

SPECIAL ISSUE

Kenya Gazette Supplement No. 213 (Senate Bills No. 29)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2020

NAIROBI, 30th November, 2020

CONTENT

Bill for Introduction into the Senate—	PAGE
The Persons with Disabilities (Amendment) Bill, 2020.....	721

**THE PERSONS WITH DISABILITIES
(AMENDMENT) BILL, 2020**

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, 2020.

Short title.

2. The Persons with Disabilities Act, hereinafter referred to as the “principal Act”, is amended by deleting section 2 and substituting the following new section—

Amendment of section 2 of No.14 of 2003.

Interpretation

2. In this Act, unless the context otherwise requires—

“adjustment order” means an order made by the Council under section 31E 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 disability for their socio-cultural, economic, civil, political wellbeing of persons with disability;

No. 24 of 2013

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

“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;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to persons with disability;

“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;

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

Cap. 253. “county executive committee member” means the county executive committee member for the time being responsible for matters relating to persons with disability;

“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 human 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;

“disability mainstreaming” means a strategy through which concerns, needs and experiences of persons with disability 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 disability 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 disability;

“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 disability or perpetuate discrimination against such persons;

“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;

“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 disability” means associations, groups, non-

governmental organizations or societies formed for the purposes of rendering services to persons with disability;

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

“persons with disability” 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 needed to ensure persons with disability 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;

“rural-based organisation” means an organisation whose membership is comprised of persons with disability 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 disability;

“support services” includes guide dogs, support persons, personal assistants, sign language interpreters, guide, 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 disability 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 disability necessary.

3. The principal Act is amended by inserting the following new section immediately after section 2—

Insertion of new section 2A

Guiding Principles.

2A. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles in addition to the national values and principles set out under Articles 10, 174 and 232 of the Constitution—

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices and the independence of all persons in the conduct of their affairs;
- (b) equality and non-discrimination;
- (c) participation and inclusion in society;
- (d) acceptance of persons with disability as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility; and
- (g) respect for the evolving capacities of children with disability.

4. 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.

- 2B.** The national government shall—
- (a) develop policies on the protection and promotion of the welfare of persons with disability;
 - (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 disability;
- (d) provide facilities and infrastructure for the training of professionals in the rehabilitation and habilitation of persons with disability;
- (e) promote the integration of persons with disability in schools;
- (f) promote the inclusion of persons with disability 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 disability;
- (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 disability;
- (h) adopt affirmative action measures in procurement of national government goods and services by implementing preferential procurement for persons or entities managed by persons with disability; and
- (i) ensure access to free basic education and other social amenities to every child with a disability.

Obligations of county governments.

2C. (1) Every county government shall—

- (a) implement national policies for the protection and promotion of the welfare of persons with disability;

- (b) allocate adequate resources to programmes specifically targeting persons with disability;
- (c) ensure access to free pre-primary education and other social amenities to every child with disability;
- (d) co-ordinate and disseminate information on government sponsored and non-government sponsored programmes targeting persons with disability within the respective counties;
- (e) promote the inclusion of persons with disability 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 disability; and
- (f) 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 disability.

(2) In ensuring that a county government meet its 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 disability in the county;
- (b) develop mechanisms for the identification of persons with disability residing in the county;

-
- (c) establish a database of persons with disability 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 the realisation of the rights of persons with disabilities under Article 54 (1) of the Constitution;
 - (e) formulate and implement programmes aimed at promoting the socio-economic development, including participation in cultural life, recreation and sports, by persons with disability in the county;
 - (f) co-ordinate the implementation of programmes developed by the Council and the Authority relating to persons with disability in the county; 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 disability.

(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—

- (a) a person who represents persons with disability in the county;
- (b) two public officers serving in the respective county public service;
- (c) two members of the public with knowledge or experience on matters relating to the welfare, rehabilitation and the management persons with disability and belong to a related group or organization; and
- (d) such other persons, not exceeding two, as the county executive committee member shall consider necessary for the performance of the functions of the committee.

(5) In constituting a committee under subsection (4), the county executive committee member shall ensure that—

- (a) not more than two thirds of its members shall be of the same gender; and
- (b) the persons appointed to the committee 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.

5. Section 4 of the principal Act is amended—

Amendment of
section 4 of
No.14 of 2003.

- (a) in subsection (1)—
 - (i) by deleting paragraph (c) and substituting therefor the following new paragraph—
 - (c) one person nominated by the council of county governors with knowledge and at least three years' experience on matters relating to disabilities;
 - (ii) by inserting the words “an ex officio member and” immediately after the words “who shall be” in paragraph (e); and
- (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 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 the Council may determine.

(1C) The members of the Council shall, at their first meeting elect a vice chairperson from amongst their members.

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

6. 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 for appointment.

4A. (1) A person is qualified to be appointed as a member 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—
 - (i) in the case of the chairperson, at least six years' working experience, three of which shall be on matters relating to disability, human rights or social development; and
 - (ii) a member, at least five years' experience of which three years shall be on matters relating to disabilities; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(2) A person shall not qualify for appointment as a member of the Council if that 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 for an offence and sentenced to a term of imprisonment of at least six months;
- (f) has been convicted of an offence under this Act; or
- (g) has been compelled to resign or been removed from office, on account of abuse of office.

Procedure for appointment

4B. (1) Whenever a vacancy occurs in the office of the chairperson or a member under section 4C (b), the executive director shall forthwith notify the Public Service Commission.

(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.

Vacation of office

4C. A member of the Council 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 Council without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term of at least six months;
 - (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 unable to perform the functions of office by reason of physical or mental infirmity.

Remuneration of the Council

4D. The members of the Council shall be paid such remuneration or allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

7. The principal Act is amended by deleting section 5 and substituting therefor the following new section—

Tenure of office of Members of the Council.

5. The Chairperson and members of the Council appointed under section 4(1)(d) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

8. Section 6 of the principal Act is amended—

Amendment of section 6 of No 14 of 2003.

- (a) in subsection (2) by deleting the words “local authorities” appearing immediately after the words “Ministries and” in paragraph (a) 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 may”.

9. 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 immediately after subparagraph (ii) —
 - (iia) advise the Cabinet Secretary for the time being responsible for matters relating to planning and the county executive committee members in each county on the collection, collation, management and dissemination of data relating to persons with disability;

- (iii) deleting the word “Minister” appearing immediately after the words “advise the” in subparagraph (iii) and substituting therefor the words “Cabinet Secretary and the respective county executive committee members”;
- (iv) inserting the following new subparagraphs immediately after subparagraph (iii)—
 - (iiia) advise the Cabinet Secretary on the development of national policy and legislation for the promotion and protection of the rights of persons with disability;
 - (iiib) monitor, evaluate, report on and advise the Cabinet Secretary and the respective county executive committee members on the progress made in the realisation of the rights of persons with disability and recommend appropriate action to facilitate full enforcement;
- (v) inserting the following new subparagraph immediately after subparagraph (iv)—
 - (iva) monitor and evaluate the effectiveness of strategies and programmes on the promotion and protection of the rights of persons with disability;
 - (vi) deleting the words “encourage and secure the” appearing at the beginning of subparagraph (vii) and substituting therefor the words “collaborate with the county governments”;
- (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 on, and facilitate access to information by, persons with disability including institutions and organizations offering services to the persons with disability;
 - (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 disability;
 - (db) advise the county governments on the implementation of national policy in so far as they relate to the promotion and protection of basic rights and freedoms of persons with disability, including—
 - (i) the rights 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;
 - (d) in subsection (1)(e) by inserting the word “National” immediately after the words “to consult with the”;

- (e) by deleting subsection (1)(g) and substituting therefor the following new subsection—
- (g) to prepare and submit an annual report to the Cabinet Secretary and Parliament on—
 - (i) the progress made in the realization of the rights of persons with disability;
 - (ii) the challenges faced by persons with disability in the realisation of their rights; and
 - (iii) measures and strategies put in place to address the challenges;
- (g) in subsection (1)(h) by deleting the word “Government” appearing immediately after the words “consult with the” and substituting therefor the words “national and county governments”;
- (h) by inserting the following new paragraphs immediately after subsection (1)(h)—
 - (ha) advise the Cabinet Secretary and county governments on—
 - (i) appropriate programmes, plans and other administrative measures required for the realisation of the rights of persons with disability;
 - (ii) appropriate measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by persons with disability because of past discrimination;
 - (hb) 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 disability;
 - (hc) provide information and technical advice to individual care givers, institutions, associations and organizations concerned with the care and rehabilitation of persons with disability;

- (hd) 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 disability;
- (he) collaborate with the Media Council of Kenya and media in—
 - (i) creating awareness through programmes on matters relating to the rights of persons with disability; and
 - (ii) ensuring that information communicated by the media houses is accessible to persons with disability;
- (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”.

10. The principal Act is amended by inserting the following new section immediately after section 7—

Insertion of new sections in No. 14 of 2003.

Powers of the Council.

7A. In the performance of its functions under this Act, the Council may, or in association with other persons or bodies—

- (a) enforce and generally administer the provisions of this Act and other related laws;
- (b) issue adjustment orders;

- (c) conduct accessibility audits;
- (d) issue summonses or other such other orders requiring the attendance of such person, organization or institution as it may consider necessary for the realization of the objects of this Act;
- (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 as it may consider necessary;
- (g) levy such fees and charges for its services as may be prescribed;
- (h) enter into association with other bodies within or outside Kenya as the Council may consider necessary;
- (i) subject to the law on public finance, the Council may 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

No. 18 of 2012 (k) do all such other things as may be necessary for the performance of its functions under this Act.

11. 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 that may be donated to the Council.

12. 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

13. 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 substituting therefor the words “Cabinet Secretary and Parliament.”

Amendment of section 10 of No. 14 of 2003.

14. The principal Act is amended by deleting Part III and substituting therefor the following new Part—

Amendment of Part III of No 14 of 2003.

PART III—RIGHTS OF PERSONS WITH DISABILITY

Realisation of rights of persons with disability

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

- (a) take all necessary measures to ensure the effective enjoyment of the inherent right to life by persons with disability;
- (b) take appropriate measures to prevent the discrimination of women and girls with disabilities;
- (c) take all feasible measures to specifically protect persons with disability in situations of risk;
- (d) ensure that persons with disability enjoy equal protection before the law;

- (e) take all the necessary measures to prevent persons with disability from being subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (f) take all the necessary measures to prevent persons with disability 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 disability;
- (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 disability; and
- (j) facilitate the full participation of persons with disability in political activities including voting and seeking public positions whether elective or appointive.

Right to Equality
and
Non-Discrimination

- 12.** (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 disability shall not be considered discrimination.

Right to
Legal Capacity.

13. (1) Every person with disability has the right to—

- (i) recognition of legal capacity before the law; and
- (ii) 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.

(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.

14. (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) A person with disability has the right to control their sexuality and reproductive health.

(3) A person with disability shall not be separated from their 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 his or her property acquired at marriage, during marriage and dissolution of marriage.

Right to Privacy.

15. (1) A person with disability has a right to privacy and confidentiality and for this purpose, a public or a private institution shall protect information relating to—

- (a) personal health;
- (b) habilitation; and
- (c) rehabilitation services for persons with disability and such information shall not be shared without express authority of the person with disability concerned.

Women
disability.

with

16. 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; and
- (g) full development, advancement and empowerment.

Children
disability.

with

17. 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 their views on all matters affecting them; and
- (d) age-appropriate assistance to realise their rights under Chapter 4 of the Constitution and this Act.

Youth
with disability.

18. (1) Every youth 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 participation of youth with disabilities in training, sports, culture, science and technology.

Older members of the society with disability.

19. Every older member of the society 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) have appropriate measures and safeguards put in place to provide them with support they may require to exercise the legal capacity; and
- (c) access inclusive services.

Right to documents of registration or identification.

20. (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) A person with disability shall not be deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their 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.

21. Every Person with disability has a right to respect for their physical and mental integrity and the right to security.

Right to human
dignity.

22. 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 considered as lowering his or her human dignity.

Protection from
abuse, exploitation
and violence.

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

(2) A person or an organisation working with a person with disability 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 a person with disability shall submit information regarding the acts to a law enforcement agency in whose jurisdiction such incident occurs or is likely to occur, and such agency shall take immediate steps on the receipt of such information to stop or prevent it.

(3) A person who fails to comply with the provisions of 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 disability
in situations of
risk
and
humanitarian
emergencies.

24. (1) Every person with disability has a right to suitable and specialised protection and safety in situations of risk, including conflict, humanitarian emergencies and the occurrence of natural disasters.

(2) Entities which run places to which the public has access shall take appropriate

measures to ensure protection and safety of persons with disability during the occurrence of any disaster and in situations of risk and humanitarian emergencies.

(3) 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 conflict, humanitarian emergencies and the occurrence of natural disasters take measures to ensure the safety and protection of persons with disability in light of the obligations under the relevant international conventions on human rights.

(4) Every construction and reconstruction programmes and activities undertaken by the National and county governments 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 conflict, humanitarian emergencies or natural disasters take into account the accessibility requirements of persons with disability.

Special measures for persons with disability.

25. (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 disability.

Right to education.

26. (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.

(2) A child or other person with disability shall not be excluded from the education system on the basis of disability.

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

(4) The national and county governments shall ensure that persons with disability have access to inclusive education, without discrimination and on an equal basis at all levels.

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

(6) Every child with disability 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 the National and respective county government shall ensure that—

- (a) learning institutions take into account the needs of persons with disability 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; and

- (c) the Ministry responsible for education formulates strategies to implement inclusive education through—
 - (a) enforcement of recruitment and retention of special education teachers in all schools and institutions;
 - (b) development of a least restrictive environment by adaptation and structural adjustments of all educational institutions to the needs of persons with disability;
 - (c) establishment of specialized institutions that undertake research and development in education for learners with disability;
 - (d) 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;
 - (e) promotion of the use of appropriate augmentative and alternative modes, means and formats of communication, adoptive technologies, including Braille and Kenya Sign Language; and
 - (f) 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.

(9) A person who denies a person with disability admission to a learning institution 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 to both.

(10) The Cabinet Secretary responsible for education shall—

- (a) put in place strategies and policy for the development of persons with disability through their personality, talents and creativity and 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) in consultation with the County Education Board put in place a sustainable financial framework in each financial year to achieve full realization of the right to education for persons with disability.

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

(12) 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 disability.

27. (1) An employer shall not discriminate against a qualified person with disability in the formulation and implementation of job. Application and employment procedures, hiring, promotion and other terms, conditions and privileges of employment.

(2) Every employer shall—

- (a) reserve at least five per cent direct employment opportunities for persons with disability to secure employment;
- (b) formulate policies and programmes to promote basic human rights, improve working conditions and enhance employment opportunities for persons with disability;
- (c) in the process of recruitment, not discriminate solely on account of the disability of a person;
- (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 disability;

(3) Every employer shall submit, in the prescribed form, such information regarding the status of employment of persons with disability within their establishments to the Council.

(4) The following acts shall, for purposes of subsection (2)(c) constitute acts of discrimination—

- (a) limiting, segregating or classifying a job applicant with disabilities in a manner which adversely affects his or her employment 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 disability;
- (c) implementing 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 other employees 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 disability from membership in trade and labour unions or similar organizations.

(5) For the purposes of subsection (4), the age of retirement shall be the age as may be provided in regulations made by the Cabinet Secretary.

(6) For purpose of this section—

- (a) “reasonable accommodation” for purposes of employment includes—
 - (i) making existing facilities used by employees accessible to, and usable by, persons with disability; 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 disability;
- (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.

28. (1) A person with disability shall not be dismissed or suffer a reduction in rank solely on the grounds of disability, acquiring any disability or any consequences thereof.

(2) Notwithstanding subsection (1), —

- (a) where an 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.

29. (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 may 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.

(2) An employer shall, for purposes of subsection (1), present proof certified by the Council of the employee of the person in respect of whom it claims the deduction and the persons with disability so employed are accredited with the Council as to their disabilities, skills and qualifications.

(3) A private employer who improves or modifies its physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities may 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.

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

(2) Every person with disability has the right to—

- (a) the enjoyment of sexual and reproductive health rights;
- (b) information that will enable him or her to make responsible and informed choices about their sexual and reproductive health;
- (c) be treated with respect, privacy and dignity while seeking health related services; and

(d) free medical care and treatment on condition of his or her disability in public owned health institutions.

(3) Medical assessment reports undertaken with respect to a person with disability for purposes of registration, employment or compensation shall be carried out free of charge in public-owned health facility.

(4) Every national or referral health facility shall employ at least two Kenya Sign Language interpreters and shall take into account the need for gender balance in the hospital organizational structure.

(5) 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.

(6) Notwithstanding subsection (5), 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.

31. (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 disability;
- (c) enabling persons with disability 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 disability at an affordable cost; and

(e) prompt attendance by medical personnel to persons with disability.

(2) Every person with disability has a right to information, communication technology and systems which would enable such persons carry on with their day to day activities with ease.

Access
to information
and
communication
technology
services.

31A. (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 a public institution to disseminate information intended for the general public in a format that is accessible to. Persons with disability.

(3) Every public institution shall put in place systems to facilitate communication by persons with disability including sign language interpreters, Braille, augmentative and alternative communication.

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

(5) Every telecommunication entity in Kenya shall take steps to provide functionally equivalent services for consumers with disability to enable them access services, products and programs offered by entity.

(6) Every television station shall provide a Kenya sign language inset, sub-titles in

newscasts, educational programs and in all programs covering events at the national, regional and international level.

(7) Every public institution of higher learning shall offer a common course in Kenya Sign Language.

Access to Justice.

31B. (1) Every person with disability has a right to effective access to justice on an equal basis with others including the provision of procedural and age-appropriate accommodation 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 for the provision of legal services at a subsidised fee for persons with disability with respect to —

- (a) matters affecting the violation of the rights of persons with disability or the deprivation of their property;
- (b) cases involving capital punishment of persons with disability; and
- (c) such matters and cases as maybe prescribed.

(3) The Chief Justice shall make rules to provide for—

- (a) the exemption, of persons with disability, from the payment of court fees in relation to matters or cases described in subsection (1); and
- (b) the provision, to persons with disability who attend court, of free Kenya Sign Language interpreters, Braille services other communication formats and technologies accessible to persons

with disability, physical guide assistance and intermediaries.

(4) Accused persons with disability who are denied bail shall be entitled to be held in custody in a facility modified in accordance with such standards as may be prescribed.

(5) The Chief Justice shall ensure that all suits involving persons with disability 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, detention, investigation, trial or confinement.

Sports, recreation,
leisure and culture.

31C. (1) Every person with disability has a right to take part on an equal basis with other persons in sporting, recreation, leisure and cultural activities at the national, regional and international level.

(2) The Cabinet Secretaries responsible for matters relating to sports and cultural activities shall, in consultation with the Council, take put in place such measures as may be considered necessary to avail all persons with disability 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 cultural activities for their employees shall ensure that such sporting, recreational, leisure and cultural activities shall put n. place mechanisms to enable the participation of persons with disability.

(5) Government agencies and institutions responsible for curriculum

development shall restructure courses and programmes to ensure access, inclusion and participation of persons with disability 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 disability with the necessary suitable environment, including appropriate instruction, training, resources and medical personnel, architectural infrastructure, apparatus and equipment, transportation facilities for the participants.

Accessibility.

31D. (1) Every person with disability is entitled to a barrier-free and disability-friendly environment to enable him or her to live independently and participate fully in all aspects of life.

(2) The national and county governments shall put in place measures to ensure that the physical environment, transport system, information and communication facilities and other facilities and services including emergency services that are accessible to or provided to the public are also accessible to persons with disability.

(3) Public and private institutions shall formulate and implement minimum standards and guidelines to enable access, by persons with disability, to facilities and services that accessible to or provided to the public taking into account the different forms of disability.

(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 device and service.

(5) The relevant government agencies shall not approve a building plan unless such plan complies with such standards on accessibility as may be prescribed.

(6) The Council shall, in consultation with the relevant government agencies and the private sector, prescribe the minimum standards for the accessibility, by persons with disability, of facilities and services that are provided to the public.

(7) In prescribing the standards under subsection (6), the Council shall take into account the need to ensure that the facilities and services 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; and
- (h) any other mode of transport.

(8) No individual, organisation 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) Any construction, modification or alteration to the built environment that is

undertaken after the commencement of this Act shall be undertaken in conformity with the standards set out in the First Schedule on accessibility of the built environment for persons with disability.

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

Adjustment orders.

31E. (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 disability 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.

(3) The Council shall set out the following information in the adjustment order issued under subsection (2) —

- (a) a description of the premises, services or amenities concerned;
- (b) the grounds upon which the Council consider that the premises, services or amenities are inaccessible to persons with disability;
- (c) the action required to be undertaken by the owner or provider at his or her own expense in order to secure

reasonable access by persons with disability to the premises, services or amenities: and

(d) the period within which the action under paragraph (b) shall be implemented.

(3) Before serving an 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 to make representations to the Council within a specified period from the date of the service of the notice.

(4) The Council may, upon considering any representations made under subsection (3)(c), issue, refrain from or defer the issuing of an adjustment order.

(5) Within thirty days after an adjustment order is issued under subsection (4), the person concerned may appeal to the High Court against the issue of the adjustment order.

(6) A person who fails to comply with an adjustment order commits an offence and shall be liable, on conviction, 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.

31F. (1) Every person with disability has the right to participate in political and

persons
with disability.

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) The Independent Electoral and Boundaries Commission shall put in place measures to facilitate the realization of civic and political rights by persons with disability 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 disability to vote by secret ballot in elections without intimidation and to offer themselves for elections; and
- (c) putting in place measures for assistive voting by a person of their own choice, on request and facilitating the use of assistive and appropriate technologies.

(3) A person who undertakes to render assistance under subsection (3)(c) shall do so 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
disability.

31G. (1) The Council shall, in order to facilitate the realization of the rights set out under this Part by persons with disability, keep and maintain a register setting out information on—

- (a) persons with disability, to whom it shall issue disability identification cards in such form as it may determine; and

(b) institutions, entitles owned by persons with disability, associations and organizations, including those controlled and managed by the Government, which promote the rights of and provide services to persons with disability and issue certificates of registration thereof.

(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 organisation holding it is registered with the Council.

15. The principal Act is amended by deleting Part IV.

16. Section 33 of the principal Act is amended—

- (a) in subsection (1) by—
 - (i) deleting paragraph (c) and substituting therefor the following new paragraph—
 - (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 Council;
 - (e) monies that may be borrowed by the Council in the discharge of its functions under the Act; 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 of Trustees shall, with the

Amendment of Part IV of No. 14 of 2003.

Amendment of section 33 of No 14 of 2003.

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 disability registered under this Act for the general benefit and development of persons with disability;
 - (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;

17. Section 34 of the principal Act is amended—

Amendment of section 34 of No 14 of 2003.

- (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” in paragraph (d) and substituting therefor the words “Cabinet Secretary”;
 - (iv) deleting the word “mental” appearing immediately after the words “for persons

with” in paragraph (e)(iii) and substituting therefor the word “developmental”;

(v) 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;

(vi) 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 word “Minister” appearing immediately after the word “The” 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 financial year.

18. Section 35 of the principal Act is amended—

Amendment of section 35 of No 14 of 2003.

(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 word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”.

19. The principal Act is amended by deleting Part VI and substituting therefor the following new part—

Amendment of Part VI of No.14 of 2003.

PART VI—RELIEFS AND INCENTIVES

Exemptions.

35. (1) A person with disability who 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 he may consider appropriate, 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 disability 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 disability.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disability 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 disability 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 a 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 disability.

(8) The Cabinet Secretary may, in consultation with the Cabinet Secretary responsible for matters relating to finance and the Council may make regulations to give effect to this section.

Incentives.

36. (1) Any donation, bequest, subsidy or financial aid which may be made to an institution or organization involved in the programmes of persons with disability 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 allowable as a deduction 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, shall provide incentives to local manufacturers of assistive devices used by persons with disability including—

- (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) exemptions from taxes and duties on raw materials;
- (g) access to bonded manufacturing systems; and
- (h) demurrage charges.

Access to credit.

37. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions and the Council develop regulations to facilitate access to credit by persons with disability.

Exemption from taxable income of employers of persons with disability.

37A. A 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.

37B. (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 disability and sent within or outside Kenya for the purpose of repair or delivery to—
- (i) a person with disability;
 - (ii) a parent or guardian of a child with disability; or
 - (iii) a duly registered organizations of or for persons with disability; and
- (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 shall, in consultation with the Cabinet Secretary responsible for matters relating to communication the Council, make regulations to give effect to this section.

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

37C. (1) All state and non-state agencies shall take reasonable measures to ensure the 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).

Amendment of Part VII of No. 14 of 2003

20. The principal Act is amended by deleting Part VII and substituting therefor the following new part—

PART VII—OFFENCES AND PENALTIES

Discrimination contrary to Article 27 of the Constitution.

38. (1) A 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 commits an offence and shall, on conviction, be liable to an imprisonment not exceeding fifteen years or to a fine not exceeding two million shillings or to both.

(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 to 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 Articles 53 and 55 of the Constitution;
- (g) the rights of older persons guaranteed under Article 57 of the Constitution;
- (h) the right to obtain, possess and utilize documents of registration or identification, including a certificate of

birth, national identity card and passport; and

- (i) 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 abuse, exploitation or violence.

39. (1) A person who treat a person with disability or does any of the acts specified in subsection (2) by reason only of their disability commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(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.

Harmful practices.

40. (1) The national and county governments shall take such measures as it considers necessary 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

commits an offence and shall be liable, on conviction, to life imprisonment.

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

Torture and cruel treatment.

41. A person who causes harm or death of a person with disability through torture, cruel treatment, ritual killings or other practices commits an offence and shall be liable, on conviction, to life imprisonment.

Concealment of persons with disability.

42. (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) A 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.

43. A 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

44. A 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.

44A. (1) A health professional shall not discriminate against a person with disability in the observance of ethical guidelines on informed consent and confidentiality while providing health care and other services to a person with disability.

(2) Without prejudice to subsection (1), every health care professional shall, when making impairment-specific interventions, provide complete information to the person with disability through accessible modes, methods and formats.

(3) A 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 one year, or both.

(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 not exceeding ten years, or both.

(5) A person who, not being a doctor or medical practitioner, causes a disability to another person or who through negligence, 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 years or both.

(6) A 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, on conviction, to a fine of three million sshillings or to imprisonment for a period not exceeding four years or both.

(7) A 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.

Offensive
Publications.

44B. (1) A person shall not 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 be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one million or to both.

Giving false information for purposes of registration

44C. A 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 disability on a person not entitled to such benefit;

commits an offence and is 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.

44D. A 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.

21. The principal Act is amended by deleting Part VIII and substituting therefor the following new part—

Amendment of
Part VIII of No 14
of 2003.

PART VIII – MISCELLANEOUS

Protection of road users with disabilities.

45. The national and county governments shall put in place measures to facilitate access to public roads and highways under their respective mandates by persons with disability and shall, for this purpose —

(a) equip pedestrian crossings with traffic control signals controlled by a pedestrian push-button system; and

provide pedestrian traffic lights with clearly audible signals.

Public service vehicles and transport.

46. (1) A registered owner of a public transport vehicle shall adjust the vehicle to suit persons with disability 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 disability 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.

Denial of admission into premises.

47. (1) A person shall not, 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 grounds 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.

Prohibition of discrimination relating to goods, facilities and services.

48. 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 disability to make use of the goods, information, service or facility.

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

49. 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 they are hired.

Inspectorate Units and Inspectors.

49A. (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 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.

(4) The Council shall appoint an inspector who shall investigate the level of compliance by a Ministry under subsection (1) and (2) and make such recommendations as may be considered necessary for compliance or to remedy any 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.

49B. Every government agency putting up a residential and commercial building shall reserve at least five percent of the said residential and commercial buildings for acquisition by persons with disability.

Markets.

49C. The national and county governments when constructing markets shall reserve five percent of the stores to persons with disability.

Awareness raising.

49D. (1) All public media houses with television and radio shall dedicate at least one hour free airtime every month to sensitize members of the public on issues of disability.

(2) The Council shall, for purposes of subsection (1), collaborate with the media for the production or publication of at least one column in the print media every month.

Right to independent living.

49E. (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.

49F. (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 Prosecutors.

Cap. 75

49G. The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for purposes of this Act.

General penalty.

49H. (1) A 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.

49I. (1) The Council may, in consultation with the Cabinet Secretary, 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

22. The Schedule to the principal Act is amended—

Amendment of the Schedule of No 14 of 2003.

- (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—

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.

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

- (fa) prescribing the requirements to be met by makers and exhibitors of films in order to

Amendment of
section 35 of Cap.
222.

make such films accessible to persons with disability.

24. (1) All existing organisations of or for persons with disability shall apply in the prescribed manner to the Council for registration.

Transitional provisions.

(2) All organisations of persons with disability and any integrated organisation with at least seventy per cent persons with disability shall within twelve months of formation, apply to the Council, in the prescribed manner, for registration.

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

The Bill also seeks to align the Persons with disability Act, 2003 with the Constitution.

The Bill further proposes to review the membership of the National Council for Persons with disability to include a nominee of the Council of County Governors 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 disability 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 12th November, 2020.

ISAAC MWAURA,
Senator.

AARON CHERUIYOT,
Senator.

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

Interpretation

2. 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 disability to assist them in education, employment or other activities;

“**Council**” means the National Council for Persons with disability 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 disability established under section 32;

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

“**organizations of persons with disability**” means associations or societies formed by persons with disability 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

Membership

4. (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 disability;
- (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 disability;
- (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

Director

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

Functions of the Council

7. (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 disability 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 disability 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 disability and its benefits to the country;

- (iv) recommend measures to prevent discrimination against persons with disability;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disability;
 - (vi) encourage and secure the rehabilitation of persons with disability 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 disability; and
 - (viii) co-ordinate services provided in Kenya for the welfare and rehabilitation of persons with disability and to implement programmes for vocational guidance and counselling;
- (c) to register—
- (i) persons with disability;
 - (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 disability;
 - (i) places at which services for the rehabilitation of persons with disability are provided; and
 - (iv) persons with disability 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 disability; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disability, 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 disability;

- (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 disability 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 disability;
- (i) generally to carry out measures for public information on the rights of persons with disability and the provisions of this Act;
- (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disability 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 disability;
- (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 disability.

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

Funds of the Council

8. 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

Annual accounts

9. (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

Annual report

10. 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.

Part III of Act No.14 of 2003 of which it is proposed to amend

PART III – RIGHTS AND THE PRIVILEGES OF PERSONS WITH DISABILITY

Realisation of rights of persons with disability

11. 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 disability set out in this Part.

Employment

12. (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.

Reservation of employment

13. 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 disability.

Apprenticeship

14. Subject to the provisions of the Employment Act, persons with disability shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Discrimination by employers prohibited

15. (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court through the appropriate trade union.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void insofar as it purports to

deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act.

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disability.

(6) The minimum retirement age for persons with a disability shall be sixty years.

Incentives to employers

16. (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 disability in respect of whom he claims the deduction are under his employ; and
- (ii) the persons with disability 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.

Records for job placement

17. The Council shall establish and maintain a record of persons with disability who are in possession of various levels of skills and training and shall update such records regularly for the purposes of job placement.

Education

18. (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 disability with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary 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.

Special and non-formal education

19. 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.

Health

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

Accessibility and mobility

21. Persons with disability 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.

Public buildings

22. (1) A proprietor of a public building shall adapt it to suit persons with disability 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.

Public service vehicles

23. (1) An operator of a public service vehicle shall adapt it to suit persons with disability 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.

Adjustment orders

24. (1) This section shall apply to—

(a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and

(b) any services or amenities ordinarily provided to members of the public.

(2) Without prejudice to the provisions of section 22, if the Council considers that any premises, services or amenities are inaccessible to persons with disability by reason of any structural, physical, administrative or other impediment to such access, the Council may, subject to this section, serve upon the owner 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 considers that the premises, services or amenities are inaccessible to persons with disability;

(b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disability 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 an order under subsection (2) the Council shall serve notice upon the person concerned—

(a) specifying the ground 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, if he wishes to do so, to make representations to the Council within thirty days from the date of the service of the notice.
- (4) After considering any representations described in subsection (3)(c) the Council may issue, or 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 against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—
- (a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;
 - (b) the period stipulated for implementing the adjustment order is unreasonable;
 - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or
 - (d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order.
- (6) Upon hearing an appeal under subsection (5), the Court may—
- (a) confirm, vary or set aside the adjustment order appealed against; and
 - (b) make such order as to the costs of the appeal as it thinks fit.

Denial of admission into premises, etc.

25. (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.

Offences-Adjustment orders and discrimination

26. (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.

Adjustment orders against Government institutions

27. (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.

Sports and recreation

28. (1) All persons with disability 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 disability 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.

Part IV of Act No.14 of 2003 of which it is proposed to amend

PART IV – CIVIC RIGHTS

Voting

29. (1) All persons with disability 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.

Polling stations

30. Polling stations shall be made accessible to persons with disability during elections, and such persons shall in addition be provided with the necessary devices and assistive devices and services to facilitate the exercise of this right under this section.

Registration of organizations

31. (1) The Council shall register all organizations of or for persons with disability.

(2) All existing organizations of or for persons with disability shall, within twelve months after this section comes into operation, apply in the prescribed manner to the Council for registration.

(3) Notwithstanding the provisions of any other law, organizations of or for persons with disability that are registered under this Act shall be exempt from registration under the Non-Governmental Organizations Co-ordination Act (No. 19 of 1990) and the Societies Act (Cap. 108).

Part VI of Act No.14 of 2003 of which it is proposed to amend

PART VI – RELIEF AND INCENTIVES**Exemptions**

35. (1) All persons with disability 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 disability 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 disability.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disability 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.

Incentives

36. (1) Any donations, bequest, subsidy or financial aid which may be made to government agencies involved in the rehabilitation of persons with disability 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 disability 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.

Credit

37. 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 disability.

Part VII of Act No.14 of 2003 of which it is proposed to amend

PART VII – MISCELLANEOUS

Legal system

38. (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 disability with respect to the following—

- (a) matters affecting the violation of the rights of persons with disability or the deprivation of their property;
- (b) cases involving capital punishment of persons with disability; 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 disability, from the payment of fees in relation to matters or cases described in subsection (1); and
- (b) the provision, to persons with disability 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 disability are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

Television programmes

39. All television stations shall provide a sign language inset or subtitles in all newscasts and educational programmes, and in all programmes covering events of national significance.

Telephone services

40. All persons providing public telephone services shall as far as possibly install and maintain telephone devices or units for persons with hearing disabilities and tactile marks on telephone sets to enable persons with visual disabilities to communicate through the telephone system.

Postal charge exemption

41. The following shall be exempt from postal charges—

- (a) printed and recorded literature, articles, equipment and other devices for the use of persons with disability which are sent by mail within and outside Kenya; and
- (b) aids and orthopaedic devices for persons with disability sent outside Kenya by mail for repair:

Provided that the aforesaid items are for personal or institutional purposes and are recommended for this exemption by the Council, and that the person with a disability or the organization is registered with the Council.

Exemptions and deductions-general requirements

42. (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.

Inspectorate units and Council inspectors

43. (1) All Government ministries shall, under the provisions of this Act, establish and maintain an inspectorate unit for the purpose of ensuring the implementation and compliance with the provisions of this Act.

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

(3) The inspector appointed under subsection (2) 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 the regulations made thereunder.

Regulations

44. 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.

Part VIII of Act No.14 of 2003 of which it is proposed to amend

PART VIII – OFFENCES AND PENALTIES

Concealment of persons with disability

45. (1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the opportunities and services available under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding twenty thousand shillings.

Negligence by doctor

46. (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.

Giving false information to get registered

47. A person is guilty of an offence if he knowingly gives false information to the Council for the purpose of being registered or for the purpose of acquiring any privilege due to persons so registered.

General penalty

48. 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 ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

Request for legal action by Attorney-General

49. (1) The Council may request the Attorney-General to take appropriate legal action if the Council believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act; and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disability and raises issues of public interest.

(2) Any person or group of persons aggrieved by an order made in a legal action commenced pursuant to a request under subsection (1) may within sixty days after the making of such order apply in the prescribed form to the High Court for the review of such order.

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;