

REPUBLIC OF KENYA

004

Recommended for approval for tabling.



Hon. Speaker

PARLIAMENT

You may approve for tabling.
15/7/19

15/07/19

THE SENATE

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- THIRD SESSION

Approved

16/7/2019

REPORT ON THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2019 (SENATE BILLS NO. 1 OF 2019)

PAPERS LAID	
DATE	July 17 2019
TABLED BY	Sr. Mugo - Vice Chair.
COMMITTEE	Labour
CLERK AT THE TABLE	M. Rajkumar

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

JULY, 2019

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1. Proposed new Bill that had had a wider stakeholder consultation (Persons with Disabilities Bill, 2016/2017)
2. The Persons With Disabilities (Amendment) Bill, 2019 (Senate Bills No. 1 of 2019)
3. Public hearing advert
4. Minutes of the Committee

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- THIRD SESSION

**REPORT ON THE PERSONS WITH DISABILITIES (AMENDMENT)
BILL, 2019 (SENATE BILLS NO. 1 OF 2019)**

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

JULY, 2019

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PREFACE

1. The Standing Committee on Labour and Social Welfare was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 212.

The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

2. In executing its mandate, the Committee oversees the Ministries of:

- a) Labour and Social Protection;
- b) Ministry of Public Service, Youth and Gender Affairs; and,
- c) Sports Culture and the Arts.

3. The Committee comprises the following Members:

- | | |
|--|--------------------------|
| 1. Sen. Sakaja Johnson Arthur | -Chairperson |
| 2. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru | -Member |
| 4. Sen. Poghisio Samuel Losuron, EGS | -Member |
| 5. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 6. Sen. Cherarkey Samson Kiprotich | -Member |
| 7. Sen. Makori Beatrice Kwamboka | -Member |
| 8. Sen. (Dr.) Gertrude Musuruve Inimah | -Member |
| 9. Sen. Lokorio Petronilla Were | -Member |

ACKNOWLEDGEMENT

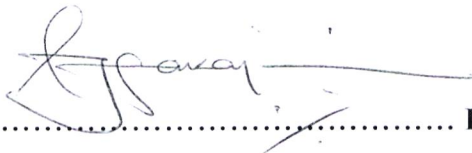
Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 203, to present and lay on the table of the House the report of the Committee on Labour and Social Welfare on the Persons with Disabilities (Amendment) Bill, 2019 (Senate Bills No. 1 of 2019) for consideration by the House.

SIGNED.....



DATE.....

2/7/19

SEN. JOHNSON SAKAJA.

CHAIRPERSON,

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.

1.0 INTRODUCTION

Mr. Speaker Sir,

The Persons with Disabilities (Amendment) Bill, 2019 (Senate Bills No. 1 of 2019) originated in the Senate and was gazetted on 6th February, 2019. The Bill was sponsored by Sen. Aaron Cheruiyot and Sen. Isaac Mwaura.

The Bill was read a first time in the Senate on 12th March, 2019 and committed to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 134(1).

Pursuant to Article 118 of the Constitution and Standing Order No. 134 (4), of the Senate Standing Order, the Standing Committee of the Senate on Labour and Social Welfare facilitated a public hearing forum that was held on 3rd April, 2019 at the Senate Chamber in Main Parliament Buildings to take into account the views and recommendations of the public while preparing this report.

According to its objects and memoranda, the Bill seeks to amend the Persons with Disabilities Act, No. 14 of 2003 to set out the obligations of both the National and County Governments in line with the Constitution to ensure that the County Government obligations are delineated in accordance with the provisions of the Fourth Schedule to the Constitution.

Currently there is no legal framework that sets out the obligations of the County Governments with regard to persons with disabilities. The legislative proposal therefore seeks to impose obligations on each level of government to address the needs of persons with disabilities in line with Article 54 of the Constitution which provides as follows-

(1) A person with any disability is entitled—

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) 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;

(c) to reasonable access to all places, public transport and information;

...

The Committee at its meetings held on 13th March, 2019, 3rd April, 2019 and 28th May, 2019 deliberated on the Bill and considered the submissions from the public hearing and stakeholders.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

2.0 OVERVIEW OF THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2019 (SENATE BILLS NO. 1 OF 2019)

2.1 Objects of the Bill

The Bill sets out the respective obligations of the National and County Governments in relation to the persons with disabilities. Under the Bill, the National Government is mandated with the preparation of national policy and strategy on persons with disabilities while the County Government is obligated to implement the national policy and strategy on the persons with disabilities.

The Bill seeks to review the membership of the National Council for Persons with Disabilities to seven (7) members to ensure the Council becomes more efficient and representative of the county governments.

The Bill requires county governments to only approve plans for the construction of roads and buildings that take in to account accessibility of persons with disabilities. The Bill seeks to ensure that county governments are consulted by the Ministry responsible for sports when developing designs to make sports facilities accessible to persons with disabilities.

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

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

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

b) Consequences of the Bill

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

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 140 (5), the Committee held a public hearing at the Senate Chamber, Main Parliament Buildings on Wednesday, 3rd April, 2019 and received the following oral presentation from the public concerning the Persons With Disabilities (Amendment) Bill, 2019 -

- a) **Kenya National Commission on Human Rights (KNCHR)** gave the following general comments -
- i) That the Bill should be aligned to the Constitution and also domesticate the Convention on Persons With Disabilities;
 - ii) The Bill did not take into account mental and psychosocial disabilities;
 - iii) The Commission should be given the role of monitoring and evaluation since the Commission of Rights of Persons Living with Disabilities (CRPD) gives the Commission, due its human rights nature, that role of reporting at regional and international levels;
 - iv) Caregivers and parents should play a key role when it comes to supporting PWDs; and
 - v) that a parallel process of coming up with a new bill that will totally overhaul the old PWD Act was in progress and was at the Cabinet level.

The Commission then submitted its written submissions which contained amendments to specific clauses; and also a copy of the new Bill that was at Cabinet level.

- b) **Users and Survivors of Psychiatry Kenya** also mentioned that they preferred the new Bill that had undergone extensive stakeholder consultations but gave the following general comments-
- i) The term “mentally retarded should not be used in the Bill and instead use “Persons with Psychosocial disabilities”.
 - ii) The Bill should see the Person before the disability; and
 - iii) The Bill should be aligned to the Convention of Rights for Persons with Disabilities.
- c) **United Disabled Persons of Kenya** presented a joint memorandum together with the Caucus on Disability Rights Advocacy (CDRA) and stated the following –

- i) That there are conflicting sections between the policies and the law and therefore there is need for a total repeal of the Act and replace it with a new one; and
 - ii) That the organization submits its written amendments as it waits for the repeal, which include adding a paragraph to 4C on disqualification of the Chairperson.
- d) **Autism Society of Kenya** thanked the Committee for inviting them to the hearing and mentioned that development disorder is covered very well in the Bill.
- e) **Wesley Educational and Mission Centre** recommended that cancer be treated as a disability condition and urged the Committee to consider the Bill that was at Cabinet level mentioning that it had undergone extensive stakeholder consultations.
- f) **New Age for the Visually Impaired** mentioned that they have waited long for the new Bill on PWD that is at Cabinet level and urged the Committee to follow up on the matter.

The Committee also received written submissions from the Ministry of Labour and Social Protection who attached a copy of the Bill at Cabinet level.

4.0 RECOMMENDATIONS OF THE COMMITTEE

Noting that majority of the stakeholders recommended the total repeal of the old Persons with Disabilities, 2003 Act and introduction of the new Bill (Persons with Disabilities Bill, 2016/2017), that had undergone extensive stakeholder consultations and is currently at the Cabinet level, the Committee resolved that the Sponsors of the Persons with Disabilities (Amendment) Bill, 2019, (Senate Bill No. 1 of 2019); Sen. Aaron Cheruiyot and Sen. Isaac Mwaura step down their bill and publish the new Bill as the Sponsors.

PERSONS WITH DISABILITIES BILL, 2017

ARRANGEMENT OF CLAUSES

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Clause

- 1—Short title.
- 2—Interpretation.
- 3—Guiding values and principles.

PART II - RIGHTS OF PERSONS WITH DISABILITIES

- 4— Right to equality and non-discrimination.
- 5—Right to legal capacity.
- 6—Right to marry and form a family.
- 7—Right to privacy.
- 8— Women with Disabilities.
- 9—Children with Disabilities.
- 10—Youth with Disabilities.
- 11—Elderly Person with disability.
- 12—Right to documents of registration or identification.
- 13—Right to physical and mental integrity.
- 14—Right to human dignity.
- 15—Protection from abuse, exploitation and violence.
- 16—Protection and safety of persons with disabilities in situation of risks and humanitarian emergencies.
- 17—Special measures for persons with disabilities.
- 18— Right to education.

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THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES**

- 31—Establishment of the Council.
- 32— Headquarters and other offices of the Council.
- 33— Functions of the Council.
- 34— Powers of the Council.
- 35— Council may establish Committees.
- 36— Composition of the Council.
- 37—Qualifications for appointment of chairperson and members .
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- 39—Tenure of office of members of the Council.
- 40— Procedure for Appointment.
- 41—Executive Director of the Council.
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- 58—Composition of the Board.
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- 60 —Functions of the Board of Trustees.
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- 63— Incentives.
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Persons with Disabilities Bill, 2016

- 68—Discrimination contrary to article 27 of the constitution.
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- 71— Denial of foods and fluids.
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PART VII- MISCELLANEOUS

- 77—Protection of road users with disabilities.
- 78— Public service vehicles and transport.
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- 81—Apprenticeship, Technical, vocational Training, Rehabilitation and Self-Employment.
- 82— Inspectorate Units and Inspectors.
- 83—Housing.
- 84—Markets.
- 85— Awareness Raising.
- 86— Right to Independent living.
- 87— Enforcement of rights.

Persons with Disabilities Bill, 2016

88—Appointment of Public Prosecutor.

89— General Penalty.

90—Regulations.

91—Repeal of the Persons With Disabilities Act No. 14 of 2003.

92— Transitional and saving provisions.

SCHEDULES

FIRST SCHEDULE

Provisions as to the Conduct of Business and affairs of the Council

SECOND SCHEDULE

Access to Buildings, Auxiliary aid, Sporting Venues and Public Facilities

PERSONS WITH DISABILITIES BILL, 2016

A Bill for

AN ACT of Parliament to give effect to Article 54 of the Constitution; to establish the National Council for Persons with Disabilities and to provide for its functions and powers; to establish the National Fund for the Empowerment and Development of Persons with Disabilities to provide for the promotion and protection of the rights of persons with disabilities, to establish the County Disability Mainstreaming Standing Committee for Persons with Disabilities to majorly advise the Government on the appropriate measures and interventions to be put in place for the protection of the rights of Persons with disabilities in the County and for connected purposes.

PART I-PRELIMINARY

Persons with Disabilities Bill, 2016

Short title. 1. This Act may be cited as the Persons with Disabilities Act, 2016.

Interpretation. 2. In this Act, unless the context otherwise requires-

"adjustment order" means an order made by the Council under section 28 of this Act;

"assistive devices " includes implements, tools, equipment, taped texts, audio, visual and pictorial recording, Braille equipment and materials, tactile equipment, orthopedic appliances and other devices and machines of whatever kind for persons with disabilities for their socio-cultural, economic, civil, political and social being of persons with disabilities; Commented [D1]: Missing?

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

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

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to persons with disabilities;

"Council" means the National Council for Persons with Disabilities established under section 31 of this Act;

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

"discrimination" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes denial of amenities and the use of derogatory words, gestures or caricatures; Commented [D2]: Is there need to mention the denial of reasonable accommodation as done in article 2 of the CRPD?

Commented [D3]: Might already be implied in the definition of discrimination

“disability mainstreaming” means a strategy through which concerns, needs and experiences of persons with disabilities are made an integral part or dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that persons with disabilities benefit equally and inequality is not perpetuated;

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

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

“Fund” means the Persons with Disabilities Empowerment Fund established under section 51;

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

Cap. 253

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

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

“organizations for persons with disabilities” means associations, groups, non-governmental organizations or societies formed for the purposes of rendering services to persons with disabilities;

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

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

“public building” means a building, place of lodging, recreation, transportation, education, or dining, along with stores, care providers, and places of public

displays, irrespective of ownership, which is used to render different types of services for people in the society and accessed by the general public at large, and includes its entrance, exit, parking space, footpath and other appurtenant lands;

“reasonable accommodation” means necessary and appropriate modification and adjustments —not imposing—a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

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

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

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

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

Guiding
Values and
Principles.

3. In promoting and protecting the rights of persons with disability under this Act or any other law, every state organ, state office, public officer and all persons including incorporated and unincorporated business associations, civil society and organizations of and for persons with disability shall be guided by the following principles—

- (a) respect for inherent dignity, and individual autonomy including the freedom to make one’s own choices, and the independence of all persons in the conduct of their private affairs;

- (b) equality and non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disability and respect for the right of children with disability to preserve their identities.

PART II- RIGHTS OF PERSONS WITH DISABILITIES

Right to
Equality and
Non-
Discrimination.

4. (1) Every person with disability is-

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

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

(3) Discrimination against persons with disability by public and private entities at any levels of life is prohibited.

Right to Legal
Capacity.

5. (1) Every person with disability has the right to recognition of legal capacity before the law and shall have the right to protection and benefit of the law on an equal basis with others.

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

Persons with Disabilities Bill, 2016

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

Right to marry and form a family.

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

(2) Every Person with Disability has the right to control their sexuality and reproductive health.

(3) No person with disability shall be separated from his or her child on the ground of disability.

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

Commented [D4]: What would this look like?

Right to Privacy.

7. (1) Every person with disability has a right to privacy and shall not be subjected to arbitrary interference and intrusion with his or her privacy, family, home or correspondence or other types of communication.

(2) Every public and private institution shall protect confidential information relating to personal health, habilitation and rehabilitation services for persons with disabilities with dignity and such information shall not be shared without express authority of the person with disability concerned.

Women with Disabilities

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

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

Persons with Disabilities Bill, 2016

and

(g) full development, advancement and empowerment.

Children with
Disabilities

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

- (a) a name and registration immediately after birth;
- (b) evolving capacities, identities and to enjoy a full and decent life, in conditions which promote and ensure dignity, self-reliance, and independence;
- (c) freedom to express his or her views on all matters affecting him or her; and
- (d) age-appropriate assistance to realise his or her rights.

Youth with
Disabilities

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

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

- (a) promoting full, inclusive and accessible education, training and employment and programmes for youth with disabilities;
- (b) promoting the inclusion of youth with disabilities in mainstream youth organisations and programmes;
- (c) removing barriers that hinder or discriminate against the participation of youth with disabilities in society;
- (d) promoting training and access to Information, Communication and Technology especially for youth with disabilities in rural areas;
- (e) developing programmes to overcome social and economic isolation, and removing systemic barriers in the labour market for youth with disabilities;
- (f) ensuring access to credit facilities for youth with disabilities; and
- (g) developing and implementing special measures to facilitate full and equal

Persons with Disabilities Bill, 2016

participation of youth with disabilities in training, sports, culture, science and technology.

Elderly
Persons with
Disabilities

11. Every elderly person with disability has the right to enjoyment of human rights and fundamental freedoms on an equal basis with others, including the right to—

- (a) access social protection programmes;
- (b) exercise his or her legal capacity and that appropriate measures and safeguards are put in place to provide him or her with support he or she may require to exercise the legal capacity; and
- (c) access inclusive services.

Right to
documents of
registration or
identification

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

(2) No person with disability shall be deprived, on the basis of disability, of his or her ability to obtain, possess and utilize documentation of his or her nationality or other documentation of identification, or to utilize relevant processes, that may be needed to facilitate exercise of other rights.

Right to
physical and
mental
Integrity

13. Every Person with disability has— a right to respect for his or her physical and mental integrity and the right to security of the person including his or her survival, liberty, protection and development.

Right to
Human Dignity

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

Commented [D5]: Is there a need to define derogatory?

Commented [D6]: Human dignity should be addressed as a right by itself in an independent section of its own.

Protection
from abuse,
exploitation
and violence

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

Commented [D7]: Is it relevant to mention this?

(2) Any person or organization working with a person with disability, or any person, who has reason to believe that an act of exploitation, neglect, violence or

abuse has been, or is being, or is likely to be committed against any person with disability, shall give information about it to law enforcement agencies in whose jurisdiction such incident occurs or is likely to occur, and such agencies shall take immediate steps on the receipt of such information to stop it and have the persons responsible for it arrested, or, if it has not occurred, to prevent its occurrence.

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

Protection and Safety of Persons with Disabilities in situations of risk and humanitarian emergencies.

16. (1) Every person with disability has a right to suitable and specialized protection and safety in situations of risk, including but not limited to situations of tribal clashes, fire, armed conflict, cattle rustling, humanitarian emergencies, floods, epidemics, earthquakes, terrorism, collapsing buildings, and the occurrence of natural disasters.

Commented [D8]: Should be summed up as natural and man-made disasters and humanitarian emergencies. The specifics should then be mentioned in the definition part.

(2) Every institution, whether public or private, shall maintain an inventory of all persons with disabilities if any, within its establishment, and shall submit such inventory to the National and County governments and any other agencies responsible for disaster management.

(3) Entities which run places to which the public has access shall take appropriate measures to ensure protection and safety of persons with disabilities during the occurrence of any disaster and in situations of risk and humanitarian emergencies.

(4) The Kenya Defence Forces, the National Police Service and any other establishment whether public or private, engaged in emergency or humanitarian services shall, in all situations of armed conflict, tribal clashes, internal displacement, fire, armed conflict, cattle rustling, humanitarian emergencies, floods, epidemics, earthquakes, terrorism, collapsing buildings, or the occurrence of natural disasters, take measures to ensure the safety and protection of persons with disabilities in light of the obligations under the relevant international conventions on human rights.

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

Persons with Disabilities Bill, 2016

Special
measures for
persons with
Disabilities

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

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

Right to
Education.

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

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(2) No child or other person with disability shall be excluded from the education system on the basis of disability.

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

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(4) The National and County Governments shall ensure that persons with disabilities have access to inclusive education, without discrimination and on an equal basis at all levels.

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

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

(7) The Council in consultation with relevant Government –establishments shall ensure that -

(a) learning institutions take into account the needs of persons with disabilities with respect to the set entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations;

(b) learning institutions provide individualized support measures, appropriate equipment, assistive devices, adoptive technologies and other supportive services in environments that maximize academic and social development, consistent with the goal of full inclusion of students with disabilities.

(c) the Ministry responsible for education formulates strategies to implement inclusive education through-

- (i) enforcement of recruitment and retention of special education teachers in all schools and institutions;
- (ii) development of a least restrictive environment by adaptation and structural adjustments of all educational institutions to the needs of persons with disabilities
- (iii) establishment of specialized institutions that undertake research and development in education for learners with disabilities.
- (iv) establishment of at least one assessment center in each county to support educational institutions within the county, by way of teacher trainers, educational aids, equipment and materials.
- (v) promotion of the use of appropriate augmentative and alternative modes, means and formats of communication, adoptive technologies, including Braille and Kenya Sign Language; and
- (vi) introduction of Kenya sign language interpretation course in all training institutions.

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

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

(10) In addition to subsection 9 the court may order unconditional admission of the person with disability.

(11) The Cabinet Secretary responsible for education shall-

- (a) facilitate through policies and legislations, the development of persons with disabilities through their personality, talents and creativity, as well as their mental and physical abilities, to their

fullest potential;

- (b) in collaboration with the relevant line ministries shall provide training facilities for speech therapy, occupational therapy, physiotherapy, guidance and counseling, audio-logical assessments, habilitation, and aural and oral rehabilitation for children with disabilities; and
- (c) together with the County Education Committees in charge of education make policy, legislation and sustainable financial frameworks in each financial year to achieve full realization of the right to education for persons with disabilities.

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

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

Right to work
and
Employment
for Persons
with
Disabilities

19. (1) No employer shall discriminate against a qualified person with disability in job application procedures, hiring, advancement and other terms, conditions, and privileges of employment.

(2) Every employer shall—

- (a) reserve five per cent direct employment opportunities for persons with disabilities to secure employment;
- (b) formulate policies and programmes to promote basic human rights, improve working conditions, and enhance employment opportunities for persons with disabilities;
- (c) when recruiting, not discriminate solely on account of disability;
- (d) not conduct any test or examination to establish whether an applicant is a person with a disability or as to the nature or severity of the person's disability; and

(e) be required to carry out appropriate modifications in their work premises to accommodate the employment of persons with disabilities;

(3) Every employer shall submit an annual report on the status of employment of persons with disabilities within their establishments to the Council in a format as may be prescribed by the Council.

(4) Every employer shall apply special measures to employees with disabilities in promotions, training and other related matters arising in the course of, or through the length of employment.

(5) Without limiting the generality of subsection (2) (c), the following may constitute acts of discrimination—

- (a) limiting, segregating or classifying a job applicant with disabilities in a manner which adversely affects his or her work opportunities;
- (b) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out or prohibit career progression of persons with disabilities;
- (c) utilizing standards, criteria, or methods of administration showing the effect of discrimination on the basis of disability or perpetuating the discrimination of others who are subject to common administrative control;
- (d) providing less payment, remuneration or fringe benefits, to a qualified employee with disability, than the amount paid to others performing the same work;
- (e) favoring an employee without disability over a qualified employee with disability with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;
- (f) re-assigning or transferring a qualified employee with disability from a task or position the employee is able to ~~can~~ perform to one which he or she cannot perform because of his or her disability;
- (g) failing to select or administer in the most effective— manner, employment tests which accurately reflect the skills, and aptitude of an applicant or employee with disability, rather than the impaired sensory, manual or speaking skills of such applicant or employee: if any; and

(h) excluding persons with disabilities from membership in trade and labour unions or similar organizations.

(7) For the purposes of subsection (5), the age of retirement shall be the age as may be provided in regulations made by the Cabinet Secretary Secretary in consultation with the Cabinet Secretary.

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(8) For purpose of this section (a) "reasonable accommodation" for purposes of employment includes-

(i) making existing facilities used by employees readily accessible to and usable by persons with disabilities; and

(ii) job restructuring, part time or modified work schedules, reassignment to a vacant or suitable position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or policies, the provisions of qualified readers or interpreters, and other similar accommodations for persons with disabilities.

(b) "employer" means an employer in the public service;

(c) "discrimination" may include-

(i) limiting or classifying a job applicant or employee in an adverse way;

(ii) denying employment opportunities qualified persons;

(iii) not making reasonable accommodation for the known physical or mental limitations of an employee with disabilities;

(iv) not advancing employees with disabilities in employment; and

(v) not providing necessary accommodations in training materials or policies; and the provision of qualified readers or interpreters.

No dismissal
for employee
with disability.

20. No person with disability shall be dismissed or suffer any reduction in rank solely on the grounds of disability, acquiring any disability, or any consequences thereof:

Provided that-

- (a) if any employee with disability is placed under undue stress or disadvantage in the usual course of employment as a result of the disability, such employee shall be eligible for a post at the same rank with adequate support; and
- (b) such employee may, if required by the nature of disability, be deployed to another post with the same pay scale and service and if it is not possible to adjust the employee against any post, the employee may be kept on a supernumerary post until a suitable post is available or he attains the age of retirement, whichever is earlier.

Incentive for private employer.

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

Provided that such an employer shall present proof certified by the Council of the employees of the person in respect of whom it claims the deduction and the persons with disabilities so employed are accredited with the Council as to their disabilities, skills and qualifications.

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

Right to Health.

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

(2) Every person with disability has the right to the enjoyment of sexual and reproductive health rights on an equal basis with others.

(2) Every person with disability has the right to information that will enable him or her to make responsible and informed choices about their sexual and reproductive health.

(3) Every person with disability has a right to be treated with respect, privacy and dignity while seeking health related services.

(4) Every person with disability shall be entitled to free medical care and

treatment on condition of his or her disabilities in public owned health institutions

(5) Medical assessment reports for persons with disabilities, including for purposes of registration, employment or compensation shall be done free of charge in public-owned health institutions.

(6) Every national or referral health institution shall employ at least two Kenya Sign Language interpreters with gender consideration in hospital organizational structure;

(7) No person shall subject a person with disability to any medical procedure which leads to or could lead to infertility without that person's express consent:

Provided that where the person with a disability is a minor such procedure may in cases of medical necessity confirmed by a medical practitioner, be performed with the parent or guardian's consent.

Council to
participate in
Health
Programmes.

23. (1) The Council shall be represented in the implementation of the National and County Health Programs under the Cabinet Secretary and County executive committee responsible for health for the purpose of—

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

(2) Every person with disability has a right to information, communications technologies and systems which includes talking software, Braille materials, hearing aids and other communication devices.

Access to
information
and
communication
technology
services.

24. (1) Every person with disability has the right to access information, communication and other services including the right to freedom of expression and opinion, the freedom to seek, receive and impart information and ideas, electronic and emergency services open or provided to the public on an equal basis with

others in a timely manner and without additional cost and through all forms of communication of his or her choice.

(2) It shall be the obligation of public institutions to provide information intended for the general public, including through the internet, to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities.

(3) Public institutions shall accept and facilitate the use of Kenya sign language, Braille, augmentative and alternative communication, and all other accessible means and usable formats of communication to accommodate the needs of persons with disabilities;

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

(5) All telecommunications entities in Kenya shall take steps to ensure functionally equivalent services for consumers with disabilities to effectively access services, products and programs offered by them.

(6) All television stations shall provide a Kenya sign language inset, subtitles in newscasts, and educational programs, and in all programs covering events of national and international significance.

(7) All public institutions of higher learning shall have a common course in Kenya Sign Language.

(8) Any public institution which fails to comply with the provisions of this section shall have its licence suspended and shall not be reinstated until it complies.

Access to
Justice.

25. (1) Every person with disability has a right to effective access to justice on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, at investigative and other preliminary stages.

(2) The Attorney-General, in consultation with the Council and the Law Society of Kenya, shall make regulations providing for free legal services for persons with disabilities with respect to the following—

(a) matters affecting the violation of the rights of persons with

disabilities or the deprivation of their property;

- (b) cases involving capital punishment of persons with disabilities; and
- (c) such matters and cases as maybe prescribed in the regulations made by the Attorney General.

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

- (a) the exemption, of persons with disabilities from the payment of court fees in relation to matters or cases described in subsection 2 (3); and
- (b) the provision, to persons with disabilities who attend court, of free Kenya Sign Language interpreters, Braille services, other communication formats and technologies accessible to persons with disabilities, physical guide assistance and intermediaries.

(4) Accused persons with disabilities who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made in accordance with standards prescribed under this Act.

(5) The Chief Justice shall endeavour 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.

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

Sports,
Recreation,
Leisure and
Culture.

26. (1) Every person with disability has a right to take part on an equal basis with others in sports, recreation, leisure and cultural activities national, regional and international levels.

(2) The Cabinet Secretaries responsible for —sports, recreation, leisure and cultural activities, in consultation with the Council, shall take appropriate measures to enable persons with disability to have the opportunity to develop and utilize their creative, artistic and intellectual potential.

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

(4) Every public and private institution with sporting, recreation, leisure and

Persons with Disabilities Bill, 2016

cultural activities for their employees shall ensure that such sporting, recreational, leisure and cultural activities are sensitive to the needs of persons with disabilities.

(5) Government agencies and institutions responsible for curriculum development shall restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities.

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

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

Accessibility.

27. (1) 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.

(2) Every person with disability has a right to accessibility as an essential pre-condition to enable him or her to live independently and participate fully in all aspects of life and shall have the right to be provided with such accessibility to the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services including emergency services open or provided to the public.

(3) Public and private institutions shall implement minimum standards and guidelines for the accessibility of facilities and services open or provided to the public to accommodate all aspects of accessibility for persons with disabilities.

(4) Every person with disability has the right to free movement with his or her assistive devices and services including guide animals and no person with disability shall be denied access to any public place because of the nature of his or her assistive devices and services.

(5) The relevant government agencies when approving building plans shall ensure that such plans are compliant to the accessibility standards and regulations promulgated.

Persons with Disabilities Bill, 2016

(6) The Council shall work with relevant government agencies and the private sector in the development and promulgation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.

(7) The standards and guidelines promulgated under sub-section (3) shall ensure that they are age and gender appropriate and are applicable to-

- (a) all buildings and facilities used by the public;
- (b) permanent, temporary or emergency conditions;
- (c) road and rail based transport;
- (d) aviation;
- (e) maritime transport and ports;
- (f) pedestrian infrastructure including zebra crossings and sidewalks;
- (g) public transport system;
- (h) any other mode of transport;

in order to enable persons with disability to travel— with safety and comfort.

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

(9) All new construction, modification or alterations on built environment immediately after the effective date of this Act shall fully comply with the standards set out in the Second Schedule on accessibility of the built environment for persons with disabilities.

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

Adjustment
Orders.

28. (1) This section shall apply to-

- (a) all premises to which members of the public are ordinarily admitted

whether on payment of a fee or otherwise;

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

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

(a) setting out:-

- (i) a full description of the premises, services or amenities concerned; and
 - (ii) the grounds upon which the Council consider that the premises, services or amenities are inaccessible to persons with disabilities;
- (b) requiring the owner or provider concerned to undertake at his or her own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned; and
 - (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

(3) Before serving the Adjustment Order under subsection (2.), the Council shall serve notice upon the person concerned-

- (a) specifying the grounds upon which the Adjustment Order is to be issued and the nature of the action which the Council considers necessary to rectify the situation which has given rise to the proposed order;
- (b) stipulating the maximum period that the Council considers reasonable for the implementation of the action it proposes to order; and
- (c) calling upon the person concerned, to make representations to the Council within a specified period from the date of the service of the

notice.

(4) After considering the representations if any, referred to in subsection (3) (c), the Council may issue, refrain from or defer the issuing of an Adjustment Order.

(5) Within thirty days after an Adjustment Order is confirmed or issued under subsection (4), the person concerned may appeal to the High Court against the confirmation or issue of the Adjustment Order.

(6) A person is guilty of an offence if he or she fails to comply with an adjustment order served under this section.

(7) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

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Civil and
Political rights
for persons
with
disabilities.

29. (1) Every Person with disability has a right to participate in political and public life and the opportunity to enjoy them on an equal basis with others, and to vote for and be voted directly or through freely chosen representatives in any public or political office.

(2) It shall be the responsibility of the Independent— Electoral and Boundaries Commission to facilitate persons with disabilities in the exercise their civic and political rights by-

- (a) providing voting procedures, facilities and materials which are appropriate, accessible and easy to understand and use;
- (b) protecting the rights of persons with disabilities to vote by secret ballot in elections without intimidation and to offer themselves for elections;
- (c) allowing assistance in voting by a person of their own choice, on request and facilitating the use of assistive and appropriate technologies; and

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

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

Registration of
Persons with
Disabilities.

30. (1) In order to facilitate access by persons with disability to the rights set out under this Part, the Council shall register on a continuous basis—

- (a) persons with disabilities, to whom it shall issue disability identification cards in such form as it may determine;
- (b) institutions, entitles owned by Persons with Disabilities, associations and organizations, including those controlled and managed by the Government, which promotes the rights of and provide services to persons with Disabilities and issue certificates of registration thereof;

(c) all existing organizations of or for persons with disabilities shall apply in the prescribed manner to the Council for registration;

(d) all organizations of ~~or~~ Persons with Disabilities and any integrated organization with at least seventy per cent persons with disabilities shall within 12 months of formation, apply to the Council, in the prescribed manner, for registration.

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

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

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

PART III A- ESTABLISHMENT, POWERS AND FUNCTIONS OF THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

Establishment
of the Council.

31. (1) There is hereby established a council to be known as the National Council for Persons with Disabilities.

(2) The Council shall be a body corporate with perpetual succession and have a common seal and shall be capable, in its corporate name of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing;

(d) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may be lawfully done or performed by a body corporate.

Headquarters
and other
offices of the
Council.

32. (1) The headquarters of the Council shall be in the Capital city of the Republic of Kenya.

(2) The Council shall establish its offices and decentralize its services to other parts of the country as it considers necessary in accordance with Article 6(3) of the Constitution.

Persons with Disabilities Bill, 2016

(3) The Council shall be the successor in title to the National Council for Persons with Disabilities existing immediately before the commencement of this Act and upon such commencement the transitional provisions set out in section 8 7 shall apply.

Functions of
the Council.

33. (1) The functions of the Council shall be to work with other relevant Government agencies and the private sector to—

- (a) Advise on, and enforce accessibility, reasonable accommodation, non discrimination for persons with disabilities and with regard to information, goods, services and the built environment and their participation in society on an equal basis with others;
- (b) Advise on formulation and development of policy and legal framework, administrative actions, measures, guidelines, standards, strategies and mobilize resources designed to—
 - (i) ensure persons with disabilities have access to facilities and services which ensure effective enjoyment of the right to life;
 - (ii) Facilitate achievement of equal opportunities for persons with disabilities by ensuring that they obtain education and employment and participate fully in sporting, recreational and cultural activities and are accorded full access to community and social services;
 - (iii) advise the government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country for purposes of planning;
 - (iv) advise the Cabinet Secretary on the provisions of any national, regional or international agreements and treaties relating to issues affecting persons with disabilities and their benefits to the country;
 - (v) provide assistive devices, appliances and other equipment to persons with disabilities registered with the Council;
 - (vi) make provision for assistance to students with disabilities registered with the Council in the form of scholarships, loan programmes, fee subsidies, assistive devices and related technologies and other similar forms of assistance in both public

and private institutions;

- (vii) Advise on and oversee inclusion and mainstreaming of disability in execution of development at the national and county level, and provide technical support to public and private sectors;
- (viii) ensure information and communication, transportation, built environment, utilities and services are accessible to persons with disabilities;
- (ix) actualize healthcare needs of persons with disabilities and ensure persons with disabilities are knowledgeable of their own health conditions, health-care personnel support and protect the rights and dignity of persons with disabilities;
- (x) consult with the Government in the provision of suitable and affordable housing for persons with disabilities;
- (xi) prevent discrimination against persons with disabilities;
- (xii) operationalize programmes for self-employment or regular employment for the generation of income by persons with disabilities;
- (xiii) in collaboration with the health service providers secure habilitation and rehabilitation of persons with disabilities within their own communities and social environment;
- (xiv) ensure continuous improvement on accessibility and usability of physical environment, roads, transportation, information and communications, indoor and outdoor facilities, including schools, housing, medical facilities and workplace and other facilities and services open or provided to the public meet the needs of persons with disabilities; and
- (xv) ensure that private entities offering facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) facilitate systematic collection, analysis and use of national statistics and data on issues relating persons with disabilities;
- (d) to provide—

- (i) information and technical assistance to institutions, associations and organizations concerned with the rights, habilitation and rehabilitation of persons with disabilities, and
- (ii) advise on the relative priorities to be given to the implementation of national and international human rights instruments on persons with disabilities.
- (e) intensive public awareness and education on the rights of persons with disabilities;
- (f) carry out and publicize research on any matter relating to human rights of persons with disabilities;
- (g) establish and maintain linkages and networking with local and international organizations, including organizations of and for persons with disabilities;
- (h) promote the establishment of self-help organization and the setting up of specific projects for the benefits of persons with disabilities, and
- (i) perform such other functions as may be assigned to the Council under this or any other law.

Powers of the Council.

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

- (a) enforce and generally administer the provisions of this Act and any other related laws;
- (b) issue adjustment orders;
- (c) conduct accessibility audits;
- (d) issue summonses or other orders in the conduct of its requiring the attendance of such person, organization or institution as it deems necessary for the fulfilment of its mandate;
- (e) control, supervise and manage the assets and liabilities of the Council in such a manner and as best provides for the purposes of the Act;
- (f) seek and receive any grants, testamentary gifts, donations and make legitimate disbursements from such grants, testamentary gifts and

donations for its purposes;

- (g) levy such fees and charges for its services as may be provided in this Act;
- (h) enter into association with other bodies within or outside Kenya which the Council may consider desirable or appropriate;
- (i) subject to the law on Public Finance, the Council invest the funds of the Council not immediately required for the purposes of the Council;
- (j) open and operate such accounts as are necessary for the funds of the Council with a bank or financial institution licensed to conduct banking business under the Banking Act to be approved by the National Treasury which shall be operated and maintained in the manner as may be prescribed by the National Treasury under the Public Finance Management Act; and
- (k) do all such other things or acts as may be necessary for the performance of its functions under this Act.

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Council may
establish
Committees.

35. For the better performance of its functions under this Act, the Council may—

- (a) constitute committees consisting of its members; and
- (b) co-opt experts, where appropriate, to serve on such committees for a renewable period of one year,

and may assign to any committee such functions of the Council as it may determine.

Composition
of the Council.

36. (1) The Council shall consist of the following—

- (a) the Chairperson, who shall be drawn from organizations of persons with disabilities and who shall be appointed by the president;
- (b) The Principal Secretary in the Ministry responsible for matters relating to

disabilities or a representative duly appointed in writing;

- (c) Principal Secretary in the Ministry— responsible for finance or a representative duly appointed in writing;
- (d) the following appointed by the Cabinet Secretary—
 - (i) four persons representing various categories of disabilities, nominated by organizations of persons with disabilities;
 - (ii) two persons nominated by organizations for persons with disabilities, one of whom shall be from organizations of parents of persons with mental disabilities;
- (e) the Executive Director of the Council who shall be the Secretary to the Council.

(2) The appointing authority, in making appointments under this section, shall ensure that—

- (a) there is equitable representation of categories of persons with disabilities and that not more than two-thirds of the members are of the same gender;
- (b) at least one of the members of the Council shall be from a rural-based organization;
- (c) persons appointed have knowledge or experience of the needs of persons with disabilities and belong to a related group or organisation;
- (d) the requirement of a mix of skills across all functionalities of the Council is observed.

37. (1) A person shall be qualified for appointment as the chairperson of the Council if the person-

- (a) is a Kenyan citizen;
- (b) holds at least a first degree from a university recognized in Kenya;
- (c) has knowledge and at least ten years' working experience, of which five years shall be on matters relating to disabilities, human rights or social development; and

Qualifications
for
appointment of
chairperson
and members.

(d) meets requirements of Chapter Six of the Constitution

(2) A person shall be qualified for appointment as a member of the Council if the person-

(a) is a Kenyan citizen;

(b) has knowledge and at least five years experience of which three years shall be on matters relating to disabilities;

(c) meets the requirements of Chapter Six of the Constitution of Kenya.

(3) A person shall not be qualified for appointment as the chairperson or a member of the Council if such person-

(a) has been removed from office for contravening the provisions of the Constitution or any other law;

(b) is a public officer;

(c) is a member of a governing body of a political party;

(d) is a member of Parliament or a county assembly;

(e) has been convicted of a felony and sentenced to a term of imprisonment;

(f) has been convicted of an offence under this Act;

(g) has been compelled to resign or been removed from office, on account of abuse of office;

(h) is adjudged bankrupt or has entered into a composition scheme or arrangement with the creditors; or

(i) is disqualified under the provisions of any other written law from appointment as such.

38. (1) The members of the Council shall, at their first meeting elect one among their number to be a vice chairperson.

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

Election of the
Vice-
Chairperson.

Tenure of
office of
Members of
the Council.

39. (1) The Chairperson and members of the Council shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(2) A member may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary, or in the case of the Chairperson, to the President;

or

(b) be removed from office by the Cabinet Secretary if the member—

- (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson, or in the case of the chairperson, without the permission of the Cabinet Secretary;
- (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with the creditors;
- (iii) is convicted of an offence involving fraud or dishonesty;
- (iv) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (v) is found to have acted in a manner prejudicial to the aims and objectives of this Act;
- (vi) fails to comply with the provisions of this Act relating to disclosure of interest as provided under the First Schedule to this Act; or
- (vii) is otherwise unable or unfit to discharge his or her functions as a member of the Council.

(3) The First Schedule shall apply with respect to the conduct of the business and affairs of the Council.

Procedure for
Appointment.

40. (1) Whenever a vacancy occurs in the office of the Chairperson or a member, the executive director shall forthwith notify the Public Service Commission accordingly.

(2) The Public Service Commission shall, within a period of fourteen days

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

(3) The Commission shall consider all applications submitted under subsection (2) and, within a period of fourteen days from the expiry of the period specified in the notice issued under that subsection, forward names of persons nominated for appointment to—

(a) the President, in the case of the Chairperson, or

(b) the Cabinet Secretary in the case of a Member.

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

Executive
Director of the
Council.

41. (1) The Council shall appoint an Executive Director through an open, transparent and competitive recruitment process.

(2) The Executive Director shall be the secretary to the Council.

(3) A person shall be qualified for appointment as the Executive Director of the Council if the person-

(a) is a citizen of Kenya;

(b) holds a minimum of a Masters' degree or its equivalent from a university recognized in Kenya;

(c) has at least fifteen years of proven work experience five years being at senior management level in a public or private institution; and

(d) meets the requirements of Chapter Six of the Constitution.

(4) The Executive Director shall hold office for a renewable term of three years renewable once.

(5) The Executive Director shall be the accounting officer of the Council and be responsible to the Council for the day-to-day management of the affairs of the Council, and shall perform such other functions as may be conferred on him or her by this Act or by any other written law.

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Removal of the Executive Director.

42. The Executive Director may be removed from office by the Council in accordance with the terms of his contract of service and the Employment Act.

Remuneration of Chairperson and Members.

43. The Chairperson and Members of the Council shall be paid such allowances as may be approved by the Cabinet Secretary with the advice of the Salaries and Remuneration Commission.

Staff of the Council.

44. (1) The Council may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms as the Council in consultation with the Salaries and Remuneration Commission may determine.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Council may determine.

(3) The National and County Governments may, upon request by the Council second to the Council such number of public officers as may be necessary for the proper performance of the functions of the Council.

(4) A public officer seconded to the Council shall, during the period of secondment, be deemed to be an officer of the Council and shall be subject only to the direction and control of the Council.

(5) The Council may establish a superannuation scheme for its employees and make such payments towards insurance as may be required under the relevant laws.

Delegation by the Council.

45. (1) The Council may delegate to any of its committees, members, the Executive Director, agencies either generally or otherwise as provided by the instrument of delegation, any of its powers other than—

- (a) duties to make decision under the Act;
- (b) power of delegation itself; and
- (c) the powers to revoke or vary delegation.

(2) A delegated power shall be exercised in accordance with the instrument of delegation.

(3) A delegation may, at any time, be revoked or varied by the Council.

Enquiries by the

46. (1) The Council may conduct an inquiry or a sectoral investigation —

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Council.

- (a) where it considers it necessary or desirable for the purpose of carrying out its functions; and
- (b) upon receiving a direction by the Cabinet Secretary in writing, requiring it to conduct an inquiry or a sectoral investigation into a matter specified in the direction.

(2) A direction by the Cabinet Secretary under subsection (1)(b) shall specify a period within which the Council shall submit its report to the Cabinet Secretary.

(3) At the request of a regulatory body, the Council may conduct an inquiry into any matter affecting persons with disabilities and provide a report within a reasonable period.

**PART III B - COUNTY DISABILITY MAINSTREAMING
STANDING COMMITTEE**

County Disability
mainstreaming
standing Committee.

47. (1) There is established in each county, a County Disability Mainstreaming Standing Committee –

- (a) five persons representing various categories of disability, nominated by organizations of persons with disability;
- (b) two persons, a man and a woman representing parents and guardians of persons with disabilities in the county; and
- (c) Chief Officer for the time being responsible for matters relating to persons with disabilities, who shall be an ex-officio member;
- (d) the County Coordinator for Social Development for the time being responsible for matters relating to persons with disabilities, who shall be co-secretary to the Committee;
- (e) the County National Council for Persons with Disabilities Officer responsible to the Director of the National Council for Persons with Disabilities, who shall be co-secretary to the Committee;

(2) The Chairperson and deputy chairperson of the Board shall be elected by members at the first sitting of the Board from among the members appointed under paragraph (a).

The functions of
County Disability
Mainstreaming -
standing Committee.

48. The functions of the Committee shall be to-
- (a) establish and maintains data bases of Persons with disabilities residing in the respective counties
 - (b) monitor and evaluate the progress made by the county government in ensuring the implementation of the Constitution towards the realization of Rights of person: with disabilities;
 - (c) advise the Government on the appropriate measures and interventions to be put in place for the protection of the rights of Persons with disabilities in the County;
 - (d) In consultation with various county government departments, design and Implement programmes to promote the socio-economic development, including participation in cultural life, recreation and sports by persons with Disabilities in the county; and
 - (e) Provide guidelines in county planning and budgeting processes to ensure that disability issues are mainstreamed and adequate resources allocated to Programmes targeting persons with disabilities.

revenue and expenditure, differentiating the recurrent, development and the Fund expenditure of the Council for that financial year.

(3) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor General the Accounts of the Council in respect to that year together with--

- (a) a statement of the income and expenditure of the Council during that financial year;
- (b) a balance sheet of the Council as at the last day of that financial year;
- (c) a statement of the assets and liabilities of the Council as at the last day of that financial year;
- (d) any other records of account required under the Public Audit Act, 2003; and

(4) The audited accounts of the Council shall be in accordance with the Public Audit Act and the Public Finance Management Act.

Annual Report.

55. (1) Within a period of three months after the end of each financial year, the Council shall prepare an annual report in respect of that financial year and submit it to the Cabinet Secretary.

(2) The annual report shall-

- (a) provide information regarding the activities and plans of the Council during the year and such additional information or other material as the Cabinet Secretary may request in writing;
- (b) outline measures taken by it towards the realization of the values and principles of the public service in accordance with Articles 10 and 232 of the Constitution; and
- (c) contain a financial statement in respect of the year.

(3) The Cabinet Secretary shall, within two months after receiving the annual report, transmit it to the National Assembly.

(4) The annual report shall be published and publicized in such other manner

as the Council may determine.

PART V- THE NATIONAL FUND FOR THE DEVELOPMENT AND EMPOWERMENT OF PERSONS WITH DISABILITY

Establishment of the Fund.

56. (1) There is established a Fund to be known as the National Fund for the Development and Empowerment of Persons with Disability.

(2) The Fund is established as a permanent Fund.

(3) The Fund shall vest and be administered by a Board of Trustees, appointed in accordance with Section 53.

(4) The Fund and income therefrom shall be applied for the benefit of persons with disabilities in Kenya.

(5) The provisions of the First Schedule shall apply, mutatis mutandis, to the meetings of the Board of Trustees.

Sources of Fund.

57. (1) The sources of the Fund shall be-

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Fund;
- (b) income generated by investments made by the Board with the approval of the Council;
- (c) any grants, donations, bequests or other contributions made to the Fund;
- (d) fees collected by the Council and retained to defray its expenses;
- (e) all other payments due to the Fund in respect of any matter incidental to its functions.

Composition of the Board.

58. (1) The Board of Trustees shall consist of the following members appointed by the Cabinet Secretary by notice in the Gazette—

- (a) a chairperson, being a persons who holds a first degree from a university recognized in Kenya and has knowledge and at least ten years' experience in financial management of which five years shall be in senior management;

- (b) three persons who hold a first degree from a university recognized in Kenya representing different categories of persons with disability with not less than five years' experience in financial management;
- (c) one person representing the Principal Secretary for the National Treasury;
- (d) one person representing the Principal Secretary for the time being responsible for matters relating to disability;
- (e) one person who has knowledge and experience and has had a distinguished career of not less than five years in project management;
- (f) the Chief Executive Officer of the Council who shall be the Secretary

(2) In the appointment of the Board, the Cabinet Secretary shall act in consultation with the Council and shall ensure that the process is open, transparent and competitive.

(3) Not more two thirds of the persons appointed to the Board shall be of the same gender.

Tenure of office of Chairperson and members of the Board of Trustees.

59. (1) The Chairperson and Members of the Board of Trustees shall serve for a term of three years but shall be eligible for reappointment for one further term of three years.

(2) The Office of Chairperson or member of the Board of Trustees shall become vacant if the holder—

- (a) dies;
- (b) is, without reasonable cause, absent from three consecutive meetings of the Board;
- (c) resigns from office by notice in writing addressed to the Cabinet Secretary;
- (d) is removed from office for any of the following grounds—
 - (i) inability to perform the functions of the office due to physical

or mental infirmity;

- (ii) incompetence or neglect of duty;
- (iii) is adjudged or otherwise declared bankrupt under any written law;
- (iv) violates the provisions of Chapter Six of the Constitution; or
- (v) is convicted of criminal offence and sentenced to imprisonment for a term of not less than six months.

Functions of
the Board of
Trustees.

60. (1) The functions of the Board of Trustees shall be—

- (a) generally administer the Fund in accordance with the provisions of this Act;
- (b) act as the Trustee to the Fund;
- (c) receive all payments required by this Act to be made to the Fund;
- (d) make payments out of the Fund to the identified persons with disabilities in accordance with the provisions of this Act;
- (e) manage and invest the funds of the Fund;
- (f) perform such other functions as are conferred on it by this Act.

(2) The Board of trustees shall prepare and submit to the council quarterly and annual reports on the discharge of its functions in each year.

(3) The Cabinet Secretary may make regulations for the better discharge of the functions and exercise of the powers of the Board under this Act.

Application of
the Fund.

61. (1) The Board of Trustees, may with the approval of the Council, out of the Fund—

- (a) provide or contribute to the cost of supportive and assistive devices and services for persons with disability;
- (b) establish or contribute to any established social protection program for the benefit of persons with disability;
- (c) provide grants to duly registered organizations of and for persons with

disability, parents of children with disability and entrepreneurs with disability;

- (d) make contributions to support empowerment programmes undertaken by organizations of and for persons with disability for the general benefit and development of persons with disability;
- (e) pay for social assistance to persons with disability falling in the following categories and who have no other source of income—
 - (i) persons with severe or multiple disabilities, intellectual or psychosocial disability or debilitating sensory disability, and who require constant medical care or other long term support services;
 - (ii) aged persons with disability.
- (f) finance initiatives for advocacy and media campaigns relating to the protection of any of the basic rights and freedoms of persons with disability guaranteed by the constitution, this Act or any other written law rights;
- (g) make any other payments or contributions to persons with disability or registered of and for persons with disability in furtherance of the objectives of this Act.

(2) The Board may invest any of the funds in lawfully constitute investment scheme with the approval of the Council and in accordance with the law relating to the administration of public funds.

(3) The Board may pay out of the Fund such sums of money required to defray the expenses incurred in the administration of the Fund, provided that such payments shall not be made in excess of fifteen per cent of the money received into the Fund in any particular year.

PART VI - RELIEFS AND INCENTIVES

Exemptions

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

(2) The Cabinet Secretary responsible for finance shall, in consultation with the Council, assess all applications received under subsection (1) and make such order thereon, if any, as he deems fit, exempting the applicant wholly, or to the extent

provided by the order, from income tax or other levies specified therein, and any such order shall, notwithstanding the provisions of any other Act, have effect according to its terms.

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

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

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

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

(7) The National and County governments shall not collect license fee, levies and other charges from persons with disabilities

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

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

(10) The Cabinet Secretary for the time being responsible for matters relating to finance shall in consultation with the Council make regulations to give effect to this section.

Incentives.

63. (1) Any donations, bequest, subsidy or financial aid which may be made to institutions or organizations involved in the programmes of persons with disabilities and registered with the Council for the purposes of this section shall, notwithstanding the provisions of any other law and on recommendation by the Council, be allowed as deductions from the Donor's gross income for the purposes of computing taxable income.

(2) The Cabinet Secretary responsible for finance, in consultation with the Council, notwithstanding provisions of any other law, shall provide incentives to local manufacturers of assistive devices used by persons with disabilities including, but not limited to, the following-

- (a) Additional deductions for labour expenses;
- (b) Tax and duty exemptions on imported capital equipment;
- (c) Tax credits on domestic capital equipment;
- (d) Simplified customs procedures;
- (e) Unrestricted use of consigned equipment; exemptions from taxes and duties on raw materials;
- (f) Access to bonded manufacturing systems; and
- (g) Demurrage charges.

Access to credit.

64. The Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions shall on the advice of the Council develop regulations, from time to time, to ensure access to credit by persons with disabilities.

Exemption from taxable income of employers of persons with disability.

65. (1) Any person who employs a person with disability and who incurs reasonable expenses on account of—

- (a) reasonable accommodation of the employee with disability;
- (b) modification of any part of the work place designed to meet the special needs of the employee with disability; or
- (c) mobility aids, assistive devices, adaptive technology or other devices or equipment, including computer software and computerized systems

designed to meet the special needs of the employee with disability.

Is entitled to exemption from taxable income to the amounts so expended.

Exemption
from postal
charges.

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

- (a) braille, printed or recorded literature, including any materials in tactile format, sent or received by postal mail from within or outside Kenya;
- (b) hearing aids, mobility aids and orthopaedic devices designed for use by persons with disabilities and sent within or outside Kenya for the purpose of repair or delivery to—
 - (i) persons with disability; or
 - (ii) a parent or guardian of a child with disability;
 - (iii) duly registered organizations of or for persons with disability.
- (c) all types of assistive devices and adaptive technology equipment sent by or delivered to the persons specified in paragraph (b).

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

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

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

67. (1) All state and non-state agencies shall take reasonable measures to ensure safety and protection of persons with disability in any of the following situations—

- (a) civil strife and armed conflicts;
- (b) terror attacks;
- (c) emergency situations arising from natural calamities such as floods and earthquakes;

(d) outbreaks of communicable diseases.

(2) The Cabinet Secretary shall on his own motion or on the advice of the council make regulations for the better carrying into effect of subsection (1).

PART VI OFFENCES AND PENALTIES

Discrimination
contrary to
Article 27 of
the
Constitution.

68. (1) Any person who willfully and without any lawful justification treats a person with disability in any manner resulting in contravention of article 27(4) and (5) of the constitution is guilty of an offence and shall upon conviction, be liable to a fine not exceeding two million shillings.

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

- (a) public services or entry to public premises generally accessible to members of the public;
- (b) the right of inheritance in accordance with the law of succession;
- (c) health services including reproductive health services generally accessible to members of the public in accordance with the law relating to health.
- (d) educational or other training services, generally accessible to the public;
- (e) employment or indentured learner-ship;
- (f) the rights guaranteed under Article 53 of the Constitution;
- (g) the rights guaranteed under Article 55 of the Constitution;
- (h) the rights of older persons guaranteed under Article 57 of the Constitution;
- (i) the right to obtain, possess and utilize documents of registration or identification, including a certificate of birth, national identity card and passport;
- (j) the right to respect for personal dignity as guaranteed under article 28 of the constitution.

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

Prohibition of

69. (1) Any person who treat a person with disability or does any of the acts

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abuse
exploitation or
violence.

specified in subsection (2) by reason only of his or her disability is guilty of an offence and shall, upon conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years.

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

- (a) physical violence occasioning actual bodily harm or any form of physical or psychological torture.
- (b) wrongful concealment, confinement or detention whether in residential premises or in an institution resulting in denial of a person with disability the opportunities and services available under this Act or any other law;
- (c) harmful cultural practices and exploitation; or
- (d) any other form of cruel, inhuman and degrading treatment.

Concealment
of Persons
with
Disabilities

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

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

Denial of
food and
fluids.

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

Degrading
treatment of a
Person with
disability

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

Negligence
by medical
practitioners.

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

(2) Without prejudice to subsection (1), every health care professional shall

when making impairment-specific interventions, take special care to provide complete information to persons with disabilities through accessible modes, methods and formats.

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

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

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

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

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

(8) The medical practice guidelines shall be revised to harmonise them with the provisions of this Act.

Offensive Publications.

74. (1) No person shall publish, circulate or display, cause or permit to be published, circulated or displayed, a publication that lowers or demeans the dignity of a person with disability or which amounts to discrimination.

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

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

- (b) by displaying notices, signs, labels, shows cards or goods;
- (c) by the circulation of samples, catalogues pricelists, leaflets, handbills or any other form of circular;
- (d) by exhibition of pictures, models, photographs, films or any other form of exhibition.

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

Giving false information for purposes of registration

75. Any person who—

- (a) knowingly gives false information to the Council for the purpose of being registered or for the purpose of acquiring any right or privilege due to persons so registered; or
- (b) fraudulently avails or attempts to avail or confers or attempts to confer any benefit meant for persons with disabilities on a person not entitled to such benefit;

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

Failure to furnish information

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

PART VII – MISCELLANEOUS

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Protection of
road users with
disabilities.

77. It shall be the duty of the National and County Governments to make public roads and highways under their respective mandates accessible to persons with disabilities by *inter alia*-

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

Public Service
vehicles and
Transport.

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

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

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

(4) For the purposes of this section "paratransit services" means special transportation services for persons with disabilities.

Denial of
admission into
premises.

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

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

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

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

competent jurisdiction.

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

(5) The standards set out in the Second Schedule shall apply with regard to accessibility for purposes of this Act.

Prohibition of discrimination relating to goods, facilities and services.

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

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

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

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

81. Every person with disability shall, subject to the provisions of the Employment Act, be eligible for engagement as an apprentice or learner -in their particular occupation for the period for which he or she is hired.

Inspectorate Units and Inspectors.

82. (1) All government ministries shall establish a Disability Mainstreaming Unit for the purpose of-

(a) mainstreaming disability issues;

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

(c) liaising with the Council on disability matters.

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

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

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

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

Housing.

83. Every Government agency putting up residential and commercial buildings shall reserve at least five percent of the said residential and commercial buildings for acquisition by persons with disabilities and the terms and conditions at such acquisition to persons with disabilities shall include interest free and longer period of repayment.

Markets.

84. The National and county governments when constructing markets shall reserve five percent of the stores to persons with disabilities.

Awareness raising.

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

(2) The Council shall co-ordinate the production of at least one column in the print media every month for purposes of subsection (1).

Right to Independent living.

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

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

Enforcement of rights.

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

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

Appointment of Public

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

Persons with Disabilities Bill, 2016

Prosecutors.

Cap. 75

General
penalty.

89. (1) Any person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

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

Regulations.

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

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

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

Repeal of
Persons with
Disabilities Act
No.14 of 2003.

91. The Persons with Disabilities Act, 2003 is hereby repealed.

Transitional
and saving
provisions.

92. (1) Notwithstanding section 84-

- (a) a person who immediately before the commencement of this Act, was a member of the Council or Executive Director of the Council shall, at the commencement of this Act, be deemed to be a member or Executive Director of the Council under this Act as the case maybe, for the unexpired period of his or her term.
- (b) every person who immediately before the commencement of this Act, was a member of staff or employee of the Council not under notice of dismissal shall, at the commencement of this Act, be deemed to be an employee of the Council under this Act.
- (c) anything done, any regulation made, directive or instruction issued or other administrative measure taken or any contract entered into or any obligation incurred immediately before the commencement of this Act.

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shall remain in force and shall be deemed to have been made, issued, taken, entered into or incurred, as the case may be under this Act.

- (d) all assets and liabilities which immediately before the commencement of this Act were in place shall be deemed to have been carried out under this Act.
- (e) all actions, suits or legal proceedings by or against the Council subsisting immediately before the commencement of this Act shall be carried out on, prosecuted by, or against the Council, and no such suits, actions or legal proceedings shall abet or be affected by the coming into operation of this Act.

Tenure of the County
Disability
Mainstreaming
Standing Committee

49. The Chairperson and the members of the Committee appointed under section 47 (1) (a) and (b) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

FIRST SCHEDULE

(S.39(3))

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

1. The Council shall meet at least four times in every year, and not more than three months shall pass between one meeting of the Council and the next.
2. Notwithstanding paragraph (1) the Chairperson may, on his own motion and shall, upon request by a member, convene a special meeting of the Council at any time when he or she deems it expedient for the transaction of the business of the Council.
3. The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Board of the Council at any time, where he or she considers it expedient for the transaction of the business of the Council.
4. Except in the case of a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council by the chief executive officer.
5. The quorum at a meeting of the Council shall be at least two thirds of the members of the Council.
6. The chairperson shall preside over all meetings of the Council at which he or she is present, and in the absence of the chairperson, the vice chairperson shall preside and in the absence of both, the members of the Council present shall elect from amongst themselves, a person to preside over the meetings of the Council.
7. The decisions of the Council shall be decided by a majority of the members present and voting, and in the event of equality of votes, the chairperson or person presiding shall have a casting vote.
8. The proceedings of the Council shall not be invalidated by reason only of a vacancy among the members or a defect in the appointment or qualification of a member.
9. Subject to this Schedule, the Council may determine its own procedure and the procedure for any committee of the Board and for attendance of any other persons at the meetings and may make standing orders in respect thereof
10. (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council shall—

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- (a) as soon as reasonably practicable, disclose, in writing, to the Council the full and accurate details of the interest;
 - (b) not participate in any discussion by the Council relating to that matter;
 - (c) not vote in relation to that matter; and
 - (d) be absent from the meeting room when any such discussion or voting is taking place.
11. If a member of the Council makes a disclosure of interest and complies with requirements of subsection (1) in respect of a proposed contract-
- (a) the contract shall not be avoided, and
 - (b) the member is not liable to account to the entity for any losses that may be incurred upon entering into the contract.
12. If a member of the Council fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the Council shall void the contract.
13. Where a member of the Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that makes it reasonably foreseeable that a conflict might arise with his or her duties as member of the Board of the Council, the member shall as soon as is reasonably practicable, disclose to the Council, in writing, of the full and accurate nature of the interest.
14. A disclosure under this section shall be recorded in the minutes of the Council.

SECOND SCHEDULE

(S.27(9))

Access to Public Buildings, Auxiliary aid, Sporting Venues and Public Facilities

- 1 The design standards issued under this Act by the Council are used to ensure access to the built environment for persons with disabilities. The Standards apply nationwide, in addition to any applicable state or local codes, where facilities are newly built or altered.
- 2 It shall be the responsibility of all organs in a public or private institution to provide—
 - (a) suitable entry and exits for persons with disabilities; and
 - (b) universal standards or designs of public buildings and places
- 3 A proprietor of a public building shall adapt the public building to suit persons with disabilities in such manner as shall be specified by the Council.
- 4 Where no modifications are possible wherever practicable, assistive services shall be made available to persons with disabilities or reservation of goods and services for use by persons with disabilities;
- 5 Facilities shall be provided to persons with disabilities at bus parks, railway stations, air and sea ports that meet the accessibility standards relating inter alia to
 - (a) parking spaces, toilets, ticketing counters, ticketing machines and cruise facilities;
 - (b) provide access to all modes of transport that conform to universal design standards;
- 6 Duty to provide access to buildings
 - (b) Any person, who constructs, a building to which the public is invited, shall ensure that persons with disabilities have access through provision of—
 - (i) accessible and easy-to-find building entrances, connected by accessible pathways to accessible indoor or outdoor parking areas, local public transit stops and accessible elevators;
 - (ii) safe and accessible urinal, bathrooms for the diverse

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disabilities;

- (iii) safe and well-dimensioned staircases for the comfort of persons with mobility problems;
- (iv) ramps wherever stairs obstruct the free passage of pedestrians, mainly wheel chair users and people with mobility problems;
- (v) adequate railing around hazardous areas, stairs, ramps, accessible roofs, mezzanines, galleries, balconies and raised platforms;
- (vi) well-dimensioned elevators, (in the case of multi-storied buildings) that persons with disabilities can use conveniently.

7 An accessible elevator shall-

- (a) serve all floors normally reached by the public;
- (b) have embossed numerals and tactile markings on the floor selector buttons to be easily identifiable by touch; and
- (c) signal arrival at each floor to alert visually impaired and the Deaf passengers simultaneously

8 Where it is difficult or unfeasible to install a ramp or an elevator to an existing building, the owner of the building shall provide platform lifts to provide accessibility.

SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Senate Bills No. 1)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2019

NAIROBI, 6th February, 2019

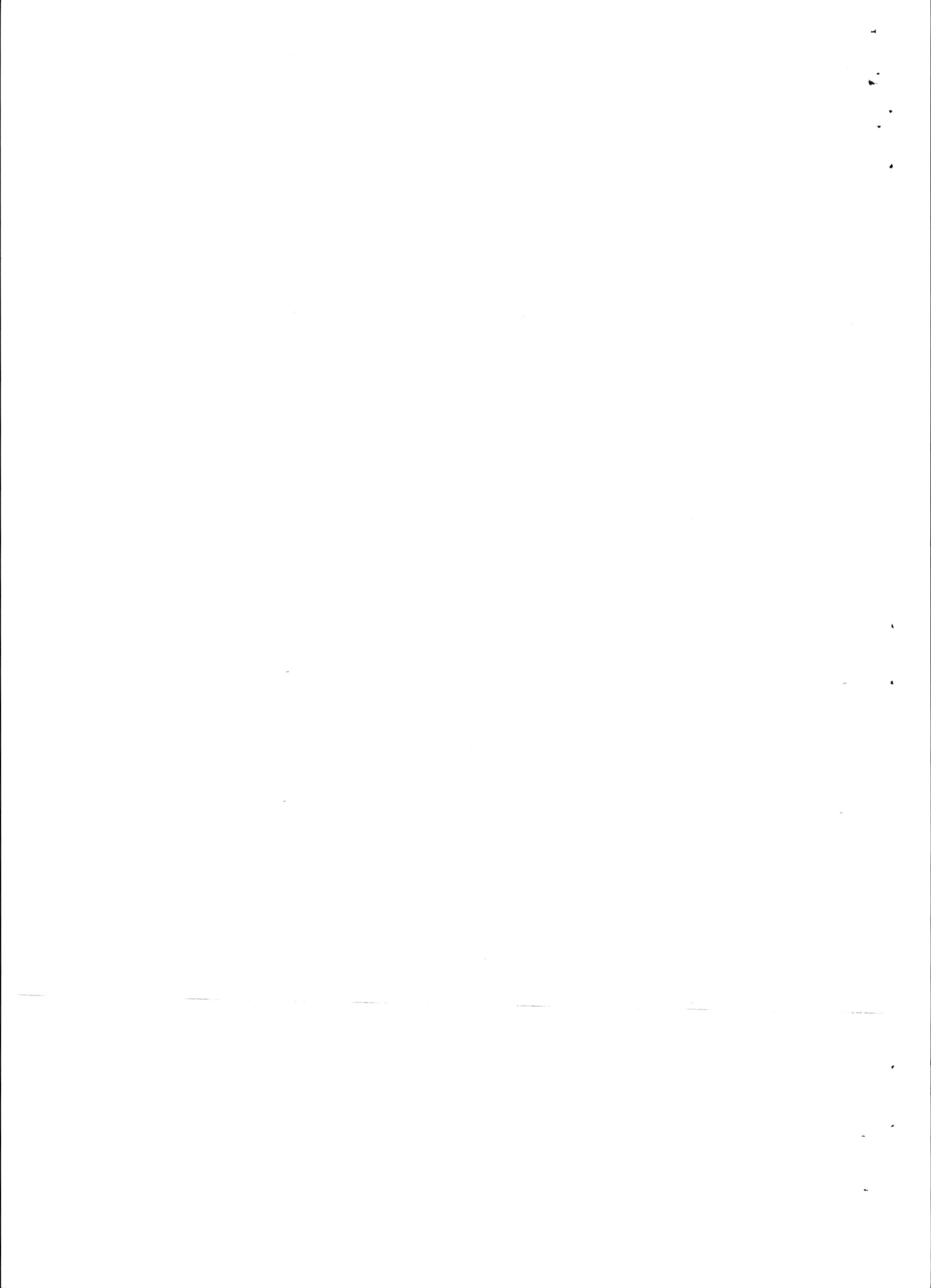
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**THE PERSONS WITH DISABILITIES
(AMENDMENT) BILL, 2019**

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Persons with Disabilities (Amendment) Act, 2019.

Short title.

2. The Persons with Disabilities Act, hereinafter referred to as the “principal Act”, is amended in section 2 by—

Amendment of section 2 of No.14 of 2003.

(a) deleting the definition of the word “disability” and substituting therefor the following new definition—

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

(b) inserting the following new definitions in their proper alphabetical sequence—

No.24 of 2013

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

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to persons with disabilities;

“county executive committee member” means the county executive committee member responsible for matters relating to persons with disabilities in the respective county;

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

“reasonable accommodation” means necessary and appropriate modification and adjustments needed to ensure

persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms and may include a change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to—

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

3. The principal Act is amended by inserting the following new Part immediately after Part I-

Insertion of new part IA.

PART IA – OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

Obligations of national government.

2A. The national government shall—

- (a) develop policies on the protection and promotion of the welfare of persons with disabilities;
- (b) undertake investigations, surveys and research into the causes and nature of disabilities and development of new assistive devices;
- (c) put in place measures for the prevention of disabilities and rehabilitation of persons with disabilities;
- (d) provide facilities and infrastructure for the training of professionals in the rehabilitation and habilitation of persons with disabilities;
- (e) promote the integration of persons with disabilities in schools;
- (f) promote the inclusion of persons with disabilities in the public service and put in place measures to ensure that at least five per centum of the employment positions are filled by persons with disabilities;

- (g) prescribe minimum standards and guidelines to be adhered to by public transport vehicles, communication service companies and infrastructure developers to facilitate reasonable access by persons with disabilities;
- (h) adopt affirmative action in procurement of national government goods and services by implementing preferential procurement for individuals or entities managed by persons with disabilities; and
- (i) ensure access to free basic education and other social amenities to every child with a disability.

Obligations of county governments.

2B. (1) Each county government shall—

- (a) implement national policies for the protection and promotion of the welfare of persons with disabilities;
- (b) budget for adequate resources to be allocated to programmes specifically targeting persons with disabilities;
- (c) ensure access to free pre-primary education and other social amenities to every child with disability;
- (d) coordinate and disseminate information on government sponsored and non-government sponsored programmes targeting persons with disabilities within their respective counties;
- (e) align county legislation and regulations with national policy relating to persons with disabilities;

(f) promote the inclusion of persons with disabilities in the county public service by putting in place measures to ensure that at least five per centum of the employment positions are filled by persons with disabilities; and

(g) adopt affirmative action in procurement of county government goods and services by implementing preferential procurement for individuals or entities established or managed by persons with disabilities.

(2) In ensuring that the county governments meet their obligations under subsection (1), the county executive committee member in each county shall—

(a) advise the respective county governor on the appropriate measures and interventions to be put in place for the protection of persons with disabilities in the county;

(b) develop mechanisms for the identification of persons with disabilities residing in the county;

(c) establish a database of persons with disabilities residing within the respective county containing the following information regarding the persons with disability—

(i) the name, age and place of residence of the person;

(ii) the type of disability of the person;

(iii) the education level of the person;

(iv) the health needs of the person;

- (v) the employment status of the person;
 - (vi) any interventions made in relation to the person; and
 - (vii) any other information that the county executive committee member may consider necessary;
- (d) monitor and evaluate the progress by the county in ensuring that the provisions of Article 54 (1) of the Constitution are realised;
- (e) implement programmes to promote the socio-economic development, including participation in cultural life, recreation and sports, by persons with disability in the county;
- (f) coordinate the implementation of programmes developed by the Council and the Authority relating to persons with disabilities in the county, in particular coordinate programmes on—
- (i) awareness creation;
 - (ii) provision of assistive devices and services;
 - (iii) accessibility and reasonable accommodation;
 - (iv) employment;
 - (v) preferential procurement;
 - (vi) health and education; and
- (g) prepare and publish reports containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation to persons with disabilities.

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

(4) Where the county executive member constitutes a committee under subsection (3), the committee shall consist of not more than five persons out of whom at least two shall be public officers serving in the respective county public service.

(5) In constituting a committee under subsection (3), the county executive member shall ensure that membership consists of—

- (a) a person who represents persons with disabilities in the county;
- (b) not more than two thirds of its members shall be of the same gender; and
- (c) persons who hold a minimum qualification of a degree from a university recognised in Kenya.

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

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

4. Section 4 of the principal Act be amended—

Amendment of
section 4 of No.14
of 2003.

- (a) in subsection (1)—
- (i) by inserting the following new paragraphs immediately after paragraph (c)—
 - (ca) the Principal Secretary in the Ministry responsible for matters relating to education or an alternate designated in writing;
 - (cb) the Principal Secretary in the Ministry responsible for matters relating to health or an alternate designated in writing;
 - (cc) two persons nominated by the Council of County Governors who have knowledge and at least three years' experience on matters relating to disabilities;
 - (ii) by deleting paragraph (d) and substituting therefor the following new paragraphs—
- (d) four persons nominated by organisations representing various types and categories of persons with disabilities, at least one of whom shall be —
- (i) from a county-based organisation; and
 - (ii) a person nominated by organisations of persons with developmental disability.
 - (iii) by inserting the words “an ex officio member and” appearing immediately after the words “who shall be” in paragraph (e);
- (b) by inserting the following new subsections immediately after subsection (1)—
- (1A) The Council may co-opt not more than two persons, whose knowledge and skills are found necessary for the performance of the functions of the Council.
 - (1B) A member co-opted under subsection (1A) shall—

- (a) have no right to vote at a meeting of the Council; and
- (b) serve for a specified period as may be determined by the Council.

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

Insertion of new sections in No. 14 of 2003.

Qualifications of chairperson.

4A. A person is qualified to be appointed as chairperson of the Council if that person—

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

Vacancy

4B. (1) A member of the Council, other than an ex-officio member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

- (iii) is convicted of an offence involving dishonesty or fraud;
- (iv) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
- (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board.

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

Remuneration of the Council

4C. The Council shall pay to its members such remuneration as the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission, may approve.

6. Section 6 of the principal Act is amended—

Amendment of section 6 of No 14 of 2003.

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

7. Section 7 of the principal Act is amended—

Amendment of section 7 of No 14 of 2003.

- (a) in subsection 1(b) by—
 - (i) inserting the word “National” immediately after the words “cooperate with the” in subparagraph (ii);
 - (ii) inserting the following new subparagraph after subparagraph (ii)-

- (iia) advise the Cabinet Secretary for the time being responsible for matters relating to statistics management and county executive committee members in each county on the collection, collation, management and dissemination of data relating to persons with disabilities;
- (iii) deleting the word “Minister” appearing immediately after the words “advise the” in subparagraph (ii) and substituting therefor the words “Cabinet Secretary and county executive committee members in each county”;
- (iv) inserting the following new subparagraphs immediately after subparagraph (iii)—
 - (iia) advise the Cabinet Secretary on matters relating to development of national policy and legislation for the promotion and protection of the rights of persons with disabilities;
 - (iib) monitor, evaluate, report on and advise the Cabinet Secretary and the county executive committee members in each county on the progress made in the realisation of the rights of persons with disabilities and recommend appropriate action to facilitate full enforcement;
- (v) inserting the following new subparagraph immediately after subparagraph (iv)—
 - (iva) monitor and facilitate the promotion and protection of the rights of persons with disabilities;
 - (vi) inserting the words “in collaboration with the relevant county government,” at the beginning of subparagraph (vii);
- (b) in subsection (1) (c) by—
 - (i) deleting the words “Government and local authorities” appearing immediately after the words “managed by the” in subparagraph (ii) and substituting therefor the words “National and county governments”;

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

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

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

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

Amendment of section 8 of No. 14 of 2003

- (c) any grants, gifts, donations or other endowments given to the Council.

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

Amendment of section 9 of No. 14 of 2003

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

Amendment of section 10 of No. 14 of 2003.

substituting therefor the words “Cabinet Secretary and Parliament.”

11. The principal Act is amended by deleting section 11 and substituting therefor the following new section—

Amendment of
section 11 of No
14 of 2003.

Realisation of rights
of persons with
disabilities

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

- (a) take all necessary measures to ensure the effective enjoyment of the inherent right to life by persons with disabilities;
- (b) take appropriate measures to prevent the discrimination of women and girls with disabilities;
- (c) take all feasible measures to specifically protect persons with disabilities in situations of risk;
- (d) ensure that persons with disabilities enjoy equal protection before the law;
- (e) take all the necessary measures to prevent persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (f) take all the necessary measures to prevent persons with disabilities from being subjected to medical or scientific experimentation without their consent;
- (g) take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation, habilitation and social reintegration of persons with disabilities;
- (h) protect the privacy and information relating to the health, rehabilitation

and habilitation of a person with disabilities;

- (i) establish appropriate habilitation and rehabilitation programmes for persons with disabilities; and
- (j) facilitate the full participation of persons with disabilities in political activities including voting and seeking public positions whether elective or appointive.

12. Section 12 of the principal Act is amended in—

Amendment of section 12 of No. 14 of 2003

- (a) subsection (1) by deleting the word “suitable” appearing immediately after the words “to opportunities for”; and
- (b) subsection (2) by deleting the words “A qualified employee” and substituting therefor the words “An employee” appearing at the beginning of the subsection.

13. The principal Act is amended by deleting section 13 and substituting therefor the following new section—

Amendment of section 13 of No. 14 of 2003.

Reservation in employment

13. The National government and county governments shall ensure that at least five percent of state and public service positions, all casual, emergency and contractual positions in employment in the public and private sectors are reserved for persons with disabilities.

14. Section 16 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 16 of No. 14 of 2003

(2) A private employer shall be entitled to apply for additional deductions from his net taxable income equivalent to fifty per cent of the direct costs of—

- (a) improvements or modifications of the employer’s physical facilities or special services to provide reasonable accommodation for employees with disabilities; or
- (b) provision of mobility aids, assistive devices, adaptive technology or other devices or

equipment, designed to meet the special needs of the employees with disabilities.

15. Section 18 of the principal Act is amended by-

Amendment of
section 18 of No
14 of 2003.

(a) inserting the following new subsection immediately after subsection (2)—

(2A) The National government and county governments shall provide adequate financing to learning institutions for the provision of appropriate equipment, assistive devices, support services and other auxiliary services to accommodate the special needs of learners with disabilities.

(b) inserting the following new subsection immediately after subsection (3)—

(3A) The National and county governments shall promote inclusive education in all schools and institutions for all learners with disabilities.”

16. Section 19 of the principal Act is amended by deleting the words “relevant agencies of Government to make provisions in all districts” appearing immediately after the words “consultation with the” and substituting therefor the words “relevant National government agencies and all county governments to make provisions in all sub-counties.”

Amendment of
section 19 of No
14 of 2003.

17. The principal Act is amended by deleting section 20 and substituting therefor the following new section—

Amendment of
section 20 of No.
14 of 2003

Integration of health
needs in programmes

20. The Ministry responsible for health, departments and agencies at the national and county governments shall, in consultation with the Council ensure that their policies and programmes are inclusive of the health needs of persons with disabilities and in particular –

- (a) prevention of disability;
- (b) early detection of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and

- medical services in public health institutions;
- (e) availing essential health services to persons with disabilities at an affordable cost;
 - (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities;
 - (g) prompt attendance by medical personnel to persons with disabilities; and
 - (h) raising awareness on the social factors that affect the health of persons with disabilities.

18. The principal Act is amended by deleting section 21 and substituting therefor the following new section—

Amendment of section 21 of No. 14 of 2003.

Accessibility and mobility

21. (1) A person with disability is entitled to—

- (a) a barrier-free and disability-friendly environment to enable them have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility; and
- (b) live independently and participate fully in all aspects of life, facilitated by equal access to new information and communication technologies.

(2) The relevant state agency or county government shall not approve the construction of a road, building or any other premises if the plans for the construction do not include an access way for persons with disabilities.

19. Section 22 of the principal Act is amended—

Amendment of section 22 of No. 14 of 2003.

- (a) by inserting the following new subsections immediately after subsection (1)—

(1A) Where modification to a public building is not possible, assistive services shall be made available to persons with disabilities or reservation of goods and services for use by persons with disabilities.

(1B) A proprietor of a public building shall ensure that persons with disabilities have access to the building through provision of—

- (a) accessible entrances, pathways, indoor or outdoor parking areas, local public transit stops and accessible elevators;
- (b) safe and accessible urinals and bathrooms for the diverse disabilities;
- (c) safe and well-dimensioned staircases for persons with mobility problems;
- (d) ramps for wheel chair users and persons with mobility problems; and
- (e) well-dimensioned elevators in the case of a multi-storied building which a person with disabilities can use conveniently including—
 - (i) embossed numerals and tactile markings on the floor selector buttons to be easily identifiable by touch; and
 - (ii) signal arrival to each floor to alert the visually impaired and the deaf passengers.

(1C) Where, owing to the existing structure of a building, it is not feasible to install a ramp or an elevator to an existing building, the owner of the building shall provide platform lifts to provide access to persons with disabilities.

20. Section 23 of the principal Act is amended—

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

(1A) The National government and county shall ensure that bus parks, railway stations, air and sea ports are accessible to persons with disabilities and conform to universal design

Amendment of
section 23 of No
14 of 2003.

standards for parking spaces, toilets, ticketing counters, ticketing machines and cruise facilities.

21. Section 25 of the principal Act is amended in subsection (1) by deleting the words “unless such denial is motivated by a genuine concern for the safety of such person” appearing at the end of the subsection.

Amendment of section 25 of No 14 of 2003.

22. Section 26 of the principal Act is amended is amended by deleting subsection (3) and substituting therefor the following new subsection-

Amendment of section 26 of No 14 of 2003.

(3) The Court may, in addition to the penalty imposed under subsection (2), make an order—

- (a) for the payment, by person found guilty, to the person injured by the offence such sums of money in compensation as the Court may consider appropriate;
- (b) for the closure of the premises in question until the adjustment orders issued have been fully complied with; or
- (c) that the person bears the costs of the relevant department of the National or county government or that any other person undertakes any required works on the premises.

23. Section 27 of the principal Act is amended—

Amendment of section 27 of No 14 of 2003.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

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

- (a) any hospital, nursing home or clinic controlled or managed by the national or county government or registered under the Public Health Act except with the consent of the Cabinet Secretary or county executive committee member responsible for health; or
- (b) any school or educational or training institution controlled or managed by the national or county government or registered under the Basic Education Act except with the consent of the Cabinet

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Secretary or county executive committee member responsible for the administration of the institution or Act concerned.

- (b) in subsection (2) by deleting the word “Minister” appearing immediately after the words “subsection (1) the” and substituting therefor the words “Cabinet Secretary”.

24. Section 28 of the principal Act is amended—

Amendment of
section 28 of No
14 of 2003.

- (a) in subsection (1) by inserting the words “National government or county government” immediately after the words “operated by the”;
- (b) by inserting the following new subsections immediately after subsection (2)-

(2A) Persons with disabilities are entitled to the development and utilization of their creative, artistic and intellectual potential for their own benefit and that of society.

(2B) For the purposes of subsection (2) the national government shall, in consultation with the Council, provide –

- (a) adequate financial resources to facilitate recognition and development of talent;
- (b) subsidized apparatus and equipment needed by the persons with disabilities to participate fully in sports and other creative and artistic activities;
- (c) recognition mechanisms, including appropriate awards; and
- (d) a framework for early talent identification and development support.
- (c) in subsection (3) by inserting the words “and county governments” appearing immediately after the words “with the Council”.

25. Section 29 of the principal Act is amended-

Amendment of
section 29 of
No.14, of 2003.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

[Participation in political and public life];

(b) by deleting subsection (1) and substituting therefor the following new subsections-

(1) Persons with disabilities have the right to full and effective participation in political and public life on an equal basis with others, including—

- (a) being registered as voters;
- (b) voting;
- (c) voting and being elected to office; or
- (d) being appointment to a public office;

(1A) The Independent Electoral and Boundaries Commission shall in consultation with the Council ensure that—

- (a) voter registration, voting procedures, facilities and materials are appropriate, accessible, easy to understand and user friendly to persons with disabilities;
- (b) the rights of persons with disabilities to vote by secret ballot in elections and public referenda are protected;
- (c) persons nominated to special affirmative action seats for persons with disabilities by political parties are bona fide persons with disabilities; and
- (d) appropriate assistance measures are put into place during the voting considering the statistics on persons with disabilities.

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

26. Section 33 of the principal Act is amended-

(a) in subsection (1) by—

- (i) deleting paragraph (c) and substituting therefor the following new paragraph-

Amendment of
section 33 of No
14 of 2003.

- (c) any grants, donations, bequests or other contributions made to the Fund;
- (ii) inserting the following new paragraphs immediately after the new paragraph (c)—
 - (d) fees and levies collected by the Fund;
 - (e) monies that may be borrowed by the Council for the discharge of the functions of the Fund; and
 - (f) all other payments due to the Fund in respect of any matter incidental to its functions;
- (b) by inserting the following new subsection immediately after subsection (1)—
 - (1A) In making investments under subsection (1) (b) the Board shall, with the approval of the Council, ensure that the funds are invested in a lawfully constituted investment scheme in accordance with the law relating to the administration of public funds.
- (c) in subsection (2) —
 - (i) by inserting the words “national and county” immediately after the words “undertaken by the” appearing in paragraph (c);
 - (ii) by inserting the following new paragraphs immediately after paragraph (c)—
 - (ca) make contributions to support capacity building and empowerment programmes undertaken by organisations of and for persons with disabilities for the general benefit and development of persons with disabilities;
 - (cb) pay such sums of money required to defray the expenses incurred in the administration of the Fund, provided that such payments shall not be made in excess of fifteen per cent of the money appropriated by Parliament in to the Fund in any particular year;

27. Section 34 of the principal Act is amended—

Amendment of
section 34 of No

- (a) in subsection (1) by-
- (i) deleting the words “The Chairman” appearing at the beginning of paragraph (a) and substituting therefor the words “The Chairperson”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph-
 - (c) a representative of the Cabinet Secretary appointed by the Cabinet Secretary;
 - (iii) deleting the word “Minister” appearing immediately after the words “appointed by the” and substituting therefor the words “Cabinet Secretary” in paragraph (d)
 - (iv) deleting the word “mental” appearing immediately after the words “for persons with” and substituting therefor the word “developmental” in paragraph (e);
- (i) inserting the following new paragraph immediately after paragraph (e)-
- (ea) a person appointed by the Council of County Governors who has knowledge and experience in matters relating to finance;
- (ii) deleting the word “three” appearing immediately after the words “not more than” in paragraph (f) and substituting therefor the word “two”;
- (b) in subsection (2) by deleting the words “the Minister” appearing at the beginning of the subsection and substituting therefor the words “Cabinet Secretary”;
- (c) by inserting the following new subsection immediately after subsection (2)—
- (2A) The Board of Trustees shall prepare and submit to the Council quarterly and annual reports on the discharge of its functions every year.
28. Section 35 of the principal Act is amended—
- (a) in subsection (1) by deleting the word “Minister” appearing immediately after the words “may apply

to the” and substituting therefor the words “Cabinet Secretary”

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

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

- (c) in subsection (2) deleting the words “The Minister” appearing at the beginning of the subsection and substituting therefor the words “The Cabinet Secretary”.

29. Section 36 (2) of the principal Act is amended by deleting the word “Minister” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “Cabinet Secretary”.

Amendment of section 36 of No.14 of 2003.

30. The principal Act is amended by deleting section 37 and substituting therefor the following new subsection—

Amendment of section 37 of No.14 of 2003.

Credit

37. The Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions shall, by regulation, prescribe the manner in which such institutions may extend credit facilities to persons with disabilities.

31. Section 38 (2) of the principal Act is amended-

- (a) in subsection (2) by inserting the following new paragraph immediately after paragraph (a)-

(aa) legal aid and assistance in the enforcement of the rights of persons with disabilities;

- (b) in subsection (3) by deleting the word “Minister” appearing immediately after the words “regulations made by the” and substituting therefor the words “Cabinet Secretary”.

Amendment of section 38 of No 14 of 2003.

32. Section 42 of the principal Act is amended in subsection (1) by—

Amendment of section 42 of No 14 of 2003.

- (i) deleting the word “Minister” appearing immediately after the words “prescribed in the regulations made by the” in paragraph (b) and substituting therefor the words “Cabinet

Secretary”; and

(ii) deleting paragraph (c).

33. Section 44 of the principal Act is amended by deleting the words “Minister” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “Cabinet Secretary in consultation with the council of County Governors”.

Amendment of section 44 of No. 14 of 2003.

34. The principal Act is amended by inserting the following new section immediately after sections 45—

Insertion of new sections in No. 14 of 2003

Harmful practices.

45A. (1) The government shall take appropriate measures, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices committed against a person with disability, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.

(2) A person who perpetrates a harmful practice against a person with disability is guilty of an offence and shall be liable upon conviction to life imprisonment.

(3) A person who wilfully aids, abets or is an accessory to an offence in subsection (2), is guilty of an offence and shall upon conviction be liable to life imprisonment

35. Section 46 of the principal Act is amended in subsection (1) by deleting the words “one hundred thousand shillings or to imprisonment for a term not exceeding one year” appearing immediately after the words “fine not exceeding” and substituting therefor the words “one million shillings or to imprisonment for a term not less than three years”.

Amendment of section 46 of No. 14 of 2003.

36. The principal Act is amended by inserting the following new section immediately after section 46-

Insertion of section 46A in No. 14 of 2003

Torture and cruel treatment.

46A. A person who causes or intends to cause harm or death of a person with disability through torture, cruel treatment, ritual killings or other practices commits an

offence and shall on conviction be liable to life imprisonment.

37. The Schedule of the principal Act is amended-

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

Amendment of the
Schedule of No 14
of 2003.

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

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

- (e) in paragraph 7 by deleting the word “fifteen” appearing immediately after the words “Council shall be” and substituting therefor the word “six”;
- (f) by deleting paragraph 8 and substituting therefor the following new paragraph-

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

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

- (g) in paragraph 9 by deleting the words “chairman, vice-chairman” appearing immediately after the words “voting shall be equal, the” and substituting therefor the words “chairperson, vice chairperson”;
- (h) by inserting the following new paragraphs immediately after paragraph 10—

11. If a member is directly or indirectly interested in any contract, proposed contract or other matter before the

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

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

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

Amendment of
section 35 of Cap
222

(fa) prescribing the requirements to be met by makers or exhibitors of films in order to make such films accessible to persons with disabilities.

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

Article 54(1) of the Constitution provides for various rights in relation to persons with disabilities. These include the right to access various social amenities and the right to be treated with dignity and respect.

The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that persons with disabilities within their jurisdiction are protected and that the requirements of Article 54(1) of the Constitution are met.

It is in this context that this Bill proposes to impose obligations on each level of government to address the socioeconomic needs of persons with disabilities.

The Bill proposes to bestow upon the county executive committee member for the time being in charge of matters relating to persons with disabilities the responsibility to advise on and put in place measures to ensure the socio-economic development of persons with disabilities in the county.

The Bill further proposes to review the membership of the National Council for Persons with Disabilities in order to make the workings of the Council more efficient and representative.

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

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

Statement on how the Bill concerns county governments

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

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

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

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

Dated the 27th November, 2018.

AARON CHERUIYOT,
Senator.

ISAAC MWAURA,
Senator.

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

2. Interpretation

In this Act, unless the context otherwise requires—

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

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

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

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

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

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

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

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

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

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

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

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

4. Membership

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

- (a) not more than eight persons nominated in a manner approved by the Minister, by organisations representing persons with various categories of disabilities;
 - (b) three members appointed from a panel of names submitted to the Minister by organizations for persons with disabilities;
 - (c) eight members representing the Ministries responsible for the following—
 - (i) culture and social services;
 - (ii) local government;
 - (iii) health;
 - (iv) education;
 - (v) economic planning;
 - (vi) housing;
 - (vii) transport; and
 - (viii) labour;
 - (d) one member representing the Attorney General;
 - (e) one member appointed from a list of not less than three persons submitted by an organization which the Minister responsible for labour deems to be representative of employers in Kenya;
 - (f) one member appointed in consultation with the organization for the time being recognized by the Government as the umbrella organization representing the interests of workers in the country; and
 - (g) such other members as may be co-opted by the Council with the approval of the Minister:
- Provided that—
- (i) the membership of the Council shall not exceed twenty-seven persons, out of whom at least twenty members shall be persons with disabilities;
 - (ii) the members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
 - (iii) one of the members of the Council shall be from a rural-based organization.
- (2) The Minister shall appoint one of the members appointed under subsection (1)(a) as the chairman.

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

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

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

6. Director

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

(2) The functions of the Director shall be—

(a) to consult with Ministries and local authorities to secure the implementation of measures recommended under this Act by the Council for the benefit of persons with disabilities;

(b) to work together with institutions, associations and organizations concerned with the educational, social and cultural circumstances of persons with disabilities; and

(c) to do such other things as he may be directed by the Council under this Act.

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

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

7. Functions of the Council

(1) The functions of the Council shall be—

(a) to issue adjustment orders under section 24 of this Act;

(b) to formulate and develop measures and policies designed to—

(i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;

(ii) co-operate with the Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning;

(iii) advise the Minister on the provisions of any international treaty or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the country;

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

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

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

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

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

8. Funds of the Council

The funds of the Council shall consist of the following—

- (a) funds voted by Parliament; and

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

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

9. Annual accounts

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

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

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

10. Annual report

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

Section 11 of Act No.14 of 2003 of which it is proposed to amend

11. Realisation of rights of persons with disabilities

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

Section 12 of Act No.14 of 2003 of which it is proposed to amend

12. Employment

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

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

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

Section 13 of Act No.14 of 2003 of which it is proposed to amend

13. Reservation of employment

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

Section 16 of Act No.14 of 2003 of which it is proposed to amend

16. Incentives to employers

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

Provided that—

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

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

Section 18 of Act No.14 of 2003 of which it is proposed to amend

18. Education

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

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

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

Section 19 of Act No.14 of 2003 of which it is proposed to amend

19. Special and non-formal education

The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities

and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Section 20 of Act No. 14 of 2003 of which it is proposed to amend

20. Health

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

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

Section 21 of Act No. 14 of 2003 of which it is proposed to amend

21. Accessibility and mobility

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.

Section 22 of Act No. 14 of 2003 of which it is proposed to amend

22. Public buildings

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

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

Section 23 of Act No. 14 of 2003 of which it is proposed to amend

23. Public service vehicles

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

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

Section 25 of Act No. 14 of 2003 of which it is proposed to amend

25. Denial of admission into premises, etc.

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

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

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

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

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

Section 26 of Act No. 14 of 2003 of which it is proposed to amend

26. Offences-Adjustment orders and discrimination

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

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

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

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

Section 27 of Act No. 14 of 2003 of which it is proposed to amend

27. Adjustment orders against Government institutions

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

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

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

Section 28 of Act No. 14 of 2003 of which it is proposed to amend

28. Sports and recreation

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

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

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

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

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

Section 29 of Act No. 14 of 2003 of which it is proposed to amend

29. Voting

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

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

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

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

Section 33 of Act No.14 of 2003 of which it is proposed to amend

33. Sources of and Payments from Fund

(1) The sources of the Fund shall be—

- (a) such moneys as may be appropriated thereto by Parliament;
- (b) income generated by investments made by the trustees; and
- (c) any other donations which the Council may receive for purposes of the Fund.

(2) Without limiting the generality of section 32(2), the Board of Trustees may, out of the Fund—

- (a) contribute to the expenses, including capital expenses, of organizations of or for persons with disabilities;
- (b) contribute to the expenses, including capital expenses, of institutions that train persons in the care of persons with disabilities;
- (c) contribute to the capital expenses of projects undertaken by the Government for the benefit of persons with disabilities;
- (d) provide or contribute to the cost of assistive devices and services;
- (e) pay allowances to persons with disabilities falling in the following categories and who have no other source of income—
 - (i) persons with severe disabilities and who are therefore not trainable in any skills;
 - (ii) aged persons with disabilities; and
 - (iii) single parents with children with disabilities and who cannot therefore seek employment;
- (f) make payments or contributions for such purposes as may be prescribed by the Council.

Section 34 of Act No.14 of 2003 of which it is proposed to amend

34. Trustees to manage Fund

(1) The Fund shall be managed by a Board of Trustees which shall consist of—

- (a) the Chairman of the Council;

- (b) the Director of the Council who shall be the secretary to the Board;
- (c) a representative of the Minister appointed by the Minister;
- (d) a representative of the Ministry responsible for finance appointed by the Minister responsible for finance;
- (e) four representatives appointed by the Council consisting of—
 - (i) one representative nominated by organizations of persons with visual disabilities;
 - (ii) one representative nominated by organizations of persons with hearing disabilities;
 - (iii) one representative nominated by organizations for persons with mental disabilities; and
 - (iv) one representative nominated by organizations for persons with physical disabilities;
- (f) not more than three persons co-opted by the Council to represent the donors that in its opinion have substantially supported the welfare of persons with disabilities.

(2) The Minister shall appoint one of the persons appointed under subsection (1)(e) to be the treasurer to the Fund.

(3) The Board shall conduct its affairs in accordance with regulations prescribed by the Council subject to any law relating to trustees.

Section 35 of Act No. 14 of 2003 of which it is proposed to amend

35. Exemptions

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

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

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

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disabilities shall be exempt from import duties, value added tax, demurrage charges, port

charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

Section 36 of Act No.14 of 2003 of which it is proposed to amend

36. Incentives

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

(2) The Minister responsible for finance or other appropriate authority shall endeavor to provide, subject to the provisions of any other relevant law, incentives to local manufacturers of technical aids and appliances used by persons with disabilities including, but not limited to, the following—

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

Section 37 of Act No.14 of 2003 of which it is proposed to amend

37. Credit

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

Section 38 of Act No.14 of 2003 of which it is proposed to amend

38. Legal system

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

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

- (b) cases involving capital punishment of persons with disabilities; and
 - (c) such matters and cases as maybe prescribed in the regulations made by the Attorney-General.
- (2) The Chief Justice shall make rules providing for—
- (a) the exemption, for persons with disabilities, from the payment of fees in relation to matters or cases described in subsection (1); and
 - (b) the provision, to persons with disabilities who attend court, of free sign language interpretation, Braille services and physical guide assistance.
- (3) Accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister.
- (4) The Chief Justice shall endeavour to ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

Section 42 of Act No. 14 of 2003 of which it is proposed to amend

42. Exemptions and deductions-general requirements

- (1) The following apply with respect to exemptions and deductions described in subsection (2)—
- (a) no person is eligible for an exemption or deduction unless the exemption or deduction has been recommended by the Council and approved by the appropriate government authority;
 - (b) no person is eligible for an exemption or deduction unless any additional requirements or conditions prescribed in the regulations made by the Minister are satisfied;
 - (c) an exemption or deduction may be refused on the basis that it has not been provided for in the allocation of public resources.
- (2) The exemptions and deductions referred to in subsection (1) are the exemptions and deductions under the following—
- (a) section 12;
 - (b) section 16;
 - (c) section 35;
 - (d) section 36(1); and
 - (e) section 40.

Section 44 of Act No. 14 of 2003 of which it is proposed to amend

44. Regulations

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

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

Section 46 of Act No. 14 of 2003 of which it is proposed to amend

46. Negligence by doctor

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

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

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

SCHEDULE

[Section 5 (2)]

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

1. A member of the Council may—

- (a) resign his office by notice in writing to the Minister; or
- (b) be removed by the Minister by notice in writing if he—
 - (i) is subject to a vote calling for his removal by a two-thirds majority of all members of the Council;
 - (ii) has been absent from five consecutive meetings of the Council without permission of the chairman;
 - (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
 - (iv) is an undischarged bankrupt;

- (v) is convicted by a Court of an offence punishable by a term of imprisonment; or
 - (vi) is otherwise unable or unfit to discharge his functions.
2. Where the office of a member becomes vacant the vacancy may with the approval of the Minister be filled through the majority vote of the members for the remainder of the term.
3. The Council shall pay to its members such remuneration as the Minister may approve.
4. The Council shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
5. A meeting of the Council shall be held on such date and at such time as the Council shall decide, or in the absence of such a decision if the chairman decides that a meeting is necessary, on a date and at a time determined by the chairman.
6. Unless otherwise decided by a two-thirds majority of the members of the Council, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.
7. The quorum of a meeting of the Council shall be fifteen members.
8. (1) The chairman, or in his absence, the vice-chairman, shall preside at every meeting of the Council.
- (2) In the absence of both the chairman and vice-chairman, the members present may choose one of their number to preside at the meeting.
9. A decision of the majority of members of the Council present at any meeting of the Council shall be deemed to be the decision of the Council and if upon any question the voting shall be equal, the chairman, vice-chairman or other person presiding shall have a second and casting vote.
10. No act, decision or proceedings of the Council shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Council being defective.

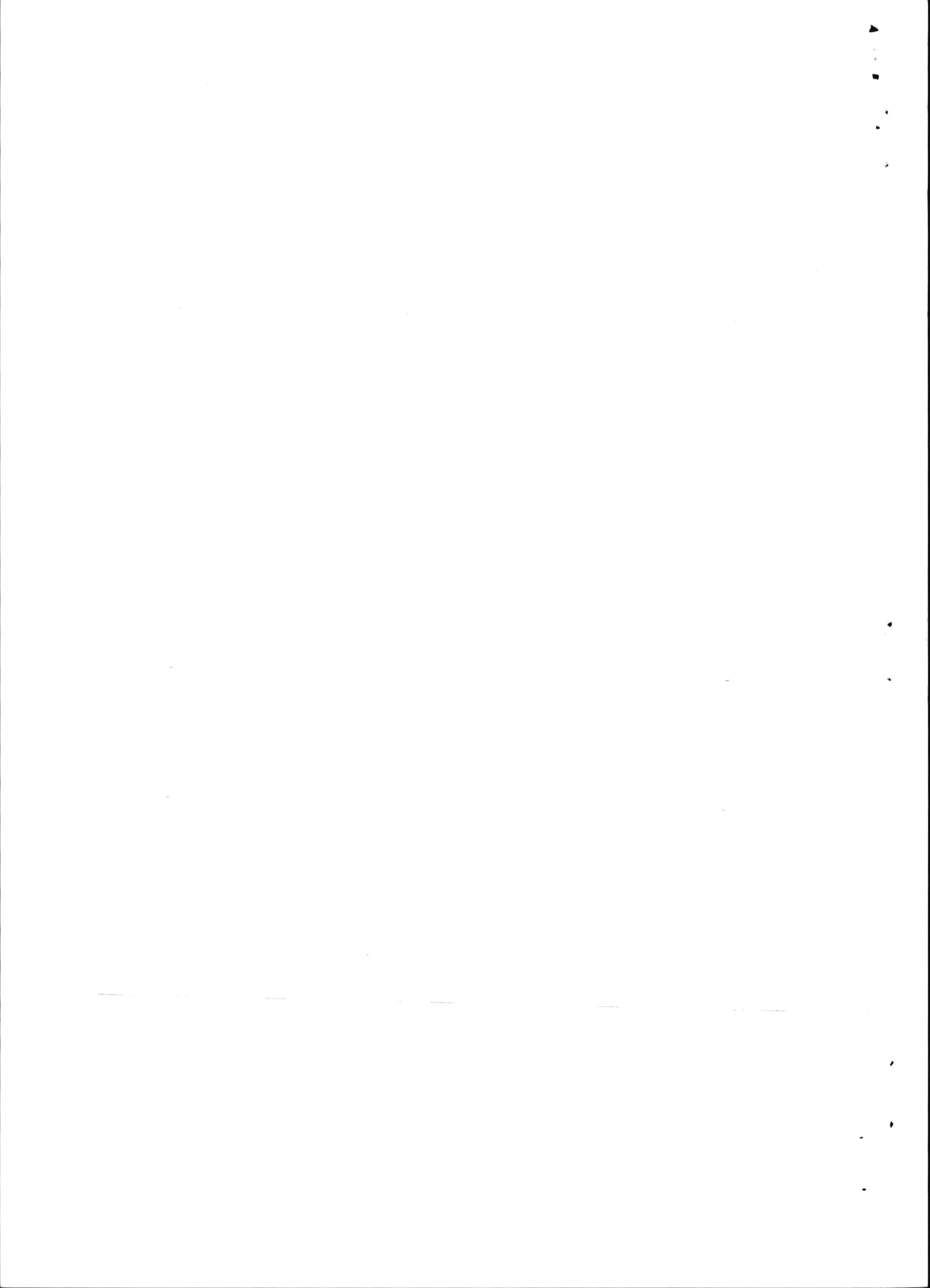
Section 35 (2) of Act No. Cap. 222 of which it is proposed to amend

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

- (a) prescribing fees for anything to be done under this Act, generally or in respect of specified areas, and, for the purpose of prescribing

fees, licences may be divided into different classes and a different fee prescribed for each such class;

- (b) prescribing charges for, or for matters incidental to, the attendance of police officers and other persons at the making of films under section 7;
- (c) prescribing the procedure for appeals to the Minister under this Act;
- (d) deleted by Act No. 5 of 2007, s. 14;
- (e) prescribing the conditions to be observed in regard to the erection, alteration and equipment of any theatre or cinema in the Nairobi Area;
- (f) prescribing the conditions to be observed in regard to securing the safety of theatres and cinemas from fire or other danger, or the safety and control of persons attending at theatres and cinemas in the Nairobi Area;





TWELFTH PARLIAMENT THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The County Hall of Fame Bill, 2018 (Senate Bills No.39 of 2018) was read a First Time in the Senate on Tuesday, 26th February, 2019 and was thereafter committed to the Senate Standing Committee on Labour and Social Welfare for consideration.

The Persons with Disabilities (Amendment) Bill (Senate Bills No.1 of 2019) was read a First Time in the Senate on Tuesday, 12th March, 2019 and was thereafter committed to the Senate Standing Committee on Labour and Social Welfare for consideration.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Senate Standing Committee on Labour and Social Welfare now invites interested members of the public and stakeholders to submit their views on the Bills. The views may be submitted through submission of written memoranda in the following manner-

1. Public Hearing for the Bills shall be held on **Wednesday, 3rd April, 2019, at the County Hall Mini Chamber, 1st Floor, County Hall Building, Nairobi** as follows -
 - a) County Hall of Fame Bill, 2018: from 9.00 am to 10.30 am
 - b) Persons with Disabilities (Amendment) Bill: from 11.00 am to 1.00 pm; or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to csenate@parliament.go.ke, to be received on or before **Wednesday, 3rd April, 2019 at 5.00 p.m.**

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

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**

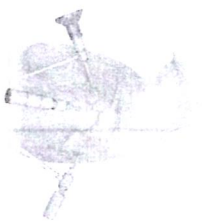
THE NAIROBI HOSPITAL



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2ND ORTHOPEDIC WORKSHOP

AIM: DEVELOPING ARTHROSCOPY ("KEY HOLE")
SURGERY IN KENYA AND THE EAST AFRICAN REGION



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REPUBLIC OF KENYA



**TWELFTH PARLIAMENT
THE SENATE**

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**CLERK OF THE SENATE/ SECRETARY
PARLIAMENTARY SERVICE COMMISSION.**

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NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

Pope Road, off Mombasa Road, P.O. BOX 57839-00200, Nairobi Kenya, Tel: (254 020) 6005522, 6001945,
Fax: (254 020) 6000997, E-mail: denema@nenma.go.ke Website: www.nenma.go.ke

NOTICE TO THE PUBLIC TO SUBMIT COMMENTS ON AN ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT FOR THE PROPOSED AFRICA REGIONAL EXPRESS (DARE 1) UNDERSEA CABLE SYSTEM WITHIN THE KENYAN TERRITORIAL WATERS UP TO THE LANDING POINT AT NYALI BEACH IN MOMBASA COUNTY.

Pursuant to Regulation 21 of the Environmental Management and Coordination (Impact Assessment and Audit) Regulations, 2003, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The proponent, Dare Consortium which is composed of Djibouti Telecom and its partners in Kenya - Telkom Kenya and Sonalia - Somtel, is proposing to install a submarine cable in the Indian Ocean within the Kenyan territorial waters. The project will consist of marine and terrestrial components. The marine component will entail the installation of a 494 km submarine cable. The 35,999m cable will be installed from the Kenyan Economic Exclusive Zone (EEZ) to Nyali beach in Mombasa County.

The following are the anticipated impacts and proposed mitigation measures

Impacts	Proposed mitigation measures
Shipping interference	<ul style="list-style-type: none"> • Follow maritime best-practice; • Request Port Authorities notify local shipping of survey activity where this might pose an abnormal obstruction to shipping; • Program work to avoid overnight mooring in or alongside harbor shipping channels;
Noise Pollution	<ul style="list-style-type: none"> • Observe international and national rules of the sea and navigational protocol; • Abide by the Resolution MSC 357(91) code on noise levels on board ships; appropriate; • Communicate plans and expectations with neighbors - adapt plans where appropriate; • Should not use the equipment when the dolphins are visiting the coastal waters of Mombasa.
Waste Generation	<ul style="list-style-type: none"> • Adhere to the waste management policy in annex 3; • Collect shipboard waste for ferrying to land-based recycling station or landfill; • Thoroughly clear all sites (terrestrial and marine) of discarded cordage, plastic and other waste; • Provide temporary toilets for construction staff with disposal of effluent into municipal sewerage system or install Bio Toilet for use by the staff; • Collect other waste for composting or disposal in landfill; • The equipment must be used when the affected marine animals are not within the radius of influence.
Auditory Shifts Results in temporary deafness/ reduced hearing ability	<ul style="list-style-type: none"> • All the equipment should operate below the acoustic harassment levels; • The proponent and contractor must ensure all the equipment used do not generate frequencies above 19KHz.
Acoustic harassment	<ul style="list-style-type: none"> • The electric and magnetic field associated with the fibre-optic are below the threshold that harm organisms and the cable will be buried hence the electric
Disturbance	<ul style="list-style-type: none"> • The electric and magnetic field associated with the fibre-optic are below the threshold that harm organisms and the cable will be buried hence the electric

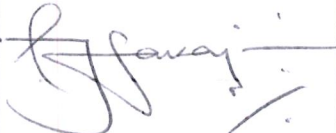


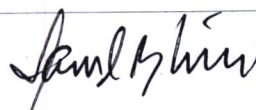




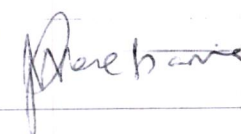
THE SENATE
ATTENDANCE REGISTER

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

Purpose..... *Adoption of the Persons with Disabilities (Amendment) Bill, 2019.*

Venue..... *Ground Floor Boardroom, Red Cross Building*

Date..... *Tuesday, 2nd July, 2019*..... **Time**..... *11:30 am*

No.	NAME	SIGNATURE	REMARKS
1.	Sen. Sakaja Johnson Arthur, CBS		
2.	Sen. (Dr.) Milgo Alice Chepkorir		
3.	Sen. Madzayo Stewart Mwachiru		
4.	Sen. Poghiso Samuel Losuron, EGH		<i>Member</i>
5.	Sen. (Dr.) Mwaura Isaac, CBS		
6.	Sen. Cherarkey Samson Kiprotich		
7.	Sen. Makori Beatrice Kwamboka		
8.	Sen. (Dr.) Inimah Gertrude Musuruve		<i>Member</i>
9.	Sen. Lokorio Petronila Were		

Committee Clerk

Mwaura

MINUTES OF THE 27TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON TUESDAY, 2ND JULY, 2019 IN GROUND FLOOR BOAROOM, RED CROSS BUILDING FROM 12.00 NOON.

MEMBERS PRESENT

- | | |
|--|--------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. Poghio Samuel Losuron, EGH | -Member |
| 3. Sen. Cherarkey Samson Kiprotich | -Member |
| 4. Sen. (Dr.) Inimah Gertrude Musuruve | -Member |
| 5. Sen. Lokorio Petronila Were | -Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------------|-------------------|
| 1. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 2. Sen. Madzayo Stewart Mwachiru | -Member |
| 3. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 4. Sen. Makori Beatrice Kwamboka | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|--------------------|
| 1. Ms. Mwanate Shaban | -Clerk Assistant |
| 2. Mr. Jeremy Chabari | -Legal Counsel |
| 3. Paul Vitus Okech | - Research Officer |
| 4. Ms. Julia Gachoki | - SAA |

MINUTE SEN/SCLSW/128/2019: PRELIMINARIES

The Chairperson called the meeting to order at 12.00 noon followed by a word of prayer.

MINUTE SEN/SCLSW/129/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Petronila and seconded by Sen. Poghio as follows –

AGENDA

1. Preliminaries (Prayers)
2. Adoption of the Agenda;
3. **Consideration and Adoption of the Persons with Disabilities (Amendment) Bill, 2019 Report; &**
4. Any Other Business & Adjournment.

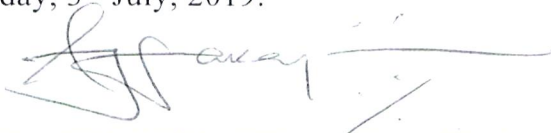
MINUTE SEN/SCLSW/130/2019: CONSIDERATION AND ADOPTION OF THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2019 REPORT;

The Members considered the report on the Persons with Disabilities (Amendment) Bill, 2019 and adopted it after it was proposed by Sen. Petronila Were and seconded by Sen. Gertrude Musuruve.

MINUTE SEN/SCLSW/131/2019: ANY OTHER BUSINESS AND ADJOURNMENT

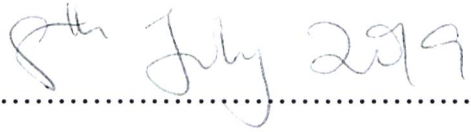
1. Members discussed the challenges sportsmen representing the country internationally face in terms of travel arrangements (a case in point being the deaf basketball players that were left behind after training for two months) and resolved to bring the issue up with the Cabinet Secretary when they meet her in August.
2. Members also resolved to ask the Ministry of Sports and Heritage of the budgetary allocations set aside for disability games and disability sports that the Ministry supports.
3. A second meeting on Consideration and Adoption of the Report on County Governments Retirement Scheme Bill, 2018 was tentatively scheduled for Wednesday 3rd July, 2019 awaiting confirmation from the Chairperson.

There being no other business the meeting was adjourned at 12.30pm and the date of the next meeting on Wednesday, 3rd July, 2019.



SIGNATURE.....

(CHAIRPERSON: SEN. JOHNSON SAKAJA)



DATE.....

MINUTES OF THE 2ND MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON TUESDAY, 28TH MAY, 2019 IN GROUND FLOOR BOARDROOM, RED CROSS BUILDING FROM 10.00 AM

MEMBERS PRESENT

- | | |
|--|-------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 3. Sen. (Dr.) Inimah Gertrude Musuruve | -Member |
| 4. Sen. Makori Beatrice Kwamboka | -Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------------|---------|
| 1. Sen. Madzayo Stewart Mwachiru | -Member |
| 1. Sen. Poghisi Samuel Losuron, EGH | -Member |
| 2. Sen. Cherarkey Samson Kiprotich | -Member |
| 3. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 4. Sen. Lokorio Petronila Were | -Member |

IN ATTENDANCE (STAFF FROM COUNTIES ON ATTACHMENT)

- | | |
|----------------------|------------------------|
| 1. Ms. Regina Githua | - Laikipia County |
| 2. Elijah Bhyanga | - Tharaka Nithi County |
| 3. Mwazani Hamisi | - Kwale County |

SENATE SECRETARIAT

- | | |
|-----------------------|------------------|
| 1. Ms. Mwanate Shaban | -Clerk Assistant |
| 2. Mr. Jeremy Chabari | -Legal Counsel |
| 3. Ms. Julia Gachoki | - SAA |

MINUTE SEN/SCLSW/104/2019: PRELIMINARIES

The Chairperson called the meeting to order at 10.29 am followed by a word of prayer.

MINUTE SEN/SCLSW/105/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Kwamboka and seconded by Sen. Musuruve as follows –

AGENDA

1. Preliminaries (Prayers & Introductions)
2. Adoption of the Agenda;
3. **Confirmation of Previous Minutes (21, 10, 9 & 8);**
4. **Consideration of the amendments to the PWD (Amendment) Bill, 2019;**
5. **Consideration of the Legislative proposal on the Care and Protection of Child Parents;**
and
6. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/106/2019: CONFIRMATION OF PREVIOUS MINUTES (21, 10, 9 & 8);

- i.* The Minutes of the 21st Sitting held on Tuesday, 21st May, 2019 in the Ground Floor Boardroom, Red Cross Building from 10.00 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Musuruve and seconded by Sen. Kwamboka.
- ii.* The Minutes of the 10th Sitting held on Wednesday 3rd April, 2019 in the Senate Chamber, Main Parliament Buildings from 11.00 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Musuruve and seconded by Sen. Sakaja.
- iii.* The Minutes of the 9th Sitting held on Wednesday 3rd April, 2019 in the Senate Chamber, Main Parliament Buildings from 9.30 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Musuruve and seconded by Sen. Sakaja.
- iv.* The Minutes of the 8th Sitting held on Wednesday 3rd April, 2019 in the Senate Chamber, Main Parliament Buildings from 9.00 am were confirmed as a true reflection of the meeting after having being proposed by Sen. Musuruve and seconded by Sen. Sakaja.

MINUTE SEN/SCLSW/107/2019: CONSIDERATION OF THE AMENDMENTS TO THE PWD (AMENDMENT) BILL, 2019;

Members deliberated on the Persons with Disabilities (Amendment) Bill, 2019 and noted that during the public hearing, most of the stakeholders preferred the total repeal of the Persons with Disabilities Act, 2003 and introduction of a whole new bill that would be in line with the current constitution. They also mentioned and submitted a bill that they said was at the cabinet level which had undergone extensive stakeholder engagement.

The Kenya National Commission on Human Rights submitted a copy of the Bill during the public hearing while the Ministry of Labour and Social Protection submitted a copy of the same bill in their written submissions on the matter.

The Committee recommended that the sponsors of the Persons with Disabilities (Amendment) Bill, 2019, Sen. Aaron Cheruiyot and Sen. Isaac Mwaura step down their bill and publish the new bill as the sponsors.

MINUTE SEN/SCLSW/108/2019: CONSIDERATION OF THE LEGISLATIVE PROPOSAL ON THE CARE AND PROTECTION OF CHILD PARENTS;

- a) The legal counsel briefed Members as follows;-**

1. That, the purpose of the Bill is to provide a legal framework for the care and protection of child parents within the counties so as ensure that an expectant underage girl or a child parent may actualize their right to basic education and at the same time ensure proper care of their children as enshrined in Article 53 of the Constitution.
2. That, the Bill takes into consideration the school re-entry policy that was passed in 1994 for pregnant girls and the National School Health Policy, 2009 and notes that both have failed to address the care, protection and reintegration of child parents back to school and society.
3. That, the Bill prohibits schools from expelling students who become pregnant, disallows compulsory pregnancy tests on girls and requires schools to ensure harassment-free environments for child parents.
4. That the Bill provides for, among other things the obligations of the National Government with respect to child parents that include through the National Council for Children's Services established under section 30 of the Children Act, the obligations of a county government with respect to the care of neglected children which include collaboration with the County Education Board and the county executive committee member responsible for education, the role of national and county governments in the prevention of school drop out by formulating policies and developing programmes and interventions for the re-admission and integration of children who have dropped out of school by reason of pregnancy, the rights of pregnant and parenting students be readmitted or enrolled into an institution of basic education, the management of teenage pregnancies in school; and the obligations of parents and guardian.
5. The Bill further provides for transition of existing care centres that are currently registered under the Children's Act, 2001 to be considered as registered under the Bill.

b) Address by Sponsor of the Bill – Sen. Kwamboka

1. Sen. Beatrice Kwamboka, the sponsor of the proposal informed Members that he proposal was inspired by the events of last year (2018) that took place towards the examination period where the media reported cases of school girls who were sitting for exams while pregnant or had small children. She also added that the increase of rape cases also motivated her to come up with the piece of legislation.
2. She mentioned sexual violence, cultural practices, peer pressure, broken families, poverty and flirting as factors that resulted into early pregnancies and listed some of the consequences of early pregnancies as increased poverty levels, unsafe abortions, unhealthy children, stigma and discrimination.

c) Members Responses

Members commended Sen. Kwamboka for her effort in providing for a legislative framework to reduce and manage child pregnancies. They however raised the following concerns –

- i) The title of the proposal;
- ii) That the proposal has not placed great emphasis on moral values;
- iii) That the Re-Entry Policy for Adolescent Mothers in Public Secondary Schools is already in place but there are gaps in implementation and follow up from the school, parents and area chiefs
- iv) That counties need to put in place rigorous programs for capacity building, mentorship and sensitization;
- v) That parents need to be encouraged to talk to their children about sex education and sexuality; and those subjects should also be put in the curriculum;
- vi) That punitive measures need to be taken against those making underage girls pregnant; and
- vii) Establishment of centres may make the problem worse and instead sensitization programs to both parents and children should be enhanced.

The Members resolved that the bill should proceed for publication.

MINUTE SEN/SCLSW/109/2019: ANY OTHER BUSINESS AND ADJOURNMENT

Members resolved to defer the adoption of the Persons with Disabilities Bill report scheduled for Thursday, 30th May, 2019 to the next meeting.

There being no other business the meeting was adjourned at 12.10 pm and the date of the next meeting on Thursday, 6th June at 10.00 am.

SIGNATURE.....

(CHAIRPERSON: SEN. JOHNSON SAKAJA)

DATE.....*Tuesday, 2nd July 2019*.....

MINUTES OF THE 10TH MEETING OF THE STANDING COMMITTEE ON LABOUR & SOCIAL WELFARE HELD ON WEDNESDAY, 3RD APRIL, 2019 IN THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS FROM 11.00 AM.

MEMBERS PRESENT

- | | |
|--|---------------------|
| 1. Sen. Sakaja Johnson Arthur, CBS | -Chairperson |
| 2. Sen. Madzayo Stewart Mwachiru | -Member |
| 3. Sen. (Dr.) Inimah Gertrude Musuruve | -Member |

ABSENT WITH APOLOGIES

- | | |
|--------------------------------------|--------------------------|
| 1. Sen. (Dr.) Milgo Alice Chepkorir | -Vice Chairperson |
| 2. Sen. (Dr.) Mwaura Isaac, CBS | -Member |
| 3. Sen. Cherarkey Samson Kiprotich | -Member |
| 4. Sen. Makori Beatrice Kwamboka | -Member |
| 5. Sen. Poghizio Samuel Losuron, EGH | -Member |
| 6. Sen. Lokorio Petronila Were | -Member |

SENATE SECRETARIAT

- | | |
|-----------------------|-------------------|
| 1. Ms. Mwanate Shaban | -Clerk Assistant |
| 2. Mr. Jeremy Chabari | -Legal Counsel |
| 3. Mr. Vitus Okech | -Research Officer |
| 4. Ms. Julia Gachoki | -SAA |

MINUTE SEN/SCLSW/054/2019: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 a.m, followed by a word of prayer. He then led a self-introductory session of all present.

MINUTE SEN/SCLSW/055/2019: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Musuruve and seconded by Sen. Madzayo as follows –

AGENDA

1. Preliminaries (Prayers & Introductions)
2. Adoption of the Agenda;
3. **Public Hearing on the Persons With Disabilities (Amendment) Bill, 2019;**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/056/2019: PUBLIC HEARING ON THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2019;

a) **Kenya National Commission on Human Rights (KNCHR)** gave the following general comments -

- i) That the Bill should be aligned to the Constitution and also domesticate the Convention on Persons With Disabilities;
- ii) The Bill does not take into account mental and psychosocial disabilities;
- iii) The Commission be given the role of monitoring and evaluation since the CRPD gives the Commission that role of reporting at regional and international levels due its human rights nature;
- iv) Caregivers and parents should play a key role when it comes to supporting PWDs; and
- v) Mentioned that a parallel process of coming up with a new bill that will totally overhaul the old PWD Act is in progress and is at the Cabinet level.

The Commission then submitted its written submissions which contained amendments to specific clauses; and also a copy of the new Bill that they said had had wide stakeholder input.

b) **Users and Survivors of Psychiatry Kenya** stated that there was a new bill that had gone through stakeholder engagement and gave the following general comments –

- i) The term “mentally retarded should not be used in the Bill and instead use “Persons with Psychosocial disabilities”.
- ii) The Bill should see the Person before the disability;
- iii) The Bill should be aligned to the Convention of Rights for Persons with Disabilities.

c) **United Disabled Persons of Kenya** presented a joint memorandum together with the Caucus on Disability Rights Advocacy (CDRA) and stated the following –

- i) That there are conflicting sections between the policies and the law and therefore there is need for a total repeal of the Act and replace it with a new one;
- ii) That there was a totally new bill at the Cabinet level that had had wide stakeholder input;
- iii) That the organization submits its written amendments which include adding a paragraph to 4C on disqualification of the Chairperson, as it waits for the repeal of the old Act.

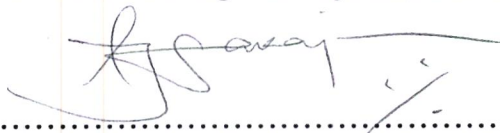
d) **Autism Society of Kenya** thanked the Committee for inviting them to the hearing and mentioned that development disorder is covered very well in the Bill.

- e) **Wesley Educational and Mission Centre** recommended that cancer be treated as a disability condition and requested the Committee to consider the Bill that had gone through intensive stakeholder engagement.
- f) **New Age for the Visually Impaired** mentioned that they have waited long for the new Bill on PWD that is at Cabinet level and urged the Committee to follow up on the matter.

The Chairperson thanked the public for attending the hearing and informed them that the Committee will look at the Bill received from KNCHR and make a resolution on the matter.

MINUTE SEN/SCLSW/057/2019: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business the meeting was adjourned at 1.00 pm.



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

DATE..... *Tuesday, May 28th 2019.*.....

