical constraint.
14. These provisions are however contradicted by other clauses that are inconsistent with article 12. Section 16 (3) and 16 (4) of the proposed bill introduces guardianship by allowing court to determine when one can loses legal capacity and appointment of legal representative to makes decision on behalf of. Section 31 on involuntary admission allows deprivation of liberty. The section also adopts broad threshold for involuntary admission based on severity of a mental illness, likelihood of imminent harm to oneself or others and when treatment can only be given by way of admission to the health facility. This is very subjective and open to abuse and is inconsistent with both article 12 and 13. Part IX introduces guardianship in management of property by authorising a spouse, relative or any person of age to apply for management of property of a person with mental illness. This is inconsistent with article 5 (2) of article 12.

## Recommendations to CRPD Committee

The Committee should recommend the following to the state:

- Hasten the process of repealing and amending laws that contravene article 12 including the Constitution of Kenya, Marriage Act 2014, Evidence Act, Law of Succession Act, HIV & AIDS and Control Act and the Matrimonial Causes Act
- Hasten the process of finalizing the Mental Health Bill 2014 taking in to cognizance the concerns raised on contradicting provisions including section 16 (3), 16 (4), Section 31 and Part IX.
- To allocate specific funding to Disabled Person Organization of persons with psychosocial disabilities to implement article 12 related activities specifically the technical and financial support to enhance the establishment of peer support groups.
- To support the on-going initiatives on article 12 by the Kenya National Commission on Human Rights by enhancing its financial capacity.

## Paragraph 23 of the List of Issues

15. The Committee requested for more information on the plans by the Health Services Sector to scale up mental and psychosocial health care and treatment services across the country.
16. Community based services and alternatives to mental health services are yet to be introduced in Kenya despite several studies by KNCHR '*Silenced Minds: The systemic neglect of the mental health system in Kenya*' (2011) and the Independent Legal Medical Unit (IMLU) '*The State of Mental Health in Kenya; Victimization and Torture Among Persons with Mental Disabilities*' (2013) calling for introduction of such services by the government. According to the research by KNCHR in 2013 on article 12, lack of choices or alternatives has forced many persons with psychosocial disability to accept forced treatment as the only available alternative. Kenya lacks enough mental health facilities and alternative to medical facilities. The only specialised referral hospital is the Mathari hospital which is ill equipped. Level 5 hospitals which mainly have mental health facilities at the County level have similar inadequacies. Part 2 of the Fourth Schedule of the Constitution of Kenya 2010 on functions of the counties devolves primary health care. This obliges County government to ensure health facilities and services are provided efficiently and sufficiently within each county. This can be used as one of way of introducing community based services. However, current health reforms at the County level have not been realigned to include mental health services. Recent reports by media indicates that persons with psychosocial disability continue to be inhumanely treated in hospitals, lacking basic amenities within the hospital such as bedding and remain locked up.<sup>2</sup>

## Recommendations to the CRPD Committee

The Committee should recommend the following to the State:

- Ensure that County governments allocate funds for community based mental health services and alternatives in the on-going health reforms.
- Facilitate and ensure that health professionals are trained on rights of persons with psychosocial disability including on access to highest attainable standards of health and right to free and informed consent.
- Ensure regular monitoring of mental health institutions by the National Gender and Equality Commission with the participation and inclusion of representatives organisations of persons with psychosocial disabilities.

2 Winnie Atieno, For Mentally ill patients in Kisumu, it's a hard life available at <<http://www.nation.co.ke/counties/kisumu/For-mentally-ill-patients-in-Kisumu/-/1954182/2814030/-/n9jxid/-/index.html>>



# Joint response to the List of Issues on Kenya's report to the UN Committee on the Rights of Persons with Disabilities

## I. Introduction

1. This joint report focuses on Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It also provides specific information on the interaction between this and other rights including access to justice (Article 13), protection of physical and mental integrity (Article 17), respect for family life (Article 23), access to healthcare (Article 25), and political participation (Article 29). Information is also provided in respect of Article 31 on statistics and data collection.
2. The Mental Disability Advocacy Centre (MDAC) is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form.
3. Users and Survivors of Psychiatry Kenya (USPK) is a national membership organisation whose major objective is to promote and advocate for the rights of people with mental health issues/conditions (people with psycho-social disabilities). USPK is affiliated with the World Network of Users and Survivors of Psychiatry (WNUSP) and the Pan-African Network of People with Psycho-social Disabilities (PANPEP).<sup>2</sup>
4. The Kenya Association of the Intellectually Handicapped (KAIH) is a national, family based organisation of self-advocates who aim to empower people with intellectual disabilities. KAIH promotes their human rights within society through meaningful participation, education, advocacy, empowerment and information exchange. KAIH is a member of Inclusion International which is the global movement of people with intellectual disabilities and their families.
5. Herbert Smith Freehills is a leading global law firm collaborating with MDAC and its Kenyan partners and providing pro bono legal assistance to support MDAC's "I'm a Person" campaign in Kenya. This three-year legal advocacy initiative seeks to ensure that: (a) courts recognise the right to legal capacity for people with intellectual disabilities and people with mental health issues, provide remedies in individual cases, and advance jurisprudence; and (b) governments are aware of human rights violations and take steps to ensure implementation of international human rights laws and standards in relation to legal capacity.
6. Mburugu & Kanyonge Associates Advocates is a private law firm in Kenya working in several fields, including public interest litigation and human rights. MDAC is currently discussing strategies with M&KA and how it can collaborate with MDAC's Kenyan partners in the "I'm a Person" campaign in Kenya.

<sup>2</sup> Further information is available at <http://www.uspkenya.com/>.

## II. Background

7. Article 12 guarantees the right to equal recognition before the law for people with disabilities. In April 2014, MDAC, USPK and KAIH published a report entitled *The Right to Legal Capacity in Kenya*, the culmination of over three years of extensive field and desk-based research conducted with people with intellectual disabilities and people with mental health issues.<sup>3</sup> It analyses Kenya's laws, policies and practices on the exercise of the right to decide for people with mental disabilities, and puts forward 40 detailed testimonies from people with disabilities themselves, and their families and carers. It provides extensive information on their experiences in different areas of life including political participation, work and employment, health care, access to justice, marriage and divorce, issues associated with property and land. The report was annexed to our previous submission for the 3rd Pre-sessional Working Group.
8. This report provides further information based on list of issues adopted by the Committee on the Rights of Persons with Disabilities (CRPD Committee) on 22 May 2015.

## III. Article 12: Equal recognition before the law

9. The CRPD Committee requested the Kenyan government to report on steps taken to repeal "legislation and practices that restrict legal capacity on the basis of impairment and to establish supported decision-making regimes to secure the right to exercise legal capacity, and the right to decide in all areas of life".<sup>4</sup>
10. The Kenyan government has noted that among duty bearers in Kenya, Article 12 of the CRPD is one of the most misunderstood provisions of the Convention.<sup>5</sup> These duty bearers include government officials from the legislative, executive and judiciary. There have been few attempts to provide information to government officials about the core importance of Article 12. Those that have taken place have been organized by civil society, such as the event to launch "Legal Capacity in Kenya" in Nairobi in April 2014. Two Kenyan judges from the High Court attended and collected copies of the report to distribute to their colleagues.
11. The Kenya National Commission on Human Rights (KNCHR) organised a legal capacity briefing event and invited judges to this in March 2014. Judge Majanja, whose judgment in HCCR APPEAL No. 17 of September 2014 in *Wilson Morara Siringi v. Republic of Kenya* is cited as a progressive understanding of Article 12 by Kenyan courts.<sup>6</sup> Justice Majanja participated in both events. In his judgment, Justice Majanja stated that "I would be remiss if I did not mention that the approach taken by the prosecution and the learned magistrate is that the complainant [a woman with an intellectual disability] is an object of social project rather than a subject capable of having rights including the right to make the decision whether to have sexual intercourse. The approach is inconsistent with the provisions of Article 12 of the Convention on the Rights of Persons with Disabilities..."<sup>7</sup> He also noted that labelling a person as "mentally retarded" represents "an affront to the right of dignity protected by Article 28 of the Kenyan Constitution".<sup>8</sup>
12. Such progressive judgments should be given due recognition, whilst recognising that such an approach is currently the exception rather than the rule. Even though the judgment did not expressly mention the need to provide access to decision making support for people with disabilities, or to help others understand their decisions, it is the obligation of the state to provide such support.
13. Formal guardianship through court or administrative processes occur less commonly than informal restrictions on decision-making by families, friends and communities, and based on paternalistic stereotypes about people with disabilities in Kenyan society. Where a person has an impairment (particularly people with intellectual impairments, or those with mental health issues), decisions are commonly made for them on a substitute and informal basis by family and other community members.<sup>9</sup> To combat this problem, it is essential that the Government take steps to raise awareness of the decision-making rights of people with disabilities, and particularly those with intellectual disabilities or mental health issues, in line with Article 8, CRPD.
14. Kenyan legislation also allows for partial and full restriction of the right to legal capacity through a court process.<sup>10</sup> Section 107 of the Children's Act allows guardianship of a child to extend beyond the age of 18 years in cases where the child has a "mental or physical disability =or an illness what will render him incapable of maintaining themselves or property without the assistance of a guardian after his eighteenth birthday".<sup>11</sup>
15. A new Mental Health Bill published in 2014 states that "persons with mental illness shall enjoy legal capacity on an equal basis with others".<sup>12</sup> It also states that "the Government shall provide support to enable persons with mental illness to exercise their legal capacity."<sup>13</sup> Yet, it was concerning to note that the Bill continued to maintain the possibility for "persons with mental illness" to have their legal capacity restricted by a court process,<sup>14</sup> which would result in the appointment of a "personal representative to manage his or her affairs".<sup>15</sup>

3 MDAC, USPK and KAIH, *The Right to Legal Capacity in Kenya*, (Nairobi and Budapest: MDAC, 2014), available online at [www.mdac.org/Kenya](http://www.mdac.org/Kenya).

4 Committee on the Right of Persons with Disabilities, List of Issues of the Committee: Kenya, 22 May 2015, CRPD/C/KEN/Q/1, para. 11.

5 Committee on the Rights of Persons with Disabilities, Replies to the List of Issues: Kenya, 10 July 2015, CRPD/C/KEN/Q/1Add.1.

6 Judgment available online at: <http://kenyalaw.org/caselaw/cases/view/101502/>.

7 Ibid., at para. 15.

8 Ibid., at para. 16.

9 Supra note 2, at p. 6.

10 Mental Health Act 1991 (Cap 248), s.26.

11 Children Act 2001 (Cap 141), s. 107(2).

12 Mental Health Bill 2014, s. 17(1).

13 Ibid, s. 17(2).

14 Ibid, s. 17(3).

15 Ibid, s. 17(4).

16. The Bill was introduced to the National Assembly in June 2014 and we understand that it is currently under consideration by a National Assembly committee. Stakeholders in Kenya have also informed us that section 26 of the new Persons with Disability Bill 2015 will recognise the right to legal capacity. While the Kenyan Government's response to the list of issues has not mentioned these steps, the Kenyan government should ensure that any future legislative amendments fully and expressly recognise the right to legal capacity for people with disabilities as well as their right to access support to exercise their legal capacity. Substitute decision-making mechanisms, such as the personal representative scheme mentioned above, should be removed where they fail to give effect to the will and preferences of persons with disabilities.

#### Recommendations (Article 12)

- i. **Repeal s. 26 of Mental Treatment Act 1989 and s. 107 of the Children's Act 2001 which allows for deprivation of legal capacity. Ensure that any future mental health or disability legislation provides equal recognition of the right to legal capacity to all people with disabilities. People with intellectual disabilities and people with mental health issues must be closely consulted and involved in future law reform.**
- ii. **Both the national Government and the county authorities should conduct regular community awareness-raising on the right to decide for people with intellectual disabilities and people with mental health issues.**
- iii. **The Government should roll out nationwide training and capacity building for judicial and executive officers on the right to legal capacity, particularly in relation to people with intellectual disabilities and people with mental health issues.**
- iv. **The Government should invest in supported decision making pilot projects in communities in Kenya, with the close involvement of people with disabilities and their representative organisations.**

## IV. Article 13: Access to justice

17. Article 13 of the CRPD guarantees people with disabilities effective access to justice on an equal basis with others. They should be able to benefit from procedural and age-appropriate modifications or adjustments to facilitate their participation in any legal proceedings (criminal, civil, administrative, regardless of the trial stage) as victims, witnesses, plaintiffs or defendants. The CRPD Committee has stressed that people with disabilities should be enabled to participate in proceedings as subjects of rights and not objects of protection.<sup>16</sup>
18. The Kenyan Civil Procedure Act and Civil Procedure Rules objectify people considered to be of "unsound mind" by requiring them to bring legal actions through a next friend, or to defend such actions through a guardian ad litem.<sup>17</sup>
19. Kenya's Constitution guaranteed the right to access justice (Article 48), fair trial and public hearing (Article 50 and Article 50(m)) and protects the right for citizens to initiate court proceedings when their rights are violated or threatened (Article 22(1) and 22(3)(b)). However, people with intellectual disabilities and people with mental health issues (including those labelled as being of "unsound mind" or "mentally infirm") have no effective way to receive direct access to justice. In addition there are no specific legal safeguards in place to ensure that such persons are protected against unsolicited interference from family members or others who prevent them from seeking justice. Very little or no support is available to people with intellectual disabilities and people with mental health issues to access justice.
20. The Kenyan Government has stated that the few people with intellectual disabilities or mental health issues who access courts as victims and/or witnesses in criminal cases face a number of barriers, including procedural hurdles to accepting as valid the testimony or evidence submitted by them. They state that: "[t]heir evidence is considered to lack credibility usually leading to dismissal of cases".<sup>18</sup> The Government has promised to address this challenge through the Evidence Act 2012 (Revised 2014). The Revised Act states that "[a] mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the question put to him and giving rational answers to them".<sup>19</sup>
21. This provision allows for the evidence of people with intellectual disabilities and people with mental health issues to be discredited, or not given appropriate weight. No additional measures of support are envisaged to enable people with disabilities to provide valid evidence, nor are there provisions for procedural, age-appropriate or reasonable accommodations in courts.
22. MDAC discussion with East African Lawyers show that lawyers and judges rarely ensure that court procedures are adapted, for example through the modification of questioning. Lawyers, especially during cross examination, often pose multiple, negative and leading questions which have the effect of confusing witnesses, or creating anxiety to witnesses with intellectual disabilities or mental health issues.<sup>20</sup> Research shows that this is also common in other jurisdictions.<sup>21</sup>

16 CRPD Committee, Concluding Observation of the Committee: China, 15 October 2012, CRPD/C/CHN/CO/1.

17 MDAC, USPK and KAIH, The Right to Legal Capacity in Kenya, (Budapest and Nairobi: MDAC, 2014), p. 47. The Civil Procedure Act 2012 (Cap 21) at s. 93 states that: "In all suits which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the court by the next friend or guardian for the suit, have the same force and effect as if such persons were under no disability and had given consent or made such agreement." Order 32 of the Civil Procedure Rules 2012 treats "persons of unsound mind or mental infirmity" in the same way as minors who are a party to civil suits (Order 32, rule 15). The rules state that "[w]here a suit is instituted by or on behalf of a minor [or person of unsound mind or mental infirmity] without a next friend the defendant may apply to have the suit dismissed with costs to be paid by the advocate or other person by whom it was presented" (Order 32, rule 2(1)). The court is also empowered to appoint a guardian ad litem on behalf of such persons (Order 32, rule 3(1)).

18 Committee on the Rights of Persons with Disabilities, Replies to the List of Issues: Kenya, 10 July 2015, CRPD/C/KEN/Q/1Add.1, para. 128.

19 Kenya Revised Evidence Act 2012, s. 125(2).

20 MDAC training for lawyers in Uganda, August 2014. MDAC discussion with two Kenyan Lawyers in June 2015.

21 Mark R Kebbell, Christopher Hatton and Shane, "Witnesses with intellectual disabilities in court: What questions are asked and what influence do they have?", (December 2010), p. 31-2.

23. Kenyan Courts should recognise the capacity of people with disabilities to give evidence. Where there are difficulties with communication, the court should allow the witness to give evidence by alternative means where this is possible. The court could perhaps order for a witness to be assisted by a 'support person' of their choice, unless the judge is of the opinion that such order would prejudice the proper administration of justice. The court could also allow witnesses with disabilities to testify outside of the court room or behind a screen which would ensure that they do not come into contact with the accused.<sup>22</sup> In the United Kingdom, judges have a wide variety of "special measures" which can be ordered during criminal trials to accommodate witnesses with 'mental disorders' or impaired mental or emotional capacity. Such orders may involve using screens, evidence given in camera, and removal of wigs and gowns. An order can be made by a judge or on the motion of one of the parties, but full reasons for its acceptance or refusal must be given in open court.<sup>23</sup> Also, alternatives to oral evidence such as video evidence should be considered as valid methods for providing testimony.

#### Recommendations (Article 13)

- i. **Fully recognise the legal capacity of people with mental disabilities (particularly people with intellectual disabilities and people with mental health issues) to sue and be sued in their own capacity and through their freely chosen support persons or representatives. Abolish discriminatory rules of court which have the effect of denying people with disabilities direct access to justice.**
- ii. **Provide age-appropriate, procedural and reasonable accommodations to facilitate the participation of people with disabilities in court cases, including through accepting alternatives to oral testimony.**
- iii. **Provide training on legal capacity and access to justice to all officials in the justice system, including police, courts, lawyers and probation and prison officials.**

## V. Article 17: Physical and mental integrity

24. The CRPD Committee asked the Kenyan Government to indicate measures taken to prohibit and prevent forced sterilisation of women and girls with disabilities in law and practice.<sup>24</sup> The Government responded that "sterilization only takes place with the consent of the woman. No forced sterilisation is carried on those with disabilities as they are protected by the law and the health law prohibits cutting of any organ without a medical reason".<sup>25</sup>
25. The government's response is inaccurate, as it fails to address the gap between law and practice. Women, in particular women with intellectual disabilities and women with mental health issues are vulnerable to being coerced into sterilisation procedures.
26. MDAC, USPK and KAIH's legal capacity research revealed that women and girls with intellectual disabilities in Kenya experience intersectional discrimination on basis of their disability and gender. A number of people interviewed for the research told researchers about abuses they had faced, including women who had been forcefully sterilised by private individuals, entities and sometimes in government-run facilities. One woman who lived in a missionary centre told our researchers:
- "I don't think I would get children. I will tell you something, you see here [lifts up the blouse and reveals a scar on her stomach] here I was made an operation. This is contraceptive, all of us had been done like this, we cannot get children. Nobody asked me. They should have asked me, because I love children [...]. I feel bad, but what can I do now?"<sup>26</sup> [emphasis added]
27. In 2014, two petitions were lodged before the Constitutional and Human Rights Divisions of the High Court in Nairobi by women living with HIV who, without informed consent, were sterilised.<sup>27</sup> The two petitioners allege that their non-consensual sterilisation was unconstitutional and violates their reproductive rights. The Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN), one of the two organisations that took up these cases, informed MDAC that another female with a visual impairment, who had also been a victim of forced sterilisation, didn't want to take her case forward through the courts.<sup>28</sup>
28. The African Gender and Media Initiative Trust (GEM) undertook a study with approximately 40 women living with HIV (including the two KELIN petitioners).<sup>29</sup> The study highlighted that women were coerced to accept permanent sterilisation in health care facilities under the threat that of withholding food and milk for their babies.
29. The Constitution of Kenya imposes a duty on the State to observe, respect, protect, promote and fulfil the rights and fundamental freedoms included in the Bill of Rights,<sup>30</sup> and obliges the State to take legislative, policy and other measures including setting of standards to implement those rights.<sup>31</sup>

22 Mark R Kebbell, Christopher Hatton and Shane, "

23 Witnesses with intellectual disabilities in court: What questio

24 ns are asked and what influence do they have?", (December 2010), p. 31-2. he Committee: Kenya, 22 May 2015, CRPD/C/KEN/Q/1, para. 16.

25 Committee on the Rights of Persons with Disabilities, Replies to the List of Issues: Kenya, 10 July 2015, CRPD/C/KEN/Q/1/Add.1, at para. 50.

26 MDAC, USPK and KAIH, The right to Legal Capacity in Kenya (Nairobi and Budapest: MDAC, 2014), pp. 46, 66. A full testimony from this interviewee is contained in the report.

27 See Petition 605 of 2014 and Petition 606 of 2014 to the High Court of Kenya at Nairobi, Constitutional and Human Rights Division. Both petitions were made with the assistance of the Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN) and the African Gender and Media Initiative Trust (GEM).

28 MDAC email correspondence with Allan Maleche, Executive Director, KELIN: 13 February 2015.

29 African Gender and Media Initiative, Robbed of Choice: Forced and Coerced Sterilisation Experiences of Women Living with HIV in Kenya, (Nairobi: GEM, 2012).

30 Constitution of Kenya, Article 21.

31 Ibid, Article 21(2).

30. Kenyan legislation fails to address the issue of informed consent to sterilization, or provide sufficient safeguards to protect the rights of women with disabilities, particularly by ensuring that informed consent is a minimum requirement for invasive and irreversible procedures. The Mental Health Bill 2014 states that sterilisation is not to be regarded as an emergency treatment.<sup>32</sup>
31. The Kenya Disability Act 2003 makes no reproductive health rights or sterilisation, nor does it set out any requirement for informed consent to medical procedures.
32. Policies such as the National Planning Guidelines for Service Providers (NPGSPK) 2010<sup>33</sup> and the National Reproductive Health Policy 2007 provide guidance to policy makers, medical practitioners and service providers on sexual and reproductive rights.<sup>34</sup> The NPGSPK refers to the need to gain informed and voluntary consent prior to female surgical sterilisation.<sup>35</sup> The Guidelines also call for caution when gaining consent from certain vulnerable people for irreversible contraceptive interventions, including “persons with mental health problems including depressive disorders”.<sup>36</sup> It warns service providers against providing any incentives to women to accept contraception or in recruiting potential clients to perform surgical operations.<sup>37</sup> The National Reproductive Health Policy does not address the involuntary and forced sterilisation of women expressly, nor does it mention women with disabilities.<sup>38</sup>
33. There has been increasing awareness and denouncement by international and regional human rights instruments and enforcement bodies.<sup>39</sup> Forced sterilisation amounts to torture, inhumane and degrading treatment,<sup>40</sup> and constitutes violence against women.<sup>41</sup> Forced sterilisation violates rights of women with disabilities to retain their fertility and should never be a condition to access medical care or other benefits,<sup>42</sup> and must be based on free and informed consent.<sup>43</sup> States must ensure that in practice, there is no non-consensual sterilisation of women with intellectual disabilities and women with mental health issues, including those have been fully or partially deprived of their legal capacity. Instead, they should provide the necessary support for women to decide whether to consent or not.<sup>44</sup>

#### Recommendations (Article 17)

- i. **Promptly and independently investigate all claims of forced sterilisation of women with intellectual disabilities or women with mental health issues in public or private institutions, and release information on prevalence into the public domain. Initiate criminal proceedings against perpetrators of forced sterilisation and monitor the implementation of any future legislation addressing forced sterilisation.**
- ii. **The Kenyan Government should introduce a clear legislative ban on forced sterilisation, and place a specific emphasis on women and girls with disabilities. The law should be in line with international human rights standards.**
- iii. **Develop guidelines and training for health care providers (including professionals such as doctors, social workers, and gynecologists, etc.) to protect the sexual and reproductive rights of women with disabilities, with a specific focus on the requirements to gain informed consent.**
- iv. **Conduct public awareness programmes about how and where to report cases of forced sterilisation and provide families of girls and women with disabilities support to access social, health, habilitation and rehabilitation services.**

<sup>32</sup> At s. 34(1)(c). Other relevant Constitutional provisions include: Article 43(1) on the right to reproductive health care; Article 54(1)(a) on the right of persons with disabilities to be treated with dignity and respect; Article 54(1)(c) “reasonable access to... information”; Article 46(1)(a)-(c) the right to be given services of reasonable quality and necessary information for the protection of health; Article 29 on freedom and security of the person and the prohibition on violence, cruel, inhuman and degrading treatment; Article 27(4) prohibition of discrimination based on sex or disability; and Article 31(a) on the right to privacy. See the functions of the National Council for Persons with Disabilities, ss. 7(1)(b)(i) to 7(2)(d).

<sup>33</sup> Kenya Ministry of Public Health, National Family Planning Guidelines for Service Providers, (Nairobi: Ministry of Public Health and Sanitation, 2010), available online at [https://www.k4health.org/sites/default/files/Kenya%20FP%20Guidelines%202010%20final%20signed\\_full%20text.pdf](https://www.k4health.org/sites/default/files/Kenya%20FP%20Guidelines%202010%20final%20signed_full%20text.pdf) (last accessed 5 August 2015).

<sup>34</sup> Kenya Ministry of Health, National Reproductive Health Policy: Enhancing Reproductive Health Status for All Kenyans, (Nairobi: Ministry of Health, October 2007), available online at: [https://www.k4health.org/sites/default/files/National%20Reproductive%20Health%20Policy%20booklet\\_0.pdf](https://www.k4health.org/sites/default/files/National%20Reproductive%20Health%20Policy%20booklet_0.pdf) (last accessed 5 August 2015).

<sup>35</sup> Supra note 32, page 173. The Guidelines state that “special care must be taken to ensure that every client who chooses this method does so voluntarily and is fully informed about the permanence of this method and the availability of alternative long-acting, highly effective methods.” Ibid, p. 171.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Supra note 33, Preamble, p. 1. Also relevant see, ss. 2(a)(i), 3.2.1(d), and 3.3.4(d).

<sup>39</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4 [at paragraph 8]; CEDAW Committee General Recommendations No. 19 and No. 24; Article 14 (1)(a)-(c) and Article 23 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women; UN Commission on Human Rights, Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 11 February 2005, E/CN.4/2005/51 [at paragraphs 12 and 49]; UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, 3 August 2012, A/67/227, [at page 8] and UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13 [at paragraph 23(a)].

<sup>40</sup> UN Human Rights Council, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, 15 January 2008, A/HRC/7/3, paras. 38-9. CRPD Articles 15 and 16.

<sup>41</sup> Radhika Coomaraswamy, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women’s reproductive rights and contribute to, cause or constitute violence against women, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), at para. 51. It states: “[F]orced sterilization is a method of medical control of a woman’s fertility without the consent of a woman. Essentially involving the battery of a woman – violating her physical integrity and security – forced sterilization constitutes violence against women”.

<sup>42</sup> CRPD, Article 23.

<sup>43</sup> CRPD, Article 25.

<sup>44</sup> Committee on the Elimination of Discrimination against Women, Committee’s Concluding Observations: Belgium, 59th session 2014, CEDAW/C/BEL/CO/7, p. 9, para. 35.a.



## VI. Article 23: Private and family life

34. The Kenyan Government was asked to explain measures being adopted to respect the right of people with disabilities, especially persons with psycho-social and intellectual disabilities, to marry and found a family.<sup>45</sup> The Kenyan Government's response has not specifically addressed this question,<sup>46</sup> but commits to eliminating discrimination against persons with disabilities in matters relating to marriage, family and personal relations.<sup>47</sup> The Constitution allows every Kenyan adult to marry a person of opposite sex (discriminatory on basis of sexual orientation) based on the free consent of the parties, and provides for equal rights during and after marriage.<sup>48</sup> Yet, negative social perceptions have made it difficult for people with disabilities to enjoy this right.<sup>49</sup>
35. Discriminatory perceptions against people with disabilities have been reinforced in recent amendments brought forward in the Marriage Act 2014. The Act consolidates existing marriage laws into a single Act. Section 11(1) states that a union is not a marriage if, at the time of the making of the union, "(a) the consent of either party has not been freely given." Section 11(2) states "Consent is not freely given where the party who purports to give it- (c) is suffering from any mental condition whether permanent or temporary, or is intoxicated, or is under the influence of drugs, so as not to appreciate the nature or purport of the ceremony". These provisions directly discriminate against Kenyans with disabilities.
36. Section 12 of the same Act states "...a marriage is voidable if- (a) at the date of the marriage... (ii) either party was or has ever since remained subject to recurrent acts of insanity". This provision is discriminatory in purpose and effect against people with disabilities, and particularly those with psycho-social disabilities. The legislation has been condemned by DPOs for entrenching discrimination against persons with psycho-social disabilities.<sup>50</sup>
37. The amendments mean that there is a high probability that the marriages of people with mental disabilities will be annulled in the future. Married people with disabilities often rely on the support of family members and their spouses.<sup>51</sup> Rather than promoting this form of support to people with disabilities, the new legislation threatens the right for people with mental health issues to get married, renders current unions voidable and easily annulled on the basis of actual or perceived disability.
38. The Kenyan government must take effective and appropriate measures to eliminate discrimination by both public and private individuals against people with disabilities in all matters relating to marriage, family, parenthood, relationship and not to promote it.<sup>52</sup>
39. The CRPD Committee has raised concerns about disability-based restrictions on the right to marry.<sup>53</sup>

### Recommendations (Article 23)

- i. **Amend Sections 11(2) and 12 of the 2014 Marriage Act to ensure that any restriction or limitation is not disability-based and its purpose and effect should not be discriminatory against people with disabilities.**
- ii. **Develop awareness raising campaigns, with people with disabilities, to combat negative perceptions that impact on the right to marry for Kenyans with disabilities.**

## VII. Article 25: Health

40. The Kenyan Government was asked how its health service sector will scale up mental and psychosocial health-care and treatment services across the country.<sup>54</sup> Without answering those questions, the Government said it seeks to combat discrimination in healthcare provision on the basis of disability and that it will ensure that insurance companies do not discriminate against people with long-term mental health impairments.<sup>55</sup>

45 CRPD Committee, Kenya List of Issues, para. 21.

46 Kenya Initial State Party Report to the CRPD Committee, para. 174. However, the Government noted that the family is regarded as the "foundation of society as it provides an environment of care, support and emotional security for any individual", *ibid*.

47 *Ibid*.

48 Kenya Constitution, Article 45(1) and 45(2).

49 Kenya Initial State Party Report to the CRPD Committee, para. 174.

50 Kenyan Star, 'How Kenyans living with mental health conditions lost the right to marry', 21 October 2014, available online at: <http://www.the-star.co.ke/news/article-190888/how-kenyans-living-mental-health-conditions-lost-right-marry> (last accessed 5 August 2015).

51 See, for example, MDAC, USPK and KAIH, Legal Capacity in Kenya, (Budapest: MDAC, 2014), pp. 50-2.

52 Several CRPD rights are at stake, including Article 5 (non-discrimination), Article 12 (legal capacity) and Article 23 (right to marry).

53 UN CRPD Committee, Concluding Observation of the Committee: El Salvador, 8 October 2013, CRPD/C/SLV/CO/1, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSLV%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSLV%2fCO%2f1&Lang=en). See also UN CRPD Committee, Concluding Observation of the Committee: Mexico, 27 October 2014, CRPD/C/MEX/CO/1, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMEX%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMEX%2fCO%2f1&Lang=en)

54 CRPD Committee, Kenya List of Issues, para. 23.

55 Committee on the Rights of Persons with Disabilities, Replies to the List of Issues: Kenya, 10 July 2015, CRPD/C/KEN/Q/1/Add.1, at para. 63.

41. All Kenyans are guaranteed the highest attainable standard of health and health care services in the Constitution,<sup>56</sup> without discrimination on the basis of disability.<sup>57</sup> USPK has reported that mental health services are not fully integrated into primary health care, and that those that do exist are not available in rural areas. The scanty provision of mental health units are sometimes in a deplorable state with inhuman conditions, such as at Kisumu County Government Hospital.<sup>58</sup>
42. The issue is not only the insufficiency of mental health services in communities, but also the denial of health care choices. People are arbitrarily detained in mental health units because of their impairments, usually on the decision of relatives and carers, contrary to Article 14 CRPD, where they are forcefully medicated against their will. The two elements of the right to health, entitlement to services and freedom to decide are both violated.
43. States must adopt measures to ensure that all health care services provided to people with disabilities, including all mental health care and services, are provided on the basis of their free and informed consent,<sup>59</sup> and as close as possible to their communities.<sup>60</sup>

#### Recommendations (Article 25)

- i. **Mental health services must be available as close as possible to peoples' communities and provided on the basis of free and informed consent.**
- ii. **Laws permitting involuntary treatment and confinement, including upon the authorisation of a third party decision-maker such as family members or guardians, should be repealed.**

## VIII. Article 29: Political participation

44. The Kenyan Government was asked about steps taken to amend Constitutional provisions in Articles 83(1)(b) and 99(2)(e) which disqualify a person from voting and being elected as a Member of Parliament if the person is of "unsound mind".<sup>61</sup>
45. The Government stated that the notion of "unsound mind" is yet to receive conclusive interpretation in relation to legal capacity and is a legal status declared by a court of competent jurisdiction based on assessment of a medical board appointed under the Mental Health Act.<sup>62</sup> Legal capacity is deprived when it is established that the person is incapable of understanding what they are doing.<sup>63</sup>
46. The delay in providing conclusive interpretation of the phrase "unsound mind" has resulted in laws, policies and practices being implemented in a manner that directly or indirectly discriminates and negatively impacts on people who are labelled, perceived or suspected to have mental disabilities. The lack of clarity has resulted in the phrase "unsound mind", being arbitrarily interpreted as synonymous with intellectual or psycho-social disabilities.
47. In Kenya's 2013 general elections, people with all kinds of disabilities voted. This does not mean every adult with a disability who qualified and wanted to were able to vote. Those who were allowed to vote included those who could vote independently without needing support; those who received support from their families or membership organisations to register and vote; and those who polling officers did not perceived as persons of unsound mind.<sup>64</sup> No plan was made for people in psychiatric hospitals to register or vote.<sup>65</sup> This is a violation of the right to political participation.
48. The Government reported that through affirmative action, 5 people with disabilities became members of parliament whereas seven others have gone through the competitive process.<sup>66</sup> None of the 12 parliamentarians with disabilities is a person with mental health issues or an intellectual disability. Voting and standing for elections is a fundamental right for all Kenyans to exercise without any discriminatory restrictions.

#### Recommendations (Article 29)

- i. **The Kenyan Parliament should immediately take steps to initiative amendments of Articles 83(1)(b) and 99(2)(e) of the Constitution that remove restrictions on the right to political participation for people with actual or perceived disabilities. Steps should be taken to remove terms from national legislation that have historically been used to discriminate against people with mental health issues and people with intellectual disabilities, such as "unsound mind" and "mental infirmity".**

<sup>56</sup> Article 43(a) of the Constitution.

<sup>57</sup> Persons with Disability Act 2013, s. 20.

<sup>58</sup> Daily Nation, 'For mentally ill patients in Kisumu it's a hard life', July 30 2015. Available online at: <http://www.nation.co.ke/counties/kisumu/For-mentally-ill-patients-in-Kisumu/-/1954182/2814030/-/n9jxid/-/index.html> (last accessed 31 July 2015).

<sup>59</sup> CRPD, Article 25(d).

<sup>60</sup> CRPD, Article 25(c).

<sup>61</sup> Committee on the Rights of Persons with Disabilities, Committees List of Issues: Kenya, 22 May 2015, CRPD/C/KEN/Q/1, para. 27.

<sup>62</sup> Committee on the Rights of Persons with Disabilities, Replies of Kenya to the List of Issues, 10 July 2015, CRPD/C/KEN/Q/1/Add.1, para. 78.

<sup>63</sup> Ibid.

<sup>64</sup> Mental Disability Advocacy Centre, The Right to Legal Capacity in Kenya (Nairobi: MDAC, 2014) page 36.

<sup>65</sup> MDAC discussion with Users and Survivors of Psychiatric Kenya (USPK) before and after the August 2010 Kenya's Constitutional Referendum and the March 2013 general elections.

<sup>66</sup> Ibid, para. 79.

- ii. Election information, communication, materials and polling stations must be made accessible, and reasonable accommodation and support should be provided to people with disabilities in order to exercise their political rights. The Independent Electoral and Boundaries Commission (IEBC) should ensure that adults with disabilities in psychiatric hospitals can register and vote in all upcoming national and county elections.
- iii. The IEBC should explore alternative voting feasible options to ensure that people with disabilities can exercise their right to vote. This may include allowing for the casting of secret ballots by telephone to a special and secure call centre, early (advance) voting, voting by post (mail), mobile polling station which visit locations such as psychiatric hospitals and peoples' residences, absentee voting which may not require a notary or medical certificate, and the provision of easy-to-read information.
- iv. Introduce support for people with intellectual disabilities and people with mental health issues to become members of parliaments (MPs). Support could include: awareness-raising campaigns; promotion of positive public attitudes towards people with disabilities; training and development opportunities targeting people with mental disabilities en route to political office; and establishing a fund for people with disabilities to stand for public office.

## IX. Article 31: Data and statistics

49. The Kenya National Bureau of Statistics and the National Council for Persons with Disabilities are obliged to collect statistical and research data to foster the implementation of the CRPD. However, as noted above, there is a lack of comprehensive, disaggregated and research data in Kenya on implementation of the Convention. Relevant statistics and research data are not publicly available.

### Recommendations (Article 31)

- i. Collect appropriate and disaggregated information, including statistical and research data on, inter alia, the numbers of people with disabilities by broad categories of impairment; the numbers of people with disabilities who access support to exercise their legal capacity, and the form that this takes; statistics on the sexual and reproductive rights of women and girls, including collation of data on those who have experienced violations of these rights; number of people with mental disabilities who have exercised their right to vote and stood for election; and statistics on marriage.
- ii. Disseminate data and research commissioned by the Government as well as disability-related research created by civil society.
- iii. The Kenya National Commission on Human Rights, Gender and Equality (Article 33(2) body) should monitor health care and residential facilities both public and private in rural and urban areas, and publish the findings of such monitoring, including research and statistical data.

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# DPO/NGO information to the 3rd Pre-sessional Working Group of the United Nations Committee on the Rights of Persons with Disabilities

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## Introduction

1. This joint written submission outlines key issues of concern with regard to Kenya's implementation of the Convention on the Rights of Persons with Disabilities (hereinafter "the CRPD"). The submission seeks to assist the 3rd Pre-sessional Working Group of the CRPD Committee (hereinafter "the Committee's Working Group") with its consideration of the Republic of Kenya's initial report. The submission has been written jointly by Users and Survivors of Psychiatry Kenya (USPK), the Kenya Association of the Intellectually Handicapped (KAIH) and the Mental Disability Advocacy Center (MDAC).
2. Users and Survivors of Psychiatry Kenya (USPK) is a national membership organisation whose major objective is to promote and advocate for the rights of people with mental health issues/conditions (people with psycho-social disabilities). USPK is affiliated with the World Network of Users and Survivors of Psychiatry (WNUSP) and the Pan-African Network of People with Psycho-social Disabilities (PANPEP).<sup>2</sup>
3. Kenya Association of the Intellectually Handicapped (KAIH) is a national, family based organisation including self-advocates aimed at empowering people with intellectual disabilities. KAIH promotes the human rights of people with intellectual disabilities and their families within society through meaningful participation, education, advocacy, empowerment and information exchange. KAIH is a member of Inclusion International which is the global movement of people with intellectual disabilities and their families.
4. The Mental Disability Advocacy Center (MDAC) is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form.<sup>3</sup>
5. MDAC, USPK and KAIH launched an investigation in 2012 into the right to legal capacity as enshrined in Article 12 of the CRPD for people with mental health issues and people with intellectual disabilities in Kenya. In March 2014, we documented how the right to decide is denied and restricted in law, policy and practice.<sup>4</sup> An important finding of the research is that the majority of people with mental health issues and people with intellectual disabilities have their autonomy restricted through social norms and customs.

<sup>2</sup> Further information is available at <http://www.uspkenya.com/>.

<sup>3</sup> MDAC has three international campaigns to challenge the most widespread and systemic human rights violations against people with mental disabilities worldwide. My Home, My Choice seeks to challenge the institutionalisation of people with mental disabilities and advocate for the right to independent living in the community. I'm a Person seeks to advance the right to legal capacity, ensuring that supports are provided for people with mental disabilities to make decisions recognised by the law and ensuring that they can author their own lives. Schools for All challenges the segregation of children with mental disabilities in education systems and calls for all children to be educated in common learning environments with access to individualised supports. Further information is available at [www.mdac.org](http://www.mdac.org).

<sup>4</sup> USPK, KAIH and MDAC, The Right to Legal Capacity in Kenya (Budapest: MDAC, 2014), available online at [www.mdac.org/kenya](http://www.mdac.org/kenya).

6. Kenya's population is estimated at 40 million people, 80% of whom live in rural areas with 46% of the population living in absolute poverty, while 56% live on less than one US dollar a day.<sup>5</sup> According to the Kenyan National Bureau of Statistics, the country had approximately 1.3million citizens with disabilities,<sup>6</sup> including 136,000 persons with mental impairments.
7. No figures exist on the number of people who are formally or informally denied their right to legal capacity in Kenya, which was one of the reasons for the joint research undertaken by MDAC, USPK and KAIH.
8. This submission focuses on key issues of concern regarding Kenya's implementation of Article 12 of the CRPD and the impact it has on the enjoyment of other key rights guaranteed in the CRPD. This submission suggests questions that the Committee's Working Group are invited to raise in the List of Issues to the Kenyan government in order to shed greater light on the implementation of Article 12 and other connected rights.

## Specific Comments

### Article 12: Equal recognition before the law

9. Article 12 of the CRPD calls for a shift from substituted decision-making regimes to support for persons with disabilities to exercise their legal capacity. It refers both to the recognition of persons with disabilities as rights bearers and as actors in law in "all aspects of life". Article 12(2) prohibits the discriminatory removal or denial of legal capacity and Article 12(3) requires States to "take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity". Article 12(4) requires that, in providing access to support, primacy must be given to the individual's will and preferences alongside with safeguards to prevent abuse. Article 12(5) guarantees the equal right to own or inherit property and control financial affairs, including equal access to bank loans and mortgages.
10. The Kenyan government has expressed its commitment to shift away from substituted decision-making to supported decision-making in August 2011 in its report to the UN CRPD Committee.<sup>7</sup>
11. Our investigation into the right to legal capacity in Kenya looked at the extent to which Kenyan legislation recognised persons with disabilities as persons before the law; the availability of support to exercise legal capacity; the exercise of legal capacity in specific areas of life; and identified legal, policy and social barriers.
12. The research took place between 2011 and early 2014 and was comprised of a legislative and policy analysis; and qualitative research including interviews with persons with intellectual disabilities, persons with psycho-social disabilities, and their family members and carers.
13. The key findings include the following:
  - a. While the 2010 Kenyan Constitution recognises persons with disabilities as persons before the law, this recognition is limited in practice, especially for persons with psycho-social disabilities and persons with intellectual disabilities.<sup>8</sup>
  - b. A significant number of persons with mental disabilities experienced restriction of their decision-making rights through informal social processes within the family and their local communities. The social restriction of autonomy and decision-making rights is more pronounced among women and younger persons with mental disabilities.
  - c. Kenyan laws allow for partial and full restriction of the right to legal capacity through a court process,<sup>9</sup> and by decisions of directors of psychiatric hospitals in certain areas.<sup>10</sup> Section 107 of the Children's Act allows guardianship of a child to extend beyond the age of 18 years in cases where the child has mental or physical disability that renders them "incapable of maintaining themselves or property without the assistance of a guardian". This legislation arbitrarily clusters people with mental health issues and people with intellectual disabilities together as an 'incapable' group, fundamentally based on a deficits approach, and fails to engage with the support needs of each group. Judicial processes for the purpose of determining whether to restrict or remove a person's legal capacity do not give weight to the person's choices will and preferences but start from the assumption that the person lacks legal and mental capacity and that the determination should be based on what the court considers to be their 'best interests'. A High Court Judge in Kenya recently ruled that this blanket presumption of incapacity violates article 12 of the CRPD.<sup>11</sup>
  - d. The restriction of the right to decide under the law and in social processes within families/communities affects numerous areas of life, including healthcare and treatment decisions, access to justice, family life and marriage, property and land rights, inheritance rights, sexual and reproductive rights, and the exercise of political and civil rights.
  - e. Legislation itself reflects discriminatory attitudes towards persons with disabilities, with derogatory terms such as 'unsound mind' and 'mental infirmity' frequently used.

<sup>5</sup> Kenya Initial Report to the CRPD Committee, 31 August 2011, CRPD/C/KEN/1, p 6.

<sup>6</sup> Ibid., p. 8.

<sup>7</sup> Ibid., p. 26.

<sup>8</sup> USPH, KAIH, MDAC, The Right to Legal Capacity in Kenya, pp. 22-3.

<sup>9</sup> Mental Health Act (Cap 248), s. 26.

<sup>10</sup> Ibid., s. 16.

<sup>11</sup> Wilson Morara Siringi v the Republic, High Court of Kenya at Migori, Criminal Appeal No 17 of 2014.



#### Questions for the Kenyan government

- a. Please explain measures taken to date (government plans) to abolish formal substituted decision-making regimes and to introduce legislation and enabling regulations to replace this with support for persons with disabilities to exercise their legal capacity, including their right to decide in all areas of life especially access to justice, healthcare and treatment, family life and marriage, property and land rights, inheritance rights, sexual and reproductive rights, and the exercise of political and civil rights.
- b. Please provide information on steps or measures taken to combat:
  - Informal substituted decision-making within families and communities.
  - Social and stigma and prejudice faced by people with mental disabilities which have the effect of restricting the exercise of their right to decide
- c. What plans does the Kenyan government have to amend legislation to remove derogatory references to persons with disabilities, such as 'unsound mind', 'mental infirmity' and 'mental incapacity'?
- d. Please explain the government's strategy to initiate and support pilot projects on supported decision-making in different regions (both rural and urban) in Kenya and to ensure appropriate and effective safeguards to prevent abuse in the provision of supports to those who may need it to exercise their right to legal capacity.
- e. Please provide information on what steps the government is taking, or plans to take, to collect appropriate and disaggregated information, including statistical and research data, relating to people with mental health issues and people with intellectual disabilities, in order to better plan, identify and develop policies and support services that people with disabilities may require in exercising their right to legal capacity.
- f. How will the government involve and closely consult with persons with disabilities, their representative organisations and civil society in these processes as required by Article 4(3) of the CRPD?

### Article 12 in relation to Article 23: Marriage and Divorce

14. Kenyan law explicitly denies persons with psycho-social disabilities and persons with intellectual disabilities the right to marry on an equal basis with others. Section 11(1) of the 2014 Marriage Act, which consolidates existing marriage laws into a single Act states that "A union is not a marriage if at the time of the making of the union- (a) the consent of either party has not been freely given". In Section 11(2), it states that "Consent is not freely given where the party who purports to give it- (c) is suffering from any mental condition whether permanent or temporary, or is intoxicated, or is under the influence of drugs, so as not to appreciate the nature or purport of the ceremony". These provisions are discriminatory in purpose and effect against persons with mental disabilities.
15. A further discriminatory provision in Section 12 of the same Act states that "...a marriage is voidable if- (a) at the date of the marriage... (ii) either party was or has ever since remained subject to recurrent acts of insanity". The legislation was condemned by DPOs for entrenching discrimination against persons with psycho-social disabilities.<sup>12</sup>
16. Kenyan government officials will apply these provision in a discriminatory manner and deny the right to marry simply on the basis that they believe that a person has a mental health issue or an intellectual disability. This strips people of their right to form relationships and promotes discrimination instead of eliminating it. The State has an obligation to take effective and appropriate measures to eliminate discrimination (including in cultural practices) against people with disabilities in all matters relating to marriage, family, parenthood and relationships and not to promote it. This violates several rights guaranteed in the CRPD, including Article 23 (right to marry), Article 5 (non-discrimination) and Article 12 (legal capacity) as well as the right to be treated with dignity under Article 54 of the 2010 Constitution of Kenya.
17. The CRPD Committee has urged State parties to amend laws such as Kenya's Marriage Act that deny the right to marry to people with disabilities, including mental disabilities, in order to guarantee the exercise of civil rights.<sup>13</sup>

#### Questions for the Kenyan government

- a. Please explain how the government will amend the 2014 Marriage Act to ensure that it:
  - Does not discriminate against persons with psycho-social disabilities and persons with intellectual disabilities.
  - Does not deny the right to marry for people with psycho-social disabilities and persons with intellectual disabilities.
- b. Please provide information on the strategies or measures adopted by the Kenyan government to combat and eradicate legal, cultural and social barriers in relation to marriage for persons with disabilities and to guarantee that the right is enjoyed on an equal basis with others, and to guarantee protection for family and reproductive rights.

<sup>12</sup> Kenyan Star, 'How Kenyans living with mental health conditions lost the right to marry', 21 October 2014, available online at: <http://www.the-star.co.ke/news/article-190888/how-kenyans-living-mental-health-conditions-lost-right-marry>.

<sup>13</sup> UN CRPD Committee, Concluding Observation of the Committee: Peru, 16 May 2012, CRPD/C/PER/CO/1.

## Article 12 in relation to Article 17, 15 and 23: Forced and coerced sterilisation

18. Testimony of persons with disabilities we spoke to during our investigation in Kenya show that women with mental disabilities experience intersectional discrimination on the basis of their disability and their gender. One woman who lived with other women in a missionary centre said told researchers: "I don't think I would get children. I will tell you something, you see here [lifts up the blouse and reveals a scar on her stomach] here I was made an operation. This is contraceptive, all of us had been done like this, we cannot get children. Nobody asked me. They should have asked me, because I love children [...]. I feel bad, but what can I do now?" (emphasis added) This testimony alleges that women with mental disabilities, in particular women with intellectual disabilities, are sterilised without their free and informed consent.<sup>14</sup>
19. Forced and coerced sterilisation against women with HIV has also been reported and is currently being challenged in the Kenyan courts.<sup>15</sup>
20. To the best of our knowledge no specific research has been carried out on the use of forced or coerced sterilisation against women and girls in Kenya. However, these sources of information suggests that it is a common occurrence in the country, and that the State has not taken concrete action to prohibit such practices.
21. The CRPD Committee considers forced sterilisation to be a violation of Article 23 of the CRPD which relates to the right of persons with disabilities to found a family and to retain their fertility on an equal basis with others.<sup>16</sup>
22. Article 17 of the CRPD in conjunction with Article 12 requires that the Kenyan government should support women with disabilities to ensure that they make decisions relating to their sexual and reproductive rights, and that practices such as sterilisation should never take place without the voluntary informed consent.<sup>17</sup> The Kenyan government has an obligation to prevent forced sterilisation, ensure and promote the full realisation of the rights of women with disabilities under Article 15 (prohibition of torture), Article 17 (mental and physical integrity) and Article 23 (right to family). In conjunction with Article 12, the government is under an obligation to combat discrimination on grounds of disability and gender, to prosecute perpetrators and provide redress to victims.

### Questions for the Kenyan government

- a. Please provide information on measures/mechanisms that the government has taken to prohibit the sterilisation of women and girls with disabilities without their prior, informed and free consent. How effective are these mechanisms? What actions has the government taken to raise awareness about the sexual and reproductive rights of persons with disabilities, including in places where people with disabilities receive services such as hospitals and schools?
- b. Explain how the government will ensure that women and girls with disabilities have access to information on their sexual and reproductive rights.
- c. What information is available to doctors, medical personnel and others who carry out evasive medical procedures including sterilisation on the need for full and informed consent, the obligation to provide support to women and girls with disabilities in making decisions relating to their sexual and reproductive rights, and avenues to seek redress before courts for violation of these rights?
- d. What steps has the government taken:
  - to investigate allegations of forced sterilisation of women and girls with disabilities, and to punish perpetrators?
  - to gather data on the prevalence of forced sterilisation and other practices which impact on the sexual and reproductive rights of women and girls with disabilities, disaggregated by gender, age, disability and impairment type?
  - to address forced sterilisation publicly and to tackle and challenge stereotypes, prejudices, misconceptions and cultural and social norms which allow such practices to take place?

## Article 12 in relation to Article 13: Access to justice

23. The Constitution guarantees everyone the right to access justice (Article 48), to a fair trial and public hearing (Article 50 and Article 50(m)) and to institute court proceedings in cases of violations of rights guaranteed in the Bill of Rights (Articles 22(1) and 22(3)(b)).
24. However, laws such as the Civil Procedure Act and its accompanying Civil Procedure Rules treat people who are considered to be of "unsound mind" as incapable of pursuing or defending their rights before courts, including in respect of proceedings related to their legal capacity.
25. Laws in general fail to protect people with mental disabilities from unwanted interference by family members who prevent them from accessing to justice. People with psycho-social disabilities and people with intellectual disabilities have little support in order to access justice.

<sup>14</sup> USPK, KAIH, MDAC, The right to Legal Capacity in Kenya (Budapest: 2014, MDAC), p. 46, 66. A full testimony from this interviewee is contained in the report.

<sup>15</sup> Kenya Legal and Ethical Issues Network on HIV (KELIN), '5 cases of forced and coerced sterilization filed in the High Court of Kenya', news article available at: <http://gem.or.ke/5-cases-of-forced-and-coerced-sterilization-filed-in-the-high-court-of-kenya/>.

<sup>16</sup> UN CRPD Committee, Concluding Observation of the Committee, China, 15 October 2012, CRPD/C/CHN/CO/1.

<sup>17</sup> UN CRPD Committee, Concluding Observation of the Committee: Argentina, 8 October 2012, CRPD/C/ARG/CO/1.

26. Article 13 of the CRPD obliges States to guarantee people with disabilities effective access to justice on an equal basis with others, including procedural and age-appropriate adjustments so that they can effectively participate in any legal proceedings (civil or criminal, regardless of trial stage) in any role in which they may find themselves: victims, witnesses, plaintiffs or defendants. The CRPD Committee has added that persons with disabilities should be able to participate in judicial and other proceedings as subjects of rights, and not objects of protection.<sup>18</sup>

#### Questions for the Kenyan government

- a. What steps have been taken to review and amend judicial practices and rules to ensure that all persons with disabilities can access justice on an equal basis with others?
- b. What steps have been taken to train those working in the administration of justice, for example, through the creation of compulsory modules for police officers, lawyers, members of the judiciary and court personnel on how to work with people with intellectual disabilities and people with psycho-social disabilities? What measures has the government taken towards the creation of professional standards for State authorities working with people with mental disabilities in the justice system?
- c. Describe the measures taken, or planned, to ensure that persons with disabilities can access justice in rural or semi-rural areas.
- d. How does the government ensure, or envisage it will ensure, that all persons with disabilities are entitled to and provided with free legal assistance?
- e. What steps will the government take to ensure that justice mechanisms are accessible for persons with intellectual disabilities and persons with psycho-social disabilities, and that they can access the necessary support to take cases where their rights have been violated? How will the government challenge barriers to exercising the right to access justice, such as preventing interference by family members or carers?

#### Article 12 in relation to Article 25: Denial of health care choices

27. Kenya's law and practices restrict and deny the right to decide in relation to health care decisions for persons with intellectual disabilities and persons with psycho-social disabilities. In the majority of cases, relatives and carers make health care decisions on a substitute basis. Article 43(a) of the Constitution guarantees the highest attainable standard of health and health care services for all Kenyans, and Section 20 of the 2003 Disability Act prohibits discrimination against persons with disability in the provision of health services.
28. The majority of people we spoke to in our investigation reported being involuntarily admitted to hospitals. The Mental Health Act allows people suspected of having a "mental disorder" to be involuntarily admitted. Police officers can detain someone on the basis that they believe that person has a "mental disorder" and any person's spouse, relative (in their absence) or any other person can make an application for involuntary admission to a psychiatric hospital.<sup>19</sup>
29. Article 25(d) of the CRPD is clear on consent to treatment and the CRPD Committee has repeatedly stated that States must adopt measures to ensure that "all health care services provided to people with disabilities, including all mental health care and services, are based on the free and informed consent of the individual concerned and that laws permitting involuntary treatment and confinement, including upon the authorization of third party decision-makers such as family members or guardians, are repealed".<sup>20</sup>

#### Questions for the Kenyan government

- a. Please provide information on steps taken to stop involuntary admission and treatment of persons with psycho-social disabilities and to prevent health care decisions being made on behalf of persons with disabilities by carers/relatives/ support persons against their will and preferences.
- b. Please provide information on plans to work with people with psycho-social disabilities and persons with intellectual disabilities to guarantee access to support in making health care decisions and having their decisions respected.
- c. Please explain any measures in place to educate and raise the awareness of health care professionals and relatives/ carers about the rights of persons with disabilities to consent on an equal basis with others to any medical intervention.
- d. Please explain measures the State has taken to ensure that mental health care services and a variety of support measures, including crisis and recovery supports, multidisciplinary, home-based and assertive outreach care and a comprehensive range of relevant medical, psychological and social therapies for service users and their families are provided within their communities.

<sup>18</sup> CRPD Committee, Concluding Observation of the Committee: China, 15 October 2012, CRPD/C/CHN/CO/1.

<sup>19</sup> Mental Health Act (CAP 248), Section 16, 16(1) & 14(1).

<sup>20</sup> CRPD Committee, Concluding Observation of the Committee: China, 15 October 2012, CRPD/C/CHN/CO/1.

# 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

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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.

## 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?

### Part 3. 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 2010<sup>2</sup>. 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?

<sup>2</sup> See the Fourth Schedule of the Constitution of Kenya, 2010

## 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 homes<sup>2</sup>. 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”<sup>3</sup>.

In 2011, Jane<sup>4</sup> 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 realize<sup>5</sup> 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.

3 Interview Number 1 with member of WCC

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

5 Refer to above interview notes

Women with disabilities face a lot of challenges in accessing reproductive health services. There have been cases of forced sterilization<sup>6</sup> or women with disabilities being discouraged from having children as 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:

Wanjiku<sup>7</sup> 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. Research<sup>8</sup> 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 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 Kamau<sup>9</sup>, 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.

6 Alternative Report in Response to the Second Periodic Report to the Committee Against Torture, Independent Medico Legal Unit, 13th April, 2013

7 Not real name, details with Autism Society of Kenya

8 World health organization Measles and Rubella Report, Strategic Plan 2012-2020

9 Not real name. Details with UDPK and Autism Society of Kenya



#### 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 forced 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'<sup>10</sup>.

Mike<sup>11</sup>: 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?
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 implemented 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.

<sup>10</sup> Maureen, Interview Number 15

<sup>11</sup> Not real name, details with UDPK

### 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 disability. 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 information<sup>12</sup>. 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?
3. What measures have the government put in place to ensure refugees with disabilities are given priority in accessing 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 others<sup>13</sup>. 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

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

13 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)

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 office"<sup>14</sup>."

Kanini<sup>15</sup>: 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 CRPD<sup>16</sup>. 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 guardian<sup>17</sup>.

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 lodged by such person's guardian or if he or she marries their spouse.<sup>18</sup>

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 person<sup>19</sup>. 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 allegation<sup>19</sup>. 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?

<sup>14</sup> As above

<sup>15</sup> Not her real name. Case with UDPK

<sup>16</sup> Briefing Paper on Legal Capacity, Kenya National Human Rights Commission, 2013

<sup>17</sup> Mental Health Act (Cap 248) Laws of Kenya

<sup>18</sup> Children Act (No. 8) of 2001, available at: [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php)

<sup>19</sup> Mental Health Act

## 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 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 him<sup>20</sup>.*

UDPK has undertaken research and consultations on access to justice for persons with Disabilities<sup>21</sup>. 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, legal 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 families<sup>22</sup>. 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.<sup>23</sup> Children with disabilities also have their liberty restricted as families abandon them in schools or institutions 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 handicapped<sup>24</sup>. 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

20 Case with Users and Survivors of Psychiatry Kenya

21 Report on File

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

23 5 Ibid 2

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



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 guardian<sup>25</sup>.

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 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.”<sup>26</sup>

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 areas<sup>27</sup>. 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 Rights<sup>28</sup> 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 abuse<sup>29</sup>.

#### Proposed Questions for the List of Issues:

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?

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?

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 Unit<sup>30</sup> 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

25 Mental Health Act (Cap 248) Laws of Kenya

26 Interview #2 on 2 November 2011 on file.

27 Child trafficking in Urban Areas of Kenya, Terres des Hommes, April 2014.

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

29 UDPK and Handicap International, Fact Sheet, 2014

30 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

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).<sup>7</sup> 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 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 1<sup>st</sup> 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.*

*Khadija<sup>31</sup>: 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 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<sup>32</sup> 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 days 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 contract HIV...<sup>33</sup>

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

<sup>31</sup> Not Real name, File with UDPK

<sup>32</sup> Not her real name to protect her.

<sup>33</sup> Jane's mother being interviewed on 1 December 2011, on file.

## 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 Convention<sup>34</sup>.

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 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. 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. 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. 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. Are individual education plans required for all students? How is the availability of assistive devices and support in classrooms, educational materials ensured?
5. What steps has the government taken to ensure free and compulsory education is accessible to children with disabilities?
6. What mechanisms are in place to ensure that learners with disabilities access quality education in appropriate learning settings?
7. 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?

<sup>34</sup> 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.



- 8 What measures have been taken to ensure that school buildings and materials are accessible to children with different types of disability?
- 9 Is 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 cycle<sup>35</sup>.” It also explains that, “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups<sup>36</sup>.” 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 population<sup>37</sup>. 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 mother<sup>38</sup> 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 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?

35 CEDAW Committee, General Recommendation No. 24 par 2

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

37 Constitution of Kenya 2010

38 Interview 10. File with UDPK

## 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 that hawkers without disability thus interfering with their rights to a livelihood<sup>39</sup>.

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 Rose<sup>40</sup> 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 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.

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

40 Not real name. File with UDPK

#### 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 disability<sup>41</sup>. 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 disabilities<sup>42</sup>. 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..."

<sup>41</sup> Towards the 2017 General Elections, UDPK, September 2013

<sup>42</sup> UDPK and Handicap International Documentary

- 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 person<sup>43</sup>.

#### 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?
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-funded<sup>44</sup>. 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 law<sup>45</sup>.

#### 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%,

<sup>43</sup> Interview Number 14

<sup>44</sup> 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>

<sup>45</sup> 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 Kenya National Survey for Persons with Disabilities puts the population of persons with disabilities at 4.6% which translates to 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.

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 report<sup>46</sup> 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 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 from 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:**

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

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



# The Right to Legal Capacity in Kenya

## Executive Summary

"I think if you have people who care for you and people who love you, people who will tell you 'Look here, you are sick and we are taking you to the hospital' and also give you a chance to express yourself in terms of what you want, then you will cooperate. But if you are forced, that is the time things get worse [...]. You feel traumatised, you feel the decision made was not in the right direction [...]. I think the family should be aware that when they have a sick person they have a duty to ensure that he is respected as a human being. They should also help the person to make the right decision, rather than seeing the person as a bother to them [...]. It would be good if there is a group of people with an office nearby which advocates for persons with mental disability, that when you have a problem you can go to their offices and they can assist you with decision-making other than making decisions on your own and at the time when you are sick."

Yusuf, a man with a psycho-social disability

"I don't think I would get children. I will tell you something, you see here [lifts up the blouse and reveals a scar on her stomach] here I was made an operation [...]. This is contraceptive, all of us had been done like this, we cannot get children [...]. Nobody asked me [if I want it]. They should have asked me, because I love children [...]. I feel bad, but what can I do now?"

Atieno, a woman with an intellectual disability

"The government should be able to provide support to people with disabilities so that they are productive like the way Chumo is being supported by our community[...] The community should love these people and also show them that they are human beings just like any other person and we should not refer to them by the use of bad words. People should know how to communicate and deal with people like Chumo."

Friend of Chumo, a woman with a psycho-social disability

This report seeks to answer the question: "To what extent does Kenya guarantee the right to legal capacity for people with intellectual disabilities and people with psycho-social (mental health) disabilities?"<sup>1</sup> It shows that Kenya must take immediate action to ensure comprehensive recognition of the right to legal capacity of all people with disabilities in the country, and that the State must take a lead to tackle social prejudices which disadvantage the vast majority.

The right to legal capacity is recognised as one of the most important shifts ushered in by the UN Convention on the Rights of Persons with Disabilities (CRPD). Guaranteed in Article 12 of the Convention, legal capacity is the mechanism through which the self-determination of people with disabilities is given legal recognition. It serves a dual purpose, guaranteeing the legal recognition of people with disabilities and their decisions, and ensuring access to supports in order to exercise their legal capacity.

As such, the right to legal capacity seeks to redress the historic lack of legal recognition provided to many people with disabilities, particularly including people with intellectual disabilities and people with psycho-social (mental health) disabilities. It requires States to take the lead in moving away from restriction and denial of the decision-making rights of people with disabilities ('substituted decision-making') towards ensuring their autonomy in all areas of life and the right to access support in exercising this ('supported decision-making').

One of the most significant findings of this report is the way in which ingrained social prejudices against people with mental disabilities leads to significant restrictions being placed on their independence and autonomy on a daily basis. Stereotypes of people with mental disabilities are reflected in a legislative framework which systematically denies them legal recognition in a wide variety of areas including education, employment, management of property and land and access to healthcare.

The testimonies from people with intellectual disabilities and people with psycho-social (mental health) disabilities presented in this report provide a compelling case for the need for legal and social reform. Many of them, in their own words, describe the restrictions placed upon them on a daily basis, limiting their freedom to move, to associate with others, even to make decisions about marriage and founding a family. The effects of social isolation and discrimination are brought into even starker contrast in the testimonies of women with mental disabilities, many of whom reported experiencing gender-based violence, rape and even forced sterilisation.

<sup>1</sup> Throughout this report we use the term 'people with mental disabilities' to refer both to people with intellectual disabilities and people with psycho-social (mental health) disabilities where the content is relevant to both groups.

The most important findings of this report are:

- 1 **Kenyan laws cluster people with psycho-social (mental health) disabilities and people with intellectual disabilities together arbitrarily.** Legislation provides for the appointment of guardians, estate managers or public trustees when an adult with a “mental disorder” is considered incapable of managing their affairs, accompanied with custody orders when the court thinks the adult is incapable of taking care of themselves. The problem with this is that the law categorises all these groups as incapable, without engaging with the support needs of each individual as required by the CRPD.
- 2 **The vast majority of people with mental disabilities experience restriction of their decision-making rights through informal social processes within the family and local communities.** This interacts on adults in many ways, restricting their day-to-day lives including whether or not they are in employment, or even in seeking redress against violence or abuse. The majority of people with mental disabilities and their families have little access to supports and the tendency is that this leads to isolation and, in many cases, over-protection.
- 3 **The denial of decision-making rights of people with mental disabilities is even more pronounced in the case of women and younger people,** and many are unable to complete education and gain employment as a result. Testimonies from people with mental disabilities clearly show that greater independence and social inclusion are achieved when they are able to engage in employment.
- 4 **The judicial process for determination of an adult’s legal capacity fails to place any emphasis on their choices, will or preferences.** Instead, laws are premised on an assumption of the adult’s incapacity, contrary to provisions of Article 12, CRPD.
- 5 **Safeguards of the rights of people with intellectual disabilities and people with psycho-social (mental health) disabilities are completely inadequate.** Those that do exist are based on their perceived ‘best interests’ rather than their choices, will or preferences.
- 6 **There is a lack of comprehensive statistical data of the number of people who have had their legal capacity restricted.** It is impossible for the State to plan and give proper effect to the human rights of people with disabilities unless such information is collected and forms the basis of policy-making.

Kenya underwent political changes during the research period. Among these changes, the adoption of a new Constitution in 2010 and has transformed the governance structure of the country, particularly following the 2013 general elections. Law reform processes followed the adoption of the Constitution and many of these reform processes are ongoing. A draft Mental Health Bill (2012) which will replace the 1991 Mental Health Act (Cap 248) has been accompanied by efforts of the Kenyan National Human Rights and Equality Commission and other stakeholders who have been pushing for legal capacity law reform.

The report is structured into two parts. **Part One** presents the background to the research, before outlining important aspects of Kenya’s legal and social systems, the political context, definitions regarding people with disabilities, data and statistics and the way in which the right to legal capacity is guaranteed under international law. **Part Two** provides a detailed analysis of Kenya’s compliance with Article 12 CRPD using four main indicators developed from MDAC’s extensive research in the area of legal capacity. **Appendix 1** sets out a distilled version of the interviews with people with disabilities and their carers/families, while the research methodology is set out in **Appendix 2**.

The research involved a law and policy analysis, focus group discussions and interviews with 74 people including people with psycho-social (mental health) disabilities, people with intellectual disabilities, their families and carers, and a variety of other stakeholders across Kenya including officials at the Ministries of Health, Education and Social Policy, and at the Kenyan National Human Rights Commission. The report offers an important insight on challenges to the realisation of the right to legal capacity for people with mental disabilities in the country, and provides recommendations aimed to bring Kenya into compliance with its obligations under the CRPD.

## Recommendations to the Kenyan government

Kenya's legal capacity system fails to meet the standards set by the UN Convention on the Rights of Persons with Disabilities (CRPD), and particularly the requirements of Article 12. In 2011 the Kenyan government submitted its report to the UN Committee on the Rights of Persons with Disabilities. The report contained an express intention to take legal steps to move from substituted to supported decision-making arrangements. In order to assist in implementing this commitment, which would bring Kenya closer to compliance with Article 12, MDAC recommends the following to the Kenyan government:

- 1 **Introduce legislation and enabling regulations to guarantee the right to legal capacity in all areas of life for people with mental disabilities**, including in accessing justice, healthcare and treatment decisions, the exercise of political and civil rights, family life and marriage, property and land law, and in the criminal justice system for both victims and perpetrators. Legislation which acts as a barrier should be abolished without delay.
- 2 **Abolish formal substituted decision making regimes to ensure that law respects the will and preferences of individuals.** Section 107 of the Children Act and Section 26 of the Mental Health Act (Cap 248) should be abolished as they allow for the deprivation or restriction of legal capacity by courts and directors of psychiatric hospitals.
- 3 **Remove the terms “unsound mind”, “mental incapacity” and “mental infirmity” from the statute books. These offensive terms perpetuate unhelpful stereotypes throughout society.** They currently appear in, inter alia, the 2010 Constitution Article 83(1)(b), the Local Government Act 2010 Part V, paragraph 53(c), and the Election Act 2011 section 9.
- 4 **Take urgent steps to combat social stigma and prejudice faced by people with mental disabilities and which have the effect of restricting exercise of legal capacity.** Public awareness campaigns, developed in conjunction with people with mental disabilities themselves, should be rolled out nationally.
- 5 **Combat informal substituted decision-making within families and communities** by asking people with disabilities, their carers and local leaders to identify promising practices of support mechanisms which respect and strengthen individual autonomy. Such promising practices should recognise the central importance of family, friends and local communities in supporting people with mental disabilities to exercise their right to legal capacity. The government should collate promising practices and share them across the country and internationally.
- 6 **Initiate pilot projects on supported decision-making in various regions**, and commission external evaluation, the learning from which should be shared with NGOs and policy-makers across and outside the country.
- 7 **Ensure that the National Bureau of Statistics and National Council for Persons with Disabilities fulfil Kenya's obligations under Article 31 of the CRPD to collate appropriate and disaggregated data of people with disabilities** – especially data relating to people with psycho-social (mental health) disabilities and people with intellectual disabilities. Data should set out the number of people with disabilities who have and do not have national identification cards. Statistics must be made available to people with disabilities and their representative organisations, and should serve as the foundation for evidence-based policy on the provision of supports to people with disabilities.
- 8 **Promote the training of government officials, magistrates, judges, psychiatrists and other medical practitioners, public trustees and police officers alongside community/traditional leaders** on the right to legal capacity and the provision of supports to exercise legal capacity. In doing so, Kenya will be fulfilling its obligations under Article 4(1)(i) of the CRPD.
- 9 **Raise awareness among people with disabilities, their relatives and carers, and the general community about their human rights, including the right to legal capacity.** These actions should include making use of different media options, radio, television, newspapers and should target all levels of the education system. This will help Kenya fulfil its obligations under Article 8 of the CRPD.
- 10 **Introduce legislative, administrative, social, educational and other appropriate measures to protect people with disabilities both within and outside their home from exploitation, violence and abuse** as provided in Article 16(1) of the CRPD. In order to prevent abuse, people with disabilities and their carers should be provided with information and education on how to avoid, recognise and report instances of abuse as required under Article 16(2) of the CRPD and ensure that all facilities and programmes serving people with disabilities are independently monitored as provided under Articles 16(3) and 33(2). Also, instances of exploitation, violence and abuse must be identified, investigated and where appropriate prosecuted as provided in Article 16(5) of the CRPD, and victims of abuse should be provided with protection services that are mindful of gender and age-specific needs as set out in Article 16(4).

The rich testimonies from people with mental disabilities which form a substantial part of this report attest to the complex challenges that they face on a daily basis when making decisions about how to live their lives. It is vital that the government takes the lead in ensuring that legal and policy barriers are removed. Clearly many of the barriers faced by people with mental disabilities flow directly from negative perceptions and discriminatory social perspectives, and these will not be changed overnight. In advancing the right to legal capacity, it is essential that the government involve people with disabilities themselves, including children with disabilities, through their representative organisations at all stages – an obligation set out in Article 4(3) of the CRPD.

## Part One:

### People with disabilities in Kenya - context

#### 1. General Background

This section sets out the context within which the report has been written. It begins with why MDAC has written this report and looks at the legal and social systems in Kenya, political context, definitions relating to people with disabilities, data and statistics and the concept of legal capacity as defined in international law.

##### 1.1 Why have we written this report?

The Kenyan government expressed its commitment to shift away from substituted decision-making to supported decision-making in August 2011 in its report to the United Nations Committee on the Rights of Persons with Disabilities.<sup>2</sup> This report aims to contribute to the legal capacity law reform process established by the Kenya National Commission on Human Rights (KNCHR) in June 2012 that sets up a technical team to discuss how Article 12 of the CRPD can be realised in Kenya.<sup>3</sup> In the process of developing this report, KNCHR developed a draft briefing paper on legal capacity in June 2013, which acknowledges MDAC's guidance and assistance as we shared information and discussed issues of legal capacity with the consultant who was contracted by KNCHR.

MDAC has examined the effect of guardianship laws in many countries in Europe, where laws have remained relatively unchanged for decades.<sup>4</sup> Since the adoption in 2006 of the UN Convention on the Rights of Persons with Disabilities (CRPD), substantial law reform is taking place in several jurisdictions, as governments realise the importance and urgency of bringing their legislation into conformity with the Convention.<sup>5</sup> Collaborating with Kenyan Association for the Intellectually Handicapped, Users and Survivors of Psychiatry Kenya and Basic Needs Kenya, MDAC launched an investigation into guardianship, legal capacity and human rights in the country. The objective was to identify the strengths and weaknesses of laws and policies, as well as look at what life is like for people with disabilities in Kenya.

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2 Initial Report to the CRPD Committee, 31 August 2011, 26.

3 Personal Communication with Lawrence Mute, former Commissioner at the Kenya National Commission on Human Rights. MDAC office Budapest, Hungary: 14 June 2012.

4 Mental Disability Advocacy Centre, Guardianship and Human Rights in Serbia, (2006), Bulgaria (2007), Czech Republic (2007), Georgia (2007) Hungary (2007), Kyrgyzstan (2007) and Russia (2007). In October 2013 we published a report entitled Legal Capacity in Europe (2013).

5 In 2012, Czech Republic abolished total deprivation of legal capacity and introduced supported decision-making, advance directives, guardianship without restriction of legal capacity and representation by members of the household. The new law takes effect in 2014. Prior to 2012, Latvia had only plenary guardianship (full incapacitation), but this was abolished and the country introduced partial guardianship (restriction of legal capacity) and alternatives to guardianship in 2012. MDAC continues to advocate for the introduction of supported decision-making in Latvia.

We began by analysing the legislative and policy framework and practices in Kenya and its impact on the rights of adults with psycho-social (mental health) disabilities and those with intellectual disabilities on exercising their right to legal capacity. We selected Kenya for our investigation because in March 2010 we met several leaders of disability NGOs and with the Kenya National Human Rights and Equality Commission (then the Kenyan National Commission on Human Rights) in Nairobi, who asked us to explore the theme, and to feed in to their law and policy reform advocacy. Kenya adopted a new Constitution in August 2010, and this has been applauded by many human rights advocates for advancing human rights – on paper, at least.<sup>6</sup>

We conducted our investigation in two phases. The first stage was to carry out a legislative and policy review, looking at laws, policies and regulations that impact on legal capacity, as well as conducting structured interviews and focus groups with key stakeholders in the country. Since law and practice frequently diverge (in Kenya as much as elsewhere), in April 2012 we gathered testimonies from adults with psycho-social (mental health) disabilities, those with intellectual disabilities and their family members and carers. These testimonies are presented as personal narratives in **Appendix 1** of this report and provide powerful accounts of the lives of people with disabilities across the country. The methodology of the research is set out in **Appendix 2**.

We sought to answer four questions, which all flow from Kenya's obligations under the CRPD:

- 1 Does the law recognise people with disabilities as persons before the law?
- 2 Are people with disabilities enabled to exercise legal capacity on an equal basis with others?
- 3 Can people with mental disabilities exercise legal capacity in all aspects of life?
- 4 What kinds of supports are available for people with disabilities who may need them in exercising their legal capacity?

## 2. Legal and social systems in Kenya

Situated in East Africa, and with a population of about 40 million,<sup>7</sup> Kenya gained independence from the United Kingdom in 1963 and has since evolved into a multi-party electoral democracy. The 2010 Constitution, designed to be implemented progressively over five years, provides for people with disabilities to be treated with dignity and respect, to access educational institutions and facilities and sets out a quota that at least 5% of parliamentary seats should be reserved for people with disabilities.<sup>8</sup>

Kenya's legal system is based on the common law system<sup>9</sup> in which the sources of Kenyan Law<sup>10</sup> include general rules of international law. Treaties ratified by Kenya also form part of the domestic legal system,<sup>11</sup> and can be directly applied by Kenyan courts, tribunals and administrative authorities if there is a gap in domestic legislation.<sup>12</sup> Kenyan courts can also make findings of violations of international law.<sup>13</sup>

The principle of non-discrimination runs through the 2010 Constitution, which requires all State organs and officials, legislators and judges to abide by the principle.<sup>14</sup> This is important, given that people with disabilities have been victims of discriminatory laws and practices for decades. State organs and officials are mandated to make, execute and interpret laws in a non-discriminatory manner<sup>15</sup>

Kenya has a multi-racial, multi-ethnic, multi-cultural and multi-religious society. People of African descent constitute roughly 90% of the population, and there are 42 main ethnic groups which are further grouped into many smaller sub-tribes.<sup>16</sup> Major religions include Christianity (78%), Islam (10%), African Traditional Religions (10%), Hinduism and Sikhism (1%). It is estimated that 46% of the population lives in absolute poverty, with 56% of Kenyans living on less than one US dollar per day<sup>17</sup>

6 Amnesty International USA, Kenya Human Rights, available at: <http://www.amnestyusa.org/our-work/countries/africa/kenya> (last accessed 9 March 2014), See also Freedom House, Kenya, available at: <http://www.freedomhouse.org/report/countries-crossroads/2012/kenya> (last accessed 9 March 2014).

7 Kenya initial report to CRPD Committee, 31 August 2011, 6, which states that 80% of the population lives in rural areas.

8 2010 Constitution, Article 54.

9 Hauser Global Law School, Researching Kenyan Law, available at <http://www.nyulawglobal.org/globalex/Kenya.htm> (last accessed 9 March 2014).

10 Section 3 of the revised 2012 Judicature Act (CAP 8, Laws of Kenya, 1967) enumerates the primary sources of Kenyan law to include: The Constitution which is the supreme law of the land; Acts of Parliament; specific Acts of Parliament of the United Kingdom; certain Acts of Parliament of India; English Statutes of General Application in force in England on 12 August 1897; substance of the Common Law and Doctrines of Equity; African Customary Law and Islamic Law.

11 2010 Constitution, Article 2(5) & (6). Also, the Treaty Making and Ratification Act 2012 sets out the respective roles of executive, parliament and the public in the treaty ratification process. Ratified treaties now have direct effect and form part of the Kenyan legal system.

12 Kenya's initial report to CRPD Committee, 31 August 2011, 11.

13 High Court of Nairobi, CK et al v. Commissioner of Police et al, Petition no 8 of 2012, judgment 27 May 2013, available at: <http://theequalityeffect.org/160girlshighcourt2013.html> (last accessed 9 March 2014). The court found a violation of the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights, and the African Charter on the Rights and Welfare of the Child.

14 Initial report to CRPD Committee under Article 35 of the CRPD, 31 August 2011, 9.

15 2010 Constitution, Article 10.

16 Initial report to the CRPD Committee, 31 August 2011, 6.

17 Ibid.



### 3. Political context

Kenya ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) on 19 May 2008. The ratification requires the government to adopt laws as well as modify or abolish existing laws, regulations, customs and practices that discriminate against persons with disabilities.<sup>18</sup> Further, the Constitution obliges the State to enact and implement legislation to fulfil its international obligations in respect of human rights.<sup>19</sup>

The government is well aware of its CRPD obligations, having acknowledged in a 2011 report to the United Nations Committee on the Rights of Persons with Disabilities that the right to legal capacity, embedded in Article 12 of the Convention, has yet to be realised for people with disabilities in the country, since many decisions are still being made “on behalf of people with disabilities without consulting them.”<sup>20</sup> It has further expressed a commitment to move from a substituted decision-making regime to one grounded in supported decision-making. It is this legislative reform process to which this report aims to contribute.

The 2012 Mental Health Bill seeks to repeal the 1991 Mental Health Act.<sup>21</sup> The Bill's first reading in Parliament was in October 2012 and is now left with the 2nd and 3rd readings. Among the Bill's objectives are to protect and safeguard the rights of people with “mental illness”,<sup>22</sup> a term defined in an ambiguous manner, rendering the scope of its application of dubious utility.<sup>23</sup> Amending the Mental Health Act is a step in the right direction since the current Act is obsolete, coming into force in 1989 and has not been amended since 1991. As such it fails to incorporate emerging human rights standards such as those enshrined in the CRPD.<sup>24</sup> The Bill sets out entitlements to choose and appoint a representative in any matter in a way which purports to respect the personal autonomy of the individual concerned, including through complaint procedures and appeals.<sup>25</sup>

The Bill, however, still allows for substituted decision-making, allowing for people with “mental illness” to be deprived or restricted of their legal capacity and to have a personal representative appointed.<sup>26</sup> A parent, spouse, adult offspring of the person, or a friend, relative or any interested person who takes charge of the person with “mental illness” can apply to the Magistrates Court for an order to be appointed to manage and administer their estate.<sup>27</sup>

Minimal safeguards are built into new legislation and they include the following:

- Courts are required to give the person with disability notice of the application against him/her unless it considers that service would be impracticable, inexpedient or ineffectual. Courts may also direct that a copy of the notice be sent to a relative of the person or to any other person the court thinks should receive the application.<sup>28</sup>
- Courts may require the person in question to be personally examined by the court, a doctor or any other person the court appoints, to assess their “mental capacity and condition”.<sup>29</sup>
- The court may make enquiries to ascertain the wealth and estate of the person and inform the public of the appointment of an estate manager through the Kenya Gazette for any possible objections.<sup>30</sup>
- The person in question or their personal representative has the right to produce independent medical reports or any other oral or written reports or evidence at any hearing that is relevant to their mental health status, and to attend and participate in any hearing.<sup>31</sup>
- An estate manager is obliged to follow the instructions of the court, and their powers over the estate are limited to what the court has expressly provided, subject to the provisions of relevant legislation. The estate manager shall not mortgage, transfer, or lease any immovable property for a period exceeding three years without permission from the court.<sup>32</sup>

These safeguards are insufficient, in MDAC's view, to bring Kenyan law into compliance with Article 12 of the CRPD. The law is still dominated by a deficits approach, which treats the person as incompetent and hands over decision-making authority to someone else. The Bill fails to set out a procedure for a person with a disability to access the support that she/he may require to exercise their legal capacity, such as the support needed to appoint and work with a personal representative. Nowhere does the Bill specify that personal representatives are required to respect the will and preferences of the people they represent.

Other bills and policy documents are silent on how people with disabilities can access supports to exercise their legal capacity.<sup>33</sup> The Legal Aid Bill 2010 allows for applications for legal aid in respect of civil proceedings next friend or guardian ad litem).<sup>34</sup> In granting legal aid in criminal proceedings, the Legal Aid Commission considers whether the person is able to understand the proceedings or present his or her case.<sup>35</sup>

18 UN Convention on the Rights of Persons with Disabilities (CRPD), Article 4(1) (b).

19 2010 Constitution, Article 21 (4).

20 Initial Report to the CRPD Committee, 31 August 2011, 26.

21 Mental Health Bill (CAP 248 of the laws of Kenya), 2012, published on the Kenya Gazette as Supplement No. 115 on 21 September 2012.

22 2012 Mental Health Bill, Section 2(5).

23 It is not clear whether the Bill's definition of “mental illness” covers people with intellectual disabilities. ‘Mental illness’ is defined in Section 3 as including any disorder, impairments, disabilities and handicaps of the mind including mental impairment as a result of alcohol, drugs and substance abuse, but does not include: cases where someone holds or refuses to hold a particular religious; philosophical or political beliefs; sexual promiscuity; sexual preference; engaging in immoral or indecent conduct; taking drugs or alcohol; or those demonstrating anti-social behaviour.

24 Kenya National Commission on Human Rights, *Silenced Minds: The Systematic Neglect of the Mental Health System in Kenya*, (Nairobi: KNCHR, 2011), 20.

25 2012 Mental Health Bill, Section 28(1).

26 2012 Mental Health Bill, Section 6(1).

27 2012 Mental Health Bill, Section 43(1).

28 2012 Mental Health Bill, Sections 43(4) and (5).

29 2012 Mental Health Bill, Section 43(6).

30 2012 Mental Health Bill 2012, Sections 44(1), (2), 45 (2), (3), (4) and (5).

31 2012 Mental Health Bill, Sections 28(3) and (4).

32 2012 Mental Health Bill, Section 45 (4) and (5).

33 Bills include the 2011 Children's Act (2001) Amendment Bill, the 2007 Family Protection Bill, the 2007 Matrimonial Property Bill, and the 2012 Persons Deprived of Liberty Bill. Policy documents include the 2006 Draft National Disability Policy, the 2010 Draft Human Rights Policy, the 2003 Draft Mental Health Policy revised in 2007, and the 2011 Draft Social Protection Policy. All are silent on the issue of supported decision-making.

## 4. Definitions

The CRPD recognises that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”<sup>36</sup> Article 1 states that people with disabilities “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. This emphasises the diversity of disability and recognises that the law must seek to demolish social barriers that impede the lives of people with disabilities. In 2011, the World Health Organisation and the World Bank published *The World Report on Disability*, the first report of its kind and providing an analysis of disability-related policy responses and recommendations for actions at national and international levels.<sup>37</sup> The report notes that the notion of disability is complex, dynamic, multi-dimensional and contested,<sup>38</sup> illustrating some of the definitional difficulties and the need for a flexible and developmental approach to the law.

It is striking that there is no definition of ‘persons with disabilities’ in the Persons with Disabilities Act 2003, nor in the Constitution. ‘Disability’ is defined in Section 2 of the Persons with Disability Act as “a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation”.

In 2007, the government came up with an unpublished draft Bill to amend this definition by including “whether arising from natural or artificial causes, which is irreversible and long term...”<sup>39</sup> after the word ‘physical incapability’ in the definition. In 2010 the government published a Bill to insert the words “or albinism” before physical incapability in the definition.<sup>40</sup> The 2010 Persons with Disability Bill has yet to have its first reading in parliament.

The Constitution defines ‘disability’ as “...any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long term effect on an individual’s ability to carry out ordinary day-to-day activities.”<sup>41</sup>

The term “other impairment” in both of these provisions provide a non-exhaustive list of impairments. The Constitution allows disability to be determined with reference to the perception of significant sectors of the community, without defining what this means, leaving open the possibility of disability to be both overly broad (for example defining homosexuality as a disability) and narrow (for example failing to consider mental health issues as giving rise to a disability).

The World Report on Disability states that people with psycho-social impairments and people with intellectual impairments are more likely to be disadvantaged in a variety of settings than those with other forms of impairments.<sup>42</sup> This disadvantage is evident in the exercise of the right to legal capacity. The Kenyan government has also acknowledged that the right to legal capacity remains a challenge for people with disabilities in Kenya, particularly people with psycho-social (mental health) disabilities and people with intellectual disabilities.<sup>43</sup>

No universally-accepted terminology exists. Different cultures and languages use different labels. ‘People with intellectual disabilities’ is the term used by Inclusion International,<sup>44</sup> Inclusion Africa<sup>45</sup> and the Kenya Association for the Intellectually Handicapped.<sup>46</sup>

The term ‘intellectual disability’ has no agreed definition. MDAC uses the following:

An intellectual disability generally means having greater difficulty than most people with intellectual and adaptive functioning due to a long-term condition that is present at birth or before the age of eighteen. People with this label may have greater difficulty in carrying out everyday activities such as communicating and interacting with others, managing money, doing household activities and attending to personal care. While the term ‘intellectual disability’ is technically distinct from other ‘developmental disabilities’ these terms are often used interchangeably.<sup>47</sup>

The term ‘people with psycho-social disabilities’ is used by the World Network of Users and Survivors of Psychiatry, the International Disability Alliance, the Pan-African Network of People with Psycho-Social Disabilities (formerly known as the Pan-African Network of Users and Survivors of Psychiatry), Users and Survivors of Psychiatry

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34 2010 Legal Aid Bill, Section 12 (1) and (2).

35 2010 Legal Aid Bill, Section 7(2)(e).

36 CRPD Preamble, Paragraph (e).

37 World Bank and WHO, World Report on Disability, 2011, see the aims of the report.

38 World Bank and WHO, World Report on Disability, 2011, 3.

39 2007 Persons with Disabilities (Amendment) Bill, Section 2.

40 2010 Persons with Disabilities (Amendment Bill), Section 2. This seeks to include people with albinism amongst the category of people identified as being disadvantaged under the 2003 Disability Act.

41 2010 Constitution of Kenya, Article 260.

42 WHO and World Bank, World Disability Report, 2011, 8.

43 Initial report to the CRPD Committee, 31 August 2011, 26 Para 121.

44 This is a global federation of family-based organisations advocating for the human rights of people with intellectual disabilities.

45 A Pan-African federation of associations of parents with a common mission and vision for children with intellectual disabilities, advocating for the rights of people with intellectual disabilities and their families. See <http://inclusion-international.org/category/regions/africa/> (last accessed 9 March 2014).

46 A parent-based Kenyan national organisation that works with parents and guardians of young people who have an intellectual disability and member organisation of Inclusion International and Inclusion Africa, also uses the term ‘people with intellectual disabilities’. See <http://kaihid.org/disabilityinfo/developmental-disability> (last accessed 9 March 2014). KAIH relied on the definition of ‘intellectual disability/cognitive disability’ provided by Centre for Disease Control and Prevention.

47 Mental Disability Advocacy Center, Building the Architecture for Change: Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities (Budapest: MDAC, 2011), 54.

Kenya and the UN Committee on the Rights of Persons with Disabilities.<sup>48</sup> MDAC describes the term as “those who experience mental health issues, and/or who identify as ‘mental health consumers’, ‘psychiatric survivors’, or ‘mad’. These are not mutually exclusive groups.”<sup>49</sup> People with intellectual disabilities and people with psycho-social (mental health) disabilities in Kenya mostly depend on their families for social, financial, material and psychological support.<sup>50</sup> Due to this dependence on families, many people with mental disabilities experience restrictions on their decision-making rights, which is exacerbated by high rates of poverty and social inequality. Poverty, inequality and discrimination are interwoven, often in complex and mutually-reinforcing ways.<sup>51</sup> The bi-directional relationship between disability and poverty is well-established.<sup>52</sup> Poverty can increase the exposure of people with disabilities to discrimination especially in respect of making decisions which have financial implications.

## 5. Data and statistics

Article 31 of the CRPD sets out the State obligation to collect appropriate and disaggregated information, “including statistical and research data to guide them to formulate and implement policies” which give effect to the Convention. It also establishes the State obligation to disseminate statistics and ensure that information is accessible to people with disabilities and others.<sup>53</sup>

Various national bodies use different statistics about the numbers of people with disabilities in Kenya. One body puts the figure at 1.7 million and another at 1.3 million.<sup>54</sup> These numbers have been faulted as underestimates,<sup>55</sup> but in human rights terms numbers are less important than how people’s rights are secured. The National Council for Persons with Disabilities (NCPWD) has statutory duties to register people with disabilities including those whose condition requires constant medical attention for the purpose of availing subsidised medical services.<sup>56</sup>

NCPWD is mandated to co-operate with relevant government bodies during the national census to ensure that accurate figures of people with disabilities are obtained for the purpose of planning.<sup>57</sup> Kenya’s National Bureau of Statistics (KNBS) is required to ensure that accurate statistics of people with disabilities are available.<sup>58</sup>

Neither of these bodies holds figures about the numbers of people under guardianship, those deprived of their legal capacity by the 2001 Children’s Act or the 1991 Mental Health Act. To try and establish this figure, MDAC sent a letter in January 2013 to the High Court (via post and hand-delivered) asking for the statistics on people deprived of their legal capacity, although we received no reply to this request.

## 6. Legal capacity in international law

Legal capacity is the law’s recognition of a person’s decisions. The effect of denying or restricting a person’s legal capacity either formally (through the law) or informally (outside the law) negatively impacts on many aspects of a person’s life, including their ownership and management of property, financial affairs, employment, opening a bank account and seeking loans, marriage and parenthood, succession and inheritance, and voting or holding political office. Restriction of legal capacity restricts a person’s access to justice due to a lack of recognition before the courts, meaning that forms of ill-treatment such as exploitation, violence and abuse can happen with impunity.

Kenya ratified the CRPD in 2008.<sup>59</sup> In 2010, the new Kenyan Constitution automatically incorporated ratified conventions, such as the CPRD, into Kenyan national law.<sup>60</sup> Notably, Kenya did not make any reservations on Article 12, indicating the government’s willingness to implement the provision in its entirety and undertaking an obligation on the government to secure this right in practice for people with disabilities in the country.

Article 12 of the CRPD guarantees the right to legal capacity. Essentially it sets out some of the principles about how States need to shift away from substituted decision-making regimes. By “substituted decision-making” we include formal processes such as appointing guardians, estate manager, public trustee or courts’ direct management of people’s affairs and through informal norms that fail to respect the choices, will and preferences of adults with disabilities. Instead of substituted decision-making, States should adopt supported decision-making, by which we mean respecting peoples autonomy and decisions, avoiding making decisions for people based on notions of a perceived ‘best interest’, and to provide people with access to support they may need to communicate their decisions or to have their will, preferences and choices understood and respected.

48 Committee on the Rights of Persons with Disabilities, Concluding Observation of the Committee: Tunisia, 13 May 2011, CRPD/C/ TUN/CO/1, paragraph 8.

49 Mental Disability Advocacy Center, Guidelines on Article 33 of the CRPD, (2011), 55.

50 Initial report to the CRPD Committee, 31 August 2011, 7.

51 Equal Rights Trust, “In the Spirit of Harambee: addressing discrimination and equality in Kenya” (U.K: ERT, 2012), 38.

52 WHO and World Bank, World Report on Disability, 2011, 10.

53 In collecting and using the information states must comply to legal safeguards covering data protection, confidentiality and privacy of people with disabilities and internationally accepted norms to protect human rights, fundamental freedoms and ethical principles.

54 The Kenyan National Bureau of Statistics (KNBS) and the National Council for Persons with Disabilities (NCPWD) finalised the National Survey for Persons with Disabilities in 2007. The survey puts the number of people with disabilities at 1.7 million with about 80% living in rural areas. The survey estimates that people with mental impairments constitute 4.64% without any mention of people with an intellectual disability. The 2009 Population and Housing Census preliminary report puts the number of people with disabilities in Kenya at 1,330,312 of which 136,093 are people with mental disabilities (75,139 males and 60,954 females) without providing data on people with intellectual disabilities. The term ‘mental disability’ may have been used to include people with intellectual disabilities or this group is simply ignored.

55 Edah Maina, quoted in the Equal Rights Trust report on inequality and discrimination in Kenya, saying that there is lack of reliable and verifiable data on people with mental disabilities and she placed the estimate of people with intellectual disabilities at 1.3 to 3.6 million in the country. Equal Rights Trust, In the Spirit of Harambee: Patterns of Discrimination and Inequality (U.K:ERT, 2012) 140.

56 2003 Persons with Disability Act, Section 7 (c)(i) and (iv).

57 Ibid, Section 7 (1) (c).

58 2006 Statistical Act, Section 4, makes the Kenyan National Bureau of Statistics the principal government agency to collect, analyse and disseminate statistical data in Kenya.

59 Signed 30 March 2007; ratified 19 May 2008.

60 Constitution, Article 2(6).

## Article 12, CRPD

### Equal recognition before the law

- 1 States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
- 2 States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
- 3 States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
- 4 States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
- 5 Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

The right to legal capacity in Article 12 refers both to the recognition of the individual as rights holder, as well as an actor in law throughout “all aspects of life”.<sup>61</sup> Many domestic laws remove someone's legal capacity, which clearly does not comply with Article 12(2). The CRPD recognises that some people need support in exercising their legal capacity, so Article 12(3) mandates that States “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”. States must respect the agency of people with disabilities on an equal basis with others and must provide access to support for the exercise of that agency which a person may require (having a disability does not mean that the person requires assistance in all or every case).

The support paradigm of Article 12 recognises that people with disabilities have an entitlement to informal or formal supported decision-making. Supported decision-making is not a model in itself, but rather a cluster of different models which can vary greatly, placing the individual concerned at the centre of the decision-making process. Models include setting up a specific support agreement with chosen support people,<sup>62</sup> or receiving support from a community-based organisation.<sup>63</sup> In any supported decision-making framework, primacy must be given to a person's “will and preference” (as outlined in Article 12(4) of the CRPD). This means that States must abolish substituted decision-making based on someone's perceived best interests. This refers to the situation where a substitute decision-maker (who may be a government official, a local community leader, teacher, carer/family member, a friend or a member of the community) makes a determination based on what they believe is in the best interest of the individual, which may not be the same as the person's will and preferences. A support paradigm demands that the people around the individual work hard to communicate with the individual and to provide the support necessary for them to express their will and preferences and to act on these.

A supported decision-making system should provide protection both for rights related to autonomy (right to legal capacity, right to equal recognition before the law, right to choose where, how and with whom to live etc.) as well as rights related to freedom from abuse and ill-treatment (right to health, right to bodily integrity, etc.)

Basic provisions and safeguards must be incorporated into the law and must establish structures to:

- 1 recognise and guarantee the right to legal capacity;
- 2 respect the autonomy, will and preferences of the individual;
- 3 ensure that support arrangements, once made, can be modified and challenged where necessary, in line with the will of the person concerned;
- 4 recognise that supported decision-making is built on relationships of trust;
- 5 assign clear roles to supporters to provide information to help people with disabilities make choices, and to assist the them to communicate these choices to third parties (such as banks, doctors, employers, etc.);
- 6 put in place adult protection systems to prevent and remedy exploitation, violence and abuse, as outlined in Article 16 of the CRPD;
- 7 carefully structure and monitor these provisions and safeguards to ensure that they do not over-regulate the lives of the individuals utilising them and become invasive and burdensome; and
- 8 ensure that third parties give legal recognition to the role of support people and to decisions made with support.

Human rights are interconnected and interdependent.<sup>64</sup> The right to make one's own decisions and have those decisions respected is only realisable if there are meaningful options to choose from. People with disabilities

61 Office of the United Nations High Commissioner of Human Rights (OHCHR), Legal Capacity (Background Documents for the Sixth Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 1-12 August 2005), available at: <http://www.un.org/esa/socdev/enable/rights/ahc6documents.htm> (last accessed: 9 March 2014).

62 Canada, British Columbia, Representation Agreement Act, RSBC 1996, c. 405.

63 Swedish user-run service with Personal Ombudsperson (PO) for psychiatric patients, PO-Skane, available at <http://www.po-skane.org> (last accessed: 9 March 2014)

64 CRPD, Preamble (c)

in Kenya have limited choices due to a lack of community-based services.<sup>65</sup> The Kenyan government must coordinate across government ministries to ensure that meaningful options are made available in the services and support available to people with disabilities.<sup>66</sup>

The UN treaty body with the mandate to interpret the CRPD is the Committee on the Rights of Persons with Disabilities. It came up with a draft general comment on Article 12 in September 2013 and has called on States to:<sup>67</sup>

- Review laws allowing for guardianship and trusteeship and take action to develop laws and policies to replace regimes of substitute decision making by supported decision making which respect the person's autonomy, will and preferences;<sup>68</sup>
- ensure that persons with disabilities are provided with identification cards and documents on an equal basis with other members of society, ensuring that this contributes to the collection of accurate data which can be used to provide services;<sup>69</sup>
- abolish the practice of judicial restriction of legal capacity;<sup>70</sup>
- guarantee the exercise of civil rights including the right to marry to all persons with disabilities, to give and withdraw consent for medical treatment, access justice, to vote, and to choose their place of residence;<sup>71</sup>
- provide training in consultation and cooperation with persons with disabilities and their representative organisations at national, regional and local levels for all actors, including civil servants, judges and social workers on the recognition of legal capacity of people with disabilities and on mechanisms of supported decision-making;<sup>72</sup>
- prepare, legislate and implement a blueprint for a system of supported decision-making that includes recognition of all persons' legal capacity and their right to exercise it; and
- guarantee reasonable accommodation and access to support for people who require it to exercise legal capacity, including regulation to ensure that supports provided respects each person's autonomy, will and preferences. Feedback mechanisms should also be developed, to ensure that that various forms of support meet the needs of people with disabilities.<sup>73</sup>

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65 CRPD, Article 19, which sets out the right to live in the community.

66 CRPD, Article 33 (1), which sets out the obligation to coordinate domestic policy.

67 CRPD Committee, Concluding Observations of the Committee: Tunisia, Spain, Peru, Argentina, Hungary, China and Paraguay, see: <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx> (last accessed: 9 March 2014).

68 CRPD Committee, Concluding Observation of the Committee: Tunisia, 13 May 2011, CRPD/TUN/CO/1 and Spain, 19 October 2011, CRPD/C/ESP/CO/1.

69 CRPD Committee, Concluding Observation of the Committee: Peru, 9 May 2012, CRPD/C/PER/CO/1 available at: <http://www.ohchr.org/Documents/HRBodies/CRPD/7thsession/CRPD.C.PER.CO.1-ENG.doc> (last accessed: 9 March 2014).

70 Ibid.

71 CRPD Committee, Concluding Observation of the Committee: Hungary, 22 October 2012, CRPD/C/HUN/CO/1, available at [http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-HUN-CO-1\\_en.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-HUN-CO-1_en.doc) (last accessed: 9 March 2014).

72 Ibid.

73 CRPD Committee, Concluding Observation of the Committee: China, 15 October 2012, CRPD/C/CHN/CO/1, available at [http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-CHN-CO-1\\_en.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-CHN-CO-1_en.doc) (last accessed: 9 March 2014).



## Part Two: Compliance of Kenyan law with Article 12 of the CRPD

### 1. Introduction

The last section provided relevant background about Kenya, looking at its social and legal system, political context, definitions relating to people with disabilities, data and statistics and outlined how the concept of legal capacity has been framed by international law. This section fleshes out the four indicators mentioned above to find out whether Kenyan law complies with Article 12 of the CRPD. The indicators flow from CRPD Committee's concluding observations after reviewing reports of States Parties to the Convention.<sup>74</sup> Under each indicator, there is a conclusion, an explanation of the precise CRPD standards and an analysis of Kenyan law and practice. Reference is also made to the personal testimonies collected during the project and which are set out in Appendix 1 of this report.

### 2. Indicator 1: Does the law recognise people with disabilities as persons before the law?

**Conclusion:** Yes, but this recognition is meaningless in practice.

**CRPD Standard:** Article 12(1) of the CRPD sets out the right of people with disabilities to be recognised everywhere as persons before the law. Any form of discrimination in the recognition of people with disabilities before the law is prohibited and disability-based discrimination violates the inherent dignity of the person.<sup>75</sup> States must prohibit all forms of discrimination and promote equality through equal protection and benefit of the law for people with disabilities and take appropriate steps to provide reasonable accommodation and ensure substantive equality.<sup>76</sup> Article 12(1) requires that if the law recognises people by possession of identification documents (birth certificates, identity card or passport) people with disabilities should be eligible for such documents on an equal basis with others and when necessary supported to gain such documents. In May 2012, the CRPD Committee urged Peru to provide identification documents to persons with disabilities including those in rural areas and to collect complete and accurate data on those that are currently undocumented and who do not enjoy the right to a name.<sup>77</sup>

**Analysis of Kenyan law:** The Constitution sets out that "every person has inherent dignity and the right to have that dignity respected and protected".<sup>78</sup> It provides for the right to equality and non-discrimination and guarantees equality before the law and equal protection and benefit of the law.<sup>79</sup> Equality includes full and equal enjoyment of all rights and freedoms. Women and men 'have the right to equal treatment and opportunities in political, economic, cultural and social spheres, but the civil sphere is not expressly mentioned'.<sup>80</sup> The Constitution prohibits direct and indirect discrimination on grounds including disability, health and age.<sup>81</sup> The prohibition extends to entities of the State (such as a government-run school and public authorities) and non-State actors (including companies, churches and private hospitals). It requires the government to take legislative and other measures including affirmative action programmes and to design policies to challenge disadvantage suffered by individuals or groups because of historic discrimination.<sup>82</sup>

**Analysis of practice:** The Kenyan government acknowledges that disability-based discrimination is entrenched in stereotypes prevailing in Kenyan societies, which portrays people with disabilities as burdens and curses, and sometimes lead to families hiding such persons.<sup>83</sup> People with disabilities remain vulnerable to discrimination and inequality despite their legal recognition as persons before the law. Social prejudices are also apparent in the way that people with mental disabilities are treated in practice by both State and private entities, as has been established in previous research.<sup>84</sup>

There is a high probability that people hidden from society will be unable to access and possess personal identification documents. The issue of someone being hidden features in the testimony of Atieno, a woman in her late 20s with an intellectual disability, who said that when she was growing up her family did not want her: "they hated me", she said, and they locked her inside a pen in the garden. She explained how her father said that she is "a bad omen to the family". Inside the pen the only company she had was "animals and goats, and I would get so lonely". After neighbours reported the matter to a church group, she was rescued.

74 CRPD, Article 35, sets out States' obligation to report to the CRPD Committee on measures taken to implement the CRPD.

75 CRPD, Preamble Paragraph (h).

76 CRPD, Article 5, on equality and non-discrimination.

78 2010 Constitution, Article 28. Also, Article 54(1)(a) states that persons with disabilities are entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning.

79 2010 Constitution, Article 27 (1), (2) and (3).

80 2010 Constitution, Article 27 (1), (2) and (3).

81 2010 Constitution, Article 260. This interprets 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 an individual's ability to carry out ordinary day-to-day activities.

82 2010 Constitution, Article 27(4), (5) & (6).

83 Initial report to the CRPD Committee, 31 August 2011,13 Paragraph 47.

84 The Equal Rights Trust's report on inequality and discrimination in Kenya portrays a failure to realise the right to equality and non-discrimination. The report described that State clearly plays a role in discriminating and creating inequality. The report also assesses the impact of poverty and ethnicity on discrimination and inequality. The Kenyan National Human Rights and Equality Commission has documented the inequality of people with mental disabilities in its report "Silences Minds: Systematic neglect of mental health systems in Kenya", (2011).

Many people with intellectual disabilities with whom MDAC researchers spoke did not have a national identification card because no one had supported them to get one. Ndungu is a man with intellectual disabilities in his 30s, and he told us how he thought he did not have an identification card because of his disability.

Family members told MDAC researchers about Kikuyu culture<sup>85</sup> which refers to people with psycho-social disabilities and people with intellectual disabilities as “stupid or idiots”. This discrimination leads to numerous social restrictions, with the result that people with disabilities are not recognised equally in inheritance and are denied the opportunity to participate in important cultural practices such as circumcision rites which is a significant rite of passage to adulthood. This subsequently impacts on several other rights of the adult such as the right to marry and have a family.

The Kenyan government has an obligation to ensure that the recognition of people with disabilities as people before the law goes beyond legislative recognition. It is important that the government takes action to ensure that recognition translates into practice, where people with disabilities will experience substantive equality without any form of discrimination, instead of mere formal equality.

### 3. Indicator 2: Are people with disabilities enabled to exercise legal capacity on an equal basis with others?

**Conclusion:** No. Law and practices restrict people with disabilities from exercising their legal capacity on an equal basis with others.

**CRPD Standards:** Article 12(2) of the CRPD sets out that States must ensure that people with disabilities have legal capacity on an equal basis with others. There should be no barrier for adults with any kind of disability to exercise their legal capacity, which means to make decisions which the law recognises as valid.

**Analysis of Kenyan law:** Kenyans assume full legal capacity at the age of 18 years.<sup>86</sup> Yet the law allows for the full deprivation, or partial restriction, of an adult's right to legal capacity, based on their disability. This violates Article 12(2) of the CRPD. The two main legislative culprits are the Children's Act 2001 and the Mental Health Act 1991.

#### 3.1 The Children's Act

There is a common understanding in Kenya that 'guardianship' refers only to children. Interviewees often referred MDAC researchers to the Nairobi Children's Court when seeking information about adults under guardianship.<sup>87</sup> This may be because adult guardianship is uncommon. The Children's Act defines a guardian as “a person appointed by will or deed by a parent or by an order of the court to assume parental responsibility for the child upon the death of the parent of the child either alone or in conjunction with the surviving parent of the child...”<sup>88</sup> Where a guardian is appointed only to manage the estate of the child she/he need not have custody of the child.<sup>89</sup>

The Act allows the guardianship of a child to extend beyond the age of 18 years in “exceptional circumstances”,<sup>90</sup> which include circumstances where the child has a mental or physical disability or an illness that renders them incapable of maintaining himself/herself or managing his/her own affairs and property without the assistance of a guardian.<sup>91</sup> Such extension orders are made before the child's 18th birthday and an application can be made by the child, the child's parent, the guardian, a relative or the director of children services.<sup>92</sup>

The Children's Act allows the child to consent to the extension order if capable of consenting, but it fails to specify how consent will be sought and obtained, and what happens if consent is refused.<sup>93</sup> The guardianship extension order may define the duration of the guardianship measure and prescribe how it will be conducted. An application to revoke an extension order can be made by those who were eligible to submit the initial application for the order (or if the person is married, the spouse).<sup>94</sup>

MDAC attempted to obtain statistics on children under guardianship, but courts do not collect this information. A search on the case database of the Kenya National Council for Law Reporting yielded no useful results.<sup>95</sup>

Through interviews and focus group discussions we learned that some parents treat their adult offspring with disability as children when it comes to decision-making, especially those with intellectual disabilities. Some relatives presented themselves during focus group discussions and interviews as guardians even though they had not been formally appointed by a court. This may be because the Children's Act allows parents to appoint guardians through “will or deeds” or because the word “guardian” is used colloquially as a synonym for “carer”.

85 Kikuyu is one of the ethnic tribes in Kenya, currently estimated at 6.5 million people, mainly located in the highlands of south-central Kenya but also constitute a substantial emigrant population in most Kenyan towns. They are traditionally agriculturalists. See <http://www.bluegecko.org/kenya/tribes/kikuyu/> (last accessed: 9 March 2014).

86 Revised 2012 Age of Majority Act of 1974 (Cap 33), Section 2 provides that a person shall be of full age and cease to be under 'disability by reason of age' on attaining the age of 18 years. It is worth noting that different statutes in Kenya used different ages of majority. The Children and Young Persons Act (Cap 141), Section 2 defines a child as someone under 14 years, a juvenile between 14 and 16 years, and a young person between 16 and 18 years. The Employment Act (Cap 226), defines a person

87 Correspondence with Kenyan lawyers and ex-interns of MDAC in Nairobi, 2013.

88 Children's Act (No. 8 of 2001), Section 102(1) and Section 104(1).

89 Ibid, Section 102(5).

90 Ibid, Section 107(1).

91 Ibid, Section 107(2).

92 Ibid, Section 107(3).

93 Ibid.

94 Ibid, Section 107(4) and (5).

95 Available at <http://www.kenyalaw.org/CaseSearch/> (last accessed: 9 March 2014).

## 3.2 Mental Health Act

The Mental Health Act regulates the “care, custody and estates management for people suffering from mental disorder or mental subnormality with mental disorder”.<sup>96</sup> A person with mental disorder “includes a person diagnosed as a psychopathic person with mental illness and person with mental impairment due to alcohol or substance abuse”.<sup>97</sup> Legal capacity can be deprived under this Act either through a court process or by the director of a mental health hospital.<sup>98</sup>

### 3.2.a Restriction through a court process

A person's relative “or any other suitable person” (undefined) may send a petition to the High Court,<sup>99</sup> which can appoint a guardian for anyone suffering from a “mental disorder”.<sup>100</sup> The court may appoint a relative or the Public Trustee as estate manager and guardian.<sup>101</sup> Where the court views that the person concerned is able to manage most areas of their lives but is incapable of managing their estate, they may decide to place these matters under the responsibility of an estate manager, leaving other areas of legal capacity intact.<sup>102</sup> The order may include provision for maintenance of the person and their dependents but need not include custody or guardianship of the person.<sup>103</sup> The Act allows the court to fix an allowance to be paid from the person's estate to the manager or guardian.<sup>104</sup> The court order may concern any matter pertaining to the person or the person's estates.<sup>105</sup> The government may instigate a secret court hearing about anything related to the order.<sup>106</sup>

During the course of its investigation MDAC did not observe any court hearings simply because they are apparently so rare. An MDAC researcher visited the Family Division of the High Court in Nairobi in January 2013 and was told by the registrar that there are no data on the number of guardianship cases. The registrar did, however, provide MDAC with the register of cases. MDAC reviewed the case files for the years 2010 to 2012 inclusive and picked out cases relating to the Mental Health Act or the appointment of a guardian. No information was available about whether the cases were pending or decided. We identified eight cases for 2010, 11 cases for 2011 and 16 cases for 2012. These numbers should not be taken as the only cases since we visited only the court in Nairobi and there are other High Courts in the country.<sup>107</sup>

We could not interview a person deprived of legal capacity through the court process, despite asking several NGOs to identify such people. A reason for the lack of cases seems to be that the court process is used for the management of people with significant wealth, yet the majority of people with disabilities associated with NGOs are likely to be poor.<sup>108</sup>

Two reported Nairobi High Court cases illustrate the process which courts take in legal capacity proceedings: *Waiganjo v. Waiganjo*,<sup>109</sup> and *Re Francis Mwaura Kamau*.<sup>110</sup> Of particular concern from review of these cases are:

- the applicant in guardianship proceedings;
- the sufficiency of evidence to deprive a person of their legal capacity; and
- the level of involvement of the person who is subject of the proceeding.

#### *Waiganjo v. Waiganjo*

In 2012, William Waiganjo applied to the court to put his older sister Leah Waiganjo under his guardianship. He said that Leah suffered from a “mental disorder” that rendered her incapable of managing her affairs and that her two landed properties were in danger of alienation following another court's judgment against her (in proceedings she was not involved in). William wanted to save the estate and wanted legal power to challenge the judgment (by becoming a guardian ad litem). The High Court relied on what he said and two medical reports from 1997 and 2012.<sup>111</sup> There is no evidence of the judge calling the doctors to give evidence. There is no evidence of the judge ensuring legal representation for Leah or allowing her or a representative appointed by her to cross examine the doctors or present alternative expert evidence to challenge the doctors' testimony. In June

96 Mental Health Act (Cap 248), Preamble.

97 Mental Health Act (Cap 248), Section 2.

98 Mental Health Act (Cap 248), Section 16(4).

99 Mental Health Act, Section 2 interprets the word ‘Court’ in the Act to mean the High Court. Also Article 165(3)(a) of the 2010 Constitution gives the High Court unlimited original jurisdiction in criminal and civil matters.

100 Mental Health Act (Cap 248), Section 26(1)(a) and (b).

101 Mental Health Act (Cap 248), Section 26(2).

102 This is where the court finds that a person is able to manage their day-to-day affairs, is not a danger to the public or themselves, and where they are unlikely to offend public decency.

103 Mental Health Act (Cap 248), Section 26(3).

104 Mental Health Act, Section 27(2).

105 Mental Health Act, Section 28(1).

106 Mental Health Act, Section 28(2): “the Minister, the Public Trustee or a manager may take out, as a matter of course, an application in chambers for the determination of any question arising out of the management of an estate in respect of which an order has been made.”

107 We have no information about High Courts in Kenya located in the 19 other administrative districts.

108 This is because most if not all of the cases taken to Court involve a person with wealth/property at stake which family members/ relatives want to manage. The Kenyan government attests in its report to the CRPD Committee that most people with disabilities depend on their families for economic, financial and other supports.

109 From the case database of the Kenya National Council for Law Reporting: High Court of Kenya at Nairobi, *Leah Wachu Waiganjo v. William Kibera Waiganjo*, Misc 330 of 2012, 29 June 2012, available at: [http://www.kenyalaw.org/CaseSearch/view\\_preview1.php?link=52491330487458673017231](http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=52491330487458673017231) (last accessed: 9 March 2014).

110 High Court of Kenya at Nairobi, *Re Francis Mwaura Kamau*, Misc Civil Application no 81 (2003)

111 First medical report signed by Dr. P.D Kanyuira reads “...suffers from Temporal Lobe Epilepsy and periodic depressions. She has had three episodes of acute psychosis necessitating her admission to hospital for in-patient management. She is regular on medication since 1980 and it's necessary that she continues on the treatment. Any attempt to reduce or stop the maintenance medication she is on makes her get into confusion states of mind, loss of memory and acute psychosis of fits.” Second report signed by Dr. Mutinda states “The above is a patient on follow up in our facility for a Bipolar Mood Disorder complicated by Temporal Lobe Epilepsy. She is currently on medication but has not yet stabilised. She is unable to make sound judgment.”

2012, the (male) judge met Leah in court and described her as a middle-aged lady who appeared well-nourished and well-groomed, able to state correctly her home address and the names of her father and other relatives. The judge noted that she responded with hesitation and probing, and therefore found her incapable of making sound decisions, and not capable of taking care of her own affairs and estate. The judge appointed William as Leah's guardian ad litem. From that point, Leah had no rights to decide anything about her assets or to guarantee her income from them.

### Re Francis Mwaura Kamau

In September 2003, Cecilia Wangari Kamua applied to be the guardian of Francis Mwaura Kamau, her husband, as he had a "mental disorder". The court relied on three medical reports that the husband was suffering from dementia, as well as testimony of the wife and their two children.<sup>112</sup> The court found Francis Kamau to be suffering from a mental disorder within the meaning of the Mental Health Act and that his "affairs and estate required immediate care and preservation". It appointed Cecilia Kamau as Francis Kamau's guardian and requested her to submit medical reports, an inventory of the properties and debts every six months. There is no evidence in the court file that Francis Kamau knew anything about these proceedings that happened without his involvement. He was given no opportunity to participate, and no lawyer was appointed to represent him.

These two cases illustrate the faults in procedures used by courts to make a determination on a person's legal capacity. They fall short of the requirements of Article 12 of the CRPD, which requires States to shift away from restricting legal capacity under substituted decision-making arrangements (such as these) and move towards providing supports for people to exercise their legal capacity. In the first case, the judge could have spoken to Leah about what she needs to be able to manage her estate as she wishes. The judge could have put in place a structure to preserve her legal capacity while making sure that her brother does not unduly influence her in investment decisions. In the second case the judge could have at the very least spoken to Francis Kamau, and asked him about his opinion, then put in place some supports which would have ensured that his finances and daily care needs were taken care of.

These court procedures lack the meaningful participation of the person with disabilities whose legal capacity is in question. The process pays no respect to the will and preferences of the person concerned. In Leah's case, her hesitation and probing in answering questions were taken as evidence of her incapacity, a finding that does not survive Article 12 scrutiny which requires efforts be made to ascertain the types of supports she may need to forge her way through life. The Mental Health Act provides no guidance as to how courts are to judge someone's decision-making capacity, and notwithstanding the rarity of the cases coming before the courts, those that are decided by judges seem to be about restricting decision-making rights instead of putting in place access to a range of supports which preserve legal capacity.

There is the risk that several human rights are violated in such proceedings, including:

- 1 The right to be heard and present during proceedings. This does not happen as a matter of course, but rather only when the judge orders it.<sup>113</sup>
- 2 Adults are not obliged to be served notice of the application.
- 3 They have no legal representation.
- 4 They have neither the right nor the opportunity to present their own evidence (including witnesses), nor the opportunity to challenge opposing evidence.
- 5 Placing too much emphasis on a diagnosis as evidence of the supposed inability to make independent decisions (including with support).
- 6 Very little evidence is required to deprive someone of their legal capacity.
- 7 The person is not asked about the appointment of a guardian.
- 8 Appeal routes are closed for the individual concerned, who loses their legal personality as a result of the proceedings.
- 9 The person is denied the opportunity to challenge the appointment of a particular person as guardian.
- 10 Guardianship is not periodically reviewed.

The court has authority to grant powers to the estate manager,<sup>114</sup> but these powers remain unclear, beyond requiring the estate manager to provide an inventory of the property to the court and to the Public Trustee,<sup>115</sup> and to seek the court's permission to sell or lease the property.<sup>116</sup> The court gave such permission in the case *Ramesh Liladhar Shah v Joseph Kibe Mungai*.<sup>117</sup>

112 Medical report submitted by Professor Paul G. Kioy, a neurologist and neurophysiologist, who states "the patient's present medical condition is irreversible and treatment remains cosmetic." Affidavit was sworn by two children because the third child had been certified as severely mentally challenged.

113 Mental Health Act, Section 38, which provides that when a person alleged to be suffering from a mental disorder is before the court or magistrate, such court or magistrate shall sit in camera, where possible.

114 Mental Health Act, Section 27(1).

115 Mental Health Act, Section 33(1).

116 Mental Health Act, Section 27(1)(i), (a), (b) and (c). Also, Section 4 of the Revised 2009 Trustee's Act of 1982, which sets out the manner in which a trustee may invest any trust fund in his hands whether it is in a state of investment or not at the particular time.

117 High Court of Nairobi, *Ramesh Liladhar Shah v. Joseph Kibe Mungai*, Miscellaneous Application 360 (2002) of 30 October 2009, available at: [http://www.kenyalaw.org/CaseSearch/view\\_preview1.php?link=25506778468820283280940](http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=25506778468820283280940) (last accessed: 9 March 2014).

## Ramesh Liladhar Shah v. Joseph Kibe Mungai

In May 2002, the High Court at Nairobi appointed Mr Mungai as Mr Shah's guardian to manage his affairs (based on Section 26(3) of the Mental Health Act). In September 2009, Mr Mungai applied to court to sell Mr Shah's interest in the leasehold property he jointly owned with his wife. The testimony of Mr Mungai and Mr Shah's wife supported the application. The court asked two doctors to write expert opinions and the court relied on these in deciding that Mr Shah's condition had not improved since the 2002 guardianship order which stated that, "it was obvious that Mr Shah could not follow the proceedings and was totally unaware and incapable of being aware of what was going on around him". The court did not invite Mr Shah to participate in the 2009 proceedings at all. The court granted the guardian permission to sell Mr Shah's interest in the leasehold property, on grounds that this was in Mr Shah's best interests.

This case highlights the paucity of safeguards available. Article 12 of the CRPD demands that safeguards should be put in place to find out and respect the will and preferences of Mr Shah, not simply take decisions for him, while guessing what is in his supposed "best interests".

Following extensive legal research MDAC found only one case where the person whose legal capacity was in question actually challenged the application.<sup>118</sup> The judgment in this case described the issues and submissions as "unprecedented".<sup>119</sup>

### K v. K<sup>120</sup>

A son alleged that his 78-year-old father could not manage and administer his property and other affairs. In June 2009, he asked the court to declare his father to be suffering from a mental disorder under the Mental Health Act and appoint a firm of lawyers as estate managers and other people as guardians. S relied on medical and psychiatric reports and his own witness statement. His father objected. The court ruled that, "all actions by relevant authorities and applications to be made either seeking a person's admission in mental hospital or seeking such orders should be directed towards the care and welfare of the persons and preservation of their estates against wastage or plunder by greed of relatives or others".

The court was able to come out with such a strong statement because the father produced medical reports showing that he was able to carry out daily life, has good judgment and average intelligence and exhibits adequate mental capacity to continue playing an active role in his company.

This case raises thoughts that are worth reflecting on.

- It is clear that people subjected to legal capacity determination proceedings may be interested in challenging the process if they have the means. Means will include financial, appropriate knowledge and supports (such as a lawyer and access to legal aid).
- This case raises the obvious possibility that relatives/family members are not always driven by caring for the individual concerned but sometimes will be interested to become estate managers and guardians regardless of whether the person in question is able to exercise their legal capacity independently or with access to relevant supports.
- It also highlights how courts rely primarily on medical reports.

If there is "sufficient cause" the court can remove a guardian, and appoint a new one.<sup>121</sup> The court can restore a person's legal capacity, "when there is reason for believing that the adult has recovered after receiving evidence by affidavit or otherwise".<sup>122</sup> This remains only a theoretical possibility. MDAC research in the database of Kenya National Council of Law Reporting for the years 2002 to 2013 found no case where a guardian has been removed or a person's legal capacity had been restored.

## 3.2.b Restriction by the administration

The Mental Health Act allows the director of a psychiatric hospital to restrict the legal capacity of a person by detaining them in the psychiatric hospital.<sup>123</sup> The director may also hand over a patient to the custody of the patient's relatives or friends who agree to, and will be bound by, certain conditions,<sup>124</sup> which remain unspecified in the Act. Anyone who gives, sells or barter any commodity to an inpatient of the hospital without prior consent of the director of a psychiatric hospital is guilty of a criminal offence.<sup>125</sup> In addition, discharge of a voluntary patient at the hospital is at the discretion of the director, which limits the adult's decision in accepting or refusing healthcare.<sup>126</sup> Article 12 of the CRPD underlines that the decisions which people with disabilities make, including those relating to healthcare, should be respected.

118 High Court at Nairobi, K v. K, Petition 36 of 2009, 1 December 2009, available at [http://kenyalaw.org/CaseSearch/view\\_preview1.php?link=17284381570124221590243](http://kenyalaw.org/CaseSearch/view_preview1.php?link=17284381570124221590243) (last accessed: 9 March 2014).

119 Ibid, page 5.

120 Here we use initials used in the judgment.

121 Mental Health Act, Section 34(1) and (2).

122 Mental Health Act (Cap 248), Section 36.

123 Mental Health Act (Cap 248), Section 16(4).

124 Mental Health Act (Cap 248), Section 22(1).

125 Mental Health Act (Cap 248), Section 52.

126 Mental Health Act (Cap 248), Section 10(3).



The previous section examined the extent to which Kenyan law restricts legal capacity. This section looks at what happens in practice. Although no national statistics exist, MDAC obtained the strong impression from interviews that few people are deprived of legal capacity through the courts. More commonly, decision-making is restricted by directors of psychiatric hospitals, and through informal practices within families and communities. A report issued by Kenyan disability organisations noted that three quarters of people with disabilities who were interviewed reported being denied the right to make decisions on issues affecting their lives.<sup>128</sup>

MDAC carried out 20 interviews with people with intellectual disabilities and people psycho-social (mental health) disabilities. None of them were under formal guardianship but many of them told MDAC about practical restrictions on their decision-making. In our focus group discussions a participant with a brother with an intellectual disability explained that in Kiambu (a county in the central province of Kenya having a population of 1.6 million),<sup>129</sup> guardianship is determined on customary basis. The example was given of this person's father who divided land among his four children, but placed the piece allocated to his son with an intellectual disability in the hands of another son who promised to take care of his sibling.

One parent said in a focus group that he makes decisions for his son who has an intellectual disability because there is no social protection system which would help his son rent a house, buy food and so on. The father said that parents decide where their children stay or what they eat because parents provide the money. While he would like his son to live an independent life, the lack of community-based supports scares him. He told MDAC of decisions which his son makes independently, like collecting tins and bottles to sell. Another participant of a focus group, a man with a psycho-social disability, told MDAC that he is demoralised as his relatives question every decision he makes, evidencing the way in which social stigma have a significant impact on the lives of people with disabilities more generally.

MDAC found that people with psycho-social disabilities, unlike many people with intellectual disabilities, have many opportunities for decision-making in their family and home life. This ranges from deciding where to live, daily activities, personal care, and taking part in family life. Poverty overwhelmingly affects the choices people can make, as Yusuf, Wambua and Kariuki told MDAC. For example, Kariuki a man in his early 30s explained to MDAC the reasons he lives with his family, but nevertheless that he would like to be more independent:

I find it easier to live with [them]. Firstly, because of issues to do with costs [...] At some point it might be nice to get my own place and be completely independent. I also find myself to be useful within my family, because I support them in a number of ways.

Kariuki's mother noted how the family appreciate his support and presence.

However, Jacinta told MDAC that her father makes decisions. He even represents her in the women's group she attends. Jacinta, Yusuf, Wambua and Kariuki feel supported in making decisions in their family and at home but this is linked to the financial contribution they make to the family, as they work. Jacinta and Yusuf told MDAC that they would like to have more independence from their family, but this is dependent on financial security.

People with intellectual disabilities told MDAC that their relatives and teachers make most decisions for them, albeit with the best of intentions and with the person's future in mind. In Kenya many people with intellectual disabilities live with their relatives, so many relatives thought it was funny when MDAC asked about where their relative with intellectual disabilities lived.

It was clear that the norm for families of people with intellectual disabilities was to exclude them from decision-making on the basis that they are likely to be incapable of participating. When MDAC asked Kiprop's sister whether this was right, she responded:

Well, yes and no. Yes because he can make some decisions and no because I am his carer and I think I know what is best for him [...] To say the truth, I admit he should make his own decisions but look, he is not in a position to and that is why I make them for him.

When MDAC asks Kiprop about how he feels when someone makes decisions for him, he responded after a long silence: "Bad". Bosire is a woman in her early 20s with an intellectual disability. Her parent hired a personal attendant who told MDAC:

We make most of her decision, me, her parents, and the teachers. You see, she may not be so much in touch with herself and that is why we make decisions for her [...] when it is time for meals [...]. I tell her when to take a bath, just the general tasks that one does.

Research in Kenya has already found that parents acknowledge the right to self-determination of their children with intellectual disabilities, but also point to their dependence, vulnerability and limited capacity to understand consequences of their actions, making parents the only ones who know how to make "good decisions".<sup>130</sup> This limits the opportunities for people with intellectual disabilities to take part in community life. They experience less freedom of movement because their relatives want them to be accompanied if they go out – with more restrictions at night outings for safety and security reasons – and are represented by relatives in community activities.

127 The names of people interviewed in this section have been changed. You can read full testimonies from each person interviewed for this research in Appendix 1.

128 African Union of the Blind (AUB), Kenya Union of the Blind (KUB) and Centre for Disability Rights Education and Advocacy, State of Disabled Peoples Rights in Kenya, 2007, 11. Available at: <http://www.yorku.ca/drpi/files/KenyaReport07.pdf> (last accessed: 9 March 2014).

129 More information available at <http://www.kenyampya.com/index.php?county=Kiambu> (last accessed: 9 March 2014).

130 Aviva Mill, Rachel Mayes and David McConnell, "Negotiating autonomy within the family: The experiences of young adults with intellectual disabilities", *British Journal of Learning Disabilities*, 38(3), (2009):194-200.

Kiprop's sister told MDAC that he "is not involved in community life", yet would love to "go out, meet other people." But in reality, his sister thought this would be impossible:

Such a thing would be really dangerous because he can just walk and not be able to come back home. So I prefer when he is just around home, then that is okay with him and with me also.

She explained her fear for his safety stems from community attitudes towards people with intellectual disabilities.

Some of these attitudes, we have very little control, because the community views him differently and fails to integrate him in mainstream activities so, yes, I can say that his right to be part of community is denied.

Ali is a man in his early 20s. His brother also explained Ali's exclusion from community activities in safety terms:

Sometimes when we are going out at night to watch movies, he is not allowed to go with us because of his condition. I think he is not happy about it but he doesn't voice his disappointment either[...] You see, at times he is so weak and if he goes outside he can fall down, so that is why we ask him not to get so much involved.

People with psycho-social disabilities, however, appear to have more freedom to participate in community life. People MDAC spoke to included a member of a church, a neighbourhood security team and a women's group. They enjoy more freedom of movement, although more significant restrictions were seen in the case of younger women. Jacinta, for example, had limits placed on her by her parents due to her disability. Onyango told MDAC that, "my mum normally tells me not to come home very late because it's risky, but I normally go everywhere I choose or wish [...] I am an adult."

Our research suggests that people who develop a psycho-social disability during education or when decisions regarding education need to be made are encouraged by their family to either quit education or change subject. Decisions are made by parents on their own initiative or prompted by teachers. Poverty and a lack of reasonable adjustments in education both seem to be factors in such decisions. A man with a psycho-social disability told MDAC during a focus group that he stopped studying for his master's degree because he experienced a mental health crisis, and he thinks that the reason that a year after the crisis he has not been scheduled by the university to present his thesis proposal was because of his disability.

MDAC found that from the people we spoke to, people with psycho-social disabilities are empowered to decide on more issues in relation to their lives than people with intellectual disabilities. Gender and age impact differently on both groups in relation to decision-making. Older people and men are more likely to be given opportunities to exercise their legal capacity than younger people and women. Githinji a man in his early 70s with a psycho-social disability spoke about how he made all his decisions in his life:

"You know me", he said, "I am an old man who is very wise and well matured so it's very difficult for people to make any decision for me because they respect me very much."

This reflects cultural norms which both demands respect for elders and is a patriarchal society.<sup>131</sup> However, the daughter of Njeri, a woman in her early 70s with an intellectual disability, told MDAC that, "my mum is fit and she makes all the decisions. At times she is slow in reasoning [...] but she makes sound decisions."

MDAC's findings suggest a link between educational attainment, employment and decision-making authority. People who earn an income are more likely to have a say in issues that affect them, especially anything which involves finances, and shows the independence that employment and education can bring to the lives of people with disabilities. It also shows how denial of such opportunities is likely to negatively impact on the right of people to exercise their autonomy as full members of society.

## 4. Indicator 3: Can people with disabilities exercise legal capacity in all aspects of life?

**Conclusion:** No. law remains ambiguous yet impacts on how people with disabilities make decisions about their lives.

**CRPD Standards:** Article 12(2) of the CRPD sets out the obligation on each State to "recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."

**Analysis of Kenyan law:** Several laws restrict the legal capacity of people with disabilities, sometimes in an ambiguous way.<sup>132</sup> Laws define the group of people whose legal capacity may be restricted by using the terms "mentally insane", "people of unsound mind" and "mental defectives." This indicator looks at whether people with disabilities are legally empowered to exercise legal capacity in the following aspects of life: political participation, work and employment, health care services, access to justice, marriage, property rights and land rights.

131 African Charter on Human and Peoples' Rights, Article 29(1) provides a duty to everyone to respect their parents at all times, and maintain them in case of need. Article 26(c) of the African Youth Charter gives young people the duty to have full respect for their parents and elders and to assist them in cases of need.

132 Legislation includes the 2010 Constitution of Kenya; Mental Health Act (Cap 248); Age of Majority Act; Persons with Disabilities Act, No.14 of 2003; Civil Procedure Act (Cap 21); Criminal Procedure Act (Cap 75); Sale of Goods Act; Law of Succession Act; Traffic Act (Cap 403); Matrimonial Causes Act; Children's Act No.8, 2001; Penal Code; Sexual Offences Act; Evidence Act (Cap 80); and the Election Act.

## 4.1 Political participation

**Question:** Does Kenyan law allow and enable people with intellectual disabilities and people with psycho-social (mental health) disabilities to make legally-binding political decisions on an equal basis with others?

**Conclusion:** No. Law prohibits people of “unsound mind” from voting and being elected into certain public offices. There is no definition of what this antiquated term means. MDAC found that those people with disabilities are only able to exercise their political rights when the following conditions are met:<sup>133</sup>

- 1 The person lives in the community (not in a psychiatric facility during voters registration or election day); and
- 2 The person is interested in politics and is supported by his or her family or an NGO to provide support; and
- 3 The polling station officer does not perceive the person to be of “unsound mind”; and
- 4 The person can physically access the polling station and can physically write, or have someone else mark an “X” on the ballot paper.

These are significant hurdles for the majority of people with psycho-social (mental health) disabilities and people with intellectual disabilities.

**CRPD Standards:** Article 29 of CRPD provides for the right to political participation for people with disabilities, without any exception. The CRPD Committee has stated that, “persons with disabilities regardless of their impairment, legal status or place of residence have the right to vote and participate in public life on an equal basis with others”.<sup>134</sup>

**Analysis of Kenyan law:** The Constitution provides for the right of every adult citizen to freely make political choices including the right to free, fair and regular elections based on universal suffrage and to freely express the will of the electors, to hold elected office, register as a voter and vote by secret ballot in any election or referendum without unreasonable restrictions.<sup>135</sup>

In reality things are more complicated. The 2003 Disability Act recognises the right of every person with a disability to participate as a voter in elections.<sup>136</sup> They are entitled to a personal assistant who follows their instructions to vote in presidential, parliamentary and civic elections.<sup>137</sup> The personal assistance is guilty of an offence if they fail to comply with the instructions provided.<sup>138</sup> The 2011 Election Act mandates the Election Commission to disseminate rules about facilitating the right to vote for people with disabilities and people who cannot read or write.<sup>139</sup> The Elections Regulation of 2012 mandates the person in charge of a polling station to allow such a voter to be assisted or supported by a person of the voter’s choice who is not a candidate or an agent of a candidate.<sup>140</sup> The support person must be an adult who makes a declaration of secrecy: if breached this is a criminal offence, and each support person should assist only one voter and will be registered as such.<sup>141</sup>

The Constitution provides that a voter must be someone who is “not declared to be of unsound mind”.<sup>142</sup> The Local Government Act 2010 sets out regulations for local elections. It expressly disqualifies a person of “unsound mind” from voting in local elections.<sup>143</sup> Similarly, the Election Act 2011, regulating national elections, also disqualifies those of “unsound mind” from voting.<sup>144</sup>

There is no clear interpretation of what it means to be of “unsound mind”. Prior to the 2010 Constitutional referendum, the High Court held that the former Constitution did not exclude adult inmates in prison from voting in a referendum.<sup>145</sup> However, no such voting arrangement was made for people in psychiatric facilities. But this misses the point. The CRPD is clear that irrespective of any disability-related labels (like “unsound mind”), and irrespective of place (such as prison or psychiatric facility), everyone is entitled to vote. It is not for the State to establish a system to determine someone’s electoral talents before deciding whether they are good enough to cast a vote. Kenya clearly fails this basic indicator of democracy and human rights.

In 2010 the Kenyan Society for the Mentally Handicapped (KSMH) together with other NGOs rallied against the Interim Independent Electoral Commissioner who said that adults with intellectual disabilities would not be eligible to vote in the Constitutional referendum. He then withdrew the statement and ensured that such adults could register as voters.<sup>146</sup> However, just a minimal percentage of those that registered actually voted since they faced numerous attitudinal and practical physical barriers at polling stations.<sup>147</sup>

133 MDAC got this information from interviews we conducted in Kenya and from Skype communication with different stakeholders including Users and Survivors of Psychiatry Kenya, Kenyan Association for the Intellectually Handicapped and Basic Needs Kenya before and after Kenya’s Constitutional Referendum in August 2010 and the March 2013 general elections.

134 CRPD Committee, Concluding Observation of the Committee: Spain 19 October 2011, CRPD/C/ESP/CO/1. Also see the CRPD Committee’s subsequent concluding observations on Tunisia, Hungary, Peru, China and Argentina.

135 2010 Constitution, Article 38.

136 It defines disability as “physical, sensory, mental or other impairment, including visual, hearing, learning or physical incapability, which impacts adversely on social, economic and environmental participation”.

137 2003 Persons with Disabilities Act, Section 29(1), (2) and (3).

138 2003 Persons with Disabilities Act, 2003, Section 29(4).

139 2011 Election Act, Section 109(1)(n) and (o).

140 2012 Election (General) Regulations, Section 72(1).

141 Ibid, Section 72(2), (3), (4) and (5).

142 2010 Constitution, Article 83(1)(b).

143 Revised 2010 Local Government Act (Chapter 265 of 1998), Part V, paragraph 53(C).

144 2011 Election Act (No.24), Section

145 High Court of Kenya at Nairobi, Priscilla Nyokabi Kanyua v Attorney General & another, Constitutional Petition 1 of 2010, 23 June 2010.

146 Kenya Society for the Mentally Handicapped, available at <http://www.ksmh.org/ksmh-at-work/campaigning-for-rights/right-to-information> (last accessed: 9 March 2014).

147 Ibid.

# Research findings

MDAC asked people with psycho-social disabilities and people with intellectual disabilities whether they had ever voted. People who lived in the community participated in elections, either with support from local organisations or their families. Some face practical challenges from other people at the polling stations. Mumbi is a woman with an intellectual disability in her early 30s. She has a national identity card, but she told MDAC about her experiences when asked if she has ever voted, saying that in the line people pushed jostled and shoved her out of the voting queue and she felt bad about it.

Other interviewees were not interested in politics and did not want to vote. Some wanted to vote but could not, for practical reasons. Ndungu told us that he needed an identification card to vote, but because his family have not supported him to acquire one, he could not vote. He explained that he lacked an identification card, “because of my head”, going on to say that “my uncles say it and even I hear it from my grandmother sometimes when she is talking to people [...] I feel bad because I don’t know what they are talking about, and I don’t think there is any problem with my head.”

People with disabilities are prohibited from being a candidate for elected positions. The Constitution disqualifies a person from being elected Member of Parliament if that person is of “unsound mind”, the same phrase which again is undefined.<sup>148</sup> The Constitution allows for the President of the country to be removed if he or she becomes physically or mentally “incapacitated”.<sup>149</sup>

The National Land Commission Act 2012 allows for the removal of the Secretary of the Commission in case of inability to perform the function of the office as a result of “physical or mental incapacity”.<sup>150</sup> The Commission for the Implementation of the Constitution Act 2010 similarly can strip the Chair or a Member for “physical or mental infirmity”.<sup>151</sup> Nowhere in Kenyan law are “unsound mind”, “physical or mental incapacity” or “mental infirmities” defined.

KSMH has pointed out that the term “unsound mind” is derogatory and discriminatory.<sup>152</sup> Its view is that the Constitution must be brought in line with the CRPD, which prohibits discrimination based on any form of disability, and guarantees the right to vote and stand for election on an equal basis with others.<sup>153</sup> The “unsound mind” provision means that the quota system (5% of elected and appointed public positions to be filled by people with disabilities) will only be filled by people with physical or sensory disabilities.<sup>154</sup>

Mutua a man with an intellectual disability in his early 40s told MDAC that he was interested in standing for political office. He had to change his mind:

During that time that I wanted to be a politician, there was a lot of mudslinging and they could talk about me very much. I think even some other rivals said I was crazy and finally the pressure was too much so I decided to bow out [...] I would like to be a politician and that is what my dream is [...] I felt awfully bad, but there was nothing I could do.

There are examples of people with a political leadership role who, because of the stigma associate with mental health issues, do not come out in their role. Githinji is a village elder and none of his fellow villagers know about his psycho-social disability, because, as his wife put it, “they might think he will not do his work properly”. Both Githinji and his wife want him to give up the role because he does not get any supports. His wife told MDAC:

You know, leadership has a lot of problems and also some people are very high tempered, so when he comes into contact with them, his stress levels become very high which is not very healthy for him [...] but since most of the people in the village like his leadership, he feels he cannot leave them just like that as his people.

148 2010 Constitution, Article 99(2)(e).  
149 2010 Constitution, Article 144.  
150 2012 National Land Commission Act (No 5, 2012), Section 21(1)(a).  
151 2010 Commission for the Implementation of the Constitution Act (No 9, 2010), Section 11(1)(d).  
152 This section allows for a person to be disqualified for registration as a voter at elections or referenda if the person is declared to be of ‘unsound mind’.  
153 Kenya Society for the Mentally Handicapped available at: [http://www.ksmh.org/publications/doc\\_download/26-ksmh-recommendationselections-bill-2011](http://www.ksmh.org/publications/doc_download/26-ksmh-recommendationselections-bill-2011) (last accessed: 9 March 2014).  
154 2010 Constitution, Article 54(2).

## 4.2 Work and employment

**Question:** Does Kenyan law allow and enable people with intellectual disabilities and people with psycho- social (mental health) disabilities to make legally-binding decisions about work and employment on an equal basis with others?

**Conclusion:** No. Law prohibits employment-related discrimination and ensures that reasonable accommodations (adjustments) are provided. In practice, some people receive adjustments from employers, while others – especially people with intellectual disabilities – face discrimination in the workplace affecting their legal capacity.

**CRPD Standards:** Work and employment rights are set out in Article 27 of the CRPD. States must recognise the right to work for people with disabilities on an equal basis with others and create an enabling and conducive environment in both public and private sector employment. It gives people with disabilities the right to work and earn a living, to be treated fairly when employed, to choose the work of their preference, complain and join labour and trade unions, freedom from harassment, the right to receive career counselling, opportunities and vocational training, and to promote self-employment and business opportunities. This should be guided by the principles of non-discrimination and access to employment in the open market.

The State should also ensure that law provides reasonable accommodation for people with disabilities. This means providing necessary and appropriate adjustments and modifications in all employment matters including conditions of recruitment, hiring and employment, continuance of employment, career advancement and ensuring safe and healthy conditions for people with disabilities. States have an obligation to adopt positive measures to promote employment opportunities, take measures including adopting legislation, modifying or abolishing laws, regulations, customs and practices that constitute discrimination in the work place for people with disabilities.<sup>155</sup>

As a social and economic right, the right to employment is subject to progressive realisation, which means that it can be implemented over time, rather than immediately. The CRPD Committee has specified that States should implement measures of affirmative action for the employment of people with disabilities. They are required to increase the diversity of employment and vocational training opportunities, ensure the participation of people with disabilities and their representative organisations within labour inspection offices. The also means that measures should be taken to ensure the freedom of choice of people with disabilities to pursue vocations based on their preferences.<sup>156</sup>

**Analysis of Kenyan Law:** The Employment Act 2007 prohibits direct and indirect disability-based discrimination against employees,<sup>157</sup> and prohibits employers from dismissing employees on disability-related grounds.<sup>158</sup> The Disability Act 2003 sets out a potentially far-reaching prohibition on any person from denying people with disabilities access to opportunities for suitable employment.<sup>159</sup> The Disability Act entitles qualified employees with disabilities to the same treatment, terms and conditions and benefits as those without disabilities,<sup>160</sup> accompanied with reasonable accommodation and tax relief for employers.<sup>161</sup> The National Council for Persons with Disabilities is required to recommend measures to prevent discrimination against people with disabilities,<sup>162</sup> set up schemes and projects for self-employment or regular or sheltered employment to enable people with disabilities to generate income<sup>163</sup> and to take actions to secure the reservation of 5% of all casual, emergency and contractual positions in both public and private sectors.<sup>164</sup> Despite these provisions, People with disabilities continue to face a variety of barriers to employment.

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155 OHCHR, Report on thematic study on the right to work and employment of persons with disabilities, A/HRC/22/25, 17 December 2012.

156 CRPD Committee, Concluding Observation of the Committee: Spain, Tunisia, Hungary, China, Peru and Argentina.

157 2007 Employment Act (No.11, 2007), Section 5(3)(a).

158 Ibid, Section 46(g).

159 2003 Persons with Disability Act, Section 12 (1). Kenya's initial report to the CRPD Committee says that the National Council for Persons with Disabilities is undertaking placements for persons with disabilities in Government institutions and private organisations as it forwards the CVs of people with disabilities and works to build their capacity.

160 2003 Persons with Disability Act, Section 12. However, the 2007 Amendment Bill seeks to remove the word "qualified" before "employee" in Section 7.

161 Ibid, Section 15(5) and 16(2).

162 Ibid, Section 7 (1)(i).

163 Ibid, Section 7 (1)(V).

164 Ibid, Section 13.



## Research findings

People with disabilities told MDAC that getting and holding down a job is a challenge. Community stereotypes strengthen the perception that a person with a disability cannot be trusted, and this makes potential employers (and some people with disabilities themselves) doubt their potential. People with psycho-social disabilities reported a variety of experiences in relation to employment. Some had a job and their workplace offered them some adjustments relevant to their mental health. Kariuki told us how his boss employed him to work as a consultant, not a full-time employee:

He also allowed me to determine which hours I worked and even allowed me to work from home. This really helped me to be productive and keep my job. Once he gave me these options, I was able to work more efficiently. He even spoke to the other employees about their attitude to ensure that my environment at work was good.

Yusuf, a teacher in his early 40s told MDAC that his company didn't give him any adjustments, explaining that: "When you take medication, you feel sleepy during the day. You doze a bit and sometimes you feel you are affected by these drugs and not at your best." He explained that it affected his performance as a teacher, so he discussed it with the human resources officer. He said that other colleagues have complained that he should leave his job if he cannot perform it fully. "I wish there was an alternative where I could manage myself like in business, more flexibly", he said.

Other people told MDAC that when they experienced mental health issues family members jumped in to prevent them from going to work or urged them to resign. Jacinta's father told MDAC, "the main reason why we insist that she stay at home is because she is sick and she might not be able to work".

It seemed from talking to a range of people that women, especially married women, are questioned about their ability to make choices in relation to work, a finding which may reflect wider gender issues unrelated to disability. Many people with intellectual disabilities MDAC spoke to reported being out of a job. Some interviewees reported being employed but this was mostly manual labour. Some spoke about helping out at home, taking care of animals, working in the farms, looking for sisal,<sup>165</sup> or on dumpsites. Having been excluded from school, educational attainment is a problem in securing employment for some people with disabilities. Nekesa, a woman in her late 20s told us that house help is the only job she could do since she needs no school-leaving certificate. Others experienced limitations of their ability to make employment decisions mostly from relatives who think no one will employ them because of their disability (see Juma's story) or decide the type of manual job they engage in.

Ali told MDAC that his mother found a job for him in a sheltered workshop for people with intellectual disabilities but he would have preferred to be consulted on the decision as he did not like working there. Ndungu told MDAC:

My grandma had gone to ask them for a vacancy because she had heard that they needed a watchman, so she was told to take me, which she did [...] She did not consult me, she just told me we need to go there to get a job and that would help in getting money to buy food [...] You know, she is the one who knows best, so if she tells me something, I have to obey her [...] It was okay, only the nights were very cold, and at times no matter how I covered myself, it was too, too cold [...] But now I am laid off [...] It is because they said that I have a problem with my head [...] I don't know what that means [...] I felt very bad because that is the money that I was taking home to feed my brother and my grandmother, so when I was fired, that meant that we had to struggle for food, or go borrow from my uncles.

## 4.3 Healthcare

**Question:** Does Kenyan law allow and enable people with intellectual disabilities or people with psycho-social (mental health) disabilities to make legally-binding healthcare decisions on an equal basis with others?

**Conclusion:** No. Law limits legal capacity in relation to healthcare decisions. People with psycho-social disabilities are deprived of mental health treatment choices. Relatives and carers make healthcare decisions for people with intellectual disabilities.

**CRPD Standards:** Article 25 of the CRPD sets out the right to health, and paragraph (d) focuses on consent to treatment. The CRPD Committee has said that States must adopt measures to ensure that, "all health care services provided to persons with disabilities, including all mental health care and services, is based on the free and informed consent of the individual concerned and that laws permitting involuntary treatment and confinement, including upon the authorisation of third party decision-makers such as family members or guardians, are repealed".<sup>166</sup> States are expected to develop a wide range of community-based services and supports that respond to the needs of people with disabilities, respecting their autonomy, choices, dignity and privacy, including peer support and other alternatives to the medical model of mental health. Article 26 of the CRPD encourages States to adopt a rights-based approach to rehabilitation and ensure that such programmes promote the informed consent of persons with disabilities, respecting their autonomy, will, preferences and integrity.<sup>167</sup>

**Analysis of Kenyan Law:** The Constitution sets out the right to the highest attainable standard of health and healthcare services.<sup>168</sup> It obliges the government to ensure people with disabilities have reasonable access to healthcare services through affirmative action programmes specifically designed for minorities and marginalised groups.<sup>169</sup> The Disability Act mandates the National Council for Persons with Disabilities to monitor the provision of healthcare to people with disabilities to ensure that services are not discriminatory.<sup>170</sup>

<sup>165</sup> Sisal is an agave-type plant with large, sword-shaped leaves which yield stiff fibres that can be used to make cord and rope.

<sup>166</sup> CRPD Committee, Concluding Observation of the Committee: China, 15 October 2012, CRPD/C/CHN/CO/1. See Article 25.

<sup>167</sup> CRPD Committee, Concluding Observation of the Committee: China, 15 October 2012, CRPD/C/CHN/CO/1, Article 26.

<sup>168</sup> 2010 Constitution, Article 43(a).

<sup>169</sup> 2010 Constitution, Article 56.

<sup>170</sup> 2003 Persons with Disability Act, 2003, Section 20.

## People with psycho-social (mental health) disabilities

People suspected of having a “mental disorder” may be involuntarily admitted into a psychiatric hospital.<sup>171</sup> Police officers are allowed to detain someone they believe to have such a condition who they perceive as dangerous to themselves or others, likely to act in a manner offensive to public decency, and those not under proper care and control, or who are being cruelly treated or neglected.<sup>172</sup> These legal criteria are extremely wide.

People are detained against their will for more than the maximum 12-month period provided by the Mental Health Act for involuntary patients.<sup>173</sup> Most people who land in psychiatric hospitals through the criminal justice system are forgotten about in the hospital.<sup>174</sup> Family members frequently coordinate with psychiatric hospitals to have their relatives admitted against their will.<sup>175</sup> One research paper found that only 12% of the study's 226 interviewees from nine hospitals had admitted themselves into the hospital, the rest being involuntary patients.<sup>176</sup> Only 15% of the respondents reported feeling safe in the hands of their carers.<sup>177</sup>

The Mental Health Act contains excessively wide inclusionary criteria to admit patients involuntarily. Application for admission is made by the person's spouse or relative. Anyone else can (in their absence) make an application, stating why the application is not being made by the spouse or a relative, stating their connection with the person to be admitted and the circumstances in which the application is made.<sup>178</sup> This means that a neighbour or adversary can have someone involuntarily admitted to a psychiatric hospital with ease.

Patients consider themselves to be inmates. In February 2011 the TV channel CNN showed how this was the case for people in Mathari Mental Health Hospital in Nairobi.<sup>179</sup> In May 2013, media reported that forty patients escaped from the hospital by forcing their way out and those who escaped had previously complained about ineffective medication. The police launched a manhunt for the patients.<sup>180</sup> The majority were brought back (some by relatives and others by police), demonstrating how the decision about whether or not to be in a psychiatric hospital is made by authorities and relatives often without the pretence of gaining consent from the person concerned. This is a clear example of the way in which legal capacity is restricted in practice. Involuntary patients are required to undergo psychiatric treatment without their consent.<sup>181</sup> Therefore, patients are treated against their will, based on admission decisions made by others.

In interviews conducted by MDAC, people with psycho-social disabilities reported restrictions in decision-making because they were hospitalised during mental health crises.<sup>182</sup> Most interviewees had experienced forced admission (either being taken to the hospital by relatives, restrained with rope, or by the police) and treatment. Jacinta told MDAC that she has been forcefully admitted to hospital twice. “[My family] pushes me to go to the hospital, sometimes I'm taken by force, like when I was admitted to Mathari [psychiatric] Hospital,” she said. The situation is complex, as her father explained:

When we took her to Mathari, she was not conscious of what was going on, so we had to take her by force. She was even fighting, insisting that she did not want to go. Even now sometimes she says she does not want to take her medication because she is not sick [...]. I personally thought it was important for her to be taken to hospital to receive medical attention and that is why I took her by force since it was in her best interest.

Many interviewees wanted to be more involved in making decisions, including during periods of crisis. Yusuf told us about his experience, bringing in the role of money in how one is treated by psychiatric services:

My hands were tied from behind, and so were my legs, and I was bundled in the back of a vehicle [...]. I think they saw as if it was wastage of money when I was saying I will pay the policeman [to take me to the hospital without being tied] and they thought that the money could be used in another way. I think they were money-minded [...] and they valued that more than my freedom [...]. I felt like an animal going to a slaughter and I had no choice [...]. They should not put money in front of the sickness. You know they use a lot of money for other things. They should treat me like a human being, even if money is to be used

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171 Mental Health Act (Cap 248), Section 16.

172 Ibid, Section 16(1).

173 Independent Medico-Legal Unit, Traumatic Experiences and Victimization among People with Mental or Psycho-social Disabilities in Kenya Public Hospitals, Nairobi: IMLU, 15 November 2012, 19.

174 Ibid.

175 Independent Medico-Legal Unit, Traumatic Experiences and Victimization among People with Mental or Psycho-social Disabilities in Kenya Public Hospitals, Nairobi: IMLU, 15 November 2012, 19. The Mental Health Act, Section 14(6) provides that involuntary patients can be admitted for six months with the possibility that the director of the facility can extend it a further 6 months.

176 Independent Medico-Legal Unit and others, Alternative Report Submitted to the Committee against Torture and Cruel, Inhuman and Degrading Treatment or Punishment, 13 April 2013, 11.

177 Independent Medico-Legal Unit, Traumatic Experiences and Victimization among People with Mental or Psycho-social Disabilities in Kenya Public Hospitals, Nairobi: IMLU, 15 November 2012, 11.

178 Section 14(1) states: “Subject to this section, a person who is suffering from mental disorder and is likely to benefit by treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive treatment, may, on a written application under this section, be received into a mental hospital as an involuntary patient for treatment.” See also Section 14(2)(a), (b) and (c).

179 This was produced with the assistance of the Kenyan Society for the Mentally Handicapped.

180 Global Post, available at: <http://www.globalpost.com/dispatch/news/regions/africa/kenya/130513/kenya-40-mentally-ill-patients-escape-nairobi-psychiatric-hospital> (last accessed: 9 March 2014).

181 Mental Health Act, Section 14(1).

182 People interviewed by MDAC highlighted serious concerns regarding the conditions in Mathari Mental Health Hospital, and in Ward 10 in Nyeri General Hospital. Some of the concerns included: locking several people in the same room, a lack of beds, the use of buckets since there are no washrooms, infestation by lice, clothes not properly washed in Mathari. Other concerns raised included people being locked in small rooms, injections by force making them sleep for over three days at a time, patients fighting among themselves and with intern doctors since the intern doctors were not respected due to their age on Ward 10, Nyeri. People also complained of nurses insulting patients verbally and patients being beaten by nurses.

Yusuf gave MDAC several examples of how he could have been supported:

I think if you have people who care for you and people who love you, people who will tell you 'Look here, you are sick and we are taking you to the hospital' and also give you a chance to express yourself in terms of what you want, then you will cooperate. But if you are forced, that is the time things get worse [...]. You feel traumatised, you feel the decision made was not in the right direction [...]. I think the family should be aware that when they have a sick person they have a duty to ensure that he is respected as a human being. They should also help the person to make the right decision, rather than seeing the person as a bother to them [...]. It would be good if there is a group of people with an office nearby which advocates for persons with mental disability, that when you have a problem you can go to their offices and they can assist you with decision- making other than making decisions on your own and at the time when you are sick.

Wambua explained to MDAC that many doctors ignore patients and get information only from relatives. He believes that forced treatment is counterproductive:

I remember back in year 2000 when I was taken to a certain doctor in town who put me under psychotropic drugs and later took me through ECT [...]. He did not consult me, he just informed the family and they agreed [...]. I actually did not know what he was doing and I was not consulted in any way [...]. I felt stigmatised and traumatised. I also did not like the fact that they were viewing me as a helpless person [...]. I lost my memory and I don't know what happened, because, since that treatment, I suffer from things that I cannot explain, for example, memory lapses. I don't think it's my mental health problems that messed up my emotions [...] sometimes I harbour resentment about this. They continued putting me on cocktails of psychotropic drugs which finally did not work for me [...]. [Instead] they should have first gathered enough information from me in regards to the problems that I was having, because I feel that nobody has an insight of what I was going through. They should have walked together with me and this would have helped me to make better decisions [...] It's only when I addressed my issues that I was able to get much better.

Other interviewees told MDAC about the importance of learning to understand their own mental health issues. When not in a crisis, they are able to exercise more control and make autonomous decisions, including those about healthcare and support, strengthening the need for recognition of advance planning processes. However, the cost of support services was reported as commonly limiting access to services for people with disabilities. Onyango explained that he had good relationship with his first doctor because the doctor appreciated and understood him. He told MDAC that he disliked his second doctor for not listening to him.

Roshi explained to MDAC about her mental health crises. She said that she is, "normally very difficult during such times and it's important for me to be taken to the hospital for care. I think they normally do not have a choice". Her husband finds the use of force distressing, but, "she insists that she is not sick and yet all of us, from her behaviours, we certainly see she is unwell. Unfortunately, we have to use force and tie her up [...]. I know it's no good, [but] we cannot live with her like that and I must use all means possible to take her to the hospital."

Some other people reported being beaten by their relatives or parents for refusing treatment. Others told MDAC they were given the option of accepting treatment or being thrown out of their house. See Chumo's and Wambua's stories in Appendix 1.

## People with intellectual disabilities

For people with intellectual disabilities, access to specific healthcare or social services seems to be severely restricted. Interviewees reported not being told about healthcare procedures and not being invited to consent to treatment decisions, which were often made on their behalf by relatives or carers.

Atieno, a woman in her late 20s, told MDAC that she was sterilised without her consent sometime after 2001:

I don't think I would get children. I will tell you something, you see here [lifts up the blouse and reveals a scar on her stomach] here I was made an operation [...]. This is contraceptive, all of us had been done like this, we cannot get children [...]. Nobody asked me [if I want it]. They should have asked me, because I love children [...]. I feel bad, but what can I do now?

Atieno said that she had not told anyone about this before. She did not report it to the police, as she believes that the religious order where she lives would have thrown her out, and she would have been destitute. MDAC asked the head of this religious order in general terms about women with intellectual disabilities having relationships and becoming parents, to which the response was: "No, that will be promoting promiscuity among young women".

## 4.4 Access to justice

**Question:** Does Kenyan law allow and enable people with intellectual disabilities and people with psycho- social (mental health) disabilities access to justice on an equal basis with others?

**Conclusion:** No. Law restricts people's legal capacity, which as a result, restricts their access to justice. Law labels people incapable of pursuing or defending litigation, including in respect of proceedings related to their legal capacity. It fails to protect people from unwanted interference by family members in blocking access to justice. It provides no support for people to access justice.

**CRPD Standards:** Article 13 of the CRPD obliges States to guarantee people with disabilities effective access to justice on an equal basis with others. This should include procedural and age-appropriate accommodations (adjustments) to enable people with disabilities to play an effective role as a victim, a witness, or defendant in any legal proceedings. These include civil and criminal cases, and it includes not just the trial stage, but also investigative and other preliminary stages. Article 13 demands that State officials working on administering justice, including police and prison staff, be given appropriate training. The CRPD Committee has interpreted procedural accommodations to mean ensuring that people with disabilities who intervene in the judicial systems should do so as subjects of rights and not objects of protection.<sup>183</sup>

**Analysis of Kenyan Law:** The Constitution guarantees the right of everyone to access justice,<sup>184</sup> setting out that any fees should be reasonable and not impede justice. Justice should not be delayed and should be rendered according to the rule of law.<sup>185</sup> The right to a fair trial and public hearing is also guaranteed.<sup>186</sup>

Everyone has the right to institute court proceedings in case of a denial, violation, infringement or threat to a right as set out in the Bill of Rights.<sup>187</sup> Court proceedings can be instituted by a person acting as a member of, or in the interest of a group or class of persons.<sup>188</sup> In addition, all State organs and public officials must address the needs of “vulnerable groups” which includes people with disabilities.<sup>189</sup> The Attorney General in consultation with the National Council for Persons with Disabilities and Kenyan Law Society must issue regulations on free legal services for people with disabilities in relation to specific matters.<sup>190</sup> No such regulations have been issued. There is an unpublished draft Legal Aid Bill of 2010 which covers people with disabilities under “vulnerable group” and, the organisation Users and Survivors of Psychiatry Kenya has been engaging the drafting committee to ensure that the right to legal capacity is upheld.<sup>191</sup>

The Civil Procedure Act is the law which prescribes in detail the rules of civil litigation. It treats people considered to be of “unsound mind” as if they were children.<sup>192</sup> The accompanying Civil Procedure Rules applies to people who are found by a court to be incapable of protecting their interests when suing or being sued by reason of “unsound mind and mental infirmity”.<sup>193</sup> No guidance is given as to how a court is to establish this. If the court declares that someone in a proceeding is of “unsound mind”, it will appoint a “next friend” when the person is suing and a “guardian ad litem” when the person is the defendant in civil proceedings.<sup>194</sup> These people should be (unsurprisingly) people who are not of “unsound mind”, and they should have no adverse interest. They should be appointed by a competent authority and themselves consent to the appointment. In *Republic v Chairperson Kilibwoni Disputes Tribunal & 2 others*,<sup>195</sup> the High Court of Eldoret stated clearly that “... it is only a Court of Law which can adjudge a person to be of unsound mind for purposes of suing or being sued.”

The Court said that “if a person whether a relative or not wishes to manage or protect the estate of any person suffering from mental disorder, he must obtain the leave of the Court first”. In this case, a son instituted an application as “the guardian and next friend of his adult father” alleging that the father suffers from “mental illness and psychosis” and therefore lacks legal and “mental capacity” to take proper care of himself. The son filed medical reports as evidence. The Court held that: 1) the son did not obtain leave of the Court to have legal powers; 2) no Court has adjudged the father to be of unsound mind; and 3) the doctor’s letter is not premised on any law and cannot invalidate the father’s voluntary acts and transactions.

Where no-one can be found to be a guardian ad litem, a court officer may be appointed.<sup>196</sup> Once appointed, applications or orders made in the case will be in the name of the next friend or guardian ad litem until (in the case of a child) the child becomes an adult.<sup>197</sup> In the case of a person of “unsound mind” the law is silent.

This system does not comply with Article 12 of the CRPD which requires States to ensure that systems provide supports for people with disabilities to exercise their legal capacity – in this case to sue and be sued. The law needs to change so that the question is not “can the person participate alone without any help in court proceedings?” but “What supports need to be put in place for the person to participate in court proceedings?” The person in question should be enabled to freely choose the support person, and a support person should not take litigation decisions like the next friend or guardian ad litem in the current system.

No statistics exist of the number of children or the number of people of “unsound mind” who have had a next friend or guardian ad litem appointed. Reported cases do, however, exist. An example is *Kariuki v. Mwangi*,<sup>198</sup> where the applicant applied to the High Court to be appointed guardian ad litem of Kariuki, who is said to have become “insane” and who opposed the application on the basis that a transaction in dispute was concluded long before the alleged “mental incapacity”. The judge allowed the application.

## Research findings

MDAC’s interviews show that people either go to the police in urban areas or to the chief and village elders in rural areas. In these domains they face challenges in seeking justice. These range from relatives preventing a matter from being reported to the police, the police not pursuing allegations and the unaffordable financial costs associated with legal proceedings.

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- 184 2010 Constitution, Article 48.
  - 185 2010 Constitution, Article 159.
  - 186 2010 Constitution, Article 50 and 50(m).
  - 187 2010 Constitution, Article 22(1) and 22(3)(b).
  - 188 2010 Constitution, Article 22(1).
  - 189 2010 Constitution, Article 21(3).
  - 190 2003 Persons with Disability Act, Section 38(1). Other ‘specific matters’ include violation of human rights, deprivation of property and cases of capital punishment.
  - 191 Users and Survivors of Psychiatry Kenya, Position Paper No.2: Comments on the Persons with Disabilities and the Legal Aid Bill, 2010 (Nairobi: USPK, 2012)
  - 192 Revised 2009 Civil Procedure Act of 1924 (Cap 21) of the Laws of Kenya.
  - 193 *Ibid.*, Order 31 Rule 15.
  - 194 *Credit Finance Corporation Ltd v Mahendi Abdulla Karnali*, Civil Case No 1736 of 1958. The Court of Appeal held that without a qualified guardian as provided by Order 31 Rule 3 of the Civil Procedure Rule, any decree obtained in the suit is a nullity. In case person of unsound mind institutes a suit without a next friend, it may be struck out by the Court and it requires the next friend to sign a written authority.
  - 195 From the case database of the Kenya National Council for Law Reporting, *High Court of Eldoret, Republic v Chairperson Kilibwoni Disputes Tribunal & 2 others*, Misc. Civ Application 74 of 2009, 21 May 2009, available at <http://www.kenyalaw.org/caselaw/cases/view/55534/> (last accessed: 9 March 2014).
  - 196 Republic of Kenya, Civil Procedure Rules, Order 31 Rule 15.
  - 197 *Ibid.*, Rule 12(1) and (2).
  - 198 *High Court at Nairobi, Wambui Kariuki v. Kamau Mwangi*, Civil Case No 526 of 1993, 29 May 2003. Found from the website of Kenya National Council for Law reporting. <http://www.kenyalaw.org/CaseSearch/> (last accessed: 9 March 2014).

People with psycho-social disabilities gave MDAC numerous examples of barriers to exercising their legal rights. Jacinta told MDAC how she withdrew a case she filed with the police against a neighbour who had beaten her in order to comply with her father's demand that the case be withdrawn because the perpetrator was a neighbour and close relative. Jacinta's father went further and told police to be careful in the way they deal with Jacinta because she is unwell, which implies a link between Jacinta's police complaint with her psycho-social disability.

Chumo had contracted HIV and told MDAC how this probably happened because she was frequently raped on the streets when she was homeless:

Some men would come and agree with the watchman that they would sleep with me during the night, though I have asked God to forgive them. I was being forced by the watchmen [...] They were saying it was a way of welcoming me to the town [...] [If I would refuse them] I would be battered by them and also the watchmen.

Chumo reported this to the police and claims she was not taken seriously because of her psycho-social disability.

I was very sick at that particular time; I would go to the station screaming instead of talking to them in a soft voice so they would say that I am mad. They would just calm me down and tell me that they will warn those particular persons [...] some of the policemen would give me some money and tell me to forgive the perpetrators since I am a Christian and I go to church. I would come back, start crying and screaming within the town. People would think that I am pretending and some of them would even mock me, telling me to remove my clothes[...] Most of the men [who raped me] were drug addicts and if you take that kind of action against them they can even beat you up. I would be very scared of what they would do to me.

People with intellectual disabilities may also need a variety of supports to access justice. Out of the five women with intellectual disabilities MDAC interviewed, Atieno, Mumbi and Nekesa experienced sexual abuse. Eight of the 10 people with intellectual disabilities MDAC interviewed had suffered some form of domestic or community violence. Apart from Mumbi who was satisfied that the person who raped her was sent to jail, Atieno was unable to access justice after being a victim of sexual violence and Ndungu serves a prison sentence he considers to be unfair particularly as he was unable to access legal advice.

Some people are unaware of their right to pursue matters through the justice system because of rumours and disinformation in their communities. A man with a psycho-social disability who participated in a focus group discussion told MDAC how he thinks that he can only access the court through a third party because of his disability even though he has not been legally adjudged by a court to be of "unsound mind". He sees this as direct denial of access to justice.

## 4.5 Marriage and divorce

**Question:** Does Kenyan law allow and enable people with intellectual disabilities or people with psycho-social (mental health) disabilities to get married and divorced on an equal basis with others?

**Conclusion:** No. Kenyan law does not comply with the CRPD. Legislation limits the right to marry of people who have been labelled of "unsound mind" and those who have been found "insane". In practice, families restrict the marriage rights of their relative with disability. Some people with disabilities marry if they can find spouses that accept or are unaware of their disability, while some marriages break up because of a spouse's disability.

**CRPD Standards:** Article 12 of the CRPD sets out the right to legal capacity in all areas of life. Marriage is recognised as an 'area of life', and this is confirmed in Article 23 of the CRPD which recognises the right of persons with disabilities of marriageable age to marry and found a family base on free and full consent.

**Analysis of Kenyan Law:** The Constitution recognises the family as the natural and fundamental unit of society<sup>199</sup> and leaves it to various laws to regulate marriage itself.<sup>200</sup> Article 45(1) of the Constitution gives every adult the right to marry a person of the opposite sex, based on free consent with equal rights at the time of marriage, during and at the dissolution of marriage.<sup>201</sup> Lesbian, gay, bisexual and transgender people with disabilities in Kenya are discriminated against in this regard, not because of their disability but because of their sexuality. Disability-based discrimination is as rife in the area of marriage as it is in other areas of life. In *Wairimu v. Karira*,<sup>202</sup> the Endoret High Court held that marriage is a civil contract that requires "mental capacity" and consent from the parties for it to be valid. The Court said it is commonly presumed that adults of marriageable age are "sane" and capable of making a valid marriage contract until their incapacity is alleged and proved.

A finding of "unsound mind" or "recurrent fits of insanity or epilepsy" is enough to render a marriage null and void<sup>203</sup>. The unhappy spouse must prove that he or she was unaware of the unsoundness of the proposed spouse when the marriage took place, and these proceedings should be initiated within one year from the marriage.<sup>204</sup>

199 2010 Constitution, Article 45(1)

200 These primarily include the Revised 2008 Marriage Act of 1984 (Cap 150 of the Laws of Kenya). Along with this there are customary laws regulating family life within the various ethnic/cultural groups. These include the Revised 2008 Hindu Marriage and Divorce Act of 1984 (Cap 157 of the Laws of Kenya), based on Hindu Law and governing adherents of the Hindu faith; the Revised 2008 Mohammedan Marriage, Divorce and Succession Act of 1984 (Cap 156 of the Laws of Kenya), based on Islamic law and governing adherents of the Islamic faith; the Revised 2008 African Christian Marriage and Divorce Act of 1977 (Cap 151 of the Laws of Kenya), governing people who choose to marry under the formal law regardless of their cultural or religious background; and the Revised 2008 Matrimonial Causes Act of 1941 (Cap 152 of the Laws of Kenya) which consolidates the law relating to matrimonial causes.

201 2010 Constitution, Article 45(2) and 45(3).

202 High Court at Endoret, *Wairimu v. Karira*, Civil Appeal No 37 of 2002 (Appeal of Divorce Case No 16 of 2001 delivered on 19 April 2002).

203 Matrimonial Causes Act, Section 14(1)(f) (Cap 152, revised 2008) 1941.

204 Ibid, Sections 14 (1)(i) and (ii).



In *Wairimu v. Karira*, the Endoret High Court also held that the one year limitation period to initiate proceedings can be extended by the Court.

Divorce can be granted on the basis that one of the spouses is of “unsound mind” and has been receiving treatment for at least five years immediately preceding the petition.<sup>205</sup> In *NKG v. ASM*,<sup>206</sup> Mombasa High Court ruled that the five year requirement is irrelevant when a spouse fails to disclose their mental condition prior to the marriage, and that this amounts to psychological cruelty to the other spouse. Also, detainees who are considered to be “criminal lunatics” in institutions are deemed to be under treatment.<sup>207</sup> A court can dismiss a request for divorce if the spouse asking for a divorce is guilty of wilful neglect or misconduct that has contributed to the other spouse having an “unsound mind”.<sup>208</sup>

Under Kenyan customary law, the mere presence of a psycho-social (mental health) disability or an intellectual disability do not restrict the right to marry in themselves and are not grounds for divorce. However, very high levels of stigma around madness and disability mean that it is difficult for some people with disabilities who are ‘out’ about their disability to get married.<sup>209</sup> Many families prevent their relatives with disabilities from getting married, and it is also common that restrictions can be placed on non-disabled relatives from marrying those who have disabilities.

## Research findings

In MDAC’s focus group discussions participants shared their experiences of love and marriage. Five out of the ten people with psycho-social disabilities whom MDAC interviewed were married. They told MDAC about how some of their spouses provided care and emotional support while others did not. Only one person out of ten interviewees with an intellectual disability had been married, and her husband had died. A 29-year-old woman with a psycho-social disability reported that a man wanted to marry her and he knows about her disability but her parents stopped the relationship because they feared that she could harm him. A 22-year-old woman with an intellectual disability told MDAC that she would like to get married and have a family like other people but her relatives told her that she cannot take vows at the church or at the District Commissioner’s Office. A parent of a boy with an intellectual disability told MDAC about how her son loved a girl with an intellectual disability and wanted to marry her, but the girl’s parents were reluctant to allow the marriage. A 25-year-old woman with a psycho-social disability explained how her husband, on learning about her mental health condition, took their children to his village home. She told MDAC that there is nothing she can do because the husband has her medical documents which he can use to win a case if she were to initiate a parental rights case at court.

In MDAC’s interviews, Mutua, a man with an intellectual disability, explained how his wife left with their two children:

She left me because some women of the village told her that am retarded [...] You see, sometimes we would quarrel in the house and then she would blurt it out she would say no wonder I am a foolish man, and that she has confirmed what she was told by a certain woman, that her husband is retarded [...] I would just keep quiet because at times if I respond to her she would hit me with whatever she is holding [...] [When she would hit me] I would not do a thing, just keep to myself [...] I would feel very bad because even one time she injured me so badly with a knife. I had a deep cut here (shows the mark on his arm) [...].

## 4.6 Right to property

**Question:** Does Kenyan law allow and enable people with intellectual disabilities or people with psycho-social (mental health) disabilities to make legally-binding decisions about their property and assets on an equal basis with others?

**Conclusion:** No. Kenyan law does not comply with the CRPD, as it restricts people of “unsound mind” from using their own money and property.

**CRPD Standards:** Article 12(5) of the CRPD obliges States to ensure that people with disabilities have an equal right to own or inherit property and that those who do own property are not arbitrarily deprived of it.

**Analysis of Kenyan Law:** The Constitution provides that every Kenyan citizen can acquire and own property in any part of Kenya.<sup>210</sup> Laws must not arbitrarily deprive a person of their property, or their interest in or rights over a property, or limit in any way the enjoyment of any related rights on any of the grounds where the Constitution prohibits discrimination, which include disability.<sup>211</sup>

The Law of Succession Act adopts the position that people of “unsound mind” lack the capacity to make wills.<sup>212</sup> A person making a will is of “sound mind” unless he or she is in a state of mind arising from mental or physical illness, drunkenness or from any other cause that makes the person unaware of what they are doing.<sup>213</sup>

The High Court can deal with the property of people with psycho-social (mental health) disabilities.<sup>214</sup> When Courts manage property of people with disabilities in a way that goes contrary to their will and preference, the effect of this is to deprive them of their right to own and enjoy their property. It is more difficult for people labelled as being of “unsound mind” to challenge violations of their property rights, since they are not allowed to initiate complaints themselves; they must go through someone else to complain for them.

205 Ibid, Section 8(1)(d).

206 High Court at Mombasa, *NKG v. ASM*, Divorce Cause 53 of 2008, judgment 27 May 2009, available at: <http://www.kenyalaw.org/caselaw/cases/view/58097/> (last accessed: 9 March 2014).

207 Matrimonial Causes Act, Section 8(2).

208 Ibid, Section 10(iv).

209 Kenya initial report to the CRPD Committee, 36.

210 2010 Constitution, Articles 40(1)(a) and (b).

211 2010 Constitution, Article 40(2). Grounds on which discrimination is prohibited under Article 27(4) include race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

212 Revised 2008 Succession Act of 1984, Chapter 160, of the Laws of Kenya.

213 Ibid, Sections 5(1) and (3).

214 Mental Health Act, (Cap 248), Section 29.



Financial gain is the primary reason why people file petitions to become the estate manager or guardian of people with disabilities. A person with a psycho-social disability told MDAC at a focus group discussion how his wife went to court and claimed that he would sell their property because he has a mental health issue. The Court ordered him to be examined at the Mathari psychiatric hospital, and as a result transferred his assets to his wife. She then sold their house and two plots of land and disappeared.

A parent of an adult with an intellectual disability told MDAC of cases where guardians steal the property of the person with a disability. He worried about the future of his child when he dies. Another person told MDAC that once a person is labelled with a psycho-social disability their property is lost automatically. Others told us about how families do not consider people with psycho-social or intellectual disabilities as being capable of inheriting property. And if by chance a person does inherit assets, the person is seen as incapable of managing them and the property is therefore highly likely to be placed under the custody of another relative.

## 4.7 Land rights

**Question:** Does Kenyan law allow and enable people with intellectual disabilities or people with psycho-social (mental health) disabilities to make legally-binding decisions about their land on an equal basis with others?

**Conclusion:** No. Kenya does not comply with the CRPD in allowing people with disabilities access to their land and lacks safeguards to ensure access to trust lands held under customary law.

**CRPD Standard:** Article 12(5) provides for the right of people with disabilities to own and inherit property, and this includes land.

**Analysis of Kenyan Law:** Management of land in Kenya is so important that the Constitution lays down principles for its management. Equitable access to land, security of land rights and elimination of gender discrimination in law, custom and land practices are all covered.<sup>215</sup> Land is an important means of livelihood for many people in Kenya. Three quarters of the country's population lives in rural areas and rely on agriculture for livelihood, and among the poorest in rural areas are persons with disabilities.<sup>216</sup> Land law reforms took place in 2012,<sup>217</sup> before which the rights and obligations of land owners were regulated in various laws.<sup>218</sup> This was problematic for people with psycho-social disabilities and people with intellectual disabilities because the eligibility to own land was subject to contract law,<sup>219</sup> which considered the "insane" or "people of unsound mind" as lacking the capacity to enter into valid and enforceable contracts (except for contracts entered into during lucid moments and contracts for the supply of necessities needed for survival such as food, shelter and clothing).<sup>220</sup> Some of the recently-repealed land laws provided that where a person disposes of land in the form of a gift while under disability it may be repudiated on cessation of disability,<sup>221</sup> and a guardian may make any application, do any act or be a party to any proceedings on behalf of people of "unsound mind" in any dealings in land.<sup>222</sup>

The Land Registration Act 2012 did not make substantial changes. A person "of unsound mind" is treated as a child.<sup>223</sup> Both are prohibited from dealing or having an interest in land.<sup>224</sup> Guardians can act on behalf of a person deprived of their legal capacity.<sup>225</sup> A person of "unsound mind" or a minor, who is registered as an owner of land or a lease, which he/she acquired as a gift and is still in possession of, has a period of six months to reject the gift after he/she ceases to be of "unsound mind" or become an adult.<sup>226</sup> However, the person's rejection is only valid when the land or lease is transferred to the donor, who is obliged to accept it and when the transfer has been registered.<sup>227</sup>

Under customary law, trust land is land that was held communally (community land) which is now governed by the Trust Land Act.<sup>228</sup> This vests trust lands in the county council where the land is situated and requires the council to manage the land in a way that complies with the rights and interest under customary law of the people connected with that land. These rights are vested in any tribe, group or individual, subject to the right of the government to alienate the land for public purposes. Courts apply customary law in civil matters including land held under customary tenure, intestate succession and administration of estates,<sup>229</sup> and Magistrate Courts have jurisdiction over questions on land tenure under customary law.<sup>230</sup> Lands held under customary tenure may be converted into individual tenure through processes set out under the Land Consolidation Act,<sup>231</sup> and the Land Adjudication Act.<sup>232</sup>

215 2010 Constitution, Article 60.

216 International Fund for Agricultural Development, "Enabling poor people to overcome poverty in Kenya" July 2011, 1.

217 2010 Constitution of Kenya (Article 60-68); the 2012 Land Act (No 6) which repeals the Land Acquisition Act (Cap 295); and the Land Registration Act of 2012 which repeals the 1882 Indian Transfer of Property Act; the Government Lands Act (Cap 280); Registration of Titles Act (Cap 281); Land Titles Act (Chapter 281) and the Registered Land Act (Cap 300).

218 These include Government Lands Act (Cap 290) of the Laws of Kenya; Trust Land Act (Cap 288) of the Laws of Kenya; Survey Act (Cap 299) of the Laws of Kenya; Agricultural Act (Cap 318) of the Laws of Kenya; Land Control Act (Cap 302) of the Laws of Kenya; Land Planning Act (Cap 303) of the Laws of Kenya; Land Consolidation Act (Cap 283) of the Laws of Kenya; Land Adjudication Act, (Cap 284) of the Laws of Kenya and Land Acquisition Act (Cap 295) of the laws of Kenya.

219 Revised 2009 Law of Contract Act of 2002 (Cap 23), of the laws of Kenya that apply English common law of contract to Kenya with certain modifications.

220 Revised 2012 Sale of Goods Act of 2003 (Cap 31) of the laws of Kenya, Section 4(1).

221 1882 Indian Transfer of Property Act, Section 127, which applies in Kenya as a statute of general application and the Registered Land Act, Section 115.

222 Revised 2010 Registered Land Act of 1989 (Cap 300), Section 114.

223 2012 Land Registration Act (No. 3 of 2012), Section 2. It defines "legal incapacity" as "a person of unsound mind or a person under the age of eighteen years".

224 Ibid, Section 47(2).

225 Ibid, Section 48(3).

226 Ibid, Section 49.

227 Ibid.

228 Trust Land Act (Cap 288), of the laws of Kenya.

229 Judicature Act (Cap 8), of the Laws of Kenya, Section 3(2) and Magistrate Courts Act (Cap 10), of the Laws of Kenya, Sections 2, 5(2) and 9(a).

230 Magistrates Court Acts, Section 5(2) and 9(a).

231 Land Consolidation Act, Chapter 283 of the Laws of Kenya. The main purpose of the Act is to consolidate fragments or pieces of land into economically viable units. It requires significant co-operation of land owners who after adjudication of titles surrender old plots which are taken up conveniently by another in exchange for a single plot with a similar aggregate acreage.

232 Land Adjudication Act, (Cap 284) of the Laws of Kenya.

These processes may result in the deprivation of people with disabilities (especially people with psycho-social or intellectual disabilities) of their right to land. The responsibility to safeguard their claim and interest in ancestral land rest with families and relatives because laws fail to protect their land rights, for which they may require access to support that respects their choices and preferences during litigation. The repealed Registered Land Act made it difficult to secure a rectification once first registration of land is procured,<sup>233</sup> and first registration may not be defeated even if it was obtained, made or omitted by fraud or mistake.<sup>234</sup> This fails to protect people who can easily be deprived of their land because of lack of support by members of society in a more advantageous position. In *Kasuve v Mwaani Investments Limited & others*,<sup>235</sup> the Court of Appeal at Nairobi held that a person may apply to the High Court for an order that he/she be registered as the proprietor of land claim by adverse possession. The claimant must prove open and exclusive possession of the land and as of right without interference for 12 years after dispossessing the owner or after the discontinuation of possession by his own volition.

Therefore there is a great need for care to prevent shrewd individuals from exploiting this legal provision by seeking to stay on the land of people with psycho-social disabilities and people with intellectual disabilities until the point that they are able to submit a claim for title by way of adverse possession. These provisions should be brought in line with Article 12 of CRPD that sets out the State obligation to ensure that people with disabilities have and enjoy the legal capacity to own, inherit and dispose of land.

## Research findings

Among the people with disabilities MDAC interviewed, only Githinji mentioned that he owns land which he inherited from his father before he developed a psycho-social disability.

A participant of a focus group told MDAC that she saw guardianship as something that allows people to grab the land of people with disabilities. A female carer who participated in a focus group discussion explained how her brother developed a psycho-social disability when he was already married with five children and how this led to another relative enticing him to sell the land. The relative would give her brother food, clothes and money for alcohol and one day chased her brother and the five children from their land, saying that the relative had bought the land.<sup>236</sup> When elders were called to resolve the matter, they ruled that her brother had sold the land and that the decision could not be reversed. Her brother lacked money to pay a lawyer, so could not challenge the sale in court.

Another female carer who participated in a focus group explained that her father had divided land among the siblings including her brother with a psycho-social disability whose portion of land was placed in the custody of another sibling. Although the sibling promised to look after her brother with disability, the land was later sold. Since their father had died there was no way to challenge the sale of the land.

A male participant at a focus group discussion told MDAC how his mother ran away when his brother was born with Down syndrome. His father remarried and before he died, the father ordered that his brother with Down syndrome should never be made to suffer and the family should take care of the piece of land he allocated for his brother with Down syndrome. The step-mother later chased his brother with Down syndrome away from the house and sold the piece of land allocated to him, a decision which was not able to be challenged.

In a focus group discussion with people with psycho-social disabilities a woman explained that she runs a small business in a rural suburb and wanted to buy a piece of land with some of the money she saved, but was told by relatives that she cannot buy it in her name. The evidence from MDAC's focus groups reflects findings in another study in Kenya which found that people with disabilities are deprived of their land solely because of their disability.<sup>237</sup>

233 Registered Land Act, Section 28.

234 Ibid Section 143(1).

235 Civil Appeal No. 35 of 2002.

236 There is some evidence to suggest that this is a issue in other countries in the region too. MDAC has heard similar stories from three people with psycho-social (mental health) disabilities in Uganda.

237 Equal Rights Trust, Report on Discrimination in Kenya, 136.

## 5. Indicator 4: What kinds of supports are available for people with disabilities who may need them in exercising their legal capacity?

**Conclusion:** Kenya does not comply with the CRPD as it fails to guarantee access to supports for people to exercise their legal capacity.

**CRPD Standards:** Article 12(3) of CRPD requires States to ensure that law provides access to support to people with disabilities who may need it to exercise their legal capacity. Support is not something which can be forced on the person. There should be safeguards to prevent abuse in the support relationship to ensure that the will and preferences of the person with a disability are respected.

As discussed above, supported decision-making is a cluster of different methods which give primacy to the person's will and preferences. It may include a specific support agreement or a representative agreement where the person with a disability chooses an individual or group (a friend or a relative) to support him/her in forging their way through life. The support can come from a community-based organisation or take the form of advance planning with safeguards that protect the individual's rights to autonomy and right to be free from ill-treatment.

States should also create regulatory frameworks to address situations where, after all efforts are made, an individual's wills or preferences cannot be ascertained. In these rare cases of last resort, there should be an option for facilitated decision-making (appointing an outside decision-maker) when supports have been exhausted (i.e. after creative communication techniques, building relationships, accessible information). Facilitated decision-making is only to be used where there is no information which can be used to determine the person's likely decision, will or preferences, or where these cannot be unambiguously ascertained and where the person has no previously-expressed will (e.g. evidenced in a planning document). Even in such circumstances, the process should be based on protection of the rights, will and preferences of the person concerned, and should only be used for the minimum period necessary and with the sole purpose of augmenting their ability to make decisions through supported decision-making. In this way a person's legal capacity is preserved to the maximum extent possible.

The CRPD sets out the State's obligation to take appropriate measures to provide access to such supports for people with disabilities. Article 12(4) of the CRPD obliges States to ensure that there are safeguards to prevent abuse and to guarantee that supports respect the rights, will and preferences of people with disabilities. It also mandates that support mechanisms are free from conflict of interest and undue influence, are proportional and that they are tailored to the person's individual circumstances. They should be in force for the shortest time possible and be subject to regular review by a competent, independent and impartial authority or judicial body. In addition Article 16 of the CRPD mandates States protect and prevent people with disabilities from abuse, violence and exploitation and ensure that all instances of violence, abuse and exploitation are investigated and when necessary prosecuted.

**Analysis of Kenyan Law and research findings:** Only the Sexual Offences Act provides an example of access to support, as it allows a court to communicate with victims of sexual violence who have a disability through an intermediary.<sup>238</sup> In such cases, people who have an "intellectual, psychological or physical impairment" can apply to the court to be a "vulnerable witness".<sup>239</sup> The intermediary helps the person understand questions, informs the court when the witness is tired or stressed and can ask the court for a break.<sup>240</sup> However, it is unclear whether the person with a disability can choose the intermediary, in conformity with the CRPD.

Supports required by Article 12 of the CRPD are much wider than court proceedings dealing with allegations of sexual crimes. The Constitution fails to provide for access to support to people with disabilities in exercising their legal capacity even though all people are recognised as persons before the law. The Persons with Disabilities Act 2003 provides for the rights and rehabilitation of persons with disabilities, equal opportunities, the principle of non-discrimination and so on,<sup>241</sup> but is silent on the exercise of legal capacity and access to supports. There is a need for one law to set out regulations for supported decision-making.

Among the people MDAC interviewed, two women with intellectual disabilities said they had been raped several times. Mumbi benefited from the kind of support envisaged by the Sexual Offence Act: she informed her mother about the rape, and the mother reported it to the police. When the suspect was arrested, Mumbi was invited to identify him. Some time later, she was raped again by a man who confessed to the crime and was sentenced to imprisonment.

Atieno is another woman who told MDAC she had been raped by the watchman in the parish where she lived. She reported it to the nun in charge, and no action was taken, to keep the crime quiet.

Lack of effective remedies for rape cases seems to be a systemic problem in Kenya. In a now famous case,<sup>242</sup> 11 children went to court to challenge a police failure to investigate and prosecute alleged rape cases. The High Court held that the government was responsible for failing to ensure an effective investigation and therefore failing to bring a prosecution. In this judgment, the High Court found that such failures create a climate of impunity, causing psychological harm to the children. The court went further by finding that this amounted to a violation of the rights of the children concerned, including their right to special protection as members of a vulnerable group. As such, the failure of authorities to act in this case breached the children's rights to equal protection and benefit of the law, to non-discrimination, and to dignity and security of person.

238 2006 Sexual Offence Act, Section 31: intermediaries may include a parent, relative, psychologist, guardian, counselor, social worker, etc.

239 Ibid, Section 31(2)(b). Section 2 defines 'person with mental disability' as "a person affected by any mental disability irrespective of its cause, whether temporary or permanent, and for purposes of this Act includes a person affected by such mental disability to the extent that he or she, at the time of the alleged commission of the offence in question, was – (a) unable to appreciate the nature and reasonably foreseeable consequences of any act described under this Act; (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation; (c) unable to resist the commission of any such act; or (d) unable to communicate his or her unwillingness to participate in any such act."

240 Ibid, Section 31(7).

241 Persons with Disability Act 2003, Preamble, and Section 15 of the Act prohibits discrimination and provides for reasonable accommodation in the area of employment.

242 High Court of Kenya, C.K. (A Child) through Ripples International as her guardians and next friend) and 11 others v Commissioner of Police/Inspector General of National Police Service and 3 others, petition 8 of 2012, 27 May 2013.

Some people with psycho-social disabilities and their family members told MDAC about positive examples of being supported to make decisions. Yusuf's wife explained how she supports her husband to make family decisions:

He likes to be in the company of other people so that he can cool his mind during daytime when he is not working. For example, when we are with him, we keep on communicating and even discussing what we can do as a family. I know that through talking he becomes more settled and we are able to come up with ideas together [...]. He is normally very troubled when we are having family issues, for example, on finances. During that particular time I like sitting down with him so that I can understand what he is going through and support him accordingly. If we don't look for solutions he is likely to be affected more and even get sick[...] When he makes family decisions I normally support him as much as possible and even when the decision is not very good, I try to explain to him on the need to adjust or change a couple of things in that particular decision.

Githinji's wife explained how she helps her husband when he forgets things: "We have employed someone to assist him as he does his work around the compound, I think he would really suffer if he did not have people by him throughout the day to help him in the course of the day, especially because he is very forgetful. It would be very difficult for him to do anything meaningful in his life."

Majani is a member of a local women's group and said that she felt supported by them: "They know about my condition and they take me just like any other person. They normally even give me the opportunity to express my views. They listen and take my opinions seriously."

Chumo's friend explained how she is supported to prevent being hospitalised and to ensure that doctors listen to her:

When she starts becoming unstable, she becomes abusive like, when you tell her she is smart she will sometimes abuse you for the whole day, but she is not violent in any way. We normally talk to her and advise her to be calm when she is spoken to by people during such a period [...]. She is very active when it comes to going to the hospital. I have known her for over 10 years and in that period she has never been admitted, and I was even requesting the doctor to give Chumo a card which contains her specific details so that she can be able to produce it to all the doctors, so as to avoid any misunderstanding.

On the whole, support seems more likely to be given if the person with a psycho-social disability is a man and if he is living with either his wife or children or with his mother.

For people with intellectual disabilities, Mutua explained how he seeks support from his friend and nephew: "At times, I feel what I am doing is not what I am supposed to do, I ask them and they tell me what to do. It is not so much encouraging, but if it is a good opinion or suggestion, I just say it is okay."

Ali's brother explained how Ali was supported to take the bus to the workshop rather than walking to work: "We could put exact money for bus fare in each of the two pockets. Then he would give the money to the bus conductor while on his way to the workshop. Then on his way back he could give out the money from his other pocket."

## Appendix 1 – Life stories

In this part, we set out a distilled version of each of the interviews we held with people with disabilities. We spoke with 10 people with intellectual disabilities and 10 people with psycho-social (mental health) disabilities. In their stories, we also incorporate testimonies from the relevant family member. To preserve the anonymity of people we spoke to, we have assigned each interviewee a Kenyan name different from their own, and removed information that may identify interviewees. The life stories contain information about education, poverty, violence, abuse, exploitation, participation in community activities and access to justice. Life stories of people with intellectual disabilities are presented first, followed by the life stories of people with psycho-social disabilities.

### The lives of people with intellectual disabilities

#### Kiprop – A man in his late forties from Nairobi

Kiprop and his sister both live at a compound they inherited from their parents. He noted how he doesn't have any friends and his sister is the only person with whom he interacts. They have two other siblings who, according to Kiprop's sister, have little interest in Kiprop and his wellbeing. As Kiprop's sister explains – "I'm his blood sister, who else can take care of him? We cannot afford to hire a carer." She finds that a lot of their choices are limited by poverty.

As a child, Kiprop attended a nursery school but did not complete it. As Kiprop explains – "My mother was told by the teachers that I need to go to special school, for people like me, but she did not have money to take me there."

Kiprop has never worked and just helps at home. He spends his days looking after chickens his sister bought for him to look after and finding ways to feed them.

*Kiprop:* You see all these food courts? I go to each one of them and tell them to keep for me any leftover food. Then I go collecting and I bring it home to my chicken, sometimes it's a lot and other times it is little. Some of the [food court owners] are good to me, but the others are so harsh to me, they don't want to see me and I feel bad.

Kiprop's sister explained that he used to work as a handyman, "like fixing the fence, nothing formal, but he doesn't do it anymore. He lost interest and just started staying at home. He also started keeping to himself[...] When he's not looking for food [for chickens] he is just in the compound, walking around and resting."

Kiprop went on to explain that his sister keeps the money from the sale of the chickens. His sister expressed a different opinion – "Now that he is not employed he does not have money as such. When he sells chicken, he gets money though he gives it to me. I let him keep some[...] Once in a while, he goes to the shop to buy bread and he even knows how much it costs."

He is not involved in community life, yet would love to "go out, meet other people". Kiprop's sister, however, is concerned for his safety – "You know such a thing would be really dangerous because he can just walk and not be able to come back home. So I prefer when he is just around home, then that is okay with him and with me also." She explained that this fear for his safety and lack of inclusion in the community stems also from community attitudes towards people with intellectual disabilities – "Some of these attitudes, we have very little control, because the community views him differently and fails to integrate him in mainstream activities so, yes, I can say that his right to be part of community is denied."

Kiprop also mentioned how he was once "beaten and locked in a room, all alone[...] They didn't want me to go anywhere", but did not want to share with the interviewer further details as to who did this and when.

When discussing community attitudes to people with intellectual disabilities, Kiprop's sister noted: "There is this time I had to lock him in his house because he was wandering and at some point he had been beaten by villagers. He was so angry but not to an extent of suing me. But he surely felt confined." Kiprop's sister noted that the beating was not reported to the police, but "next time it happens, I will [report it]".

She was not sure whether making decisions for Kiprop is the best course of action she takes – "Well, yes and no. Yes because he can make some decisions and no because I am his carer and I think I know what is best for him[...] To say the truth, I admit he should make his own decisions but look, he is not in a position to and that is why I make them for him." Although he appreciates her support, Kiprop noted that he would like to have more opportunities to make decisions in his life.

*Interviewer:* Do you think your sister should ask you before making decisions?

*Kiprop:* Yes

*Interviewer:* What I'm asking is, do you feel good or bad when someone makes decisions for you?

*Kiprop:* (Long silence) Bad.



## Ali, a man in his early 20s from a provincial town

Ali lives with his mother, three siblings and his cousin who also sometimes looks after him. His father works in another town, while his mother works in his hometown. He attended primary school until Standard 8. According to Ali, it was his mothers' decision for him not to continue to secondary school, although he would have preferred to stay in education. His brother confirmed it was because Ali "didn't do well at school" and the fact that there was no special school close to their township.

When Ali left primary school, he worked in a workshop for people with intellectual disabilities for almost a year. His mother found this work for him and decided that it was the right job for him. In the interview, Ali disclosed that he would have preferred to be consulted on the decision, as he didn't like working there. He also described a time when a co-worker at the workshop attacked him. He didn't disclose the incident to anyone and said he wouldn't know where to seek help. However, his brother knew about his incident – "there is a time he was bullied at the workshop by another man[...] We did not know where we would have been helped [if we reported it]. Again we thought he would easily be bullied by those who do not understand his condition."

To his brother's knowledge, Ali wasn't paid at the workshop. His brother explained – "We did not know why [he didn't get paid] because he stayed for long without being paid and mother went to find out. Most times they were saying that he had not mastered the art of making beads so did not warrant payment." Although Ali did not like working there, he did like working with beads and would like to work "putting beads on the wire, to make beads." In general, Ali said he'd like to do more for himself. He likes visiting his relatives who live in Nairobi and would like to live there someday. However, his family prefers him to be at home – "For us we would like him to stay close to us, work nearby so that we monitor him and be with him." (Ali's brother).

*Ali:* [Instead of working] I stay in the house[...] fetching water, I go with my brother, [...] I watch citizen TV[...] I like Papa Shirandulla and Inspekta Mwala.

He would like to have pocket money to "go to the shop[...] [buy] clothes". However his brother stated that he doesn't get pocket money as "he does not know currency". When Ali used to work at the workshop, he'd occasionally be given money to take a bus, rather than walk. In such instances, Ali's brother explained "we could put exact money for bus fare in each of the two pockets. Then he would give the money to the bus conductor while on his way to the workshop. Then on his way back he could give out the money from his other pocket."

He also goes to church each morning, although he'd prefer to "stay in the house". But if he doesn't go "my mother will quarrel with me... I am not happy". His brother explained – "My mother is very religious, so maybe that's why she tells his friends to take him. We have never asked him [if he likes to go there]." Ali also likes visiting his neighbours, but is not allowed to do so at night, which he's not happy about.

*Ali's brother:* Sometimes when we are going out at night to watch movies, he is not allowed to go with us because of his condition. I think he is not happy about it but he doesn't voice his disappointment either[...] You see, at times he is so weak and if he goes outside he can fall down, so that is why we ask him not to get so much involved [in community life].

Ali likes living at home, but is not always happy there, because: "Sometimes they shout at me[...] my mother, or my brother, [...] I feel very bad[...]. I am not happy about it[...] [I'd like for them to talk to me] without shouting, quietly." His brother noted that his family also ties him up to handle Ali's behaviour that they perceive as violent, despite knowing that this breaches his rights.

*Interviewer:* How else do you think his rights are violated?

*Ali's brother:* Sometimes he gets so angry and he can get violent and at such times, then he is always tied with ropes, because he is too violent. He does not it, he kicks around and gets very angry. [But] it's the only way that calms him.

## Juma, a man in his late teens from a provincial village

Juma lives with his mother and uncle in one of Kenya's provinces. His father left the family when his younger brother was born. In Kenya, people often live with their family members, so asking about choice of where to live, particularly for young people, may sound funny. Juma's mother answered: "That is a funny question. Who decides for him where he will live? This is where he lives, I am his Mother, where else would he live?" Juma's mother is his primary carer and decision maker: "both then [growing up] and now she still makes decisions for me."

His younger brother now lives at his aunts' compound, where he helps with the cattle. Juma would have liked to go and help with his brother, but was not allowed.

*Juma:* She did not ask for me, my Mother said that she asked for my brother[...] She said because I am sick, I should stay at home[...] Sometimes I get convulsions, so that is why[...] I was not happy when she said that[...] I was not asked, you see, I was just told I could not go.

His mother viewed the decision differently.

*Juma's mother:* (Laughs) They can't go the two of them, who will keep guard the house, when they both go?[...] I know he would have wanted, but you see, because of his condition, it would not be appropriate. I like him being close to where I am[...] You see, Juma gets convulsions and he started getting them when he was nine years old, so I am the only one who knows how to handle him, that is why I would not want him to go and live far. Sometimes, when he falls, he gets cuts and bruises on his head, and I am perhaps the only one who would know how to go about it.



Juma however says that he takes medication for his epilepsy and manages it himself “because if I don’t take, then I will get convulsions[...] I know where they are kept, so I just take when it is time.”

Juma’s mother stressed how she, too, had to accept limitations to her options, due to her son’s disability.

Juma’s mother: You see, even me, I can’t go far from where he is, like going to a place where I will have to spend the night because of him. So it is for his own good that I don’t allow him to go. You see, he is my son, I love him so, and were it not for his condition, he would do all that he wanted to do, with little supervision.

Juma went to secondary school – and “liked it very much[...] playing with friends[...] buying sweets and biscuits[...] in the school canteen (smiles), Swahili, science.” However, Juma was taken out of school after he beat up another pupil.

Juma: Headmaster said I should pack my things and go[...] I beat a boy with kicks and blows... we used to sit next to each other[...] He stole my money. He stole my 100 bob, which is why I beat him. He was a thief, that is why I decided to beat him[...] I know it was him who stole my money, he was sitting next to me, and that’s why I know he was the thief. [I kept my money] in my desk, and then he took it[...] My mother [gave it to me], it was mine[...] The teacher, my class teacher took me to the headmaster [silence] and when he was told that I had beaten someone, he did not listen to me.

Juma never got the money back. His mother explained how the situation could have been worse for Juma:

Juma’s mother: Actually, [he was only expelled] because the Headmaster knows his condition, otherwise it would have been a legal issue[...] The parents to the other boy who was beaten wanted to forward the matter to the authorities like in a police station, but the Headmaster talked to them and convinced them otherwise. He told them that [Juma] had a mental condition, and that is why they did not forward the matter.

Juma now spends his days looking for sisal at the dumpsites and selling it to the women working at the market for a small fee (20 Kenya Shillings for 1kg of sisal). His mother is not happy about him earning his money this way. Both of them said that Juma gets skin rashes working at the dumpsites. His mother does, however, ask him for the money he earns “to buy food or anything else needed in the house”, which Juma doesn’t like. Juma said I would prefer “to buy my own things[...] like my shoes.” His mother said she only takes money from him occasionally “when maybe I do not have money[...] to buy groceries[...] I really don’t take time to ask him [if he’s happy with that], because he will eat the food we buy with that money, isn’t it?”

Beyond looking for sisal, “I just stay at home”, both Juma and his Mother confirmed. He also has friends that he likes to go and visit. However, his mother and uncle forbid him to socialise at night:

Juma: There is this one time my friends were going to watch a movie and they asked me if I wanted to go, of course I wanted to go but my mother refused[...] She said it was late, I could not go[...] I was not happy[...] even if it was at night, I wasn’t walking alone.

His mother said she forbids him only because she fears for his safety.

Juma doesn’t like that he’s not in school anymore and would like to go back. He told his mother about it – “she said she would go and talk to the Headmaster[...] she tells me to wait[...] [I want to] go back to school.” His mother is aware of this, yet explained the difficulties due to both his intellectual disabilities and the discipline issues because of which he was expelled. She only wants him to have a “Form Four Certificate” so that she could send Juma to a vocational college. She hasn’t discussed these plans with him:

Juma’s mother: No you cannot ask him, because he will not know, so I will just take him[...] the way I see him, he would do well in carpentry[...] it is good for him, I am his mother and I know what is best for him.

Juma’s dream for the future is to be a policeman, “so that I can arrest bad people”. He hasn’t shared this dream with anyone. His mother thinks he would not be able to gain employment.

Juma’s mother: I am almost sure that he would never get employed in this condition. So the only other thing he can do is starting his small business of carpentry.

## Atieno, a woman in her late 20s from a provincial town

Atieno lives in a Church parish. She moved there from her hometown because of the abuse and neglect she experienced in her family.

Atieno: You know, when I was growing up, my family did not want me, they hated me[...] they even used to lock me in another place, where I was just alone[...] My parents, especially my father[...] when I was young he used to say that I am a bad omen to the family, and that is why I was being locked inside a pen[...] And I never used to have people around me, only animals, goats, and I would get so lonely[...] The neighbours reported the matter to the Church[...] And then these people from the Church came and rescued me.

[...] I have siblings but they are at home with my parents, you see, they are more loved, so they stay at home. I doubt they are mistreated like the way I was[...] I remember I used to be all alone and I could only see my siblings when they are bringing food to me, and at times in that place I could peep and see my siblings playing with their friends and I was just locked up, and I hated every one of them[...] I felt so lonely; many times I was wishing I would die, and I would cry so much[...] I don't like going there [home], it reminds me of all those things I went through when I was young so I don't like going[...]

You know you can only miss people when you were close to those people, but if you are not, then you cannot miss them, isn't it? [...] [I was] just a young girl, I would not remember age, maybe around puberty stage[...] Sometimes [I miss them], and I ask myself why they hate me that much[...] I would really like to know because if I have done something bad to someone, then I will say sorry.

The Parish Sister we spoke to during the study explained that the Church where Atieno now lives is "a missionary church funded by the missionaries and one of our programmes is to rehabilitate abused women and give them skills so that they can empower themselves[...] we believe they are the backbone of any society so we help them empower themselves." The Sister also explained how they identify the women who live at the Parish:

Sister: Most of our cases are referred by the villagers. Then we go for a fact-finding mission. You find villagers and neighbours coming to us for help in rescuing the women[...] that is how we learnt about Atieno[...] You know around here there is a belief that if you give birth to a child with disability, then it is a curse from the ancestors, so such children find themselves shunned by the society[...]

Some members of this church came and reported to us that there was a girl who had a mental disability who had been shunned by the parents and lived in a goat pen. We were concerned and decided to go and for sure we found that it was true, the poor girl was secluded and locked up. So we called the Chief [local administrator] and we decided that the missionary would be a perfect place to rehabilitate the girl.

The Church did not press charges against the parents. The Sister told us "no, in the villages such things are rampant, so we just told the parents that we would take Atieno and take care of her. They gladly accepted us to take her and that is how she ended up being here."

The Sister explained what happened when Atieno was rescued from her home:

Sister: [She was a] big girl, almost 15 years, but because of the circumstances that she lived in, she looked quite young, and emaciated. She was a very scared child [...] When she came here, she was not talking coherently and I think because of trauma, too, she was very withdrawn, but with constant company around her from the other young women, she has now picked up and is doing well.

While she was kept at the family pen, Atieno was also sexually abused.

Atieno: There was a man who used to come and force himself on me[...] He was I think a neighbour, he was a big boy, and he knew my name[...] [He would come] many times, and nobody cared about me. I think when there was nobody around, he was coming[...] I felt very bad, I hate that man.

Atieno reported this to the Sister at the Parish but doesn't know whether any action was taken about it – "I did not talk to her [Sister] about the experience again". The Sister confirmed that Atieno told her about the abuse, but that nothing was done as, "it has been long and we did not have proof so we just thanked God that Atieno was now in safe hands, in our custody".

She likes living at the church, because "at least I have friends here and am not lonely, there are also girls like me, who are my friends[...] I am very happy here, they even give us food and they buy us shoes. It is nice here." Her mother used to come and visit her once she started living in the Church "but recently she does not visit me, so now I am just on my own". The Sister confirmed this, explaining that "she [the mother] was doing it behind her husband's back, she did not want the husband to know. But I think now she is too old to move, maybe that is why she does not come".

Atieno never attended school and wishes she had.

Atieno: I feel bad, I cannot read, and writing I also don't know, but it is fine, since God is still blessing me, so I am happy the way I am.

Sister: By the time we brought her here she was over the age to attend school, she lacked the basics in speech and we kind of engaged her in conversational moments till she became coherent in speech.

At the Parish, Atieno started a vocational course.

*Atieno:* I have attended a dressmaking course, where I have learnt how to do tailoring and make dresses. We have teachers who come and teach us how to sew. It is the course they offer girls, so I just got involved in doing it[...] I like it.

During the day, Atieno makes dresses. The dress she was wearing was “from well wishers who come to visit us” and the dresses she makes “are for sale, so that is why we are not allowed to wear them[...] We make very beautiful dresses and at times I would like to wear one of them.” Atieno hasn’t shared this wish with anyone at the Parish. Apart from working as a seamstress, she also helps at the Parish – “In this place we plant our own vegetables and go to the farm to cultivate, we also have cows that we look after.” She and other women also attend mass.

*Atieno:* I wake up – actually, we are woken up by the Sister – and we go for a morning mass, then we later go and take breakfast[...] After breakfast I go to clean[...] just at the front of the dormitory, I mop there every day. We call them duties and everyone has her own duty of cleaning somewhere[...] I like it because it is making our compound clean[...]. Then I go to the workshop[...] I like making those things[...] [after workshop] we go for lunch and then we relax, we make hair and some other people sleep[...] After the evening mass, we take our food, by that time it’s evening, isn’t it? So we go to watch TV in the common room[...] We don’t watch every day, we watch TV on Sundays mostly, other times we have teachers teaching us[...] I [also] wash my clothes, we have a day for washing them.

Atieno also has time for free time activities.

*Atieno:* Oooh, didn’t I tell you that I sing in the choir?[...] Ahhh, I go to practice songs, because I love singing in church on Sundays.

Atieno and the Sister confirmed that Atieno doesn’t get paid for any of the work she does, but she doesn’t mind.

*Atieno:* You cannot be given money for doing something for yourself. It is our food that we cultivate and also the cows give us milk[...]. [The dresses we make] are sold and that is how we get money to buy our things that we need, things like food[...]. That is what Sister tells us, that the money we get from making dresses is for our own good.

While she is both grateful that the missionaries saved her and enjoys her days at the Parish, Atieno doesn’t like it every day.

*Atieno:* Sometimes it is very cold and I don’t feel like waking up, but I have to wake up because it is for my own good.

She never mentioned it to the Sister: “You cannot say, you will make her angry[...] because it means not going to the mass, and that is very bad.” However, when asked what she’d do if she could choose what she’d do, Atieno confided: “[Looks around and almost in a whisper] Sleep a bit more.” If she could choose what to do she would “just go to the workshop, only.”

*Sister:* In Atieno’s condition previously, we made all the decisions for her; we would take her to the bathroom, help her with bathing and make her bed, literally everything for her. But now, she does most things without being told.

When asked if there is still a need to make decisions for Atieno, the Sister laughed and said:

*Sister:* I don’t know; you know, here we have a schedule that we follow, so it is up to these women to fit in it. Since this is a missionary church, we always go for a morning mass, and you find that some girls do not want to wake up. Atieno has a problem waking up and since it is a rule, then we have to ensure she is awake and that she attends the mass[...]. It is a rule and it has to be followed, isn’t it? It is part of help for the girls, spiritually.

Unfortunately, Atieno has experienced sexual abuse at the Parish, too.

*Atieno:* I was just walking around near the Parish and then there is a man who used to greet me[...] And he would give me sweets and such things[...] He was working here, as a cook or a watchman, I don’t know, but was a worker here. So one day he called me through the fence, and when I went, he dragged me in the nearby bushes and forced himself on me[...] I did not want him[...] He said if I screamed he would do something bad to me, like kill me, but you see, he was holding my mouth also[...] I was hurting and was feeling so bad [quivering].

Atieno reported it to a Parish Sister, who, according to Atieno’s recollection, said she would look into the matter. However, that didn’t seem to be the case:

*Atieno:* I have seen him even after that day, around here, and I told Sister again, so I doubt he was arrested[...] I felt very bad, because he did something bad to me, he should be punished.

*Sister:* Sometime back, when she had stayed here like three years, she reported to me that our watchman had raped her[...] I did my follow-up and talked to the watchman who denied the allegation.

When asked if Atieno was taken to the hospital to check if she was raped, the Sister replied:

*Sister:* No, we do not have those kinds of facilities here[...] There is a clinic at the other end of this compound, a basic one that has painkillers[...] The District Hospital is far from here, and we do not have resources to undertake such expenses[...] I am sure if we had the means, we would have taken her.

Beyond that, nothing else was done about the Atieno's allegations. However, when talking about Parish policy regarding any rape allegations, the Sister noted: "Well, that would be a police case, I would report to the authorities".

There is also limited support available to women about the experiences they had. The Sister explained: "Well, we talk to the young women quite extensively, so as we talk we also counsel them. In addition, they are welcome to talk to us whenever they have a problem."

*Atieno:* When something like that happens to you, you don't want to remember, but sometimes it keeps coming to your head and you feel very bad. If it were you, how would you feel?[...] I think I would beat the man or even kill him, now I am a strong woman and would fight with any man[...] Even if you report nothing will be done, so I even see that there is no point in reporting.

At the Parish, Atieno was also sterilised without her consent.

*Atieno:* I don't think I would get children[...] I will tell you something, you see here (lifts up the blouse and reveals a scar on her stomach) here I was made an operation[...] This is contraceptive, all of us had been done like this, we cannot get children[...] The other women were talking and I was there when they were saying that we cannot get children, or even get pregnant, because there was an operation that was done to stop us from getting children[...] Nobody asked me [if I want that] [...] They should have asked me, because I love children[...] I feel bad, but what can I do now? [...] If I knew before, I would have refused to go for that operation. I would have ran away from here and would not have wanted the operation[...] [I haven't discussed this with anyone] and the sisters would be very angry if they know that we know. They think we don't know, so we only talk about it ourselves[...] [I cannot report it to the police] because they will kick me out of this place and I will have nowhere to go. So I cannot report them.

The Sister didn't disclose such practices when asked whether the Parish undertakes any measures to prevent pregnancy among women who live there: "No, no, that would be promoting promiscuity among young women, so we have not put any measures to ensure they don't get pregnant." However, Atieno showed the interviewer the scar on her stomach and neither Atieno nor the Sister noted any other health issues that would have warranted Atieno to have had a medical intervention resulting in such a scar.

Atieno also experienced bullying behaviour in the local village.

*Atieno:* When we go to the shopping centre, and there are these young men, they start shouting those names[...]; they say I am retarded or foolish and I don't like it[...] I am not happy and I think that is why my father said I should be locked up because I am bad omen[...] [I feel] very discriminated because I think am a human being like any other[...] I get so angry, but now there is nothing to do.

The Sister confirmed that the women go to the village and the shopping centre for walks, but did not mention bullying by the villagers.

Atieno also spoke about her dreams.

*Atieno:* [I would] like to be a teacher[...] to teach the little children, to play with them, that is what I would like[...] [I haven't discussed this with anyone] because I fear it will make her [Sister] very angry so I just keep to myself.

The Sister finds it difficult to see that Atieno and her peers will easily be integrated back into the society.

*Sister:* You see, like in the case of Atieno, the parents do not show any interest, these women they don't have relatives, they do not have people to go back to, that is why integration would be difficult[...] Until they can stand on their own, start a small business, then they can continue with their life. Of course when they feel they can be on their own, we don't keep them, actually there are some who have left and they are doing very well on their own.

## Mumbi, a woman in her early 30s from a provincial town

Mumbi lives with her older sister and her sisters' family in one of Kenya's provincial towns. Her father died when Mumbi was still a baby. Following the death of her mother while she was still in primary school, Mumbi moved to live with her aunt. She was the one who eventually decided to move to her sister's house.

Mumbi: Because, at my aunts, things were not so good[...] I think I was not happy, and I was doing so much work there, and my cousins were mean to me[...] I told my sister one day that I would like to live with her and then she accepted. You see, she had completed her university and got married, meaning she had her own house now, so that is why I wanted to live with her.

Her sister added how she was pleased that Mumbi asked to live with her.

Mumbi stopped her education in Standard 8. She did not proceed to secondary school.

Mumbi: I had not performed well in my primary school. I did not get good grades[...] I think [the death of my mother] also affected my performance and contributed to poor grades[...] My aunty told me I would not go to secondary school since I failed my Class 8 exams that would have enabled me to join a secondary school[...] I felt very sad, you know, most of my friends in primary school all joined secondary school and only I was left, it was very devastating[...] I think if she [my aunt] wanted me to join, she would have done everything in her capability to enable me to do so. But she was hesitant, I don't know why.

Mumbi's sister: I remember my aunt mentioning that she could not find a school for her[...] When Mumbi was in primary school, she would get seizures and I think it affected her schoolwork, since she was not performing well.

Mumbi now manages her epilepsy herself. Both Mumbi and her sister noted that "she knows which day she is supposed to go to the clinic and since it is not far, she takes herself and brings herself home" (Mumbi's sister).

While Mumbi still lived with her mother, she was raped. Although she was at university at the time, Mumbi's sister confirmed that their mother told her about the rape.

Mumbi: One man came to our home and cheated me, because I was young and he was old and he tricked me and then he slept with me[...] I did not know him[...] [It happened] just one time[...] He gave me some money and then he told me he would give me more money if I accepted to sleep with him, so even before I replied, he took me by force. [...] I wanted to tell him I was not interested because I know it is wrong[...] My mother kept on telling me that I should not allow a man to touch me here [points below her stomach] [...]

I felt very bad and very dirty. [...] I told my mother and then my mother went and reported to the police[...] The police carried their investigations and then the man was arrested[...] I went and I identified him.

This was not Mumbi's only experience of rape.

Mumbi: There was another one time and a different man forced himself and raped me[...] I was still staying at home with my mother, but my mother had gone out, I don't know where to, then a man came and he raped me[...] I knew him, he was staying in the neighbourhood, sometimes he used to come and fetch water for us or just help with menial jobs[...] With this second time, it happened more than once[...] That man used to wait until when there was no one around and then he would rape me[...]

I did not want what he was doing to me, actually, both of those people, I did not want them. First I was afraid to say, you know, like report it to anyone, and then later I decided to tell my sister because it happened many times. [I did not report immediately because] sometimes if I say, my mother maybe could not have believed me[...] especially on just the normal things and she never seemed to listen or to be keen on what I always told her.

Mumbi's sister: At first I did not believe her, but when I told my mother about it she was so mad and stormed into that boy's home. Apparently when the boy was confronted, he confessed to sneaking in and raping her. Well, he was taken to the police then later to court and was jailed.

After reporting both rapists, Mumbi was taken to the hospital – "both times by my mother. You know, they had to check where the baby passes if it was okay." Mumbi was happy that both men were arrested and jailed: "When they were arrested I was happy because they had done to me something bad, so they were to pay for that."

Mumbi is currently unemployed, but used to work as a saleswoman in a shop and at the market, selling vegetables. Both were informal jobs. Mumbi's sister confirmed this, explaining "since she does not have substantive education, she cannot get a good job so she only worked informally."

Mumbi: The shop belonged to a friend of my aunt. So one day, the friend came and asked my aunt if I could go and help her at the shop. So my aunt told me to go and help[...] I was selling small things[...] like hairclips, hand lotion, earrings, belts, necklaces, such things[...] but sometimes people were not coming to buy so I was laid off.

Mumbi received a salary for her work at the shop and enjoyed having her own earnings.



Mumbi: I was buying for myself things, many things I wanted[...] soda, sweets, perfume[...] I was deciding for myself, and some of it I was giving to my aunt[...] She was asking for it and I was giving her[...] I would have wanted to use all the money on myself[...] I was not happy [giving her money] at all.

[At the market] I was just helping my aunt, but right now I am not, am just staying at home. She just told me she needed me in the house, then she got another woman to help her at the market[...] I used to like very much helping out at the market.

Although Mumbi wasn't happy that she had to stop working at the market and asked her sister about it, "I can't even remember what she said." Mumbi's sister said Mumbi had stopped working at the market because of her temper.

Mumbi's sister: I have a store at the market place and I used to have her helping me[...] I then realised she has a bad temper at times. At times she just shouts or gets angry and can be very adamant. Even when you talk to her she will just look down and won't move an inch. So when I realised that, I was so sure that I would lose customers I employed a lady to help me out and told my sister to be staying in the house, as she helps out with household chores.

At the house, Mumbi feels she is "just like a housemaid [...] I wash utensils, then I make beds for the children, then I mop the floor", but her sister doesn't pay her for the work, as "I am not employed, she has not employed me, so I don't get paid[...] I don't mind, because once in a while she gives me a little money." Her sister confirmed: "I give her pocket money, because, you see, she is a young woman, she may want to purchase some things, so I give her a small stipend."

Mumbi likes looking after her baby niece: "I like holding her and feeding her. And she likes me, sometimes when she is crying, I hold her and she stops crying." However, Mumbi is not sure if she herself would like to get married and have children one day.

Mumbi: I fear being beaten or someone can make me sick with a bad disease[...] I was beaten by the one who was forcing me to sleep with him, so that I don't report him.

When talking about Mumbi's experiences of rape, her sister noted "I don't know if she was traumatised, but she never speaks about it[...] I think she does not like men from her previous experiences."

Because reporting resulted in arrests in the past, if someone would infringe Mumbi's rights, she would report it again: "Like now, I can tell someone, like my sister, because she is the one I am with." Mumbi's sister confirmed – "I think I would go get that man who would try to touch her and report him to the police, and maybe follow up the case to see that he is imprisoned."

In her free time, Mumbi visits her friends and goes to church, but she doesn't go out at night: "I think my sister is scared something bad will happen to me, so she says no going out[...] I am scared, too." Her sister confirmed she is scared for her safety.

Mumbi has hobbies, too.

Mumbi: I love knitting cardigans, we were taught in primary school and I still love knitting. So I knit cardigans and baby socks. I make them for my baby niece and nephew.

Mumbi's sister thinks knitting can be more than a hobby.

Mumbi's sister: I even encourage her, you see she likes knitting she could easily go to a vocational centre and be trained on how to knit for commercial purpose. I have even mentioned it to her, but she was not so keen, so I decided I will still go with a plan of taking her to a vocational training centre[...] I won't ask her, now that I know she is good at knitting and that she likes it, I will just take her there to learn more skills and to polish whatever she knows[...] It is good consulting her, but you work with what you have, isn't it?

Mumbi said that, in her life, "I make most decisions", but dreams of more independence and getting her own house. Her sister, however, finds that she make a lot of decisions for Mumbi.

Mumbi's sister: But it is always in her interest, you see, like now I am telling you that I want to take her to a vocational college. She would not make such a decision so at such times I come in. I just decide. I guess that is life, not everything goes the way we want it, right?

When asked what work she'd like to do in future, Mumbi replied: "Well, I have never thought about it... I don't know, maybe I would have to think about it, [...] I don't think I can think about it now."

Mumbi's sister said that she has national identity card and has voted once but with an unpleasant voting experience.

Mumbi's sister: Yes, I remember she went to vote once and she came home complaining. She thought the people had mistreated her and she vowed she would never go voting again because the people had jostled and shoved her out of the queue and she felt bad about it.

Mumbi: Yes, only once [I voted], but my sister can't agree me to go, you know when we are queuing, and someone comes and pushes me. That time I voted, I was queuing and then it was very sunny so I went under the shadow then the people passed me, and they would hear none of it that I had just gone to sit under a tree for shade. So you see even sometimes where there are many people, even if you want to buy something you can't buy, because people just push me.

## Ndungu, a man in his late 30s who lives in a remote village

Ndungu lives with his 83-year-old grandmother and his cousin at the family compound, as both of his parents died, as did his cousins. His sister is married and lives in another village. Four of his uncles and their families also live at the compound. The atmosphere between families is not always amicable, particularly because of poverty.

Ndungu: One day, my uncle chased me away from his house with a panga [machete] and he told me that I was an old man who should fend for himself, that I should not go to borrow food from his wife[...] I felt so bad, I felt unwanted and I reported it to grandma[...] she just told me to leave other people alone and to keep to myself[...] I would have wished he just gave me the food I was borrowing, 'coz I was so hungry.

Ndungu's grandmother is concerned about such incidents and discrimination Ndungu faces in the community on a regular basis.

Ndungu's grandmother: Even my sons who are the uncles of the children, sometimes I see them not treating him well. And it is even worse with the wives, you see they shun the two boys, they shout at them and I get so depressed but I know God will take care of them even when I am not around them.

Ndungu dropped out of education whilst still at primary school, during Standard 6.

Ndungu: You know, my grandma came to school and abused the Headmaster, and then the Headmaster chased me away[...] I am not sure [why] but I think it is because the Headmaster kept beating me in school because I was always in the last position. One day he beat me so badly that I fainted, and when I went home I informed my grandma, who got angry and went to insult the Headmaster[...] I was not happy for dropping out of primary school.

Ndungu's grandmother: The teachers were mistreating him in the sense that they could beat him senseless when he failed his arithmetic, you know the corporal punishment, yes, that is what those teachers were subjecting him to every day, so I thought that is not the life I wanted him to live, of being called names, so I withdrew him from school.

Despite his bad experiences, Ndungu would have preferred to complete his education. He is worried that lack of education prevents him from finding work.

Ndungu: I think education was very hard, so I was performing poorly in all subjects[...] I did not want to tell teachers to repeat [what they explained] because I thought I would be disturbing the them[...] I would like very much to go back to school so that I can get a good job because, you see, now if I would be having education, I would be having a good job[...] I had told even my uncle that I want to go back but they never took me seriously, because if they took me seriously, then they would have taken me to school.

Ndungu's grandmother tried to explain to Ndungu the reasons why she pulled him out of education and never enrolled him in another school.

Ndungu's grandmother: I told him and very slowly made him understand why I would not want him to go back to that school, which he accepted and that is how he stopped attending the school[...] At first he was determined to still attend school, but I was so persistent until he gave in and now he stays with me at home[...] I had already decided for him and that was the best for him at that time.

And something else, he would not have been in a position to know what was right for him, so that is why I thought of not asking him anything[...] [Having looked for a new school] I had lost my patience and I thought all schools would mistreat him so I decided that he would just stay at home with me. Besides, the teachers thought he would never achieve anything academically so it was good for him to stay with me.

During the day, Ndungu helps his grandmother at the family compound. In the past, he used to work as a night watchman in a nearby home – a job that his grandmother found for him.

Ndungu: My grandma had gone to ask them for a vacancy because she had heard that they needed a watchman, so she was told to take me, which she did[...] She did not consult me, she just told me we need to go there to get a job and that would help in getting money to buy food[...] You know, she is the one who knows best, so if she tells me something, I have to obey her[...] It was okay, only the nights were very cold, and at times no matter how I covered myself, it was too, too cold[...] but now I am laid off[...]

He was dismissed due to his disability.

Ndungu: It is because they said that I have a problem with my head[...] I don't know what that means[...] I felt very bad because that is the money that I was taking home to feed my brother and my grandmother, so when I was fired, that meant that we had to struggle for food, or go borrow from my uncles.

For a while, Ndungu also worked at a construction site, but now works at the market carting groceries for the shoppers for a small fee, as "it's much less tiring". He explains, "my uncle told me to do it, so that I can get some money". The money he earns go to the grandmother: "I don't spend even a single coin[...] she buys for us food with the money, so am happy to give her all the money." Ndungu's grandmother confirmed that this is their only income.

Ndungu's grandmother: We only survived with the little that he brings home[...] and gifts from well-wishers[...] he has a very good heart, actually, were it not for his condition, he would be a very responsible person.

Ndungu doesn't have an identification card.

Ndungu: [I don't have an ID] because of my head[...] my uncles say it and even I hear it from my grandmother sometimes when she is talking to people[...] I feel bad because I don't know what they are talking about, and I don't think there is any problem with my head.

Talking about this, Ndungu spoke about how he was twice incarcerated.

Ndungu: You know, even another time when I was in the prison they said my head had a problem so I was released[...] You see, I have been in prison two times. One day, I was just walking around and went near the town centre. And then I came across some students of a certain primary school. Actually, I think as I was walking, I then entered a school and saw a girl I thought I knew. Then I went to where she was and wanted to greet her. So as I was trying to say hello to this girl, by handshaking her, then suddenly I was surrounded by other students who started screaming and shouting at me. They came up to where I was and they started attacking me. So they started beating me and hitting me until I collapsed, and you know I thought I would die because of how they beat me. They were hitting me with stones and sticks, and it hurt so much.

His grandmother explained that, at the school, Ndungu "held a girl's hand and told her that he would like to marry her" which triggered the violence from other pupils.

Ndungu's grandmother: By the time I was called I thought he was just about to die[...] I never thought he would live to see the next day and I did not even have hope that he would survive.

From the school, Ndungu was taken by the police to the hospital and then incarcerated.

Ndungu: They said that I wanted to rape the girl and I could not do such a thing to her[...] I used to tell them [police officers] almost every day [that I'm innocent] but they could not listen to me, sometimes they would beat me, saying that I was a child molester and that was not true. [Silence, almost in tears] I could never do such a thing.

[...] Only my grandmother used to come and visit me[...] I was very happy [to see her] and every time that she was going away I could get very sad, I always wished I would go home with her[...] [I stayed there] a very long time, I think almost two years[...] [I had no lawyer], it is the second time [I was in prison] that grandma hired a lawyer for me.

Ndungu's grandmother noted that "the girl's mother heard of the incident and was so furious, she insisted on the imprisonment of Ndungu[...] he was put in remand for almost one year and then he was later released due to lack of evidence." Ndungu's grandmother confirmed that she could not afford a lawyer.

This was not the only time Ndungu was imprisoned.

Ndungu: [On the second occasion] I felt very bad, and was wondering why this entire curse had to befall me[...] I was near the shopping centre and was seated next to other young men. They stabbed somebody, stole from him and then threw the knife near where I was, so when people came they thought I was among the gang that had robbed and killed the man. They frogmarched me to the police even with my pleads that fell on deaf ears. The police came and I was put in the cells[...] I tried to explain [to the police] but nobody was listening.

And, you see, it was Charge 2 that I was charged with. Charge 2 is murder because the person had died. So I was put in the cells where I really suffered[...] I was beaten up so many times and the place was infested with lice and bugs. I stayed for almost three years, and I really suffered because I was taken to a prison and the conditions there were so unbearable[...] The food was not palatable at all, it had more water than vegetables and the bedding had lice and bugs. There wasn't any toilet in the cells so we were helping ourselves in a bucket that was at the corner of the room.

The prison wardens were brutal to us and I hated that place[...] My grandmother paid the lawyer, I think she had borrowed some money from her friends and maybe had sold some of her cattle. I tried to tell the lawyer that I was innocent, good thing is they said I had a problem with my head so I was taken to Mathare mental hospital[...] I did not want to go because I was being given medicines that used to make me feel dizzy and I would sleep all day[...] Nobody was asking me if I wanted to go to Mathare but you know what, it was like a blessing in disguise, because there was good food at the hospital and also conditions there were better than the prison[...] I was then taken to the court for mentioning, but the person who was suing did not show up even once, so my lawyer told the court. [...] Then I just had to go home, and that is how I went home[...] It was such a good feeling.

His grandmother corroborated Ndungu's story.

Because of these experiences, Ndungu's grandmother tries to limit where and how much he leaves from the compound, but Ndungu disregards her requests.

Ndungu: [She] makes noise to me, all the time she says that if I just walk aimlessly just like that, that I would get into trouble.

However, Ndungu still finds that "my grandma makes decisions for me[...] I like it". When asked if he would prefer to make decisions about his life, Ndungu just noted that he would like to decide about how to spend the money he earns.

Ndungu: I would not tell her [that] at all[...] I don't know[...] I don't feel good about it, I am a big man, would like to be deciding things myself[...] there isn't anybody I can talk to about it.

Both Ndungu and his grandmother would like for him to continue his education. However, they have different plans. Ndungu's grandmother would like him to attend a vocational school.

Ndungu's grandmother: I have a plot that I bought when I was working and I have been looking for a buyer. Once I sell it, then I will take both boys to a vocational centre. That is the only thing that they can inherit from me; survival skills[...] I would like Ndungu to learn masonry now that he has worked in a construction firm[...] I haven't asked him but I am sure he will like it.

Ndungu mentioned this plan, too, noting that he is not keen to attend a vocational school, explaining, "because I don't even know which course I would learn, I don't know what is taught, so why would I want to go to such a school?"

One of the key reasons Ndungu would like to go back to school is to pursue his dream career.

Ndungu: I would like to fly airplanes; you see like the ones that fly on air, I would like to be inside one of those, directing it[...] I have told this to her [grandmother] many times, but I think because she does not have money, I think she cannot take me to school[...] She never took any action, she just listened.

## Nekesa, a woman in her late 20s from a provincial town

Nekesa has a two-month-old baby boy. She is the oldest of five children. Her two brothers and two sisters live with her mother. Her family disowned Nekesa because of her decision to keep the child without a father, "because there was no way I could provide for the baby". She didn't want to get pregnant.

Nekesa: I was using family planning pills. I had been using them for a long time because I was cautious not to get pregnant. So I don't know if I had confused the days or the pills backfired, I don't know.

Nekesa met the baby's father while working as a house maid. Although she trusted him, he sexually abused her.

Nekesa: I thought he was a good person, so one day he told me he had found for me another job. So I was interested and that is when he forced me to sleep with him. It was somewhere outside, like in a bush. It was in the evening and there weren't people passing [...] I felt so bad because he had taken advantage of me. It was the first time that he did that to me. I told my mother [about it] and she took me to the chief [local administrator] and reported the man who had done that to me. The chief told me to look for him and once I get him, I go back to the chief and report his whereabouts and then he would be apprehended[...] He must have learnt that he was being looked for, because he later moved and I never saw him again.

Despite what he has done, Nekesa would still like to stay with her baby's father, but cannot find him. "I don't even know where to start the search for him so it is like I am easily giving up." Nekesa's cousin doesn't think Nekesa was raped: "I heard rumours from friends of hers that she was having a man friend, who was a watchman, who was promising her a job at the house he was guarding."

Because of her family's decision not to support her, Nekesa now lives with her cousin. However, Nekesa's cousin perceived her invitation differently to Nekesa:

Nekesa's cousin: When her mother threw her out I sympathised with her and told her she could stay with me for a few days before she planned her next move. But she has now stayed for almost a month. Because of that, Nekesa and her cousin are finding it difficult to live together.

Nekesa: [My cousin] sees me as a burden[...] When I got pregnant she offered to give me money to abort but I refused. Then after I came home with the baby she told me that I should throw away the baby, again I refused, so that is why she does not like me. And that is also the reason that she mistreats me by not buying food in the house.

Nekesa's cousin explained that she finds it difficult to discuss and agree on issues with her.

Nekesa's cousin: [Nekesa] just keeps quiet when I ask her anything[...] You know, it can be very annoying to talk to somebody who is not responding, so nowadays I just talk to her when it is extremely necessary.

As she cannot find work while caring for a small child, Nekesa feels she has to resort to begging. Her cousin suspects that Nekesa begs.

Nekesa's cousin: One of my neighbours told me that she saw Nekesa on the streets begging from motorists. When I asked her she denied ever begging.

Nekesa feels her family should be more supportive.

Nekesa: You see, I am not the one that wanted to get pregnant, it was an unfortunate incident that led to the pregnancy so I would like to be supported, not demonised[...] At times, I get no one to help me so I am forced to sleep hungry[...] Such times, the baby also goes hungry because I can't produce milk[...]

I would have wished the people around me understand my situation and give me support in bringing up my baby. When I was working, I could manage to pay my rent, and I was not a burden to anyone. Only now I am not working because I cannot manage to work with the baby. Again, I have no money to hire a babysitter, so I just stay without looking for a job and am forced to beg.

Nekesa's cousin views the situation quite differently.

Nekesa's cousin: [Nekesa can be] very arrogant and rude and she does not take any advice from anybody including her mother, and that is why the mother does not want to see her[...] Previously, I would not have minded her living with me, if she did not have a baby, but now she went to make herself pregnant and now she wants everyone to shoulder that burden with her. Again I think she is not a good person, she likes acting a lot.

In education, Nekesa only reached Standard 8. Both her cousin and Nekesa confirmed that this was due to her family not being able to afford sending both her brother and her to secondary school.

Nekesa: I repeated several classes until he caught up with me, so when we sat for the Class 8 exams, he was given priority[...] He was brighter than I was, so I thought it was a good thing he was paid to join a secondary school[...] [although] I would have wanted to go to secondary school.

Had she completed her education, Nekesa would have loved to be a secretary.

Nekesa: I like the way they dress, nice skirts and wearing heels. Also, I would like to be working with a computer. When I was working as a house girl, Madam would send me to big offices. When I go there, I see the secretaries working with computers and I really admire them.

Nekesa started working as a house help once she left school: "That is the only work I could do since it needed no certificate." The home where she met the father of her baby was the second home she worked. She was sexually abused in her first post, too.

Nekesa: The man of the house used to touch my body when the wife was not around[...] I was not happy and did not want anything to do with him, but he still used to insist on touching me[...] I told the wife who was the Madam of the house. I think she fought with him, but the next day I was kicked out of the house and I just went back to my mother's house.

I felt bad because, had I done any mistake? [...] I think they thought I was a bad girl so that is why I was kicked out of the house[...] I felt betrayed, because I trusted them so much and I was feeling like they are part of my family[...] If I kept quiet, I am sure I would not have been kicked out.

Nekesa was paid for her work but was not asked to return. After she was fired, Nekesa found another job as a home help, but she chose not to stay with her employers "in case I get another man who would try to touch me." She was laid off from that job once she fell pregnant.



Nekesa: I felt so bad because now I was exposed to abject poverty and with a baby on the way. I knew it would be miserable for me.

Her cousin is planning to move and Nekesa is worried about this.

Nekesa: If she goes, I won't get a place to sleep. I am sure she will not take me with her. I feel bad, because I am a human being also. And her doing that to me is not fair, but it is okay, I am sure I will pull through.

Nekesa's cousin: She has the option of going to the village to stay with grandmother. One day I asked if she can go there, and I was even willing to pay for her bus fare, but she did not respond. Actually it is like she was not interested so I have never brought the conversation up again[...] I just think she is being difficult. I am tired, you see, I pay the house rent and yet it is like she does not appreciate what I do for her, so now I want to move out.

## Mutua, a man in his early 40s from a remote village

Mutua lives with his friend and his nephew at the family compound that he and his two brothers inherited from their parents. He enjoys the company of his friend and nephew, but doesn't get on well with his brothers who also live at the compound, "because they say that I like spreading gossip about their families... Each of us minds his own business and we hardly interact... I would like to be close to them, though." His sister married and moved to another province: "At times she comes here to visit me, because this was our parents' home... she also comes to check on me to see how I am faring on."

Mutua explained how his disability developed during primary school:

Mutua: I kept having falls[...] Sometimes the convulsions would occur so many times that I really thought someone had bewitched me[...] I went to church then they prayed for me and they said I had a mental disorder or illness of some kind.

He has been seeing Western medical doctors, too, but is not happy with how they treat him.

Mutua: He just says that I will be fine, he does not explain to me anything. Even I would like to know, but still I don't have an answer. I hear the nurses talk about it, as they refer to me, so I know what medication I use.

Despite his health concerns, Mutua finished secondary school and went on to college, first attending an accounting course, then journalism. However he did not finish either course as a man who promised him work after college left Kenya. He was an Italian catholic priest who lived in Kenya and sponsored Mutua to finish a special school initially, as his teachers in regular school "were harsh". The priest promised Mutua that he would take him to Italy, "but he just left without me". Mutua's friend spoke about the grave effect this had on Mutua.

Mutua's friend: When the priest went without him, I think he got depressed and started hallucinating. At times he would say he is hearing things, yet we could not hear what he was hearing.

Around that time, Mutua decided to get married.

Mutua: I was working as a messenger in an office that the [the Italian priest] helped me get, so I had some money. So it was then I decided to marry and went to my home where my parents were staying.

Mutua got married to a woman from his village and has two young children (five and seven years old). However, his wife left him with the two children. During the course of their marriage, she abused Mutua.

Mutua: She left me because some women of the village told her that I am retarded [...] You see, sometimes we would quarrel in the house and then she would blurt it out, she would say no wonder I am a foolish man, and that she has confirmed what she was told by a certain woman, that her husband is retarded[...] I would just keep quiet because at times if I respond to her she would hit me with whatever she is holding[...] [When she would hit me] I would not do a thing, just keep to myself[...] I would feel very bad because even one time she injured me so badly with a knife. I had a deep cut here (shows the mark on his arm)[...]

I came home and she asked me for money to buy necessities for the house and I only had 50KES [approx. 50 euro cent] in my pocket that day. So when I gave her the 50 bob note she hit me with it as she asked me what she would do with that kind of money. She then went to the kitchen and came out brandishing a knife and as I jerked, it scratched me on the arm. The children were playing so it was just two of us at the house[...] I wasn't scared, I know it's because she was unhappy that she used the knife on me, but I don't think she would have killed me[...]

I did not share this with anyone, I just decided to keep it to myself[...] If she knew I told anyone, she would have been infuriated, I'm sure[...] I just tied a cloth on it to stop the bleeding and few days later it was healed[...] she looked remorseful, but she didn't say she was sorry[...]

People did not know what was happening in the house. One time I tried to hold her and she got so, so angry, so because I love her I just let her be[...] I feel so bad, because I loved her very much and even now I wish she would come back to me[...] She just says that she will come to me one day[...] but she now has a complete new lifestyle. Before she was a house maid in another home. Then when she moved to town, she started selling beer in a pub and the customers tip her, so I know she is making a lot of money and maybe she now thinks I am a poor man.

Mutua doesn't discuss his thoughts and feelings about the separation with anyone.

Mutua: I just keep quiet to myself: I don't want to keep telling people about my affairs.

Both Mutua and his friend think that his brothers' wives contributed to the divorce.

Mutua's friend: You see when Mutua was staying with the wife, the children would at times stay hungry and such times the brothers would chip in and help Mutua's wife with food[...] I think they were not happy and decided to incite the wife[...] She was told that the husband is retarded and that she is the laughing stock of the whole village.

His friend and nephew moved in with him once his wife left. Mutua enjoys their company and support, including support when making decisions.

Mutua: At times, I feel what I am doing is not what I am supposed to do, I ask them and they tell me what to do[...] It is not so much encouraging, but if it is a good opinion or suggestion, I just say it is okay.

During the day, Mutua does odd jobs in the village and at the compound.

Mutua: I work with the donkey at times, fetching water or carrying luggage, or at other times I help in cultivation and help people in tilling their gardens[...] I get around 30KES per trip to fetch water[...] I don't mind because I get some money from that and am able to survive, purchase items that I would have otherwise not afforded.

However, his friend thinks that Mutua is not paid well for his work.

Mutua's friend: People give him peanut pay because they say he doesn't know so much about the value of money. You see, he is one of those people who are born when they are a bit slow. And people tend to take advantage of them. I like him, he is a very good man, he likes helping when he can with or without pay, so people take advantage to use him.

Mutua didn't face abuse just at home. In the past, his neighbours used to beat him up, too. Mutua said: "It doesn't happen anymore since I decided to keep to myself." He reported this to the police, but this had no impact.

Mutua: They would just record the statement but did not take any action against those who have assaulted me[...] People say I am ailing from an illness or that I have a mental disorder[...] I don't think I have such a big complication[...] It feels bad when people of this village say that I take long to understand things, I don't even know why they say that[...] I think I am just like everybody else. I would want people to stop talking about me, you know, and to treat me just like anybody else.

Mutua's friend: You know how things are here: this is not America where things are so smooth. Here you have to be strong and persevere challenges.

The prejudice and abuse Mutua has faced also became a problem when he decided to stand as a representative for his village.

Mutua: During that time that I wanted to be a politician, there was a lot of mudslinging and they could talk about me very much. I think even some other rivals said I was crazy and finally the pressure was too much so I decided to bow out[...] I would like to be a politician and that is what my dream is[...] I felt awfully bad, but there was nothing I could do.

## Njeri, a woman in her early 70s who lives in one of the slums

Njeri has nine children, "seven girls and two boys and so many grandchildren[...] They all have their own homes. And they have children who also have children, so I am a great grandmother." She now lives with one of her daughters and her children. Njeri's husband passed away a few years ago, but she added: "I am not lonely, I get to have someone to talk to and my grandchildren always keep me busy." However, Njeri's childhood wasn't always as happy.

Njeri: Before, when I was a young woman, I could have so many disagreements with people, especially women. I had a problem with my speech and I could not communicate well, so I would attract a lot of criticism[...] even my siblings somehow always distanced themselves from me, they really did not want me to hang out with them or with their friends and since I am the last born I could go and cry to my mother and she would really console me[...] My mother was always very understanding and she would tell me to leave people alone and work hard in my life.

She didn't attend school, however this was not due to her disability.

Njeri: In those days, girls hardly attended school[...] we mainly looked after our siblings, went to the river to fetch water and firewood and only waited to get married[...] I did not see the need to attend school.

Njeri moved from the province where she grew up to Nairobi because of work opportunities. She was a babysitter for almost 12 years, until all of the children in the family grew up and she met her husband and decided to marry - "He was a gardener in a next home, and we were friends[...] I wanted to get married so I was happy to marry him." Once married, Njeri continued to work as a housekeeper, but would go back home each evening, rather than live with her employers. Njeri's relative looked after her children while she was at work.

When he retired, Njeri's husband built a few houses around their own, which they started renting. When her husband died, Njeri took over from him responsibilities to collect rent and manage the family business. Njeri spoke about the time before she was widowed:

Njeri: My husband would make decisions in the house, concerning our children. I did not mind, because he was my husband. Let me say that most of what he decided was good and I had no problem with his decision-making.

Njeri likes how and where she lives and makes all the decisions in her life, from where and how she lives, management of her finances, to her medical care needs, as she has a bad back.

Njeri's daughter: My mum is fit and she makes all the decisions. At times she is slow in reasoning[...] but she makes sound decisions.

Her daughter appreciates Njeri's support, which includes financial support for the grandchildren's school fees.

In her free time, Njeri goes to church "and my friends visit me once in a while." She also goes to visit her other children, but finds the journeys increasingly tiresome. Njeri feels well regarded in her community.

Njeri: They appreciate me, even the children of the villagers as I pass they greet me as cucu [grandma], and if I have any ripe bananas or fruits I give them.

Among other reasons, Njeri attributes her position in the community to her financial stability and security.

Njeri: You know there is nothing as good as being financially stable, because most of the people will not see you as a beggar. But if you do not have money, no one will want to have anything to do with you[...] I am very happy, and I always encourage young women to work hard and not entirely rely on their men, because these men you see, today they are here, tomorrow elsewhere, so it is good for a woman to have a source of income, however little.

## Bosire, a woman in her early 20s from Nairobi

Bosire, the youngest of three children, lives with her parents and siblings. The family employed a servant to look after Bosire and help at the house. The servant noted, "you see, I am like her mother, because her parents are very busy looking for money, so we are very close."

Bosire stopped her formal schooling at Standard 5, but would like to go back to school.

Bosire: When my siblings are going I say that I want to go to school with them but they don't accept[...] I feel bad because I would also like to go to school or to college like my sister[...] she is learning how to make baskets for selling to the white people. I would like to be like my sister, making baskets then selling them. I always tell her [this], she just says that she will teach me how to do it, but she hasn't done it yet.

Although Bosire did not mention this, the servant explained that Bosire receives private tuition. Bosire said that, each day "I just stay here in the house...sometimes I watch TV and sometimes I go to the neighbours place to visit my friends."

Bosire likes spending time with her siblings.

Bosire: Sometimes, my sisters brings me chocolate[...] when she comes home and then my brother is teaching me how to ride a bicycle.

But Bosire doesn't travel or visit many different places as her parents demand that she is accompanied everywhere.

Bosire: [It's] okay, only sometimes when I want to visit my friends and everyone is busy[...] I have to wait[...] then I am not so happy[...] My parents would be very angry if I said that to them, because every time they caution me not to go anywhere unaccompanied.

The maid noted how she knows that Bosire is unhappy about such arrangement, but that it's her parents who made such a decision. She added that this is the case in regards to most of Bosire's life.

Bosire's maid: We make most of her decisions, me, her parents, the teacher. You see, she may not be so much in touch with herself and that is why we make decisions for her[...] when it is time for meals[...] I tell her when to take a bath, just the general tasks that one does.

## The lives of people with psycho-social (mental health) disabilities

### Jacinta, a woman in her late 20s from Nairobi

Jacinta lives with her parents and five siblings, although she finds this difficult at times.

Jacinta: Sometimes I am not happy due to the way that am treated while other days are okay. I would like to stay on my own. Even at home I like staying alone so that I can read novels[...] [but] I don't have a job for now so I might not be able to support myself.

Jacinta's father: The main reason why we insist that she stay at home is because she is sick and she might not be able to work.

Jacinta finished secondary school, but didn't proceed with her studies.

Jacinta's father: When she was in school she was not sick and she was a very bright student[...] [but] her grades were not good enough to be admitted to university and we were not able to raise the money for college education since I work like a casual labourer. She speaks about how she would like to go back to college and study more.

Once she left education, Jacinta was "employed as a house help." She is currently not working.

Jacinta: My father told me [working as a home help] was not the right job for me so I had to leave it and look for something else to do[...] The way I am feeling right now, I might not have energy to do it." When she worked, "part of my income was for supporting my parents as I am the oldest child in the family, because they have never had good jobs[...] and I also had a fee balance to clear [from my education].

These were her secondary school fees that her father was unable to afford. Contributing money to the family is seen by both Jacinta and her father as her obligation.

Jacinta's father: You know it is good for a child to give something small to their parents.

As she is not working, Jacinta spends her days helping out with some of the house chores and talking to her family members. She enjoys reading and listening to the radio. While Jacinta is also a member in a self-help group, her father attends on her behalf.

Jacinta: It is my father who represents me in all the affairs of the group.

Jacinta's father stated that Jacinta had only went to the group meeting herself once and that the rest of the time he attends on her behalf.

Jacinta's father: When she is asked questions about the issues of the group she was able to answer them well, without any mistake, but nowadays she says she is not feeling well and hence does not attend the meeting. So it is difficult for me to know what the problem is.

Each month, Jacinta attends a clinic at the local hospital, but is not happy with her treatment.

Jacinta: I have been telling my family and the doctor that I don't feel as if I am getting better, but am hoping with time that I will [...] I was taking medication for depression although I felt as if they were not treating me for the right condition and because of this I think that is why my condition is getting worse[...] [The doctor] does not listen or take my opinion seriously[...] most of the time the [the doctor] talks to my father but not me.

Jacinta finds that her family "pushes me to go to the hospital. Sometimes I am taken by force, like when I was admitted to Mathare [psychiatric] Hospital." To date, Jacinta has been admitted to the psychiatric hospital twice, and both times by force.

Jacinta's father: When we took her to Mathare, she was not conscious of what was going on, so we had to take her by force. She was even fighting, insisting that she did not want to go. Even now sometimes she says she does not want to take her medication because she is not sick[...] I personally thought it was important for her to be taken to hospital to receive medical attention and that is why I took her by force since it was in her best interest.

Jacinta feels her only source of support is going to church.

Jacinta: I am very prayerful and my parents are also very religious so it's the only place that I have been able to get support.

In general, Jacinta noted how her parents help her in decision-making.

Jacinta: I think I make my own decisions, but my parents also help me in making decisions. For example, there is a time I did not want to go to the hospital and I did not want to take medications, but my parents took me to the hospital. They really pushed me and made that decision for me.

Jacinta's father stressed that such support is highly relevant for Jacinta.

Jacinta's father: For now, let me say she is sick and might not be able to make decisions. She can say she will be able to do a certain task and then later she does not deliver on it. The most important thing for her now is that she might require our support and assistance in making decisions[...] Like when we were taking her to Mathare [psychiatric hospital]. In such situations we feel that she is not conscious enough to make her own decisions.

Despite appreciating their support, Jacinta also finds her parents' support restrictive and her options limited.

Jacinta: Let me say that I find the day to be very boring and I feel as if there is something lacking in my life. I would like to go out more with my friends, but my family members sometimes say that I am unwell to do so.

A further example of family members making decisions was an incident when Jacinta was beaten up by a neighbour.

Jacinta: I filed the matter with the police, but my father forced me to withdraw it since she was a neighbour and also a close relative.

Her father thought it would be best to drop the case as it concerns a relative.

Jacinta's father: I also explained to them [police] that they should be careful when dealing with her since she is unwell.

## Kanyonge, a man in his late 30s from Nairobi

Kanyonge lives with his mother in the capital city. Due to family problems, the family moved a lot as Kanyonge was growing up. His father abandoned the family when he was young. "This is something which has disturbed me for many years", Kanyonge noted.

While at first grade of a boarding secondary school, "the company I was keeping was not good". He started chewing Khat and smoking Bhang, taking Miraa or drinking Changaa.<sup>243</sup>

Kanyonge: I was also taking some other hard drugs[...] That is where my mental health problems started.

Kanyonge noted how he knew that his mother was not happy with his friends.

Kanyonge: I was feeling on one side that she was right, but on the other hand I was feeling a bit bad because I did not have other people who I would call friends.

This eventually led to his first hospitalisation, which Kanyonge resisted.

Kanyonge: My mother would bring policemen who would come with their vehicle and take me to the hospital or sometimes we would use a taxi although my mum would not tell me where we are going, but upon realising where we were going I would become rebellious. My mother would then go and call the CID who would get hold of me and take me to the hospital where I would be injected to calm down and thereafter admitted to the hospital. The medication would start working immediately, but I was misusing it by giving it away to my friends instead of taking it so that I could get better[...] The only problem was that I was wondering whether I was going to be taking the medication all the time, but I also knew if only I could stop using the hard drugs I would be able to concentrate on my education.

Kanyonge's mother clarified that she made treatment decisions for him only in limited circumstances.

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<sup>243</sup> These are all illicit substances, and alcoholic drinks.

Kanyonge's mother: When he was confused and even when you speak to him you would notice that he is not hearing or understanding anything. So in such situations I would normally seek help by sometimes even calling the police.

Despite not seeing it that way at the time, Kanyonge stressed how his mother helped him a lot.

Kanyonge: My mum was very caring because she received me the way I was, took me to the hospital where I came to know some doctors[...] They were giving me medication that was making me stable[...] I was admitted to the hospital because I was in a very bad condition. I was not able to stay with my mother at the time because we were always quarrelling. At that time, I did not understand that my mother was assisting me, but afterwards I got saved and left all the bad things I was involved in at that particular time[...] I also did not have friends who would have advised me and showed me that my mother was assisting me and even make me realise that going to the hospital was for my own good.

His mother decided to move to one of the provincial towns so that she can remove Kanyonge from bad company and afford his school fees so that he could finish secondary school.

Kanyonge: My mother was asking me what kind of a life I wanted and I would tell her that I wanted to live a good life, a life that would enable me to be productive and help myself. Have at least something that I am doing with my life. Like now I have taught myself to look after livestock, you know.

Currently, Kanyonge works as a casual labourer: "When I get a job and earn some money I share it with my mother."

His mother explained that Kanyonge gains such employment through a government-funded programme to create employment for youth. Kanyonge and his mother make joint household decisions and Kanyonge helps with any household chores. His mother noted "if he was living alone that would be different, but because we are living together we must discuss and agree on issues."

In his free time, Kanyonge likes going to the local church "so that I can listen to the preaching like on how the youths should be engaged in productive living and also not to be involved in bad things."

Kanyonge feels supported and likes listening to advice from people around him and applying it to his life. He still appreciates his Mother's advice.

Kanyonge: Even now she normally tells me not to keep the company of certain people. Sometimes I tell her the way some people I was with were talking so that she can advise me[...] I take that seriously you know she is an adult, older and also wiser. She has also seen different aspect of life so I humble myself before my mother and I do not ignore what she is saying.

He also attends a counselling service, and a local clinic where he appreciated the advice of the doctor.

Kanyonge: You know they are talking to us about certain issues that can make a person to develop a mental condition.

Even the doctor was telling me that if I want to be successful it is good for me to be busy. It is not a question of taking medication and expecting to get well.

Kanyonge makes all his healthcare decisions nowadays.

Kanyonge's mother: Now, because he is better, he is the one to take his clinic card and remembers he is supposed to be going to the clinic on a specific date.

In the future Kanyonge "would love to reach a point where I can say that I have improved, continue taking medication and also take care of myself."

## Yusuf, a man in his early 40s who lives in a provincial town

Yusuf lives with his second wife and child. He works as a secondary school teacher. He initially studied Agriculture.

Yusuf: I was helped to choose a course which I did not know much about[...] But one month later I started having emotional problems adjusting to university life and therefore chose to change the course to Bachelor of Education.

Once Yusuf finished university, he obtained a job in one of the provincial schools. Although he didn't want to work there, he found that he had no option.



Yusuf: I never wanted to go and work there because it was far away from the town. When I went to the employer they told me either to go to work there or leave and if I left I was not going to get employed anymore by the Teachers Service Commission." After three years, "I had a mental breakdown and went to stay with my brother. During my stay there, I kept going to the TSC for a transfer and eventually I was transferred [closer to my family].

Yusuf didn't experience reasonable accommodation in his work.

Yusuf: When you take medication, you feel sleepy during the day. You doze a bit and sometimes you feel you are affected by these drugs and not at your best. It affects my lessons and I had to go to the Human Resource Officer to complain about it. I was given a letter to take to school so that I could start my lessons from 10am[...] Sometimes they give me a duty which starts at seven and I have to arrive at school before seven, which am not very comfortable with, but there is nothing I can do about it[...] When you complain some of the workers come in and say that if you are not able to work you should leave the job[...] I wish there was an alternative where I could manage myself like in business, more flexibly.

His wife explained the difficulties with giving Yusuf early morning duties.

Yusuf's wife: He looks as if he is much stressed[...] This affects him in a significant way[...] the medication is still much active in his body.

She noted how he had more understanding when he worked under a Principal who changed the previous term.

Yusuf was married before and has two children from his first marriage. His former wife restricts the contact he has with children and breaks arrangements.

Yusuf: You can do nothing about it. For example, there was a day the kids were on an outing and I went all the way to [see them], but she broke my phone and told me she did not want me near them[...] She thinks I am not supportive of them and I don't give them enough money. She is always demanding for more money from me and when I don't give her she becomes very aggressive.

Many of the decisions Yusuf makes are driven by finances.

Yusuf: I do not have money, that is why I ended up staying in the rural areas, because it's cheaper than the town.

When he tried to take a loan to address some of his financial difficulties, Yusuf experienced discrimination.

Yusuf: They said I was sick and I could not manage the money. They had approved the loan but when I went for the money they refused it. The manager was actually told about my condition by someone, that's why he changed his position about the loan[...] I had to apply for another one with another branch of the same bank, where they did not know me. I started by applying for the loan afresh after which they gave me the money[...] [Had they known about my condition]

I strongly believe they would have behaved like the other branch[...] I thought they were not doing the right thing because I was supposed to access the loan just like any person[...] The loan was secured against my salary and I had worked with the TSC for more than 10 years[...] If they were not asking security from other people, why were they saying that my condition was not good? This was not explained to me as a precondition in the loan agreement.

It is relevant to note that one of the key reasons why Yusuf wanted the loan was to afford better healthcare.

Yusuf: Part of the money [was to pay] for my medication. I wanted to go to a good hospital and see that I am taken care of properly, but when they denied me the money I ended up in Mathare [psychiatric hospital] and had to survive in hard conditions there.

Yusuf is concerned about the conditions of hospitalisation he has experienced to date.

Yusuf: You feel like you are in the wrong place at the wrong time. You feel as if you are not in the hospital. You feel as if you have come to suffer.

His wife is also concerned about the conditions in the hospital and aims to help avoid Yusuf's hospitalisation.

In general, Yusuf has varying degrees of control over his healthcare decisions.

Yusuf: When am not very sick I make my own decision on when and where I will go to the hospital, but sometimes when the illness is very high and I am not cooperating, then I am taken to the hospital by force, mostly by my brothers.

Yusuf likes having control over his support and any treatment offered, but finds that such information is not readily shared in different hospitals. Equally, his family members don't always respect his wishes. In such instances, rather than being offered information, he finds he is treated in a manner that doesn't comply with his wishes and strips him of his dignity.

Yusuf: The second time I volunteered to go to Mathare [psychiatric hospital]. [It happened at the school and] I told the teachers to be taken to the police station[...] when I waited long for my brother to come and I was so sick, I saw that I was becoming too much for the school[...] so I requested them to take me to the [police] cell because I was becoming a nuisance[...]

When my brothers came, I requested to be taken to the hospital together with a policeman[...] There was a time I was in Mathare and I saw people being brought by policemen instead of being tied up. The policemen were guarding the person but when I requested to even pay him for the service [of taking me to hospital...] I was told no. My hands were tied from behind and my legs and I was bundled to the back of a vehicle[...] I think they saw as if it was wastage of money when I was saying I will pay the policeman and they thought that the money could be used in another way. I think they were money minded[...] and they valued that more than my freedom[...] I felt like an animal going to a slaughter and I had no choice[...] They should not put money in front of the sickness. You know they use a lot of money for other things. They should treat me like a human being, even if money is to be used.

Instead, Yusuf wishes to have support and be listened to.

Yusuf: I think if you have people who care for you and people who love you, people who will tell you 'Look here, you are sick and we are taking you to the hospital' and also give you a chance to express yourself in terms of what you want, then you will cooperate. But if you are forced, that is the time things get worse[...] You feel traumatised, you feel the decision made was not in the right direction[...] I think the family should be aware that when they have a sick person they have a duty to ensure that he is respected as a human being. They should also help the person to make the right decision, rather than seeing the person as a bother to them[...]

It would be good if there is a group of people with an office near which advocates for persons with mental disability, that when you have a problem you can go to their offices and they can assist you with decision-making other than making decisions on your own and at the time when you are sick.

His wife confirmed how she tries to support him in a way her husband finds comfortable and adheres to his will and preference, even at the times of a crisis.

Yusuf's wife: He is just like anyone else and should be allowed to make decisions just like any other person[...] We have never reached that kind of a situation where we had to use the police. Even in times like that I would use a different approach[...] I normally involve his best friend who he can listen to. So that would be my first option before involving the police or even other persons to take him by force to the hospital. He normally listens to him and once they sit down and speak he settles down and he is able to make his own choices in a better way[...]

One time he started by getting angry[...] I asked him that time whether he wanted to go to the hospital and he decided he would like to go to Mathare and stay there. We even started preparing for the journey, but we started arguing about going to the hospital and I realised this was getting worse off because of the argument. You know, he wanted to go to Mathare and people are not normally treated well there, so I did not want him to go, although he was insisting on it. He had explained all these things to me about the situation in Mathare when initially he started getting sick. I did not want him to go and live in those kinds of conditions. I told him to go and wait for me in our neighbours' place, who is like our mother. After talking to her for about one hour, he came back into the house when he was completely okay. I also showed him that I was supporting him in anything that he wanted at that particular time and this cooled him down.

She uses the same approach in relation to family decisions.

Yusuf's wife: He likes to be in the company of other people so that he can cool his mind during daytime when he is not working. For example, when we are with him, we keep on communicating and even discussing what we can do as a family. I know that through talking he becomes more settled and we are able to come up with ideas together[...]

He is normally very troubled when we are having family issues, for example, on finances. During that particular time I like sitting down with him so that I can understand what he is going through and support him accordingly. If we don't look for solutions he is likely to be affected more and even get sick[...] When he makes family decisions I normally support him as much as possible and even when the decision is not very good, I try to explain to him on the need to adjust or change a couple of things in that particular decision.

When you live with your husband most of the decisions are made by him, for example, on where to live. He also takes responsibility as a husband and also the man of the house[...] although he cannot do anything before consulting with me.

She stressed that her husband would have far less control and wouldn't be treated as well if he wasn't working.

Yusuf's wife: You know, naturally when you have money you are perceived like an important person within the society, but a person who has nothing is treated in a bad way by other people. The same thing would apply to him because he would not even be able to stay in his current condition. I think if he did not have a job he would have committed suicide due to high levels of stress.

## Chumo, a woman in her late 30s who lives in a provincial town

Chumo is the oldest of six siblings. When she was growing up, she experienced abuse at home, as she had a psycho-social disability from young age.

Chumo: There was one time I refused to take medication for one month and I was beaten up by my father[...] He had a very bad temper. He also used to beat me up when I would refuse to go and take care of the goats[...] I was feeling very bad but I would not tell him anything because he is my father.

Her family also used to lock her up in the house: "They were saying it's because I was too sick and getting out of control."

Chumo finished primary school, but struggled to complete it.

Chumo: I was not performing well so I had to repeat Standards 4, 5 and 6. When I was in Standard 7, I started hallucinating and was very sick. My parents did not understand and because I was very young they thought that I did not want to go to school or maybe I was pregnant and that I was pretending to be sick. When I was in Class 8 I took some poison and that is when my life was ruined completely[...] The poison I had taken had really affected my brains[...] I decided not to proceed to high school because I was not feeling well[...] I was collapsing a lot even during the parade and also during class time.

Despite not proceeding to secondary school, Chumo still wanted to proceed with her education: "I requested them [my parents] to take me for a course because I had always decided to be a tailor and I was also thinking about my future life[...] My parents separated at that point and my mother went to another town".

Chumo was taken in by a benefactor who "was a very staunch Christian and even took me to Tanzania so that I could be prayed for[...] so that I could get healed and also to find a job." Chumo liked this as she wanted to feel better and to see another country.

Once she returned from Tanzania, Chumo started working at the local hospital, where she was given a proposal of marriage.

Chumo: I met a watchman[...] who told me that he had a brother with a mental health condition and that we could live together with him as husband and wife[...] I did not exactly want to get married but I wanted to be with a person who could pray for me and this guy was a born again Christian and that is why I was listening to him[...]

I had doubts but I did not have a place to live. We started living together and I would help in the farm and other household chores, but what made me scared and run away was they wanted to circumcise me. The family told me that I could not continue staying with their son if I was not circumcised and that's when I decided to run away[...] I realised that was also a bit risky and anything could happen to me.

After running away from the family, Chumo got to the town she now lives in, but was homeless.

Chumo: I used to sleep in the streets. I would get into a sack and sleep since I did not have a place to live[...] I feared that my family and relatives would reject me because I was taking medication for my mental health problem and also the ARVs.

Chumo doesn't know how she contracted HIV and suspects that it happened when she was raped – something that happened frequently when she was living on the street.

Chumo: Some men would come and agree with the watchman that they would sleep with me during the night, though I have asked God to forgive them. I was being forced by the watchmen[...] They were saying it was a way of welcoming me to the town[...] [If I would refuse them] I would be battered by them and also the watchmen.

She did report the violence to the police, but they didn't take her claims seriously due to her psycho-social disability.

Chumo: I was very sick at that particular time; I would go to the station screaming instead of talking to them in a soft voice so they would say that I am mad. They would just calm me down and tell me that they will warn those particular persons[...] Some of the policemen would give me some money and tell me to forgive the perpetrators since I am a Christian and I go to church. I would come back, start crying and screaming within the town. People would think that I am pretending and some of them would even mock me, telling me to remove my clothes[...] Most of the men [who raped me] were drug addicts and if you take that kind of action against them they can even beat you up. I was scared of what they would do to me.

Chumo has had several hospitalisations, but now just attends the local clinic. Her friends now help her prevent hospitalisation, by helping her identify any early warning signs of a mental health crisis.

Chumo's friend: When she starts becoming unstable, she becomes abusive like, when you tell her she is smart she will sometimes abuse you for the whole day, but she is not violent in any way. We normally talk to her and advise her to be calm when she is spoken to by people during such a period[...] She is very active when it comes to going to the hospital. I have known her for over 10 years and in that period she has never been admitted.

Her friend also helps her to be able to talk to the doctors and ensure she is listened to.

Chumo's friend: I was even requesting the Doctor to give Chumo a card which contains her specific details so that she can be able to produce it to all the doctors, so as to avoid any misunderstanding.

Chumo had a difficult time coping with her psycho-social disability. At times during the interview, she referred to herself as "the mad lady" as that is what she used to be called in the town where she lives.

Chumo: It's because there was a time I was removing clothes and walking naked in the streets[...] I felt bad [when they called me a mad lady] because they are not treating me like a person sometimes. I even started abusing them with very tough words.

Chumo's friend acts as her carer and aims to help protect her from any abuse, to ensure that all such issues are addressed. Chumo noted: "[She says] I should try and address the issue by telling her first, so that she can talk to that particular person." This is relevant as Chumo feels that "some of the adults [in the community] are very hostile and unfriendly."

Despite such experiences, Chumo takes part in community life. In her free time, "I like participating in church activities very much [...] I normally like going to fundraisings very much and also weddings."

Chumo now lives alone and does occasional work at the town she lives in. Her friend helps her with the work.

Chumo: I am sometimes sent by business people to bank money for them [...] and then am given a small fee. People here trust me a lot and that is why they like sending me [...] I mostly sell clothes on a commission basis.

Chumo's friend: When she is doing this I normally assist her in managing the transactions by taking stock of what she is given at the beginning of the day and also we reconcile everything with her at the end of the day to determine what she will take home as her pay and also the amount that is owed to the dealers. This is mostly so when she makes large financial transactions which might be confusing her[...]

Some people tend also to take advantage of her when they realise this but she is very much aware about how much she sells every product[...] So I can say that in terms of work she is able to do it effectively and also she chooses to do the work that she enjoys most, like selling clothes and being sent to the bank.

Chumo likes her home and her circumstances and feels settled.

Chumo: It's a small house but I like it very much[...] I am currently very happy where I am living right now. You know the neighbours and also the landlord is very friendly. They even take care of me when I am not feeling well, that is why I would not like to go to a different place.

Chumo's friend stressed how both the community and the government need to change their attitudes and support offered to people with psycho-social disabilities.

Chumo's friend: The government should be able to provide support to them [people with psycho-social disabilities] so that they are productive like the way Chumo is being supported by our community[...] The community should love these people and also show them that they are human beings just like any other person and we should not refer to them by the use of bad words. People should know how to communicate and deal with people like Chumo.

## Githinji, a man in his early 70s who lives in a remote village

Githinji lives with his wife and children on the land he inherited from his father, explaining “I really enjoy living here”. He did not develop a psycho-social disability until he was nearly of retirement age.

Githinji: I was working in a shop that was selling spare parts. I also had a side business of making sculptures. But later on, towards the year 2000, I started having severe headaches, a very bad temper and also problems with my sleep, so I decided to resign from my work the following year and came back home. I was feeling quite unwell and felt I could no longer cope with my job. Sometimes I was using a bicycle to make deliveries and also collect money, so I thought it was a bit risky when I was also not feeling well.

He tried initially to discuss his feelings with the employer, who didn't show much understanding.

Githinji: So instead of quarrelling with him, I decided to just resign from my job and gave them my notice. The only problem is that they were refusing to pay me my benefits[...] I was assisted by a lawyer who used to work for the government in getting me my money[...] because he was feeling that my rights had been violated.

While he sought healthcare for his psycho-social disability, Githinji has had mixed experiences to date.

Githinji: When I go to private hospitals they are more interested in my money not anything else[...] I normally go to a hospital where I have my own personal file. There is one doctor who comes from Nairobi and normally he is very good. He sits down with me and reads my file after which we discuss things with him.

However, this doctor was replaced and the new one put Githinji on medication with strong side-effects: “I told him [about the side effects] but he did not take it seriously. He told me to either take them or leave them.” His wife explained that problems only occur if he cannot access healthcare “due to charges associated with the service, because of a lack of resources[...] He got very worse and even started forgetting a lot.”

Githinji spends his days doing “a lot of work around the farm. In fact, he is very hardworking” (Githinji's wife). Githinji is also the village elder.

Githinji: I am normally involved in a number of things within this community. Although I really want to leave the job [as the village elder], but my people keep on insisting that I should stay[...] It is only that I want to bring change to the community and people also like me very much.

Githinji's wife would also like for him to quit this role.

Githinji's wife: You know, leadership has a lot of problems and also some people are very high tempered, so when he comes into contact with them, his stress levels become very high which is not very healthy for him[...] But since most of the people in the village like his leadership, he feels he cannot leave them just like that as they are his people.

None of Githinji's fellow villagers, however, know about his psycho-social disability. Githinji's wife feels that if they would, “they might think he will not execute his work properly”.

Githinji noted how he makes all the decisions in his life.

Githinji: You know me, I am an old man who is very wise and well matured so it's very difficult for people to make any decisions for me because they respect me very much.

His family aims to assist him, particularly with his forgetfulness.

Githinji's wife: We have employed someone to assist him as he does his work around the compound. I think he would really suffer if he did not have people by him throughout the course of the day, especially because he is very forgetful. It would be very difficult for him to do anything meaningful in his life.

She added how the manner in which Githinji is supported is very important.

Githinji's wife: You must know how to tell him so that you don't look disrespectful. You know, as the man and also as the head of his family you might tell him something and he perceives it as if you are belittling him. This is challenging in its own way, but since it's me who handles him most of the time, I know how to address him so he does not get angry or agitated in any way, as my husband.

## Majani, a woman in her late 30s from one of the provincial towns

Majani lives on her husband's homestead with her child and mother-in-law. She was the youngest of five children in her family. Majani only finished primary school as her parents couldn't afford the secondary school fees. However, her older siblings "were men, so all of them were taken to high school". Hence, Majani thinks her gender is the key reason she wasn't given an opportunity to continue her schooling.

Majani: Of course, they were thinking I am going to get married sooner or later[...] I felt bad but even when I spoke to my parents they insisted they could not afford [to send me to school] so I also felt I did not have any other choice other than to get married.

Prior to having her baby, Majani had two miscarriages: "I think he [husband] indirectly blames me for it." It was his subsequent decision not to have more children, contrary to Majani's wishes. He didn't share her desire to have more children with him.

Majani: [My husband] normally assaults me very much so I would never like to get into an argument about it. I feel bad [about it] but there is nothing I can do.

Majani spends her days looking after her baby, the homestead and her mother-in-law who is has a disability. She would also like to work, but her husband doesn't allow it.

Majani: He just says that I should stay at home and watch the homestead[...] I told him [I'd like to work] but he became very aggressive and almost beat me up [despite] not even providing enough to support us.

Majani's husband works in another town and brings other women home. When she asks about why he does that, "normally he starts beating me up." Her mother-in-law appreciates Majani's support and feels "it's like my son has abandoned us." However, she thinks that Majani is "very happy living here[...] I think [their relationship] is okay but they have their own challenges just like any other family."

Majani doesn't feel she can change her situation, although if she were able to work she would gain greater respect.

Majani: Sometimes I want to go back to my family but they also live in abject poverty so I don't have any other choice but to stick around with him. I think [my husband] treats me badly because I have nothing and am from a very poor family.

Majani visits the clinic at the local hospital and is happy with the support she gets from the doctors. She is also a member of the local women's group and feels supported by them.

Majani: They know about my condition and they take me just like any other person. They normally even give me the opportunity to express my views. They listen and take my opinions seriously.

Her mother-in-law noted "she likes interacting with other women in her group in this village[...] they even bring some of their meetings here, at our home." However, Majani doesn't share with them what happens in her home life.

## Roshni, a woman in her early 50s from a remote village

One of eleven children (six girls and five boys), Roshni only finished primary school up to Standard 7 "because of a lack of school fees[...] I felt bad, but there was nothing I could have done about it." Her parents were able to send some of her siblings to secondary school and the decision wasn't based on gender, but on whether they could afford their children's education at the time: "my parents used to treat us all the same and all of us were able to get education on an equal basis."

Roshni lives with her husband and three teenage children on their homestead. She spends time looking after her home, farming and knitting. She sells her knitting in the village. Roshni would like to set up a business but feels she lacks capital for that.

Roshni: We don't have enough money to buy the materials required for me to constantly engage in the activity.

However, her husband noted that the villagers like her knitting so much that "some of them even pay her in advance, especially when she says she does not have the capital to buy the materials required, so that she can purchase them and start knitting."

Roshni started experiencing mental health problems when she was in her late 30s. It was her husband's decision to take her to the hospital.



Roshni: There are times that I completely lose myself and am not even conscious of what is happening. In those circumstances, I normally refuse that I am sick and don't even want to eat, bathe or even go to the hospital. In such situations, my husband is the one who makes the decisions for me.

[At such times] I am normally tied up with ropes, taken to the hospital and given an injection after which I start feeling better, though it has not happened in a long time. I am normally very difficult during such times and it's important for me to be taken to the hospital for care. I think they normally do not have a choice.

Roshni's husband finds this distressing, too, but feels that is the only option.

Roshni's husband: She insists that she is not sick and yet all of us, from her behaviours, we certainly see she is unwell. Unfortunately, we have to use force and tie her up[...] I know it's no good, [but] we cannot live with her like that and I must use all means possible to take her to the hospital.

This hasn't happened for a long time, because Roshni's and her husband are able to recognise early warning signs of her distress and agree together what they will do.

Roshni: My husband is able to identify when I am getting very sick early enough. In such instances, he normally discusses it with me, then we go to the hospital together and we are able to avoid a serious crisis[...] He is the one who takes care of me so he understands me very well.

Roshni's husband also helps her advocate with the doctors at the hospital outpatient clinic, such as when Roshni experiences negative side-effects of the medication she is provided.

Roshni's husband explained how he learned to support her.

Roshni's husband: I even went for counselling so that I could learn how to live with her[...] It was in the church and mainly we were being taught on how to understand the person that you are married to and how to live with them. It was very helpful[...]

I try to love her as much as possible. She can even tell you that I even cook for her when she is not feeling well[...] We support one another as a family[...] The first thing is that we need to get close to her so that we can understand her needs as a human being and also so that she can understand us. After this, it will be easy for you to communicate with each other and even share in case there are problems.

Indeed, when not in a crisis, Roshni feels supported and confident to make her own decisions and contribute to the family life.

Roshni: When I am not very sick I can make decisions for myself, although I have to consult my husband since we are a family, but when I'm in a crisis, my husband normally makes them for me because am not in a position to[...] I prefer my husband to take care of me in such circumstances.

Roshni also feels supported by her villagers, who have knowledge of her psycho-social disability.

Roshni: They love me and my work very much[...] They feel very bad, especially when I was sick[...] They would come looking for me to wish me a quick recovery and also to say that they miss my work.

However, Roshni's husband is concerned that not all villagers provide her with the same level of support.

Roshni's husband: It depends, people are very different. Some will refer to her as a mad person, but others will sympathise and make her know that she is just like any other person. The majority of them say that she is mad, especially when they see her passing. They say this despite the fact that she has never done anything wrong or even abused them, even when she is seriously sick.

Her husband encourages her to take part in the women's group for additional support, which Roshni enjoys, too.

Roshni's husband: When she goes to the women groups, by the time she comes back she is very happy and in a very good mood. But when she just sits around in the house, you can see that she is sometimes lost in thoughts. So I encourage her to interact with other women as much as possible. When she is here she might be thinking a lot about the [financial] challenges here at home, but when she goes out, they talk about general things and in the process of talking out issues, I think she feels better[...]

They do love her very much and mostly they keep on reminding her that she is a very nice person. They normally tell her that they would be very happy to have a home like her own. That makes her appreciate herself and realise that she might not have as many challenges like other people. This influences her mood positively.

## Onyango, a man in his late 20s from a provincial township

Onyango lives with his parents. He started experiencing difficulties in Form 1 of secondary school: "I started having behaviour problems and also being in bad company, so eventually I was expelled from school." His mother explained that in Form 2, Onyango was "also taking drugs [...]" and due to this he was having a lot of problems."

Despite this, Onyango continued his education. Based on his father's wishes, he started an IT course at the College. He did not complete it as, in the end, "I found the course to be challenging and difficult so I dropped out."

Onyango now has a sponsorship for a course to become a car mechanic. Again, he wanted to do another course, "but the sponsorship was only for a technical course[...] I would have liked to do something like medicine." He was even advised not to undertake the course by the doctor and his family.

Onyango's mother: Because of his mental health condition[...] the doctor was saying that the course would be very difficult, but eventually he was able to go through the course and even pass his examination.

He now works as a casual labourer. With the money that he earns, he gives some to support his family.

Onyango: This makes them appreciate me very much[...] People tend to respect you more when you are bringing something home.

Beyond his education, Onyango makes all of his decisions, "though sometimes I drink alcohol a lot". His family is not happy about it. However, he does feel that his family restricts his movements, although his mother spoke of the way in which she wants to guide and support her son.

Onyango: My mum normally tells me not to come home very late, because it's risky, but I normally go everywhere I choose or wish[...] I am an adult.

Onyango's mother: The only thing we do is to advise him not to be staying very late because of security reasons[...] I normally tell him he can invest his money, for example, in rearing chickens or goats, because this will help him to grow in life. He is normally very positive about it. I normally advise him to tell us what he wants to do so that we can support him. You know, at his age, it is very difficult to make choices for him.

Onyango attends an outpatient clinic each month and likes the relationship he has with his current doctor.

Onyango: [The doctor] is very good, I even have his telephone number. Sometime when I don't go to the hospital, he will even call me up to ask how am doing and why I did not go to the Clinic...I [then] feel very good, because he really loves and appreciates me.

His mother noted that he appreciates the treatment, "though sometimes he refuses to go, especially when he does not have money. You know, he cannot be treated without the cash, since it's a cost sharing programme[...] The other problem is that he refuses to take the medicine due to the side-effects."

Onyango doesn't like the side-effects of some of the medication he was given when treated by force.

Onyango: They [two men] just came at home and told me that they were policemen who wanted to take me to the hospital. I told them I did not want to go for the injection but they took me into a vehicle by force. When we reached the hospital, I was injected by force[...] They should have listened to me. There is another doctor in another hospital who works with a drugs agency who came and taught us about drugs and we discussed my problems [with side-effects], after which he gave me a prescription and I was doing very well.

When I got sick again, I went to a different doctor who started injecting me without even referring to the notes from the previous Doctor. He also gave me injections for other things, for example, he was saying that I was using hard drugs, which was not true[...] the previous doctor had certified that. This really made me feel bad.

Such experiences cause Onyango to lack trust in doctors and in his family: "the only people that I share with are my friends because they understand and listen to me." His mother explained how she felt that the family had no choice but to force Onyango to have medical treatment.

Onyango's mother: When he was very sick, he used to refuse, you know, this is normal for most people with mental health issues, but later on he started getting well, and we have not had any problem with him[...] I have no idea [if arranging forced treatment was a good choice] but maybe we could tell him to agree to go to the hospital on the promise we will do something that he likes[...]

We normally encourage him to express himself, especially in what he would like to do in his life, so that we are able to support him[...] We would not like to make choices for him, since he is a grown up, because we might tell him something which he does not want to do.

## Kariuki, a man in his early 30s who lives in Nairobi

Kariuki lives with his family.

Kariuki: I find it easier to live with my family. Firstly, because of issues to do with costs[...] At some point it might be nice to get my own place and be completely independent. I also find myself to be useful within my family, because I support them in a number of ways.

His mother said the family appreciate Kariuki's support and presence.

He experienced difficulties all throughout his primary and secondary school education, which finally resulted in his first hospitalisation.

Kariuki: In primary school I was very withdrawn and felt like it was a prison sentence, so I used to look forward for the classes to end so that I could go home[...] I did not share this with my parents, I was a very reserved person, more like an introvert[...] I think they did notice and mostly thought that I was a shy person and again in school we were very many, so the teachers could not pay personal attention to all of us.

In high school it was pretty much the same thing[...] I did not talk much. I did not know how to express myself, so it was difficult for those around me to know and understand what I was going through[...] While I was in Form 3, I was taken to a psychiatrist, since I was a loner and not socialising with other students. That was the first time I was admitted to hospital[...] It was a joint decision by the doctor and my dad, since my mum was away from home. This decision was reached mostly because one of my brothers had committed suicide and my parents did not want it to happen again in the family[...] I was not involved in the decision, but I was physically present.

The doctor did not talk to me directly, he only talked with my dad and they both decided that the best course of action was for me to be admitted[...] I think because I was a very withdrawn person, I was used to decisions being made for me, and consequently I did not see anything wrong with this. And again, I was still relatively young[...] I also think since I was in a very deep depression, I did not have the capacity to say yes or no. Maybe because of my personality or the illness – I just went along with these decisions without any objection at all.

Kariuki subsequently completed a degree of his choice. He changed his programme of study, as “in the first university I fell sick before the end of the first semester and I was hospitalised. I decided not to go back, because I had to disclose why I was in hospital and people started treating me differently.” His parents supported his decision to change universities, as they realised “they would be putting me in an environment that would make me sick again.”

Kariuki mainly spends his day at home or working.

Kariuki: To some extent, it's my personal choice, but it's mostly because this is the only natural choice and I don't have any other alternatives[...] I think I have limited myself, since I get offers to even attend parties, but am simply not an outgoing person. I limit myself maybe because of self-stigma, or maybe the way I perceive myself.

In his free time, Kariuki attends a peer support group and his mother noted that they “really help him, even when he's low.”

He also finds that his current employer accommodates for his psycho-social disability.

Kariuki: He employed me to work as a consultant, not a full-time employee. He also allowed me to determine which hours I worked and even allowed me to work from home. This really helped me to be productive and also keep my job. Once he gave me these options, I was able to work more efficiently. He even spoke to the other employees about their attitude to ensure that my environment at work was good.

He now manages his own treatment with support from the outpatient clinic.

Kariuki: I talk to my Doctor regularly[...] What I have come to understand is that I have to take responsibility for my own condition. I have also seen the adverse effects of not taking my treatment, not just on myself, but also the other members of my family.

To date, Kariuki has experienced four hospital admissions. The last one was 5 years ago. Kariuki's mother stressed that "he has understood his condition" and hence can manage it himself. The family no longer makes treatment decisions for him. He has never been treated by force, which he explains is due to his personality.

Kariuki: I have never really put any kind of resistance. Once they have said that I am not feeling well and not fit to be at home, then I would just comply and agree to go to the hospital[...] It might be different now, but at the time, I did not see anything wrong with it, since I did not know anything better. I would say that I don't want to go to the hospital, but on the other end, I realise that they were not comfortable with my situation[...] That is an issue of trust. That they could see it and I couldn't see that I was unwell. I simply trusted them.

He found that he did not get consulted while in hospital, due to a lack of understanding by staff in respect of his psycho-social disability.

Kariuki: The hospital simply assumes that you are not capable of understanding anything. The nurses would also make some funny comments, saying that we are very young to get depressed. This was very offending to me, since it made me feel guilty that I was just wasting my family resources [to pay the hospital bills].

At that particular time, I had not really developed my personhood, so it did not matter to me who made the decisions for me, since I just wanted to get out of the hospital[...] I just felt like I was in prison[...] So I would do whatever they wanted. I think I did not have my voice, therefore I could not appreciate the distinction between the ability to make my decisions and my rights. The illness made me feel as if I was a lesser person and I had agreed with that faulty perception and this limited my ability to make choices in life.

Kariuki feels he would now react differently and take more control over his life.

Kariuki: Right now, it would be very different, because I would not agree to be hospitalised by force. I would only accept it if evidence was shown to me that I needed to be admitted. I think it's the whole process of personal empowerment. Firstly, I have been able to do some thinking for myself, like completing my degree and also being able to work. I have taken loans and have been able to repay. This has helped me to realise I can be able to make choices for myself. I am no longer the lesser person I used to take myself to be.

## Wambua, a man in his late 30s who lives in a slum district

Wambua lives with his wife on the outskirts of Nairobi. He has a degree in engineering and works on contracts. He started experiencing mental health problems and misusing substances while studying at university. The choice of the degree was his father's.

Wambua: He said this is an opportunity he has gotten for me to better my life. At some level I protested about it, but all he said was that I can't quit[...] I felt like it was some sort of blackmail, since I did not have any support of my own[...] I lost my esteem and felt powerless.

Due to his substance misuse and psycho-social disability, his family made a decision to send him to a rehabilitation centre without his consent.

Wambua: They would just tell me that its either I go to the rehab or vacate this place. This left me with no choice and I had to comply with their wishes since I did not have any other place to go and was dependent on them.

He found the forced treatment has had a negative effect on him.

Wambua: I remember back in the year 2000 when I was taken to a certain doctor in town who put me under psychotropic drugs and later took me through ECT[...] He did not consult me, he just informed my family and they agreed[...] I actually did not know what he was doing and I was not consulted in any way[...] I felt stigmatised and traumatised. I also did not like the fact that they were viewing me as a helpless person[...]

I lost my memory and I don't know what happened, because, since that treatment, I suffer from things that I cannot explain, for example, memory lapses. I don't think it's my mental health problems that messed up with my emotions[...] Sometimes I harbour resentments about this. They continued putting me on cocktails of psychotropic drugs which finally did not work for me[...]

[Instead] they should have first gathered enough information from me in regards to the problems that I was having, because I feel that nobody has an insight of what I was going through. They should have walked together with me and this would have helped me to make better decisions[...] It's only when I addressed my issues that I was able to get much better.

His family also wanted to make decisions as to whom Wambua should marry.

Wambua: I would refuse, since it was not my own initiative, but they were doing it to suit their own interests[...] This was giving me a lot of pressure, because it was not out of my own will.

He is now married to a wife who is “100% my choice.” While his family was initially apprehensive, “later on, after realising I made the right decision, they have been very supportive.”

Wambua is a member of the security team in his neighbourhood and attends the local church. His wife added that he values attending a support group for people with psycho-social disabilities. In relation to the community where they live, Wambua’s wife added “people are very different; some will treat him well and others might not want to associate with him.”

Wambua finds that his work peers are supportive of him, despite knowing of his psycho-social disability. However, he would like to have another job, as his pay is low. Wambua thinks that his options in that respect are limited as, “I am not very good at taking risk and it’s not very easy to get a job nowadays.”

While he now manages his own finances, Wambua did note that he used to spend most of his money on alcohol. He now finds the best kind of support making decisions with his wife.

Wambua: [We] set out the priorities and see how we can spend what we have.

However, Wambua’s wife she was of opinion that “sometimes he consults me, although most of the time he decides on his own[...] Since he works he is the one who decides how to spend his money.”

Due to limited resources, Wambua is also unable to move home, yet “would prefer to live somewhere better.”

Beyond financial limitations, Wambua feels his main problem is that his family made most of the decisions in his life for him.

Wambua: But since I discovered myself, before I get into something, I normally ask myself is this my own initiative or am I being compelled by another person? This has really helped me in making my own decisions.

## Appendix 2

### Study Methodology

#### Phase One: Legislative compliance and data collection

Part One was an analysis of all relevant legislation and policies. This identified how issues related to and impacting on legal capacity were covered by national legislation including through:

- assessment of the legal procedures for initiation or termination of guardianship and the rights of the parties in such procedures, as well as the areas of law which remove rights to related to the exercise of legal capacity (e.g. property rights, voting rights, family rights, etc);
- examining the evidentiary standards in guardianship proceedings;
- documenting issues related to the human rights of persons alleged to lack capacity throughout the guardianship process;
- assessing the various legal determinations of incapacity;
- analysing the power and authority of guardians, their accountability and how they are monitored, as well as the processes, if any, for bringing complaints against guardians and resolving disputes between guardians and people under guardianship; and
- assessment of appeal and review proceedings on determinations.

The analysis was conducted through review of legislation, policies and procedures as they apply or may apply to people with intellectual disabilities and people with psycho-social (mental health) disabilities in Kenya. Assessments on the basis of human rights standards were conducted by a senior lecturer from Moi University, Kenya and MDAC’s Legal Officer.

From 20 April 2011 to 18 June 2011, prior to the primary qualitative research discussed below, the lecturer from Moi University conducted structured interviews with two judges, two magistrates, eight lawyers, five community leaders, three psychiatrists, two police officers, two officers at the Kenyan National Human Rights Commission and one official each from the Ministries of Health, Education, Social Protection, Education and the Public Trustee’s Office to explore their understanding of the right to legal capacity under Article 12. He also held focus group discussions with 10 family members of people with psycho-social (mental health) disabilities, 10 family members of people with intellectual disabilities, and with 10 adults with intellectual disabilities.

## Phase Two: Primary qualitative research

### Data gathering

Data gathering was conducted through semi-structured interviews and through focus groups. Semi-structured interviews were carried out from 2 April to 31 May 2012 by Anne Wambugu (MA Social Work; experience of working with people with intellectual disabilities) and Michael Njenga (Head of Programmes for the survivor organisation “Users and Survivors of Psychiatry Kenya” - USPK). MDAC prepared an interview guide and the researchers were trained on how to use it and provided with regular supervision.

This part of the study included 10 interviews with people with psycho-social (mental health) disabilities, 10 interviews with their family members/carers, 10 interviews with people with intellectual disabilities and 10 interviews with their family members/carers (40 interviews in total). The semi-structured interviews followed preliminary focus group sessions conducted between 8 April and 18 June 2011, conducted by George Otieno Ochich, Senior Lecturer at Moi University School of Law.

### Sampling

The sample for the interviews was a purposive one and generated with consideration for gender, age, ethnic, cultural or religious diversity and whether they were placed under guardianship (see tables below for a summary of key sampling issues and how these were considered and addressed when preparing a study sample).

Participants were identified and approached with assistance of contact persons who are community-based workers with DPOs and other voluntary organisations working in the disability and health sector in Kenya (namely, Users and Survivors of Psychiatry in Kenya, BasicNeeds Kenya and Africa Mental Health Foundation). Such contact persons were important in establishing a rapport with potential participants, due to their understanding of local dialects in the specific regions and to provide support to research participants following the interview (if relevant, considering the nature of some of the questions that explored potential experiences of abuse).

The age range of participants is between 18 and 80, with an average age of 35 for both people with intellectual disabilities and people with psycho-social (mental health) disabilities. There was a gender balance between participants with disabilities, but most of family members were female and were mainly mothers, daughters or spouses of people with disabilities who took part in the study (but some were also other female family members or female friends who act as carers or main support persons). This highlights how caring/supporting roles within families and households are mainly female in Kenya, just like in many other countries around the world. None of the participants were ever under formal guardianship.



Tables 1 – 4

- Sample description, breakdown in terms of gender, age, location and religion

Sampling issue – age	Number of participants			
	People with intellectual disabilities	Family members – PwID	People with psycho-social disabilities	Family members – PwPSD
18-25	2	1	0	1
25-30	3	2	2	0
30-40	2	1	5	2
40-50	2	2	1	0
50-60	0	1	1	1
60+	1	3	1	6
TOTAL	10	10	10	10

Sampling issue – gender By default - no scientific technique In case of influx 50:50	Number of participants			
	People with intellectual disabilities	Family members – PwID	People with psycho-social disabilities	Family members – PwPSD
M	5	3	5	2
F	5	7	5	8
TOTAL	10	10	10	10

Sampling issue – Location	Number of participants			
	People with intellectual disabilities	Family members – PwID	People with psycho-social disabilities	Family members
Nairobi – Kibera	2	2	2	2
Nairobi Region – Nairobi	2	2	2	2
Eastern Region – Kibwezi	2	2	2	2
Rift Valley region – Eldoret	2	2	2	2
Central region – Nyeri	2	2	2	2
TOTAL	10	10	10	10

Sampling issue – Religion	Number of participants			
	People with intellectual disabilities	Family members – PwID	People with psycho-social disabilities	Family members – PwPSD
Protestant	3	3	4	5
Roman Catholic	2	2	2	2
Other Christian	2	2	1	1
Muslim	1	1	2	2
Other	0	0	0	0
No religion	2	2	1	0
TOTAL	10	10	10	10

In order to capture the above-noted diversity across Kenya, the plan was to conduct the research in five different regions across the country: Nairobi, Central, Eastern, Rift Valley and Nyanza province. However, it was not possible to conduct the study in Nyanza because the contact persons were not able to identify any participants willing to take part in the study. Translators were used in two regions: Eastern (eight interviews were translated from Kamba to Swahili) and in the Rift Valley (eight interviews were translated from Kalenjin to Swahili). In Central Kenya, the researchers translated six interviews from Kikuyu to Swahili since they were conversant with the local dialect and two other interviews were conducted in English since participants could express themselves in English. Except in Central Kenya, the Community Health Workers acted as translators as they had a good rapport with the study participants and were knowledgeable about the relevant terminology.

## Ethical issues

In order to ensure informed consent by all research participants, they were provided with a brief information sheet about the study and asked to sign the consent and confidentiality form, guaranteeing that the interviews and any information disclosed would be used solely in relation to the present study. For any issues that were disclosed where interviewees shared experiences of violence or other forms of ill-treatment, they were offered guidance on further support available to them, including access to legal remedies. The information sheet and the consent and confidentiality forms were also made accessible for people with intellectual disabilities. This was ensured by an accessible information organisation run by people with intellectual disabilities themselves.<sup>244</sup> All interviews were conducted in a space where interviewees felt safe and relaxed and at a time which suited them, and were recorded. Interview transcripts were checked and shared with the interviewees. <sup>s</sup>

Data analysis was done by one of the researchers and the MDAC Research and Monitoring Director using manual data analysis (through the use of sensitising concepts related to legal capacity). Findings from the interviews with family members with and without a disability were used to corroborate particular findings.

## Study limitations

The study does not capture the nature of limitation of legal capacity under the criminal justice system in Kenya, as it focuses only on determination of legal capacity under the civil procedure. Our researchers were unable to observe the process of determination of legal capacity by a court or an administrative officer due to the absence of such processes during the research period and the inability to identify research participants who have been placed under guardianship. After consulting organisations of people with psycho-social (mental health) disabilities such as Users and Survivor of Psychiatry Kenya, and the Kenyan Association for the Intellectually Handicapped, as well as visiting the Courts to review case files on legal capacity determination, we were unable to identify relevant cases and where consent could be obtained for inclusion into the study.

In parallel, researchers encountered language barriers in remote rural areas like Kibwezi, where respondents were not fully conversant with either English or Kiswahili. The researchers had to use the services of an interpreter when conducting the interviews – but the interpreters were not experienced in discussing disability-related topics.

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244 MDAC used EasyRead services at Inspired Services Publishing Ltd to produce easy to read versions and a Makaton version of the interview guide. For their services on this project, Inspired Services were presented with an Accessibility Award for Innovative Practices in early 2014 during the Zero Project conference.



# NHRI Report

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# Introduction

The Kenya National Commission on Human Rights (KNCHR) is a Constitutional body established under Article 59 of the Constitution of Kenya, 2010 and the Kenya National Commission on Human Rights Act, 2011; with the primary responsibility of promoting and protecting the respect of human rights in Kenya.

## Current Status

KNCHR was awarded “A status” certificate as a National Human Rights Institutions by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in Geneva on 12th March 2015 as an indication of its sterling performance regarding its work on human rights promotion, protection and monitoring and engaging with the international human rights system which has gained international recognition<sup>2</sup>.

In February 2011, the Office of the Attorney General (AG) in Kenya designated KNCHR to be the independent monitoring body on the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in Kenya under Article 33(2) of the CRPD. However, with the creation of the National Gender and Equality Commission (NGEC), the AG transferred this mandate to the sister Commission. KNCHR monitored the implementation of the CRPD in Kenya between 2011 and 2014 and published a report of its findings<sup>3</sup>. The monitoring report is the basis of the assertions and recommendations in this document.

There have been positive developments with regard to the rights of persons with disabilities (PWDs) internationally, regionally and domestically.

## Purpose and General Obligations (Arts. 1-4)

1. Kenya ratified the CRPD in 2008. Kenya's legislation still contains derogatory terms referring to Persons with Disabilities. While the State has made some positive provisions in the 2010 Constitution regarding the rights of Persons with Disabilities, the key domestic legislation with regards to their rights, the Persons with Disabilities Act of 2003 has been undergoing a review process and the actual amendment of this law is yet to be enacted. It is however noteworthy that Article 2(6) of the Constitution provides that any treaty or convention that Kenya ratifies shall form part of the law of Kenya under the Constitution. CRPD is therefore part of Kenyan law under this Article.
2. With regards to persons with disabilities among marginalized communities in Kenya, their situation is even more dire taking into account the general challenges the communities experience with regard to access to health care and education services apart from the attendant high levels of poverty and insecurity. Persons with disabilities among marginalized and minority communities are therefore in the main, doubly disadvantaged.
3. The State has an obligation to provide the CRPD in accessible formats and an official translation in the national language that is Kiswahili. This is yet to be done 7 years after ratifying the Convention.
4. KNCHR therefore recommends that the CRPD Committee (Committee) encourages the State to commit to the actual amendment of the provisions in the laws that are derogatory to persons with disabilities such as Article 83(1)(b) of the Constitution, Section 9 Election Act 2011, and Section 11(2) of the Marriage Act 2014, within a specific timeframe.

## SPECIFIC RIGHTS

### Equality and Non-Discrimination (Art.5)

5. Article 27<sup>4</sup> of the Constitution bars discrimination on the listed grounds including disability but further requires<sup>5</sup> the State to come up with legislation and other measures to mitigate disadvantages suffered by persons with disabilities, amongst others, due to past discrimination. The envisaged law (affirmative action measures) has not yet to be enacted five years after the promulgation of the Constitution of Kenya. There are also no clear measures taken by the state to ensure non-discrimination of persons with disabilities by private actors.
6. KNCHR recommends that the Kenyan State be called upon to prioritize enactment and implementation of the relevant law to give effect to Article 27(6) of the Constitution. Such a law should also address cultural practices that discriminate and stigmatize to persons with disabilities. The state has taken similar steps in passing and implementing the Prohibition of Female Genital Mutilation Act, 2011, which has outlawed this retrogressive and harmful cultural practice in Kenya.

<sup>2</sup> <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>

<sup>3</sup> KNCHR Monitoring Report, From Norm to Practice A Status Report on Implementation of Rights of Persons with disabilities in Kenya (2014) available at <http://www.knchr.org/Portals/0/Reports/Disability%20Report.pdf>

<sup>4</sup> 27(4)(5)

<sup>5</sup> 27(6)

## Women with disabilities (Art.6)

7. Women with disabilities often suffer double discrimination and are at a higher risk of sexual abuse, gender based violence, exploitation and ill-treatment. The KNCHR Report on reproductive health rights indicated that women across all disability types were denied the rights to make their own reproductive health decisions<sup>6</sup>. Several women with disabilities reported during the inquiry that medical procedures such as sterilization and hysterectomy were conducted on them without their consent and even at times knowledge. This situation still obtains as indicated by a study conducted by Users and Survivors of Psychiatry Kenya (USP Kenya) in 2013<sup>7</sup> and the KNCHR monitoring visits conducted in various parts of the country.
8. KNCHR urges the Committee to recommend that the State puts in place measures to ensure that persons with disabilities provide informed consent prior to sterilization and other medical procedures being performed on them. Such measures should provide for sanctions where such procedures are performed without consent, under duress and under forced circumstances.

## Children with Disabilities (Art. 7)

9. There are no specific measures that have been put in place by the State to get views of children with disabilities. The situation obtaining is lack of awareness on support services for early interventions for children with disabilities which would be key in reducing the extent of disabilities and even number of children with disabilities.
10. KNCHR urges the Committee to recommend that the State adopts specific measures for early interventions to assist children with disabilities and also to hear the voices of children with disabilities on matters that concern them. The State should also train children officers on rights of children with disabilities.

11.

## Awareness Raising (Art. 8)

12. Persons with disabilities continue to face stigmatization in society mostly occasioned by lack of awareness and understanding of their situation. While the Kenyan government policy of mainstreaming disability in all government programmes is to be lauded, much more needs to be done to create a facilitative environment for persons with disabilities to participate in public life, and have access to opportunities that promote positive perceptions and awareness of their potential to contribute meaningfully to society<sup>8</sup>. The findings of the monitoring by KNCHR indicated that many persons with disabilities were not aware of their rights including the various legislations put in place to protect and promote their rights.
13. KNCHR urges the Committee to recommend that the State scales up awareness raising programs on the rights of persons with disabilities. Such programs should also tackle negative cultural practices and beliefs surrounding disability generally and nurture a culture of supporting persons with disabilities to actualize their rights. The State should also educate the public on the interventions it has undertaken to uplift the situation of persons with disabilities.

## Accessibility (Art. 9)

14. The Persons with Disabilities Act, 2003 (PDA) has similar provisions on accessibility in Section 21. It entitles persons with disabilities to a barrier- free and disability-friendly environment. Section 22 of the PDA requires any proprietor of a public building to adapt it to suit persons with disabilities in such manner as may be specified by the National Council for Persons with Disability (NCPWD). Sections 22 and 23 of the PDA obliged proprietors of public buildings and operators of public transport to comply with the provisions on accessibility within 5 years beginning 2003. Such compliance has not been achieved over 12 years since enactment of the law. Public buildings and public service vehicles countrywide are still inaccessible to persons with disabilities. According to the Act, sections 22 on accessibility of public buildings and 23 on public service vehicles became operational from the 1st of January, 2010. This therefore means that the timeline for compliance with section 22 is the 31st of December, 2015, while that for section 23 was the 31st of December, 2012<sup>9</sup>.
15. The issue of accessibility to transportation services is further compounded by the fact that most public transport vehicles are privately owned and the State has taken no concerted efforts to either provide alternative transport and/or oblige private actors to abide with the legal provisions on accessibility.
16. The assessment of both private and public buildings during the monitoring done by KNCHR between 2011 and 2014 showed that physical accessibility for persons with disabilities remains a far-off target in most cases save for a few noted health facilities which had made relevant improvements and adjustments to their buildings. Several buildings that house national and county government offices, courts, hotels, public toilets, police stations among others do not comply with current accessibility standards<sup>10</sup>.
17. KNCHR urges the Committee to recommend that the State implements accessibility standards in the Convention especially Universal Design. The same should be time bound and sanctions provided for non-compliance to ensure expeditious implementation.

6 KNCHR, Report on Reproductive Health Rights Inquiry (2011) available at [http://knchr.org/Portals/0/EcosocReports/Reproductive\\_health\\_report.pdf](http://knchr.org/Portals/0/EcosocReports/Reproductive_health_report.pdf) (last visited 29/7/2015)

7 USP Kenya Study on Human Rights Violations of Persons with Psychosocial Disabilities (2013) available at <http://www.scribd.com/doc/199590360/USPKENYA-Reviewed-Human-Rights-Violation-Users-Mental-Health-Kenya-Report-2013#scribd> (last visited 29/7/2015)

8 KNCHR Report, From Norm to Practice (2014)

9 KNCHR Monitoring Report, From Norm to Practice, A Status Report on Implementation of the Rights of Persons with Disabilities in Kenya (2014) available at <http://www.knchr.org/Portals/0/Reports/Disability%20Report.pdf> (last visited 24/7/2015)

10 KNCHR Monitoring Report, From Norm to Practice (2014)



## Right to life (Art. 10)

18. The State has made positive interventions in various cases concerning persons with albinism. It is commendable that on 13<sup>th</sup> June 2015, the country observed the International Albinism Awareness day. This was an avenue for raising awareness about rights of persons with Albinism. However, there are no targeted measures to stem out cultural beliefs and practices that endanger the lives of persons with Albinism.
19. KNCHR urges the Committee to recommend that the State implements more targeted measures to respond to cases of abduction and killing of persons with Albinism. It should enact a law that prohibits harmful cultural practices that violate the rights of persons with Albinism and also come up with programmes that secure persons with Albinism most at risk.

## Equal Recognition before the Law (Art. 12)

20. The Constitution of Kenya provides for equality before the law for all people under Article 27 and outlaws discrimination on all grounds including disability. However, the reality on the ground is that there are laws that still stand in the way of realization of legal capacity for persons with disabilities. KNCHR conducted research on implementation of Article 12 in Kenya in 2013 and published its Briefing Paper. It found that there are several laws that curtail the right to legal capacity for persons with disability. The laws that were identified in the said research are still in existence. They have not been amended to remove the barriers to legal capacity for persons with disabilities. The other finding was that there is little awareness by the duty bearers, persons with disabilities and professional bodies about legal capacity for persons with disabilities<sup>11</sup>.
21. KNCHR urges the Committee to recommend that the State should amend the laws that are a barrier to the exercise of legal capacity by persons with disabilities. It should also have concrete plans for raising awareness to all about legal capacity for persons with disabilities.

## Access to Justice (Art. 13)

22. Persons with disabilities continue to face a lot of challenges when seeking justice with key obstacles being inaccessibility and barriers to exercise of legal capacity. Law enforcement agents and members of the judiciary have little or no training on equality and diversity including disability awareness and thus they have limited skills to respond effectively to issues of persons with disability particularly those with mental and psycho social disabilities. KNCHR has noted that there are no appropriate services to support law enforcement agents, the judiciary and other government institutions to communicate with persons with mental and psycho-social disabilities and the deaf<sup>12</sup> when need arises. And where such services are provided, they are fraught with delays and other inadequacies thereby prejudicing the interests of the persons with disabilities.
23. A case in point is when KNCHR received a complaint through Kenya National Association of the Deaf (KNAD) in the month of April 2015, concerning a deaf defendant in Kiambu Law Courts who had been in remand since November 2014. His case had not been heard since the Court indicated that a sign language interpreter was not available. The defendant's case had been mentioned several times since November 2014 but had not made progress.<sup>13</sup> A sign language interpreter was availed for this case upon intervention by KNCHR. This is a clear example of the challenges that the deaf face when they engage with the justice system in the country.
24. KNCHR urges the Committee to recommend that the State should prioritize establishment of measures that facilitate access to justice for persons with disabilities. A wide range of interventions to aid access to justice should be implemented including accessibility to relevant buildings, provision of information in accessible formats, support persons for persons with mental and psychosocial disabilities and sensitization of personnel in the justice sector on the rights of persons with disabilities among others.

## Liberty and Security of the Person (Article 14)

25. The law in Kenya still has provisions that allow for the deprivation of liberty on the grounds of actual or perceived mental and psychosocial disability in the guise of protecting the members of the public from potential danger that may be posed by the person with disability. The involuntary detention of persons with disabilities based on presumptions of risk or dangerousness tied to disability labels is contrary to the right to liberty.
26. Persons with disability have a right to live in the community on an equal basis with others. Article 50 of the Constitution of Kenya provides for the right to a fair trial for all persons which includes persons with disabilities though they are not specifically mentioned. Article 29 of the Constitution of Kenya further supports the rights of a person not to be arbitrarily denied their freedom without just cause. And further, Article 54 thereof makes provision for persons with disabilities to be treated with dignity and respect.
27. The Criminal Procedure code in Section 166 provides that where there is sufficient ground a person with mental disability can be found guilty of a crime but plead the defense of 'insanity'. Afterwards the President has the power to determine whether the person should be discharged, detained or taken to a mental hospital. This is dependent on the psychological and probation report presented before the Court. The Court has discretion on sentencing under Section 167(1) of the CPC but rarely do courts question the psychiatrist report or seek alternative measures from the probation officer.

11 KNCHR, Briefing Paper on Legal Capacity (2013) available at <http://knchr.org/Portals/0/GroupRightsReports/Briefing%20Paper%20on%20Legal%20Capacity-Disability%20Rights.pdf> (last visited 24/7/2015)

12 KNCHR Monitoring Report, From Norm to Practice (2014)

13 KNCHR Investigation Reports

28. There are no guidelines on sentencing 'at the president's pleasure' as provided for under Section 167(1) of the CPC and hence the provision has led to the institutionalization for life of persons with mental disabilities who are in conflict with the law. This results in a violation of the right to liberty and the right to live in the community as enshrined in the CRPD and Kenya's Constitution.
29. KNCHR urges the Committee to recommend that the State develops guidelines for sentencing people at the president's pleasure. That the State should review the practice of sentencing persons with disabilities to serve prison terms at the pleasure of the president.

## Freedom from Torture or Cruel, Inhuman or Degrading Treatment or

### Punishment (Art. 15)

30. Persons with disabilities are often treated in cruel, inhuman or degrading manner. This happens in many situations but mostly when they are require medication or treatment for various health issues. Their consent is not sought on most occasions and in some instances they are tied up with ropes or handcuffed and treated by force<sup>14</sup>. Such treatment amounts to torture, is cruel, inhuman and degrading.
31. Added to the above, some parents resort to tying up their child with disabilities or confining them in locked premises for purposes of containing them while engaging (parents) in other duties.
32. KNCHR urges the Committee to recommend that the State raises awareness on the rights of persons with disabilities to their families, caregivers, local administration, medical personnel and the communities. Such parties should also be supported by the state through provision of respite centres when they can be adequately cared for when their caregivers have to engage in other duties.

## Freedom from exploitation, violence and abuse (Art. 16)

33. Persons with disabilities are vulnerable to exploitation, violence and abuse. During their study in 2013, USP Kenya found that most of the people they interviewed had been exploited before<sup>15</sup>. They also documented cases of abuse of persons with disabilities by family members and also forced sterilization.
34. KNCHR urges the Committee to recommend that the State raises awareness to the family members, the public and local administration about the rights of persons with disabilities. It should also enforce the laws that bar exploitation, violence and abuse against all persons including persons with disabilities.

## Protecting the integrity of the person (Art. 17)

35. It is commendable that the State has established gender desks in police stations to enhance protection of women and girls. However, these desks are not specific to women and girls with disabilities and are not sensitive to their needs.
36. KNCHR urges the Committee to recommend that the State ensures that law enforcement agents and other actors in the justice sector are properly trained on the rights of persons with disabilities so as to effectively serve them.

## Liberty of Movement and Nationality (Art. 18)

37. The State has made efforts through the National Council for Persons with Disabilities to register persons with disabilities. There is also a draft National Registration and Identification Bill 2014 that provides for registration and identification of all people in Kenya. However, the enactment of this Bill is still pending.
38. KNCHR urges the Committee to recommend that the State speeds up the enactment of the National Registration and Identification Bill.

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

39. There are no support systems to enable persons with disabilities live independently within the community. The practice in Kenya is for family members of a person with disabilities to be their default guardian and to make decisions about their welfare. The other common practice in Kenya is the institutionalization of persons with mental disabilities where the family is not able to assist the person and they are in a position to afford the services from such institutions. In most instances under such arrangements, the person with disability is not able to live independently and to participate in the community<sup>16</sup>.
40. KNCHR urges the Committee to recommend that the State provides support to families to facilitate independent living for persons with disability in society.

14 USP Kenya, Study on Human Rights Violations of Persons with Psychosocial Disabilities (2013)

15 USP Kenya, Study on Human Rights Violations of Persons with Psychosocial Disabilities (2013) pg 20

16 KNCHR, Briefing Paper on Legal Capacity (2013) at pg. 89-90

## Personal Mobility (Art. 20)

41. During the monitoring done between 2011 and 2014, KNCHR noted that public transport is completely inaccessible to persons with disabilities<sup>17</sup>. This makes the mobility of persons with disability in Kenya quite difficult. For instance, persons with physical disabilities have to be carried to board and alight from transportation means. In other cases, they incur more expenses than their able bodied counterparts through being asked to pay extra costs for their wheelchairs in addition to the applicable fares. Accessibility to transport services both in rural and urban areas remains a big challenge for persons with disabilities in Kenya.
42. KNCHR urges the Committee to recommend that the State reviews its transportation system to ensure mobility for persons with disabilities in both urban and rural areas.

## Respect for Private and Family Life (Art. 23)

43. The practice in Kenya is for children who are vulnerable to be taken care of in orphanages. There are no measures in place to return them to family settings. It is commendable that the State has a fund to support families that have children with severe disabilities. However, there has been a challenge of late disbursement of these funds.
44. There are no measures to support the respect to the right to marriage and found a family by persons with disabilities. Section 11(2) (c) of the Marriage Act 2014 denies persons with mental disabilities their rights to marriage.
45. KNCHR urges the Committee to recommend that the State considers multiple factors while assessing the recipients of the transfer fund to assist persons with severe disabilities. Factors such as poverty, number of disabilities and number of family members with disabilities should be considered. The State should also ensure that the funds are disbursed timely for more meaningful assistance to the recipients. The State should facilitate creation of respite centers where caregivers of persons with disabilities who also are breadwinners can get assistance to enable them get time to earn an income.
46. Further, the State should review the Marriage Act 2014 to remove the provisions that discriminate against persons with mental or intellectual disability in barring them from the right to marriage and the public should be empowered on how they can support persons with disabilities who wish to exercise their right to marriage.

## Education (Art. 24)

47. Access to education remains a big challenge to Learners with disabilities. According to the school mapping data set, there are 3,464 special needs institutions in the country of which 2,713 are integrated institutions and 751 are special schools. Among these are 10 public secondary schools for learners with hearing impairments, 3 for learners with physical disabilities and 4 for learners with visual impairments making a total of 17 special secondary schools in the country. The above figures indicate that access and participation of Learners with disabilities in the education system is relatively low across the country and explains why transition (from primary to secondary to tertiary levels) is a great challenge as most Learners with disabilities cannot afford private schools and regular schools are not accommodative<sup>18</sup>.
48. KNCHR urges the Committee to recommend that the State sets measurable steps towards implementation of inclusive education in Kenya.

## Health (Art. 25)

49. In its report on reproductive health rights in Kenya in 2011, KNCHR found that persons with disabilities had great challenges accessing information on health, accessing health facilities, meeting the cost of health services, encountered negative attitude from medical personnel, and endured abusive and coercive treatment at most health facilities<sup>19</sup>. During the subsequent monitoring of implementation of the CRPD in 2013, KNCHR encountered similar cases from persons with disabilities as had been found during the inquiry<sup>20</sup> thereby implying that not much had changed during the intervening.
50. KNCHR urges the Committee to recommend that the State implements the recommendations of the KNCHR Report on Reproductive Health, in this regard, those that touch on the health rights of persons with disabilities.

17 KNCHR Monitoring Report, From Norm to Practice (2014)

18 KNCHR Monitoring Report, From Norm to Practice (2014)

19 KNCHR, Reproductive Health Inquiry Report (2011)

20 KNCHR Report, From Norm to Practice (2014)

## Right to work and employment (Art. 27)

51. Despite the existence of international and national legal framework for the protection of the rights of persons with disabilities, the findings in the 12 Counties monitored by KNCHR as above indicated reveal that access to employment and work is still a distant dream for persons with disabilities. Some of the barriers identified during the monitoring exercise include low levels of education, low self-esteem by the persons with disabilities due to the harsh environment surrounding them, poverty, lack of workplace support, and weak implementation of tax exemptions and more importantly stigma and economic prejudice.
52. The mode of dissemination of information on new job opportunities has also been found to be limiting as many advertisements are done in print media i.e. newspapers and via internet which many of the persons with disabilities may not have access to. As a result many fail to apply for suitable job opportunities not because they do not qualify but because they lack the necessary information to enable them tender their applications.
53. KNCHR urges the Committee to recommend that the State puts in place measures to increase the number of persons with disabilities transitioning to tertiary education. It should also ensure that persons with disabilities take up varied applicable courses to increase their employment chances.

## Adequate Standard of Living and Social Protection (Art. 28)

54. Though the State has created the National Development Fund, most persons with disabilities hold the view that it is inadequate. It is not sufficient and many persons with disabilities are not considered for the assistance.<sup>21</sup> There is no data on the number of persons with disabilities in Kenya, thus it is challenging to plan and effect programs to address their needs.
55. KNCHR urges the Committee to recommend that the State prioritizes the colligation of disaggregated data on the number of persons with disabilities in Kenya and the categories of disabilities in Kenya. The State should also enhance the funds that are geared towards assisting persons with disabilities in terms of the numbers accessing them and also the amounts.

## Participation in Political and Public Life (Art. 29)

56. The Kenya state has yet to take any steps taken to review Articles 83(1)(b) and 99(2)(e) of the Constitution of Kenya which disqualify persons with mental disability from voting or being elected as a Members of Parliament. The Independent Electoral and Boundaries Commission made some effort to enable persons with disabilities participate in the last General Election that was held in 2013<sup>22</sup>. There was assistance offered to persons with disabilities and the elderly to enable them to vote. However, there were some polling stations that were inaccessible to persons with disabilities both in terms of physical premises and/or voter material to enable confidential voting.
57. KNCHR urges the Committee to recommend that the State explores modalities of enabling persons with mental disabilities to vote and participate in the political process in so far as they are capable and their will can be discerned. It should also review the Constitutional provisions that curtail the political rights of persons with mental disabilities. Further, the State should be obliged to enhance the participation of persons with disabilities in elections by ensuring accessibility to polling stations and access to election related information and materials.

21 KNCHR Report, From Norm to Practice (2014)

22 KNCHR Report, 2013 Elections: Safeguarding Rights available at [http://knchr.org/Portals/0/CivilAndPoliticalReports/2013%20Elections\\_Safeguarding%20rights.pdf](http://knchr.org/Portals/0/CivilAndPoliticalReports/2013%20Elections_Safeguarding%20rights.pdf) (last visited 29/7/2015)





# List Of Issues

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





# List of issues in relation to the initial report of Kenya\*

## A. Purpose and general obligations (arts. 1-4)

1. Please indicate what measures are being adopted for comprehensive legal harmonization, including on the concept of disability, and to remove derogatory terms referring to persons with disabilities, such as “unsound mind”, “mental incapacity” and “mental infirmity”, from its legislation, in particular the 2010 Constitution (art. 83 (1) (b)), the Local Government Act 2010 (part V, para. 53 (c)), the Election Act 2011 (sect. 9) and the Marriage Act 2014 (sect. 11 (2)), in all of which derogatory terms are found.
2. Please provide information about the situation of persons with disabilities who belong to minority communities and indigenous groups and indicate what measures have been taken to ensure that Kenyan disability legislation and policies include and protect them. Please indicate whether the Convention has been translated into Swahili.
3. Please provide information on mechanisms for consultation with organizations of persons with disabilities.

## B. Specific rights

### **Equality and non-discrimination (art. 5)**

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

### **Women with disabilities (art. 6)**

5. Please provide information on specific measures taken to mainstream the rights of women and girls with disabilities in the work of the National Gender and Equality Commission.

### **Children with disabilities (art. 7)**

6. Please report on measures taken to guarantee full respect for the views of children with disabilities, including the views of children living in rural areas and children who belong to minority communities, in accordance with article 7 (3) of the Convention.

### **Awareness-raising (art. 8)**

7. Please indicate whether awareness-raising training or campaigns on disability are provided in the civil service, schools, the media and cultural and religious-run institutions, and initiatives are run for the general public, including those working in the private sector.

### **Accessibility (art. 9)**

8. Please provide specific information on the outcomes of the implementation of the comprehensive legal and policy framework on accessibility, including information on the accessibility of health-care facilities.

### **Right to life (art. 10)**

9. Please report on measures taken to protect persons with albinism from abduction and murder and other discriminatory practices; in particular, please inform the Committee of prosecutions and convictions of perpetrators, of training for the police and of awareness-raising and education campaigns for the public to eliminate such practices.

#### **Situations of risks and humanitarian emergencies (art. 11)**

10. Please give details of measures taken to protect the rights of persons with disabilities who are victims of internal displacement, in particular those living in refugee camps, throughout the envisaged repatriation process.

#### **Equal recognition before the law (art. 12)**

11. Please indicate what steps are being taken to repeal legislation and practices that restrict legal capacity on the basis of impairment and to establish supported decision-making regimes to secure the right to exercise legal capacity, including the right to decide in all areas of life.

#### **Access to justice (art. 13)**

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

#### **Liberty and security of the person (art. 14)**

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

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

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

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

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

#### **Protecting the integrity of the person (art. 17)**

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

#### **Liberty of movement and nationality (art. 18)**

17. Please inform the Committee of measures taken to ensure that every person with a disability is registered upon birth or at the time that they choose, and given a name and a nationality.

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

18. Please report on measures to prevent the institutionalization of children with disabilities and to monitor the conditions of children in institutions. Please give details on community-based services available for persons with disabilities to live independently in the community.

#### **Personal mobility (art. 20)**

19. Please explain whether persons with disabilities living in rural areas have benefited from the assistive devices being provided. Please also report on measures to ensure access to transportation for the public.

#### **Respect for private and family life (art. 23)**

20. Please report on measures taken to ensure that children with disabilities currently in orphanages are returned to a family setting and are included in the community. Please also report on the type of support and services that are available to families with children with disabilities to ensure they can be brought up within their families and are empowered to participate in the community.
21. Please explain what measures are being adopted to respect the right of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, to marry and found a family.

#### **Education (art. 24)**

22. Please explain in detail how the State party is working towards inclusive education, in particular for children with high-level support needs. Please also give information on the current status of inclusive education in the education policy.

### **Health (art. 25)**

23. Please explain how the health services sector will scale up mental and psychosocial health-care and treatment services across the country.
24. What programmes are currently in place across urban and rural areas for persons with disabilities, including women and girls, young persons and refugees, concerning sexual and reproductive health, HIV/AIDS and sexually transmissible infections?

### **Right to work and employment (art. 27)**

25. Please provide information on the employment rate of persons with disabilities in the open labour market, and on the implementation of the 5 per cent quota. Please also give information on measures to protect against employment-based discrimination of persons with disabilities.

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

26. Please give details of plans to expand the national development fund to benefit all persons with disabilities, and especially people with psychosocial and/or intellectual disabilities in particular from rural areas.

### **Participation in political and public life (art. 29)**

27. Please provide information on any step taken to repeal restrictions to be elected and to vote in the Constitution, in particular sections 83 (1) (b) and 99 (2) (e), in which it is stated that a person can be disqualified from voting and being elected as a Member of Parliament if the person is of “unsound mind”.
28. Please explain in detail what the Government is doing to improve physical access to polling stations, as well as ensuring access to election-related information for persons with disabilities.

## **C. Special obligations**

### **Statistics and data collection (art. 31)**

29. Please report on any attempt to update the data-collection system in accordance with the Convention and with the involvement of organizations of persons with disabilities.

### **International cooperation (art. 32)**

30. Please give information on the mechanisms to consult and involve with organizations of persons with disabilities in the design of international cooperation projects and programmes.

### **National implementation and monitoring (art. 33)**

31. Please report on steps taken to establish a national implementation and monitoring mechanism.



PRISON

SEGREGATION

COURT  
Confinement

PUNITIVE LAW

PRISON

SEGREGATION

COURT  
Confinement

BARRIERS

SYSTEMS

POLICE

Revolving  
Door

STIGMA  
Addiction

HEALTH

Guilty

ISOLATION  
BAIL

LAW

POVERTY

BARRIERS

CORRECTIONS

Punishment

TRIAL

CRIMINALIZE

DISABILITY

PAROLE

# Responses to the List of Issues



Implementation of the UN Convention on the Rights of  
Persons with Disabilities in the Republic of Kenya

Submission to the CRPD Committee of the response to the  
List of Issues – LOI 2015

CRPD KEN R DPOs  
7/8/2015

JUNE 2015

# Introduction

The submission herein is a collective effort of key Disabled People's Organizations in the Republic of Kenya. It is a culmination of exhaustive multi-disability category (MDC) consultations whose summit was an inclusive and interactive plenary session held in Nairobi, Kenya on 7th July 2015. It was prepared under the aegis of the Disability Caucus on Implementation of the Constitution (DCIC), an umbrella body of DPOs, individuals and multi-disciplinary professionals committed to securing and enhancing the gains of persons with disabilities in the implementation of the Constitution of Kenya 2010, formulation of policies and legislative processes. The preparation of this report was facilitated by Ecumenical Disability Advocates Network (EDAN). This is the first such submission by Disabled Persons' Organizations to the list of issues in relation to the Republic of Kenya.

The purpose of this submission is to present to the Committee a realistic assessment and information on the actual status of implementation of the CRPD in Kenya from the perspectives and experiences of Persons with Disabilities. The presentation articulates DPOs responses to the Committee's list of issues for Kenya; adopted by the Pre-Sessional Working Group at its Third Session held from the 20th to the 24th of April 2015. It further makes recommendations for the Committee to consider for inclusion in its Concluding Observations following Kenya's review scheduled for 18th and 19th August 2015. Preparation of the submission was participatory and inclusive of the diversity, configuration and reach of persons with disability in Kenya. As part of contribution to this submission, DPOs and professionals gathered information for the report based on experiential analysis by disability category. Towards this end, DPO meetings were held by disability category for consolidation of individual category positions. These positions were then shared at the final plenary summit. Sources of information included from desk reviews of existing policies, legislation, relevant regional and international treaty obligations ratified and/or acceded to by Kenya, as well as day to day experiences of individual persons with disabilities.

Some of the literature reviewed included Kenya's Initial State Party Report pursuant to Article 35 of the Convention received on 3rd April 2012 by the Committee, the ***Draft National Policy on Disability 2006, the Sessional Paper on Disability 2006, the Draft National Action Plan on Accessibility and Disability Rights, April 2013***<sup>2</sup>, the Persons with Disabilities Act (No. 14 of 2003), the Inclusion Guidelines Prepared by the Commission for the Implementation of the Constitution (CIC) in consultations with DCIC, the County Governments Act (No. 17 of 2012), the Elections Act 2011, the Political Parties Act 2012, the Marriage Act 2014, the Constitution of Kenya 2010, the CRPD and its protocol and the World Health Assembly Resolution EB133.R1 on 'Comprehensive and Coordinated Efforts for the Management of Autism Spectrum Disorders' of 30th May 2013; and which re-enforces Article 25 on health of the CRPD. The overarching approach was gap analysis based on the premise of translating policy and legislative provisos into actual benefits for persons with disabilities in fulfilment of the CRPD. This final written submission to responses to List of Issues has views and representations from the following DPOs in Kenya: -

1. Action Network for the Disabled Youth
2. Agency for Disability Development in Africa (ADDA)
3. Albinism Society of Kenya (ASK)
4. Autism Society of Kenya (ASK)
5. Brian Resource Center (Parents and families with/of Deaf-Blind Persons)
6. Women Challenged to Challenge (National Organization of Women with Disabilities)
7. Kenya Association of the Intellectually Handicapped
8. Disability Caucus on the Implementation of the Constitution (DCIC)
9. Ecumenical Disability Advocates Network (EDAN)
10. Handicap International (Kenya)
11. Kenya Institute of Curriculum Development (KICD)
12. Kenya National Association of the Deaf (KNAD)
13. Kenya Union of the Blind
14. United Disabled Persons of Kenya (UDPK)
15. University of Nairobi Students Body

2 National Council for Persons with Disabilities in collaboration with the Ministry of Gender, Children and Social Development held a National Conference on Accessibility and Disability Rights in June 2012. The conference targeted a range of over 3,700 stakeholders with specific reference to Persons with Disabilities, Government Ministries, Civil Society Organizations, Development Partners, Disabled Person's Organizations' and the private sector. This Plan which is designed to give effect to the outcomes of the Conference remains largely ignored



## Response to the List of Issues in Relation to the Initial Report of Kenya

### A. Purpose and general obligations (arts 1-4)

#### Issue 1:

Please indicate what measures are being adopted for comprehensive legal harmonization, including on the concept of disability, and to remove derogatory terms referring to persons with disabilities, such as “unsound mind”, “mental incapacity” and “mental infirmity”, from its legislation, in particular the 2010 Constitution (art. 83 (1) (b)), the Local Government Act 2010 (part V, para. 53 (c))<sup>3</sup>, the Election Act 2011 (sect. 9) and the Marriage Act 2014 (sect. 11 (2)), in all of which derogatory terms are found.

#### Response:

Although there are currently multiple initiatives to amend the Constitution of Kenya 2010 and legislation to address a number of concerns including how to realize the two-thirds gender principle in the Constitution, no measures aimed at harmonization of legislation on the concept of disability and especially removal of derogatory terms have been taken. **Kenyan laws still use derogatory terms** such as “unsound minds” to describe persons with disabilities. In addition Kiswahili (National Language) uses demining terms to describe persons with disabilities for example zero zero to describe albinism. The word zero zero means ghost in Kiswahili.

**The concept of disability as currently understood in Kenya does not include autism spectrum disorders and developmental disorders and associated disabilities.** There is misplaced categorization of disability associated with developmental disorders such as autism as falling within ‘Sensory’ and ‘psychosocial’ spectra of disability. This has a bearing on policy, planning and budgetary imperatives from the perspectives of choices for targeted service delivery to this category of disability. **The concept of psychosocial disability is only getting to be known now and although there is a network of Psychiatric users, there is a problem in having it recognized as a DPO. In terms of derogatory terminology and nomenclature, there is continued use of these in policy and statutory documents. Thus the terms “unsound mind”, “mental incapacity” and “mental infirmity” still appear and enjoy prominence of place in many policy instruments and statute books beyond those isolated in this Issue.** The justification for this is that in the hierarchy of laws, the Constitution of Kenya is the Supreme Law. Article 2 (1) of the Constitution provides that *“This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government”* while Article 2 (4) provides that *“Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”* **The principle of Supremacy of the Constitution means that terms used in statutes must therefore be consistent with the Constitution and not in any contradiction to it. In this regard, the nomenclature provided in Article 83 (1) (b) of the Constitution has been adopted in respect of the County Governments Act (No. 17 of 2015) (part V, para. 53 (c))<sup>4</sup>, the Election Act 2011 (sect. 9) and the Marriage Act 2014 (sect. 11 (2)) as well as in a number of policy documents.** The foregoing notwithstanding, it is generally understood that the spirit of the Constitution of Kenya 2010 is founded on the principle of **Inclusion**. On the basis of this understanding, it is recommended that the Ministry of Labour, Social Security and Services, which is for the time being responsible for issues of disability commence a process of amending the offending Articles and clauses of the Constitution of Kenya 2010 and harmonize policies and legislation on the basis of such amendments to align with CRPD and make a report on the same in the next reporting cycle to the CRPD Committee. In tandem with this undertaking, a holistic awareness creation and sensitization of key institutions be designed and implemented. The use of these derogative terms remains rampant in everyday usage, expressions and attitudes.

#### Issue 2:

Please provide information about the situation of persons with disabilities who belong to minority communities and indigenous groups and indicate what measures have been taken to ensure that Kenyan disability legislation and policies include and protect them. Please indicate whether the Convention has been translated into Swahili.

#### Response:

**Persons with disabilities who belong to minority communities and indigenous groups continue to suffer double marginalization and exclusion.** In the first instance, minorities and indigenous groups in Kenya have historically remained in the periphery of social, economic and political affairs. Persons with disabilities in these segments of society thus experience a second and third tier of marginalization and exclusion. This is because **in the first instance they are marginalised and excluded as members of larger communities, then they are further marginalised and stigmatized by their own communities on the basis of disability and also further as either children or women with disabilities.** The minorities and indigenous peoples have largely been associated with pastoral communities in the Arid and Semi-Arid Lands (ASAL) in Kenya. However, the 2009 population census identified additional communities including hunter-gatherers commonly referred to as ‘*Ndorobo*’. **Still this data is not comprehensive and the absence of data impedes effective policy formulation to ensure inclusion of indigenous persons with disabilities.**

Since the compilation of the census data and establishment of devolved governments in Kenya a number of groups have emerged to claim their own identity. Some examples include the Terrik of the western part of Kenya, the Boni, Wasini, Watta, Wariangulo in the Coast of Kenya and the Sengwer, Illchamus, the Bongomet of Mt. Elgon and Ogiek, of Kenya’s Rift Valley. Previously these groups were classified as ‘Others’ and this had implications on disproportionate development planning and resource allocations. Although Article

<sup>3</sup> The applicable statute is the County Governments Act (CGA) (No. 17 of 2012) and not the Local Government Act 2010. The previous law since repealed following promulgation of the Constitution of Kenya 2010 and establishment of two levels of Governments at the County and National Level was the Local Governments Act, Cap 265, Laws of Kenya.

10 on National Values and Principles, Article 56 on Minorities and marginalised groups, Article 174 and 175 on Objects and Principles of the Constitution of Kenya make provision for the protection of minority and indigenous groups as marginalised, **there is no policy or legislation specific to the welfare and protection of persons with disabilities in these communities, including on access to justice, education, economic wellbeing, physical security and health, including reproductive health issues.** The nearest attempt is the Social Protection Cash Transfers for severely handicapped and the elderly. This is however a general uniform programme and does not take into account special needs of persons with disabilities in hardship areas.

**The Convention has not been translated into Swahili and other local languages.** However, there is a Swahili version within the East Africa Community (EAC) bloc done by Tanzania. This is however not in use in Kenya since it is not accessible in other formats suitable for various categories of persons with disabilities.

## Proposed recommendations:

- a) *That there is need for a legal definition of discrimination against persons with disabilities which should incorporate prohibition of indirect discrimination on the basis of terms used and instead emphasize on inclusion and reasonable accommodation. This should be done in the currently ongoing review of the National Policy on Disability and the Persons with Disabilities Act (No. 14) of 2003. These processes should expressly adopt the principle that denial of reasonable accommodation constitutes disability-based discrimination in violation of Article 10 (2) (b)<sup>5</sup> Article 27 (4) of the Constitution of Kenya 2010.*
- b) *That relevant Ministries, Departments and Agencies (MDAs) responsible for various aspects of service delivery to minority regions formulate policies and develop guidelines for interventions to improve the material wellbeing of persons with disabilities among minority communities and indigenous groups.*
- c) *That the requirements of the Constitution of Kenya 2010 be complied with by the Ministry of Education and immediate measures be put in place for the translation of the Convention into Swahili and local languages and availed in other accessible formats for persons with disabilities.*
- d) *That appropriate awareness creation programmes be designed and implemented to augment these efforts.*

## Issue 3:

Please provide information on mechanisms for consultation with organizations of persons with disabilities.

## Response:

There are **no structured or institutionalized mechanisms for consultations with organizations of persons with disabilities.** What exist **are ad hoc episodic interfacing meetings and consultations** with DPOs umbrella bodies including the Kenya National Association of the Deaf, United Disabled Persons of Kenya and the Association of the Physically Disabled of Kenya; **but whose outcomes are not binding on participants, including policy makers; and in most cases remain un-implemented or enforceable with no accountability.**

A case in point is the outcomes of the **'National Conference on Accessibility and Disability Rights'** held at the Kenyatta International Convention Centre (KICC) in June 2012. The conference was organized by the National Council for Persons with Disabilities<sup>7</sup> in collaboration with the Ministry of Gender, Children and Social Development and brought together 3,700 delegates drawn from Persons with Disabilities, Government Ministries, Civil Society Organizations, Development Partners, Disabled Person's Organizations' and the private sector. The conference adopted the **'Draft National Action Plan on Accessibility and Disability Rights, April 2013'**<sup>8</sup> which had clear strategic actions and timelines for implementation. The Action Plan fulfils one of the guiding principles of Kenya's premier blueprint 'The Kenya Vision 2030' which, under the Social Pillar, prioritizes disability mainstreaming and increasing access to promotions and appointments for persons with disabilities. The objectives and intervention areas in the Plan would have gone a long way in ensuring progress in Kenya's efforts at implementing the CRPD. Regrettably there has been no follow-up to this process due to misplaced priorities by MDAs while the DPOs have sought its operationalization in vain. **The National Action Plan is clear on a consultation mechanism, which meets the threshold of the Convention- yet this remains non-existent.**

As things stand there is a **misperception that it is the statutory National Council for Persons with Disabilities, which is the consultation mechanism.** Since inception the Council has played a critical role in enhancing the interests of persons with disabilities through

- 5 Article 10 (2) (b) of the Constitution provides that "The national values and principles of governance include— human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised"
- 6 Article 27 (4) of the Constitution provides that "The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth"
- 7 The National Council for Persons with Disabilities is semi-autonomous State agency established under the Persons with Disabilities Act 2003, it has representation from government and DPOs. The Council advises the Government on issues of disabilities, registers persons with disabilities and DPOs; while at the same time facilitating distribution of assistive devices to various categories of persons with disabilities
- 8 The Plan prioritizes seven SMART objectives to increase access for Persons with Disabilities. These are:
  1. To enhance reasonable access to buildings, sports and recreational facilities
  2. To improve Persons with disabilities access to roads and transportation
  3. To improve access to basic quality health care
  4. To increase Persons with disabilities formal education at all levels of education
  5. To achieve 5 per cent accessibility to employment by Persons with disabilities annually
  6. To increase access and use of information, communication and technology by Persons with disabilities
  7. To enhance access to justice by ensuring that the rights, privileges and dignities of Persons with disabilities including legal capacity are upheld.

The Plan has the following cross-cutting issues: -

1. Mainstreaming
2. Awareness raising
3. Research

execution of its mandate under the Persons with Disabilities Act 2003 as an advisory mechanism for the Government of Kenya. With regard to consultations with DPOs, it has acted more as a liaison rather than the kind of consultation mechanism contemplated by the Convention. There is currently an effort in Kenya to come up with a Public Participation Policy and Statute; and guidelines have been developed and validated by the Ministry of Devolution and Planning (MDP). However, the policy and guidelines are general to the Kenyan public and not responsive to disability and participation by persons with disabilities.

## Proposed recommendations on Articles 1-4:

- a) *That the government take immediate steps to harmonise the definition of disability and all laws, policies and programmes to be consistent with the human rights model of disability as set out in the Convention. In particular, take steps to remove derogatory terms referring to persons with disabilities in law and government discourse as well as amending the Constitution, the County Governments Act, the Election Act and the Marriage Act to be in line with the Convention.*
- b) *That the Government ensures that all Ministries, Departments and Agencies (MDAs) responsible for service delivery, law and policy making, engage in systematic consultation to gather the views of children and adults with disabilities, in particular in minority communities and indigenous groups across the country, for their effective participation and inclusion in society.*
- c) *Take steps to ensure that the requirements of the Constitution of Kenya 2010 be complied with by the Ministry of Education and immediate measures be put in place for the translation of the Convention of into Swahili and local languages and availed in other accessible formats for persons with disabilities. That appropriate awareness creation programmes be designed and implemented to augment these efforts.*

## B. Specific rights

### Equality and non-discrimination (art. 5)

#### Issue 4:

Please clarify whether the provisions to prevent discrimination on the basis of disability are applicable to all persons with disabilities, including persons with intellectual and/or psychosocial disabilities. Please explain the measures taken to ensure non-discrimination of persons with disabilities by private actors, including within families, and to address cultural practices that are discriminatory of persons with disabilities. In most Kenyan communities, persons with disabilities are not entitled to property inheritance purely on the basis of disability which community members consider renders persons with disabilities incapable of managing property depending on the nature of disabilities.

#### Response:

The Constitution of Kenya 2010 outlaws discrimination on any ground. Article 27 of the Constitution on *Equality and freedom from discrimination* makes provision in the following sub-clauses: -

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law, (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms, (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres, (4) ***The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth,*** (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4); and, (6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination. There are no specific measures in place to address discrimination by private actors. While it is possible to lodge complaints in normal courts on being discriminated on the grounds of disability; there are no test cases that have been filed in Kenya. When cases are filed in courts, the most applicable remedy is monetary compensation and at times reparation and re-instatement where one was unfairly denied employment. In practice, there is no effective protection against discrimination on the grounds of disabilities.

**In spite of the above express constitutional provisions and safeguards, there is still rampant discrimination on the basis of disability in Kenya.** This manifests itself differently as barriers in many forms and is desegregated by disability category, gender and age bracket. That is to say deaf or hard of hearing persons for instance experience discrimination differently from the way those with physical, intellectual, psychosocial, visual, persons living with albinism and those with autism spectrum disorders and developmental disorders, deaf-blindness and associated disabilities respectively. The discrimination is experienced in the fields of education, employment, access to health services (especially reproductive health rights and entitlements), the household, and justice system and within the various cultural setting of communities; and in unequal resource allocation.

An example of discrimination; which is due to lack of awareness of policy makers and institutions is the daily experience of the Deaf and hard of hearing. In most cases they require hearing aids and Sign Language Interpreters, however since they have been classified as Deaf in most policy documents and procurement instruments they are usually left out when it comes to provision of assistive devices and support services. Although there is in existence a Draft National Policy on Disability and the legislative framework in the form of the Persons with Disabilities Act 2003, the former has not been reviewed and adopted while the latter has not been likewise reviewed to be in accord with the new Constitution of Kenya and the Convention. There is therefore need to fast-track the review of the Draft National Policy and the PWD Act.

The Constitution of Kenya Article 54 recognizes 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.<sup>9</sup>

## Proposed recommendations on Article 5:

- a) *Take steps to clarify the prohibition of disability-based discrimination by providing definitions and guidance on how victims of discrimination can invoke their rights before the authorities and the courts, as well as setting out effective remedies such as concrete dissuasive sanctions for perpetrators and redress and compensation for victims.*
- b) *Take immediate steps to include in the law a definition of reasonable accommodation in accordance with the Convention and ensure that the law explicitly recognises the denial of reasonable accommodation constitutes disability based discrimination.*
- c) *Conduct awareness-raising and provide training to public and private actors including state officials, judges, court personnel, lawyers, employers, as well as to persons with disabilities, DPOs and the general public, on the prohibition of disability based discrimination and the obligation to provide reasonable accommodation.*

## Women with disabilities (art. 6) Issue 5:

Please provide information on specific measures taken to mainstream the rights of women and girls with disabilities in the work of the National Gender and Equality Commission.

### Response:

**There are no specific institutionalized and systemic measures put in place by the National Gender and Equality Commission to mainstream the rights of women and girls with disabilities.** However, the Commission did take administrative steps after the 2013 General Elections to enforce nomination rules in respect of affirmative action seats for women in the County Assembly, National Assembly and Senate. There are current national efforts at arriving at a formula for implementing the constitutional two-thirds gender rule, in which the Commission is playing a central role. The Constitution requires that not more than two-thirds of elective and appointive public offices should be of the same gender. However, at the time of compiling this submission, the Commission had neither consulted with women with disabilities nor incorporated their issues in the processes. It has been reported that attempts by women with disabilities to engage with the Commission has received a lukewarm response.

## Proposed recommendations on Article 6:

- a) *Take steps to ensure that the National Gender and Equality Commission and other governmental bodies consult with women and girls with disabilities on an equal basis with other women and girls when it comes to the development and drafting of laws, programmes and policies concerning women and establish a formal consultation mechanism to ensure that women and girls with disabilities across the country are meaningfully consulted and are enabled to participate in the legislative and political spheres.*
- b) *Adopt a formal and systemic twin track approach to the rights of women and girls with disabilities and take concrete steps to mainstream the rights of women and girls with disabilities across all laws, policies and programmes including the law on gender equality, in line with Convention, and systematically collect data disaggregated not only by gender but also by disability across all sectors.*

## Children with disabilities (art. 7) Issue 6:

Please report on measures taken to guarantee full respect for the views of children with disabilities, including the views of children living in rural areas and children who belong to minority communities, in accordance with article 7 (3) of the Convention.

<sup>9</sup> 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.

## Response:

While the Childrens Act 2006 makes reference to children with disabilities, it does not expressly make provisions for their facilitation to effectively make their views known and taken into account. There is a children's cabinet but there are no guidelines for participation by children with disabilities. There are therefore no formal measures in place for the realization of this requirement of the Convention with regard to children with disabilities, including the views of children living in rural areas and children who belong to minority communities. Children with disabilities in rural areas and those among minority communities are particularly inhibited by negative cultural practices. Some of these practices include Female Genital Mutilation and disinheritance of persons with disabilities.

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 out rightly rejected by their families condemning them to remain in learning institutions for the rest of their lives.

## Proposed recommendations on Article 7:

- a) *Develop and implement a mechanism to ensure the right of children and young persons with disabilities to express their views in major policy decisions affecting them.*
- b) *Adopt a twin track approach by mainstreaming the rights of children with disability across all programs, projects and events in Kenya, and allocate the necessary budget to also take specific measures for support for their participation in the community on an equal basis with others.*
- c) *Take steps to develop quality support services to families of children with disabilities in both urban and rural areas as well as make available sufficient financial support and benefits for families to care for their disabled child; and ensure the availability and effective dissemination of information to parents about services and benefits. Ensure support, information and advice, and training courses for parents and caregivers of children with disability so they are equipped to facilitate children's participation in the community and assistance to express their views and to be consulted.*

## Awareness-raising (art. 8)

### Issue 7:

Please indicate whether awareness-raising training or campaigns on disability are provided in the civil service, schools, the media and cultural and religious-run institutions, and initiatives are run for the general public, including those working in the private sector

## Response:

It is to be observed that awareness-raising is a cross-cutting response to the access to enjoyment of rights entitlement of persons with disabilities. The neglected 'Draft National Action Plan on Accessibility and Disability Rights, April 2013' identifies disability awareness as important in enabling general populace, law makers, policy makers and programmers to understand the rights, needs, potentials, contributions and aspirations of persons with disabilities and their families. Disability Awareness entails educating people on the rights of persons with disabilities and giving people the knowledge required to carry out a job or task thus separating good practice from poor as Article 8 of the CRPD articulates. The Plan envisages awareness as a holistic intervention comprising:

- Sensitizing key ICT stakeholders on the provisions of the Persons with disabilities Act, 2003 , CRPD, National ICT Policy
- Creating awareness on a Universal Design
- Awareness raising for transport sector stakeholders and service providers on the provisions of Persons with disabilities Act
- Sensitizing key stakeholders on the provisions of the PWD Act, 2003
- Sensitizing relevant ministries to recognize other disability casual factors
- Creating awareness on attitude towards persons with disabilities
- Sensitizing persons with disabilities on access to Health services under the Constitution
- Creating awareness to employers on the provisions of the Persons with disabilities Act, 2003, the Kenya Constitution 2010 and CRPD
- Sensitizing employers to offer internship opportunities to persons with disabilities to enable them gain work experience
- Sensitizing persons with disabilities, and the general Public, on the key legislations and policies that are applicable to the rights and privileges of persons with disabilities
- Sensitizing Lawyers with Disabilities to take interest in issues affecting persons with disabilities
- Sensitizing Courts personnel; and
- Creating awareness to the general public on any demeaning, derogatory, and caricaturing language that is offending to persons with disabilities.

While understanding of disabilities issues and needs is still extremely low in Kenya the relevant governmental institutions responsible for disability have not facilitated design and implementation of universal awareness-raising programme on disability.

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 to 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 NGEK have been mandated to create awareness on disability. However both institutions lack the funding to do so.

There is ad hoc civic education on disability going on. However, this is not inclusive, holistic and desegregated by disability category.



Mainstreaming has also been confused for awareness-raising although the two are different in substance and approach. The DPOs have further been excluded in the ad hoc and limited awareness creation on issues of disability. In sum, there is inadequate and ad hoc awareness raising training or campaigns on disability provided in the civil service, schools, the media and cultural and religious-run institutions. It is further not integrated or uniform and does not therefore reach a significant segment of the Kenyan public.

## Proposed recommendations on Article 8:

- a) *Devise, develop and together persons with disabilities and their representative organizations, conduct awareness-raising campaigns targeting the general public, persons with disabilities, DPOs, the media, employers, health and educational professionals, cultural and religious-run institutions to foster the positive image of persons with disabilities. Ensure that DPOs are involved in the monitoring and evaluation of such campaigns and awareness-raising activities. Further, ensure that all awareness raising campaigns targeting the public are also made available in accessible formats and Kenyan sign language.*
- b) *It is also recommended that Kenya institutionalizes commemoration of the World Autism Awareness Day on 2nd April pursuant to United Nations General Assembly Resolution 62/139.*

## Accessibility (art. 9) Issue 8:

Please provide specific information on the outcomes of the implementation of the comprehensive legal and policy framework on accessibility, including information on the accessibility of health-care facilities.

### Response:

The Constitution of Kenya makes elaborate provisions on issues of access as an entitlement generally to citizens and also specifically with regards to persons with disabilities; **it provides for the promotion and development of Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.** Article 35 on Access to information, Article 43 on Economic and Social rights (ECOSOC) and Article 54 on persons with disabilities is particularly critical. The Persons with Disabilities Act 2003 contains likewise specific provisions on accessibility. These provisions recognize that accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In the Kenyan context however, there persist innumerable obstacles and barriers that hinder persons with disabilities. These include inaccessible buildings, transport, employment, information inaccessible formats such as Braille and sign language and community services provided in a form which persons with disabilities are not able to access. All these play a crucial role in promoting full and effective participation and integration of Persons with Disabilities in social life and development.

Although the instruments are clear in their intent, they have not been translated into reality through enforcement. Key among these is adjustment orders for buildings and public transport. It is instructive that the Act exempts government buildings and service centres from adjustment orders. The others are enforcement of universal design, accreditation and/or certification of Kenyan Sign Language interpreters to ensure quality and standardization of professional signage. In particular the 'In-set' size of screen for sign language interpreters on the few TV Stations that have adopted it is too small for complete access to messaging being communicated. Access to health services by various categories of persons with disabilities is still a challenge due to both the attitude of service providers and inadequate targeted facilities and equipments. There is also no uniformly coordinated effort at ensuring accessibility for persons with disabilities across the board.

## Proposed recommendations on Article 9:

**Adopt immediate measures to implement a comprehensive and coordinated national plan on accessibility supported by the existing legal and constitutional framework, with measurable benchmarks, indicators and goals, and including simple and accessible enforcements mechanisms that provide with effective and dissuasive sanctions for non-compliance. In addition, ensure the plan covers accessibility in all its dimensions, including information and communication through braille, sign language, alternative and augmentative modes of communication and easy to read easy to understand language.**

## Right to life (art. 10) Issue 9:

Please report on measures taken to protect persons with albinism from abduction and murder and other discriminatory practices; in particular, please inform the Committee of prosecutions and convictions of perpetrators, of training for the police and of awareness-raising and education campaigns for the public to eliminate such practices.



## Response:

**There is 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 implemented in the country.**

There are currently no specific measures in place to protect persons with albinism from abduction and murder and other discriminatory practices. Persons with albinism are protected as other members of the public by the security agencies and the operations of the Kenyan Penal Code; under which framework arrests, processing, prosecution, and conviction and sentencing occur. The greatest threat experiences are in the border locations with neighbouring countries where there are cultural beliefs that body parts of persons with albinism can be used in cultic practice and in the cure of such diseases as HIV/AIDS. It is recommended that awareness-raising programme be designed and implemented as a means of protecting persons with albinism.

## Proposed recommendations on Article 10:

***Adopt additional policies and implement existing ones to protect the right to life of persons with disabilities, in particular the albino population, from harmful cultural and violent practices. In addition, develop awareness raising strategies to prevent such practices.***

## Situations of risks and humanitarian emergencies (art. 11)

### Issue 10:

Please give details of measures taken to protect the rights of persons with disabilities who are victims of internal displacement, in particular those living in refugee camps, throughout the envisaged repatriation process.

## Response:

There is currently no verified data on the number of persons with disabilities who are victims of internal displacement, in particular those living in refugee camps, throughout the envisaged repatriation process. This lack of data is especially so with regards to internally displaced persons who have been uprooted from their homes since the introduction of multi-party democracy in Kenya in 1992 to date. A recent census by CARE-Kenya estimates that there are 15,000 persons with disabilities in the Kakuma Refugee Camp alone.

There is no support policy for the internally displaced persons with disabilities. As a result the various categories of persons with disability continue to remain vulnerable and are exposed to human rights violations including gender based sexual violence, and human trafficking. Although there is a Refugee Act, it does not have clear guidelines on persons with disabilities. There exists no mechanism at the moment to account for and track persons with disabilities in strife prone areas and situations.

## Proposed recommendations on Article 11:

***Adopt urgent measures, including a revision of the Refugee Act, in order to protect displaced and/or refugee persons with disabilities and their families and ensure them the exercises of their rights under the Convention and, in particular, accessible services and information.***

## Equal recognition before the law (art. 12)

### Issue 11:

Please indicate what steps are being taken to repeal legislation and practices that restrict legal capacity on the basis of impairment and to establish supported decision-making regimes to secure the right to exercise legal capacity, including the right to decide in all areas of life.

## Response:

**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 office"<sup>10</sup>.**

Article 22 of the Constitution provides in Clause (2) that "In addition to a person acting in their own interest, court proceedings ..... may be instituted by— (a) a person acting on behalf of another person who cannot act in their own name; (b) a person acting as a member

10 As above

of, or in the interest of, a group or class of persons; (c) a person acting in the public interest; or (d) an association acting in the interest of one or more of its members.” Clause (3) provides that “The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that— (a) the rights of standing provided for in clause (2) are fully facilitated” Clause 22 (1) provides that “Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened” Article 50 of the Constitution of Kenya on Fair Hearing provides in sub-clause (1) that “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”

Although the Constitution is clear in this regard to the extent of anchoring legal capacity, no steps have been taken to repeal legislation that restricts legal capacity, especially the Criminal Procedure Code (CPC) and the Penal Code. Likewise Rules in respect of Civil Litigation have not been reviewed. Where they have, they have not been adequately publicized. Further, there is still no uniform understanding of the concept of legal capacity. As result of this it receives diverse interpretations and application depending on the institution applying it. This reality combined with negative societal perception still render various categories of persons with disabilities to restricted legal capacity. This is particularly the case with the Deaf persons, Deaf-blind persons and those with severe physical disabilities and those with intellectual and psychosocial disabilities. A majority of these categories of persons with disabilities do not have access to identification documents such as National Identity Cards and passport. This is in turn a function of the fact that most are not registered at birth and subsequently issued with birth notifications which remains a pre-requisite for obtaining a Birth Certificate. There is no legislation authorizing deprivation of legal capacity.

## Proposed recommendations on Article 12:

**Take immediate steps in order to repeal constitutional and legal provisions that contradict Article 12 of the Convention and General Comment No. 1. Furthermore, develop a comprehensive supported decision making system in order to provide support in the exercise of legal capacity to those persons that would like to be supported**

## Access to justice (art. 13)

### Issue 12:

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

### Response:

Article 22 of the Constitution on Enforcement of Bill of Rights under Clause (1) provides that “Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened” Article 50 Clause (2) (m) provides that “Every accused person has the right to a fair trial, which includes the right— to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial” Article 22 Clause (3) provides that “The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that— (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation; (c) no fee may be charged for commencing the proceedings; (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.” Clause (4) further states that “The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.” The Persons with Disabilities Act 2003 also has comprehensive provisions on access to justice, including handling case involving persons with disabilities whether criminal or civil in an expeditious manner.

The Kenyan judiciary has made some efforts at implementing the above constitutional demands as part of ensuring that all persons with disabilities benefit from access to justice through measures aimed at simplifying procedural accommodation, information and communication in accessible formats including Kenyan sign language. Towards this end, the judiciary has information desks and Court User Committees. Kenya Sign Language interpreters are also availed when necessary. The only limitation of provision of sign language interpreters is that they are not hired on full time basis; and therefore is a trend where justice is delayed with regards to deaf persons especially when there are no signers readily available when required. This has the implication that cases involving deaf persons and the like are routinely adjourned leading denial of expeditious dispensation of justice. Other challenges are in respect of circumstances involving group crimes where a deaf person is charged alongside persons without disabilities. There is a tendency to lay the blame on the deaf person who is not in a position to articulate his or her case. Persons with intellectual and psychosocial disabilities are disadvantaged in a special way. First, the court environment is strange and intimidating.

In view of the foregoing, it is recommended that the Chief Justice formulate the rules contemplated under Clause 3 of Article 22 of the Constitution and the Persons with Disabilities Act 2003. Well trained and qualified Kenya Sign Language interpreters should be recruited as permanent employees and placed on the payroll. In tandem with this, designated persons including the next of kin trusted and preferred by those court users with intellectual and psychosocial disabilities should be allowed continuous presence at court proceedings. Procedural, age appropriate and reasonable accommodations should be provided when required throughout Kenya’s justice system and procedures from arrest, investigation, prosecution, sentencing and incarceration.

## Proposed recommendations on Article 13:

*Take steps to immediately implement Clause 3 of Article 22 of the Constitution and the Persons with Disabilities Act 2003 by adopting the necessary rules. In addition, to strengthen and devote more resources to ensure access to justice of persons with disabilities, in particular deaf persons through timely sign language interpretation.*

### Liberty and security of the person (art. 14)

#### Issue 13:

What steps are being taken to repeal laws and practices that permit the detention of persons based on actual or perceived impairment/disability, including “unsound mind”?

#### Response:

**There are no steps that have been taken as at the time of submission of this report to repeal laws and practices that permit the detention of persons based on actual or perceived impairment/disability, including “unsound mind”.** Detentions are still rampant with the Deaf and persons with psychosocial and developmental disabilities being the greatest victims. It is recommended that deliberate measures be put in place through a policy framework and repeal of existing offending legislations to cater for and support Respite Centres and social dimension support services.

#### Proposed recommendation:

*Take urgent measures to completely ban deprivation of liberty on the basis of impairment and repeal legal provisions allowing for it. In addition, take immediate steps to prevent that such deprivation of liberty happen in practice, including by developing inclusive and accessible mental health services in the community for persons with psychosocial disabilities that might decide to require them.*

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

#### Issue 14:

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

#### Response:

There are no measures specifically designed to support victims of forced medical treatment. Most decisions are still being made without the consent of persons with disabilities, especially the severely afflicted including those with intellectual and psychosocial disabilities. Some of these persons with disabilities are subjected to severe physical harm in the false belief that they are possessed by evil spirits and are taken through dehumanizing exorcism as a healing treatment. Women in a number of cases undergo involuntary sterilization.

#### Proposed recommendations:

- a) *The Government should take steps to completely ban forced sterilization of women with disabilities, including the one authorized by a guardian in contradiction with Article 12 of the Convention, and to support person's victims of forced medical treatment, including counseling, reparation and monetary compensation. In particular, adopt measures to prevent harmful cultural practices based on traditional beliefs.*
- b) *That the Governments repeals all legislations authorizing these kind of practices and that community protection and support mechanisms be put in place to among other things function as early detection and prevention of abuse of PWDs on the basis of the nature of their disabilities.*

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

#### Issue 15:

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

## Response:

**There are no measures so far taken to address the heightened risks for children and women with disabilities, including refugee women and girls with disabilities, of becoming victims of violence and abuse.** There is a general low level of awareness among policy makers in government on the risks for children and women with disabilities. Although there is no scientific data available, it is estimated that a significant number of women and girls including refugees are violated. The reason there is no accurate data is because some of these violations go unreported due to a combination of fear and stigmatization.

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 areas<sup>11</sup>. 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 few functional helplines which are in a majority of cases either dysfunctional or not professionally utilized and managed. It is recommended that specialized training for officers, especially members of the security agencies be undertaken, that the existing gender based violence desks be upgraded by assigning specially trained officers to be responsible for them; while at the same time recognizing and enhancing access to refugee camps and detention centres by trained and certified legal assistance practitioners. It is further recommended that Referral Respite Care Centres be introduced while existing Rescue Centres be strengthened and enhanced through policy and appropriate guidelines.

## Proposed recommendations on Article 16:

***Take immediate steps to protect persons with disabilities, especially women and children, from violence, exploitation and abuse, including by addressing and dismantling the practice of using children with disabilities for begging in streets and by implementing aid phone lines and legal aid services accessible to persons with disabilities, in particular deaf persons. Furthermore, to ensure that Referral Respite Care Centres be introduced while existing Rescue Centres be strengthened and enhanced through policy and appropriate guidelines.***

## Protecting the integrity of the person (art. 17)

### Issue 16:

Please indicate what measures are being taken to prohibit and prevent forced sterilization and genital mutilation of women and girls with disabilities in law and in practice.

## Response:

**There are no specific measures in place to prohibit and prevent forced sterilization. This is still rampant though most incidences go unreported due to a combination of conspiracy by family members and/or carers, security personnel and health workers. On reproductive health rights, the Kenya Medical Practitioners and Dentist Boards insists 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**

There is a law in place which outlaws FGM and a Board to spearhead national campaign against the practice. However the practice continues and recent trends indicate it may have gone underground and is being carried out in secrecy.

## Proposed recommendations on Article 17:

Adopt measures, including legal reform, to ban and prevent forced sterilization and female genital mutilation of women with disabilities, and any other forced treatment, and to provide counseling, support and reparation to victims of such violations and sanction their perpetrators.

## Liberty of movement and nationality (art. 18)

### Issue 17:

Please inform the Committee of measures taken to ensure that every person with a disability is registered upon birth or at the time that they choose, and given a name and a nationality.

<sup>11</sup> Child trafficking in Urban Areas of Kenya, Terrres des Hommes, April 2014.

## Response:

Article 12 of the Constitution on Entitlements of citizens provides in Clause (1) that “Every citizen is entitled to— (a) the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution; and (b) a Kenyan passport and any document of registration or identification issued by the State to citizens.” Clause (2) provides that “A passport or other document referred to in clause (1) (b) may be denied, suspended or confiscated only in accordance with an Act of Parliament that satisfies the criteria referred to in Article 24.” A majority of persons with disabilities, especially those being concealed at home and never went to institutions of learning do not have requisite registration documents. This is because; although the law requires that all births and deaths be registered this is only enforced in instances of normal deliveries of children without disabilities. The instruments being used for this do not anticipate disability acquired at birth. Persons with disabilities domicile in border areas are discriminated against in the acquisition of identification documents, especially the deaf and those with intellectual and psychosocial disabilities who used alternative forms of communication.

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 recommendation:

- a) *The Government should take steps to ensure that birth registration instruments be redesigned to accommodate notification of disability at birth for those cases that are clearly permanent in order to facilitate early identification and categorization of disability at the point of delivery.*
- b) *Further, ensure that Traditional Birth Attendants (TBAs) be accredited, trained and remunerated as part of efforts in identification and registration of disabilities acquired at birth.*

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

## Issue 18:

Please report on measures to prevent the institutionalization of children with disabilities and to monitor the conditions of children in institutions. Please give details on community-based services available for persons with disabilities to live independently in the community.

## Response:

There are no policy measures in place by the government to prevent institutionalization of children with disabilities and to continuously monitor conditions of children in institutions effectively. It is worth noting that the judiciary has a mechanism in place for visiting borstal institutions. This is however *ad hoc*. There was previously the concept of ‘Small Homes’ but these collapsed due to resource constraints and not clear policy guidelines. Due to these deficiencies, inclusion of children with disability into communities is undermined.

## Proposed recommendation:

*The Government needs to take urgent steps to ensure that persons with disabilities, including children, are not institutionalized and remain living included in the community, and to ensure that Community Respite Support Centres be revisited to facilitate community support in inclusion of children with disabilities into society.*

## Personal mobility (art. 20)

### Issue 19:

Please explain whether persons with disabilities living in rural areas have benefited from the assistive devices being provided. Please also report on measures to ensure access to transportation for the public.

## Response:

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.

There National Council for Persons with Disabilities through the National Development Fund for Persons with Disabilities in conjunction with the Association for the Physically Disabled Persons of Kenya have put measures to render provision of assistive devices to various categories of persons with disabilities. It is noted that the National Council has decentralized these services to the county level. These efforts are however inhibited by poor information dissemination and the rigorous procedures for qualification for assistance. **There are improvements being carried out on accessibility aids for persons with disabilities even though the government still supplies outdated equipment. Training on use of aids is also lacking leading to delayed mobility for persons with disabilities.**

It is noted that at the time of reporting priority was placed on persons with intellectual, psychosocial and physical disabilities. Hard-of-hearing persons have not been beneficiaries on equal basis with others. The Council is in the process of expanding these supportive services to include Kenya Sign Language Interpreters as human resource support for the Deaf.

The Persons with Disabilities Act 2003 make express provisions for accommodation of persons with disabilities in access to public transport through adjustment orders. However, other than at the main national airports, these have remained largely unenforced.

## Proposed recommendation:

*Implement measures to improve accessibility of transport and mobility of persons with disabilities, including assistive devices distribution. In particular, to provide training to personnel in charge of public transport in order to prevent mistreatment of persons with disabilities and to enable better service provision.*

## Respect for private and family life (art. 23)

### Issue 20:

Please report on measures taken to ensure that children with disabilities currently in orphanages are returned to a family setting and are included in the community. Please also report on the type of support and services that are available to families with children with disabilities to ensure they can be brought up within their families and are empowered to participate in the community.

### Response:

**There are currently no known measures in place ensure that children with disabilities currently in orphanages are returned to a family setting and are included in the community.** What is in operation is the adoption law; which is itself not supported by an enabling policy framework. At the time of reporting there was no policy and legislative framework to facilitate availability support services to families with children with disabilities to ensure they are brought up within their families and are empowered to participate in the community. It is noted that the Child Welfare Society of Kenya is the body, which at the time of submission of this report was actively engaged in re-integration of children through foster families. These efforts do not however cover children with disabilities.

### Issue 21:

Please explain what measures are being adopted to respect the right of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, to marry and found a family.

### Response:

At the time of preparation and submission of this report, **there were no measures in place to anchor and facilitate respect to the right of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, to marry and found a family. The Marriage Act, 2014 and especially section 11 (2) are hostile to marriages involving adult persons with disabilities. This piece of legislation provides ‘unsound mind’ as a ground for dissolution of marriage. There is also hostile community attitude towards acceptance of marriage between 2 persons with disabilities especially those with intellectual disabilities.**

## Proposed recommendations on Article 23:

- a) *Ensure support to families with persons with disabilities to raise their children at home. Take steps to develop quality support services to families of children with disabilities in both urban and rural areas as well as make available sufficient financial support and benefits for families to care for their disabled child; and ensure the availability and effective dissemination of information to parents about services and benefits. Ensure support, information and advice, and training courses for parents and caregivers of children with disability so they are equipped to facilitate children’s participation in the community and assistance to express their views and to be consulted.*
- b) *Take concrete steps to scale up the Cash transfer initiative to facilitate independence as children with disabilities transit to adulthood. With regards to Cash Transfers, take steps, in close consultation with representative organisations of persons with disabilities to formulate guidelines through which support services rendered by families to children with disabilities is quantified.*
- c) *Take immediate steps to repeal discriminatory provisions of the Family Law and guarantee persons with intellectual disabilities, persons with psychosocial disabilities, and persons under guardianship, the right to marry and to adopt on an equal basis with others.*
- d) *Enact legislation which prohibits the child being separated from their parents on the basis of the disability of either the child or one or both of the parents.*



## Education (art. 24)

### Issue 22:

Please explain in detail how the State party is working towards inclusive education, in particular for children with high-level support needs. Please also give information on the current status of inclusive education in the education policy.

### Response:

**Inclusive education as provided by the Convention is far from being achieved. Some of the 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.**

Although there are efforts at facilitating inclusive education particularly for children with high-level support needs, there are no clear policies and legislative guidelines to anchor this. The nearest attempt was the Special Needs Education policy which was officially launched in April 2009. It does not however have legislative framework and guidelines for operationalization. Attempts have been made to revise the Education Act to provide guidance on inclusive education but the process has been very slow. Organisations of persons with disabilities have floated the idea of a Special Needs education Act and even prepared a draft bill which was presented to the Minister of Education three years ago but it did not see the light of the day. Given this situation the state of inclusive education for those with high support needs is pathetic in terms of the quality of education accorded them.

### Proposed recommendations on Article 24:

- a) **Take steps 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. Ensure that individual education plans required for all students and the availability of assistive devices, accessible education materials and the provision of support in classrooms.**
- b) **Take steps to ensure the accessibility of physical school environments, to encourage the teaching of sign language and deaf culture, including by reinforcing the level of professional training of sign language to teachers at all schools. Training should be created and implemented in collaboration with deaf persons' organisation and led by deaf people who are native in Kenyan Sign Language.**

## Health (art. 25)

### Issue 23:

Please explain how the health services sector will scale up mental and psychosocial health-care and treatment services across the country.

### Response:

There are no known plans in place, either through policy or financial resources to scale up mental and psychosocial health-care and treatment services across the country. It is noted that provision of primary healthcare is a function which has been assigned to County Governments while the National Government has been assigned policy formulation and setting of norms and standards.

### Issue 24:

What programmes are currently in place across urban and rural areas for persons with disabilities, including women and girls, young persons and refugees, concerning sexual and reproductive health, HIV/AIDS and sexually transmissible infections?

### Response:

As at the time of preparing and submission of this report, there were no programmes in place across urban and rural areas specifically for persons with disabilities, including women and girls, young persons and refugees, concerning sexual and reproductive health, HIV/AIDS and sexually transmissible infections. It is noted NACC and the 'Beyond Zero Campaign' are providing information and mobile clinics which are of general nature not specifically targeting persons with disabilities.

### Proposed recommendations on Article 25:

- a) **Repeal legislation which violates the right of disabled persons to free and informed consent and enact legislation which explicitly recognises this right for persons with disabilities, including persons with intellectual disabilities, psychosocial disabilities and regardless of any status under guardianship, and make available support to persons with disabilities to**

*exercise their right to free and informed consent. In particular, It is recommended that both the County and National Governments mutually design a coordinated comprehensive mental and psychosocial health-care treatment services management programme; especially for intellectual, psychosocial including those with autism spectrum disorders and developmental disabilities”*

- b) Take steps to ensure access to health information, services and education, including relating to HIV/AIDS and sexual and reproductive health, for children and adults with disabilities across the country, in accessible formats, in particular in rural and remote areas.*
- c) Take steps to train all health professionals on the rights of persons with disabilities including the right to free and informed consent, and on communicating with the persons of disabilities, in close consultation with DPOs; further more, adopt measures to support for research and public awareness-raising and stigma removal campaigns consistent with the Convention and to systematically shift the focus of care away from long-stay health facilities towards community-based non-residential services respectively.*
- d) Train staff of health care facilities in sign language and to provide professional sign language interpretation services.*

## Right to work and employment (art. 27)

### Issue 25:

Please provide information on the employment rate of persons with disabilities in the open labour market, and on the implementation of the 5 per cent quota. Please also give information on measures to protect against employment-based discrimination of persons with disabilities.

### Response:

At the time of preparation and submission of this report, the only data available was provided by the Ministry of Devolution and Planning which indicated that persons with disabilities accounted for 1.2% of those employed in the public service at County and National Government levels. A close analysis of these statistic indicates that a big segment of this data comprise of persons who acquired disability while in service. There are no readily available statistics on persons with disabilities employed in the open labour market. There are no adequate mechanisms towards realization of the 5% Affirmative Action principle. It is further noted that adverts for most employment opportunities are themselves barriers to take-up of available employment opportunities.

### Proposed recommendations on Article 27:

- a) Adopt immediate measures to foster compliance with the positive measures of quota for persons with disabilities in employment, including an effective enforcement mechanism and truly dissuasive sanctions for non-compliance, in both public and private sectors.*
- b) Adopt further measures to promote the right to employment of persons with disabilities and to protect from discrimination in the recruitment processes and in all other dimensions of the right to employment.*

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

### Issue 26:

Please give details of plans to expand the national development fund to benefit all persons with disabilities, and especially people with psychosocial and/or intellectual disabilities in particular from rural areas.

### Response:

The disability fund has a social protection cash transfer programme whose main beneficiaries are persons with “severe” disabilities. Most of these are those with intellectual disabilities. There is evidence that the cash transfer programme is being up scaled as demonstrated in the incremental allocation which in the 2015/2016 stand at KES 700 Million. This is administered as a targeted programme as it cannot reach all the intended beneficiaries soon. An identified problem with it is that it is difficult to measure the “severe” disabilities and as such there are many in the programme who may not meet the intended Criteria. Organisations of persons with disabilities recommend that the fund should be increased to target all persons with disabilities who do not have any other means of income.

### Proposed recommendation:

*Extend urgently the coverage of social protection schemes beyond persons with “severe disabilities” in order to ensure an adequate standard of living to all persons with disabilities that are currently not eligible for social protection schemes.*

## Participation in political and public life (art. 29)

### Issue 27:

Please provide information on any step taken to repeal restrictions to be elected and to vote in the Constitution, in particular sections 83 (1) (b) and 99 (2) (e), in which it is stated that a person can be disqualified from voting and being elected as a Member of Parliament if the person is of “unsound mind”.

## Response:

There are no deliberative measures in place to repeal restrictions to be elected and to vote in the Constitution, in particular sections 83 (1) (b) and 99 (2) (e), in which it is stated that a person can be disqualified from voting and being elected as a Member of Parliament if the person is of “unsound mind”.

## Issue 28:

Please explain in detail what the Government is doing to improve physical access to polling stations, as well as ensuring access to election-related information for persons with disabilities.

## Response:

There was slight improvement in voter access by persons with disabilities in the last General Elections in 2013. It is recommended that the category of persons with disabilities be recorded in data capture information at the time of continuous voter registration. It is further recommended that Sign language interpreters to be available at voter registration centres and at polling stations during elections.

## Proposed recommendation:

- a) ***Urgently repeal restrictions to be elected and to vote in the Constitution, in particular sections 83 (1) (b) and 99 (2) (e), in order to ensure the exercise of political rights to all persons with disabilities.***
- b) ***Adopt measures to improve political participation of persons with disabilities, including accessibility related measures and the promotion of persons with disabilities as candidates to the different public offices.***
- c. ***Special obligations***

## Statistics and data collection (art. 31)

### Issue 29:

Please report on any attempt to update the data-collection system in accordance with the Convention and with the involvement of organizations of persons with disabilities.

## Response:

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.

The NCPWD has embarked on registration of persons with disabilities but the process has been slow and there is no incentive for persons with disabilities to register. There has not been any attempt to involve persons with disabilities and their organisations in this process. There is also no coordination with other agencies responsible for data collection on population issues. If more organizations would hand over their data to the Council as a coordinating body then more persons with disabilities would be registered.

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.

## Proposed recommendation:

***Review, strengthen and further develop the Kenyan statistics system in line with the Convention, including by consulting and involving persons with disabilities and their representative organisations. In particular, review the statistical categories and methodology that seemingly leads to underestimations of the number of persons with disabilities. It is recommended that during the national census the enumerators be adequately trained and sensitized on disability issues before deployment. Organizations of persons with disabilities should be involved in the training exercise.***

## International cooperation (art. 32)

### Issue 30:

Please give information on the mechanisms to consult and involve with organizations of persons with disabilities in the design of international cooperation projects and programmes.

## Response:

There is no framework and mechanisms to consult and involve with organizations of persons with disabilities in the design of international cooperation projects and programmes.

## Proposed recommendation:

Adopt measures to ensure that international cooperation programs are accessible to and inclusive of persons with disabilities, including their consultation and active involvement in decision making processes.

## National implementation and monitoring (art. 33)

### Issue 31:

Please report on steps taken to establish a national implementation and monitoring mechanism.

## Response:

There is confusion and conflict between various governmental and quasi-governmental agencies in the implementation and monitoring of CRPD. The KNCHR, the NGEC and the National Council for Persons with Disabilities are duplicating roles while DPOs have been largely excluded from this undertaking.

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 from the government and donors. KNCHR has the power to partner with other organisations to monitor human rights situation in Kenya. The National Gender and Equality Commission (constitutionally appointed) has a mandate to coordinate non-discrimination against person with disabilities. The National Council for Persons with Disabilities is the 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 recommendation:

***Clarify through an explicit appointment which governmental body is the focal point or coordination mechanism under Article 31(1) and what are its prerogatives. Furthermore, ensure that the KNCHR as well as organisations of persons with disabilities counts with the proper budget resources to comply with its task on monitoring the compliance of the Convention, including by financial support.***

# Kenya National Commission on Human Rights

## Introduction

This submission has been prepared by Kenya National Commission on Human Rights. This submission provides information in relation to the Kenyan Government's implementation of the Convention on the Rights of Persons with Disabilities (CRPD) and in consideration of Kenya's first report under the CRPD.

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

## Article 8: Awareness Raising

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

## Questions for State's response

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

## Article 9: Accessibility

7. This Article is echoed domestically in section 21 of the Persons with Disabilities Act, 2003 (PDA) which entitles persons with disabilities to a barrier-free and disability-friendly environment. Section 22 of the PDA requires any proprietor of a public building to adapt it to suit persons with disabilities in such manner as may be specified by the National Council for Persons with Disability (NCPWD).

<sup>2</sup> KNCHR Report: From Norm to Practice, A Status Report of Implementation of the Rights of Persons with Disabilities in Kenya, 2013 available at <http://knchr.org/Portals/0/Reports/Disability%20Report.pdf> (last visited 20/4/2015)

8. Sections 22 and 23 of the PDA oblige proprietors of public buildings and operators of public transport to comply with the provisions on accessibility within 5 years. However, this is not the case. Public buildings and public service vehicles are still inaccessible to persons with disabilities. According to the Act, sections 22 on accessibility of public buildings and 23 on public service vehicles became operational from the 1st of January, 2010. This therefore means that the timeline for compliance with section 22 is the 31st of December, 2015, while that for section 23 was the 31st of December, 2012.
9. The assessment of both private and public buildings across 12 Counties in Kenya showed that physical accessibility for persons with disabilities remains a far-off target in most cases save for a few noted health facilities which had made relevant improvements and adjustments on their buildings. Several buildings that house national and county government offices, courts, hotels, public toilets, police stations among others do not comply with current accessibility standards. Of key concern was that even houses of persons with disabilities were also inaccessible.

## Questions for State's response

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

## Article 13: Access to Justice

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

## Questions for State's response

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

## Article 27: Work and Employment

12. Despite the existence of international and national legal framework for the protection of the rights of persons with disabilities, the findings in the 12 Counties monitored by KNCHR reveal that access to employment and work is still a distant goal for persons with disabilities. Some of the barriers identified during monitoring include low levels of education, poor attitudes by the persons with disabilities, poverty, lack of workplace support, and weak implementation of tax exemptions and more importantly stigma and economic prejudice.
13. The mode of dissemination of information on new job opportunities has been limiting as many advertisements are done in print media i.e. newspapers and via internet which many of the persons with disabilities may not have access to. As a result many fail to apply for certain job opportunities not because they do not qualify but because they lack the necessary information.

## Questions for State's response

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

## Article 24: Education

14. The policy environment of education is theoretically supportive of education for Learners with disabilities (Learners with disabilities) but faces resounding bottlenecks in implementation. For instance, the inclusion policy in education though advocated for and recognized from human rights based approach; it is yet to be implemented. To date, the implementation framework of the National Policy on Special Needs Education Policy of 2009 has not been developed. The educational



outcomes for children and adults with disabilities are still low. Illiteracy rates for Persons with disabilities and for school-age children with disabilities are much higher than the general population. The poor school attendance by children with disabilities is attributed to lack of proper facilities that enhance access, resources that encourage transition and completion, coupled with poverty and stigmatization.

15. Access to education remains a big challenge to Learners with disabilities. According to the school mapping data set, there are 3,464 special needs institutions in the country of which 2,713 are integrated institutions and 751 are special schools. Among these, there are 10 public secondary schools for learners with hearing impairments, 3 for learners with physical disabilities and 4 for learners with visual impairments making a total of 17 special secondary schools in the country. These figures show that access and participation of Learners with disabilities is relatively low across the country and explains why transition (from primary to secondary to tertiary levels) is a great challenge as most Learners with disabilities cannot afford private schools and regular schools are not accommodative.

## Questions for State's response

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

## Article 28: Adequate Standards Of Living And Social Protection

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

## Questions for State's response

- ❖ What steps has the State taken to monitor the effectiveness and impact of the Cash Transfer Funds?
- ❖ What measures has the State taken to ensure the Cash Transfer Fund its proper utilization by the Persons with Disabilities?
- ❖ What awareness creation mechanisms has the State put in place to ensure that the National Fund for the Disabled meets its intended purposes?
- ❖ What measures has the State taken to ensure decentralization of the the operations of NCPWD to the Counties in keeping with the devolved structure of governance? Committee on the Rights of Persons with Disabilities
- ❖ Concluding observations on the initial report of Kenya\*
- ❖ I. Introduction
- ❖ 1. The Committee considered the initial report of Kenya (CRPD/C/KEN/1) at its 206th and 207th meetings (see CRPD/C/SR.206 and 207), held on 18 and 19 August 2015, respectively, and adopted the following concluding observations at its 222nd meeting, held on 28 August 2015.
- ❖ 2. The Committee welcomes the initial report of the State party, which was prepared in accordance with the Committee's reporting guidelines. It also appreciates the State party's written replies (CRPD/C/KEN/Q/1/Add.1) to the list of issues prepared by the Committee (CRPD/C/KEN/Q/1).
- ❖ 3. The Committee appreciates the constructive dialogue held during the consideration of the report and commends the State party for its high-level delegation. The Committee also welcomes the independent participation of the Kenya National Commission on Human Rights.
- ❖ II. Positive aspects
- ❖ 4. The Committee notes that the Convention is an integral part of the Kenyan Constitution. It welcomes the measures taken by the State party since the ratification of the Convention, including the following:
  - ❖ (a) The introduction of an indicator on disability mainstreaming for public service contracts;
  - ❖ (b) The adoption of a contingency plan by the National Disaster Operations Centre that recognizes persons with disabilities as a particular group in disaster situations;
  - ❖ (c) The adoption of affirmative action measures in the area of employment for persons with disabilities;
  - ❖ (d) The adoption of the National Social Protection Policy in 2012, which includes benefits for persons with disabilities;
- ❖ \* Adopted by the Committee at its fourteenth session (17 August-4 September 2015).







# Concluding Observations

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## Convention on the Rights of Persons with Disabilities

Compendium on Convention on the Rights of Persons with Disabilities

Distr.: General

30 September 2015

Original: English

Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Kenya

Initial reports of State parties due in 2010  
Kenya\*

# Introduction

## Committee on the Rights of Persons with Disabilities

### Concluding observations on the initial report of Kenya\*

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  - (c) The adoption of affirmative action measures in the area of employment for persons with disabilities;
  - (d) The adoption of the National Social Protection Policy in 2012, which includes benefits for persons with disabilities;
  - (e) The establishment of a cash transfer programme for persons with "severe disabilities".

#### III. Principal areas of concern and recommendations

##### A. General principles and obligations (arts. 1-4)

5. The Committee is concerned about measures to ensure the effective implementation of the Convention and the delay in the amendment of the Persons with Disabilities Act 2003. It observes with concern that derogatory terminology against persons with disabilities persists in the Constitution and in other pieces of legislation, such as the Local Government Act, the Election Act, the Mental Health Act and the Marriage Act.
6. **The Committee calls upon the State party to:**
  - (a) **Complete as a matter of priority and within a specific time frame the process to review the Persons with Disabilities Act 2003 and bring it into line with the provisions of the Convention and the human rights-based approach to disability;**
  - (b) **Ensure adequate processes in parliament to enact various bills pending approval regarding the rights of persons with disabilities;**
  - (c) **Adopt measures to amend and/or repeal legislation that includes derogatory terminology against persons with disabilities;**
  - (d) **Raise awareness among members of parliament with regard to the Convention and convey their involvement in implementing the Committee's concluding observations.**
7. The Committee observes with concern the absence of specific legal and policy frameworks for implementing the Convention at the county and municipal levels. It is concerned about the lack of mechanisms to ensure permanent and formal consultation with organizations of persons with disabilities in processes to enact legislation, and in the discussion and adoption of public policies, both at the national and the county levels.
8. **The Committee recommends that the State party:**
  - (a) **Adopt measures to ensure that county governments and all local authorities allocate budgetary resources and establish action plans to implement the Convention with targets and indicators to monitor their results;**
  - (b) **Establish formal mechanisms and protocols, at the national, county and municipal levels, and conduct consultations with organizations representing persons with disabilities, in line with the State party obligations under article 4.3 of the Convention, including the required financial resources, and promote the meaningful participation of organizations of persons with disabilities in both rural and urban areas.**

\* Adopted by the Committee at its fourteenth session (17 August-4 September 2015).

## B. Specific rights (arts. 5-30)

### Equality and non-discrimination (art. 5)

9. The Committee is concerned that mediation and conciliation prevail on claims by persons with disabilities. It is also concerned about the absence of information on the definition of reasonable accommodation and that the denial of such accommodation is not considered a form of discrimination.
10. **The Committee recommends that the State party:**
  - (a) Enforce measures to ensure that cases of discrimination against persons with disabilities can be invoked before courts and that victims receive appropriate redress;
  - (b) Define in its legislation the principle of reasonable accommodation in all areas, in line with article 2 of the Convention, and ensure legal recognition of the denial of reasonable accommodation as a form of discrimination.

### Women with disabilities (art. 6)

11. The Committee is concerned about the multiple forms of discrimination faced by women with disabilities and the absence of measures to prevent and combat different forms of discrimination against them. It is also concerned about the lack of information on public policies and programmes on gender equality that include the rights of women and girls with disabilities.
12. **The Committee recommends that the State party:**
  - (a) Systematically collect data and statistics on the situation of women and girls with disabilities living in rural and urban areas, and belonging to ethnic minorities and pastoralist communities;
  - (b) Strengthen the mandate of the National Gender and Equality Commission, and ensure it is allocated human, technical and budgetary resources specifically aimed at the advancement of the rights of women with disabilities;
  - (c) Adopt a national strategy with a time frame and indicators to address intersectional discrimination against women and girls with disabilities, including those living in rural and urban areas, and ensure their effective participation in the design, implementation and monitoring of such a strategy.

### Children with disabilities (art. 7)

13. The Committee is deeply concerned at the abandonment of children with disabilities who are rejected by their families and at negative stereotypes against them, particularly in rural areas. It is also concerned about the institutionalization of children with disabilities and the prevalence of residential care. It observes with concern the absence of information on the situation of deaf, blind and deaf-blind girls and boys and about measures to ensure their protection and inclusion in society. The Committee takes note of the creation of child assemblies in 47 counties. Nevertheless, it is concerned that children with disabilities, in particular in rural areas, are not systematically involved in decisions that affect their lives.
14. **The Committee recommends that the State party:**
  - (a) Adopt as a matter of priority a strategy to combat stereotypes against girls and boys with disabilities within families and in society and implement an early warning mechanism to prevent the abandonment of children with disabilities in urban and rural areas;
  - (b) Provide community-based services and assistance for girls and boys with disabilities with a view to eliminating institutionalization, and ensure that grants from the Transfer Programme for Orphans and Vulnerable Children reach children with disabilities in rural areas;
  - (c) Take measures to assess the situation of girls and boys who are deaf-blind and ensure that public policies and programmes are responsive to their specific needs;
  - (d) Implement measures, in partnership with organizations of persons with disabilities and other civil society organizations, aimed at promoting the right of children with disabilities to be consulted in all matters of concerning their lives, and ensuring that they receive assistance appropriate to their age and disability.

### Awareness-raising (art. 8)

15. The Committee welcomes the information on awareness-raising activities among public officials. However, it is concerned about the stigmatization of persons with disabilities in society that hinder the exercise of their rights. It is also concerned that persons with psychosocial and/or intellectual disabilities are disproportionately affected by stigma, which limits their access to education, health and employment.
16. **The Committee calls upon the State party to set up a long-term strategy aimed at raising awareness and combating discrimination against persons with disabilities among the public in general, in rural and urban areas, including all aspects covered by the Convention. It also recommends that it carry out mass-media awareness-raising campaigns and workshops in order to foster a positive image of persons with disabilities and their contributions to society. It further recommends that human rights-based training programmes be provided in both the private and the public sectors for all officials, in consultation with organizations of persons with disabilities and in collaboration with human rights institutions and organizations.**

## Accessibility (art. 9)

17. The Committee is concerned about:
  - (a) The barriers that prevent persons with disabilities from accessing public transportation in urban and rural areas and the lack of measures to enforce the guarantees concerning accessibility in all areas of life;
  - (b) The lack of measures to sanction non-compliance with existing accessibility standards.
18. In line with its general comment No. 2 (2014) on accessibility, the Committee recommends that the State party:
  - (a) Finalize and adopt the draft consolidated national action plan on accessibility and disability rights for the implementation of the Persons with Disabilities Act No. 14 of 2003 and related provisions of the 2010 Constitution;
  - (b) Effectively implement the regulations of non-compliance as provided in the Persons with Disabilities Act and ensure adjustment orders are issued to non-compliant stakeholders.

## Right to life (art. 10)

19. The Committee is concerned by different forms of violence against persons with albinism, in particular girls, including kidnappings, killings and attacks for the purpose of witchcraft practices, and the absence of measures to protect victims and to prosecute and convict perpetrators.
20. The Committee calls upon the State party to:
  - (a) Promptly investigate all cases of violence against persons with albinism, ensuring that they are appropriately prosecuted and punished;
  - (b) Create shelters and redress services for victims of attacks, including health care, counselling and free legal aid;
  - (c) Redouble efforts to raise awareness about the dignity and rights of persons with albinism and ensure the involvement of organizations of persons with albinism in any campaigns aimed at eliminating stigmatization and myths that underpin violence against persons with albinism.

## Situations of risks and humanitarian emergencies (art. 11)

21. The Committee is concerned about the absence of information on the situation of internally displaced persons with disabilities and those living in refugee camps, and the lack of information on emergencies and disaster strategies in formats accessible to persons with disabilities.
22. The Committee recommends that the State party:
  - (a) Adopt a national plan to ensure the protection of persons with disabilities in situations of risk and humanitarian emergencies and to ensure universal accessibility and inclusion for persons with disabilities at all stages and levels of all disaster risk reduction policies and their implementation;
  - (b) Provide information in modes, means and formats of communication accessible to all persons with disabilities, in all of the State party's official languages and indigenous languages about early warning mechanisms in case of risk and humanitarian emergency;
  - (c) Adopt measures to monitor the situation of persons with disabilities in refugee camps and internally displaced persons with disabilities, and ensure that they are entitled to access all services available, including accessible shelters, water and sanitation, education and health.

## Equal recognition before the law (art. 12)

23. The Committee is concerned that different laws of the State party, such as the Children's Act 2001, the Mental Health Act of 1991 and the Marriage Law (2014), deprive persons with disabilities of their legal capacity, in particular persons with intellectual and/or psychosocial disabilities. It is also concerned about the de facto guardianship in families of persons with disabilities that deprive persons with disabilities of their ability to make choices in aspects such as buying food, renting a house or inheritance.
24. The Committee recommends that the State party:
  - (a) Eliminate all forms of formal and informal substituted decision-making regimes and replace them with a system of supported decision-making, in line with the Committee's general comment No. 1 (2014) on equal recognition before the law;
  - (b) Repeal legislation and practices that allow for the deprivation of legal capacity on the basis of impairment, and adopt measures to prohibit the deprivation of legal capacity on a customary basis;
  - (c) Support and facilitate ongoing initiatives to implement article 12, including research by the Kenya National Commission on Human Rights and the models of supported decision-making spearheaded by representative organizations of persons with disabilities;
  - (d) Develop training and information campaigns for the public about the contents and scope of the right to legal capacity in all areas of life, considering the involvement of all stakeholders, including organizations of persons with disabilities and decision-makers.



## Access to justice (art. 13)

25. The Committee is concerned about the barriers that prevent persons with disabilities from gaining access to justice, in particular owing to the absence of reasonable accommodations throughout court proceedings that particularly affect women with disabilities, the lack of information available in accessible formats, additional costs to access sign language interpretation services, and the lack of free legal aid. It is also concerned about obstacles in the prosecution of cases where persons with disabilities have been witnesses or victims. It is further concerned about the legal provisions that restrain the validity of corroborated evidence of persons with intellectual and/or psychosocial disabilities.
26. **The Committee recommends that the State party:**
  - (a) Adopt measures to ensure that all persons with disabilities have access to justice, including by establishing free legal aid for persons with disabilities who claim their rights, and by providing information and communications technology in accessible formats, including the Kenyan sign language;
  - (b) Define explicitly in legal instruments the duty of the judiciary to provide procedural accommodations for persons with disabilities in accordance with article 13 of the Convention;
  - (c) Develop a capacity-building strategy within the judicial branch on the rights of persons with disabilities, including lawyers, magistrates, judges, prison staff and the Police.

## Liberty and security of the person (art. 14)

27. The Committee notes with concern that persons with disabilities can be detained on the basis of actual or perceived impairment, the alleged danger of persons with disabilities to themselves or to others and the alleged need of care and/or treatment, which is incompatible with the Convention. It is also concerned that persons with disabilities who are considered of “unsound mind” and/or “insane” can be subjected to deprivation of liberty and are not entitled to the same guarantees as other persons in criminal procedures.
28. **The Committee recommends that the State party:**
  - (a) Amend its legislation to prohibit involuntary placement, in particular, to repeal provisions of the Mental Health Act (1989), amend the Persons Deprived of Liberty Act 2015, which allows detention for the purpose of psychiatry treatment, and ensure that new legislation is fully compatible with article 14 of the Convention in all cases;
  - (b) Repeal the provisions of the Criminal Procedure Code, Section 166, concerning the declaration of “insanity” and reaffirm the right to a fair trial of persons with disabilities, in accordance with the Convention.

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

29. The Committee is concerned about information received on forced medical treatments, physical and chemical restraints and isolation faced by persons with disabilities in psychiatric hospitals. It is also concerned about the absence of measures to ensure that persons with disabilities are allowed to provide their free consent to medical or scientific experimentation.
30. **The Committee recommends that the State party:**
  - (a) Establish a mechanism on the prevention of torture, considering in particular the protection of persons with disabilities;
  - (b) Provide support to persons with disabilities, including information in accessible formats, in order to be able to give free and informed consent in relation to medical treatment and scientific experimentation;
  - (c) Train health-care professionals on the rights of persons with disabilities, specifically on the right to free and informed consent.

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

31. The Committee is concerned about:
  - (a) Cases of violence and abuse against persons with disabilities, in particular the higher risk that women, girls and boys with disabilities face of physical and sexual violence, both in family settings and in institutions;
  - (b) Exploitation of children with disabilities through begging, particularly in urban areas;
  - (c) The limited coverage of gender violence recovery centers and the lack of information on the ability of women with disabilities to gain access to temporary shelters.
32. **The Committee recommends that the State party:**
  - (a) Design and implement a strategy with adequate funding for the protection of persons with disabilities, particularly women and children with disabilities, from exploitation, violence and abuse. Such a strategy must include prevention, early recovery, legal remedies, including compensation and reparation, and accessible services and counselling for victims;
  - (b) Set up an independent mechanism to monitor the conditions in all facilities designed to serve persons with disabilities, in accordance with article 16 (3) of the Convention;
  - (c) Take the necessary measures to prevent children with disabilities from falling into exploitation by begging and create programmes at the national, county and municipal levels for their rehabilitation, recovery and inclusion in family and community life;
  - (d) Ensure that gender violence recovery centers are established throughout the country and are accessible for women with disabilities, and collect information about women with disabilities who have benefited from the services at such centers.

## Protecting the integrity of the person (art. 17)

33. The Committee observes with concern that women with disabilities have been victims of forced sterilization and that genital mutilation affects women and girls with disabilities, although is a practice prohibited by law.
34. **The Committee calls upon the State party to:**
  - (a) Establish mechanisms to monitor health-care facilities and adopt measures to prohibit forced sterilization and ensure that adequate information is provided in accessible formats for all women and girls with disabilities concerning their sexual and reproductive rights;
  - (b) Implement the recommendations issued by the Committee on the Elimination of Discrimination against Women in 2011 (CEDAW/C/KEN/CO/7) relevant to female genital mutilation, and ensure that the action plan of the Anti-FGM Board includes a compilation of information on the women and girls subjected to such a practice and mechanisms for their reparation and redress.

## Liberty of movement and nationality (art. 18)

35. The Committee express concern about the lack of registration of children with disabilities upon their birth, in particular children in situations of internal displacement and those living in refugee camps.
36. **The Committee recommends that the State party strengthen the registration programme with the necessary budget and personal resources to ensure that persons with disabilities in all areas of the country, including persons in refugee camps, gain access to identification documents.**

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

37. The Committee is concerned about the institutionalization of persons with disabilities and the absence of community support services that provide for inclusion of persons with disability in society.
38. **The Committee recommends that the State party:**
  - (a) Adopt a strategy for the de-institutionalization of persons with disabilities, within a time frame and measurable indicators. This strategy must involve the participation of organizations of persons with disabilities;
  - (b) Launch a comprehensive strategy, with time frame and human rights-based indicators, to make community-based services available for persons with disabilities;
  - (c) Take steps to introduce specific budgetary allocations for the promotion of independent living, including cash transfer schemes for personal assistance services.

## Freedom of expression and opinion, and access to information (art. 21)

39. The Committee is concerned by:
  - (a) The limited provision of sign language interpreters in public offices to facilitate access to public services free of charge;
  - (b) The lack of information on low-cost information and communications technology for persons with disabilities, including those living in rural areas.
40. **The Committee recommends that the State party:**
  - (a) Establish jointly with organizations of deaf persons and Kenyan sign language interpreters a mechanism to certify the quality of interpretation services and ensure that opportunities for continuous training are provided for interpreters;
  - (b) Strengthen measures to grant persons with disabilities access to information and communications technology, including the provision of low-cost software and assistive devices to all persons with disabilities, including those living in rural areas.

## Respect for private and family life (art. 23)

41. The Committee is concerned about the absence of measures to return children with disabilities currently in orphanages to a family setting. It is also concerned about the measures of the Marriage Act (2014), which prevents persons with intellectual and psychosocial disabilities from marrying.
42. **The Committee recommends that the State party:**
  - (a) Take steps to increase information and support to families of children with disabilities to ensure they can be raised within the family home, expand the scope of the transfer fund for children with “severe” disabilities to benefit all children with disabilities and establish a monitoring mechanism on the effective disbursement of the resources through the country;
  - (b) Review the Marriage Act 2014 in order to repeal provisions that discriminate against persons with psychosocial and/or intellectual disabilities on their right to marriage.

## Education (art. 24)

43. The Committee is concerned about the:
  - (a) Persistence of segregated education institutions in the State party;
  - (b) Lack of information on the situation of children with a high level of support needs, such as deaf-mute children;
  - (c) Lack of information on the provision of assistive technologies in classrooms for all children with disabilities in rural and urban areas;
  - (d) Absence of measures to ensure continuous training of teachers on sign language.
44. **The Committee calls upon the State party to:**
  - (a) Establish a time frame for the transition process from segregated to inclusive quality education and ensure that budgetary, technical and personal resources are available to complete the process, and collect disaggregated data on the advancement of the inclusive education system;
  - (b) Immediately adopt a non-rejection policy for children with disabilities enrolling in regular schools, and provide reasonable accommodation;
  - (c) Ensure that school facilities are accessible for deaf-mute children, and provide materials and curricula adequate to their needs;
  - (d) Undertake measures, including by encouraging public-private partnerships, to ensure the provision of assistive technologies in education;
  - (e) Ensure the training of all teachers in inclusive education and establish a programme for continuous training in sign language in mainstream schools and universities.

## Health (art. 25)

45. The Committee remains concerned about the barriers for persons with disabilities in accessing information and services on sexual and reproductive health, and the lack of information on the implementation of specific measures to prevent sexually transmissible infections, including HIV/AIDS, among persons with disabilities. It is also concerned about the lack of information on accessible health-care facilities for persons with disabilities in rural areas. It is further concerned about the State party's approach to mental health care is based on the medical model.
46. **The Committee recommends that the State party:**
  - (a) Strengthen its efforts to ensure that all health policies, programmes and services, including on sexual and reproductive health and those related to HIV/AIDS, are fully accessible and incorporate a gender perspective, especially in rural areas and at the community level;
  - (b) Adopt measures to establish accessible health-care facilities and technologies for persons with disabilities in urban and rural areas;
  - (c) Develop a wide range of community-based services that respond to the needs of persons with disabilities and respect the person's autonomy, choices, dignity and privacy, including peer support and other alternatives to the medical model of mental health.

## Right to work and employment (art. 27)

47. The Committee is concerned at the very low employment rate among persons with disabilities of about 1 per cent. It is also concerned about the stereotypes surrounding persons with disabilities and their lack of training to access employment opportunities.
48. **The Committee recommends that the State party:**
  - (a) Adopt immediate measures to foster compliance with the positive measure of quotas for persons with disabilities in employment, including an effective enforcement mechanism and sanctions for non-compliance, both in the public and the private sectors;
  - (b) Design work and employment programmes in the open labour market specifically aimed at persons with disabilities, including information on job opportunities in accessible formats and the development of skills to undergo competitive selection processes to access jobs;
  - (c) Support entrepreneurship among persons with disabilities including by providing training on accessing markets;
  - (d) Collect periodically statistics and information on persons with disabilities' access to work as a matter of public accountability.

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

49. The Committee is concerned about the situation of poverty in households with persons with disabilities both in rural and urban areas and in particular among persons with disabilities in ethnic minority groups. It is also concerned about the lack of regularity in the distribution of support and services in rural areas and the absence of monitoring social assistance services for persons with disabilities.
50. **The Committee recommends that the State party:**
  - (a) Take steps to extend urgently the coverage of social protection schemes beyond persons with "severe disabilities" in order to ensure an adequate standard of living to all persons with disabilities who are not currently eligible for social protection schemes, and ensure that support services and social assistance for persons with disabilities are distributed on a regular basis and that progress in the living conditions of persons with disabilities is monitored;

- (b) Expand the coverage of the national development fund for persons with disabilities and facilitate the involvement of organizations of persons with disabilities in the formulation of their goals and priorities;
- (c) Adopt measures to include persons with disabilities in post-2015 development policies, including monitoring with a community and rural focus, and ensure that the needs, perspectives and views of persons with disabilities are taken into account in such policies.

## Participation in political and public life (art. 29)

- 51. The Committee is concerned about restrictions to the right of persons with disabilities to vote and stand for elections and the lack of measures to ensure the secret vote. It is also concerned about the lack of information on accessible information on voting procedures.
- 52. **The Committee recommends that the State party:**
  - (a) Repeal constitutional provisions that restrict the right of persons with disabilities to be elected as members of parliament and to vote on an equal basis with others;
  - (b) Guarantee full accessibility to polling stations throughout the country in election processes and design and develop election-related information on accessible formats for persons with disabilities.

## Participation in cultural life, recreation, leisure and sport (art. 30)

- 53. The Committee notes that the State party has yet to ratify the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.
- 54. **The Committee encourages the State party to take all necessary steps to ratify and implement the Marrakesh Treaty as soon as possible.**

## C. Special obligations (arts. 31-33)

### Statistics and data collection (art. 31)

- 55. The Committee is concerned about the lack of systems to collect information on the situation of persons with disabilities, including the barriers that they face to exercise their rights.
- 56. **The Committee recommends that the State systematically facilitate the collection, analysis and dissemination of data disaggregated by sex, age, disability, indigenous communities, refugee or migrant status and geographical location across all sectors, including health, education, employment, political participation, access to justice, social protection and violence, by disability and according to other categories listed above, and that it amend the census questions, in close cooperation with organizations of persons with disabilities, to accurately reflect the population.**

### International cooperation (art. 32)

- 57. The Committee observes that organizations of persons with disabilities have not been consulted in the design of international cooperation projects and programmes.
- 58. **The Committee recommends that the State party involve organizations of persons with disabilities in the implementation and monitoring of projects supported by international cooperation, in order to ensure that they have an impact on progress towards the implementation of the Convention and the framework of the Sustainable Development Goals.**

### National implementation and monitoring (art. 33)

- 59. The Committee is concerned about the lack of clarity in the designation of a focal point or focal points for the implementation of the Convention within the Government and for a coordination mechanism. It is also concerned that the Kenya National Commission on Human Rights does not form part of the national mechanism for monitoring the Convention, and that the current mechanism does not comply with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It is further concerned at the absence of specific mechanisms for the participation of civil society organizations in the entire process of monitoring the Convention, as set out in article 33 (3) of the Convention.
- 60. **The Committee recommends that the State party appoint explicitly a governmental body to be the focal point for the implementation of the Convention, and consider the appointment of a coordination mechanism under article 33 (1) and elaborate concretely on its prerogatives. It also recommends that the State party establish a national mechanism to monitor the implementation of the Convention, with the participation of the Kenya National Commission on Human Rights, as an institution in compliance with the Paris Principles, in line with article 33 (2) of the Convention, and ensure the full participation of persons with disabilities and their representative organizations in the monitoring process, including by providing the necessary funding.**

## Cooperation and technical assistance

61. Under article 37 of the Convention, the Committee can provide technical guidance to the State party on any queries addressed to the experts via the secretariat. The State party can also seek technical assistance from United Nations specialized agencies with offices in the country or the region.

## Follow-up and dissemination

62. The Committee requests that the State party provide, within 12 months and in accordance with article 35 (2) of the Convention, information on the measures taken to implement the Committee's recommendations as set forth in paragraph 60 above.
63. The Committee also requests that the State party implement the recommendations contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and parliament, officials in relevant ministries, local authorities, organizations of persons with disabilities and members of relevant professional groups, such as education, medical and legal professionals, as well as to the media, using modern social communication strategies.
64. The Committee strongly encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its periodic report.

## Next report

65. The Committee requests that the State party submit its combined second, third and fourth reports by no later than 19 June 2022, and include therein information on the implementation of the present concluding observations. The Committee invites the State party to consider submitting the above-mentioned reports under the Committee's simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the due date set for the report/combined reports of a State party. The replies of a State party to such a list of issues constitute its next report.

