

APPROVED

REPUBLIC OF KENYA



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THE SENATE RECEIVED
29 MAY 2023
DEPUTY CLERK

To: Speaker of the Senate
Through: Clerk of the Senate
Through: Deputy Clerk (EG)
Through: Ag. Director, Socio-Economic Committees (MJC)
Through: Principal Clerk Assistant (HOD) (VK)
From: Senior Clerk Assistant
Date: 26th May, 2023

Recommended for approval for tabling. Eg 29/05/23
Forwarded and recommended for approval for tabling. 29/05/2023
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RE: APPROVAL FOR TABLING OF THE REPORT OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7 OF 2023)

The Standing Committee on Labour and Social Welfare has concluded its consideration on the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023), and is ready to table its report.

This is to request your approval for tabling of the attached report.

Thank you.

Shaban.

Mwanate Shaban

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 29/05/23



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REPUBLIC OF KENYA



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Recommended for approval
for tabling.
29/5/23

THE SENATE

29/05/2023

Rt. Hon. Speaker
You may approve for tabling
J.M. Nyegenye, C.B.S.,
Clerk of the senate/ secretary, PSC
Date: 29/5/23

THIRTEENTH PARLIAMENT | SECOND SESSION

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE PERSONS WITH DISABILITIES BILL, 2023
(SENATE BILLS NO. 7 OF 2023)

PAPERS LAID	
DATE	31/5/2023
TABLED BY	
COMMITTEE	Labour
CLERK AT THE TABLE	Chania

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

May, 2023

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PRELIMINARIES

Establishment and Mandate of the Committee

The Senate Standing Committee on Labour & Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. The Committee is mandated to consider all matters related to *Manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1. Sen. Julius Murgor Recha, MP, | - Chairperson |
| 2. Sen. George Mungai Mbugua, MP, | - Vice Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP, | - Member |
| 4. Sen. Mohamed Faki Mwinyihaji, MP, | - Member |
| 5. Sen. Erick Okong'o Mogeni, SC, MP, | - Member |
| 6. Sen. Alexander Munyi Mundigi, MP, | - Member |
| 7. Sen. Crystal Kegehi Asige, MP, | - Member |
| 8. Sen. Miraj Abdullahi Abdulrahman, MP, | - Member |
| 9. Sen. Gloria Magoma Orwoba MP, | - Member |

FOREWORD BY THE CHAIRPERSON

Hon. Speaker,

The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023), sponsored by Senator Crystal Kegehi Asige, MP was published *vide* Kenya Gazette Supplement No. 16 of 20th February, 2023. The Bill was read a First Time in the Senate on Wednesday, 22nd March, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration.

The Bill seeks to repeal the Persons with Disabilities Act, No. 14 of 2003 and have in place a law that is consistent with the Constitution. The Bill places emphasis on human rights approach towards the realization of specific rights for persons with disabilities. The Bill also sets out the obligations of both the National and County Governments in line with the Constitution to ensure that county government obligations are delineated in accordance with the provisions of the Fourth Schedule to the Constitution.

Hon. Speaker,

Pursuant to Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on Friday, 24th March, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Following the call for submissions, the Committee received written memoranda from stakeholders.

The Committee proceeded to consider the Bill extensively, scheduled meetings with various stakeholders including the Ministry of Labour and Social Protection, the Council of Governors, the County Assemblies Forum, the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC). The Committee held stakeholder engagements with the KNCHR and the NGEC.

The Committee received both oral and written submissions, including reservations on the Bill by the Ministry of Labour and Social Protection. This report therefore presents an account of the deliberations, including the resolutions outline in Chapter Three, that have been transformed into the Committee Stage Amendments in *Appendix 1* of this Report.

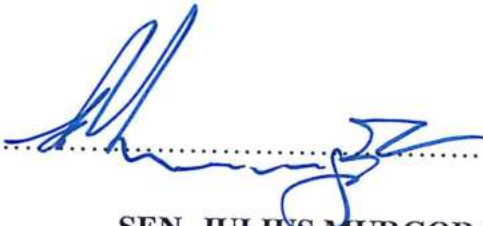
Hon. Speaker,

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

Hon. Speaker,

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Labour and Social Welfare on the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023).

Signed



Date

Friday, 12th May, 2023

SEN. JULIUS MURGOR RECHA, MP
CHAIRPERSON, STANDING COMMITTEE ON LABOUR AND SOCIAL
WELFARE

CHAPTER ONE: INTRODUCTION

1.0 Background

1. The Persons with Disabilities Bill, 2023 (Senate Bills No.7 of 2023), sponsored by Senator Crystal Kegehi Asige, MP was published *vide* Kenya Gazette Supplement No.16 dated 20th February, 2023. The Bill was introduced in the Senate by way of First Reading on 22nd March, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration. A copy of the Bill is annexed to this Report as *Appendix 3*.
2. Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on Friday, 24th May, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advertisement is attached as *Appendix 4*. The advertisement was also posted on the Parliament website and social media platforms.
3. Following the call for submissions, the Committee received written memoranda from various stakeholders including the Ministry of Labour and Social Protection, Council of Governors, National Gender and Equality Commission, Kenya National Commission on Human Rights, Transparency International, Digital Accessibility for Persons with Disabilities (KICTANet), Amazing Grace Bawo Foundation, Consortium of Disabled Persons Organizations in Kenya (CDPOK), Kesho Kenya.
4. The Committee also received submissions from individuals including Dennis Ochieng' Orenge Juma, Timothy W. Mwangi, Nathaniel Mtunji and Evans Gichia. Copies of the Stakeholder submissions are attached as *Appendix 6*.
5. The Persons with Disabilities Bill, 2023 (Senate Bills No.7 of 2023) seeks to repeal the Persons with Disabilities Act, No. 14 of 2003 and have in place a law that is consistent with the Constitution. The Bill places emphasis on human rights approach towards the realization of specific rights for persons with disabilities.
6. The Bill also sets out the obligations of both the National and county governments in line with the Constitution to ensure that county government obligations are delineated in accordance with the provisions of the Fourth Schedule to the Constitution.

1.1. Overview of the Bill

7. Currently there is no legal framework that sets out the obligations of the county governments with regard to persons with disabilities. The Bill therefore seeks to impose obligations on each level of government to address the needs of persons with disabilities in line with Article 54 of the Constitution which provides that a person with any disability is entitled—
 - (a) *to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;*
 - (b) *to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;*
 - (c) *to reasonable access to all places, public transport and information; ...*
8. The Bill sets out the respective obligations of the National and County Governments in relation to the persons with disabilities. Under the Bill, the National Government is mandated to among other functions—
 - (a) develop policies on the protection of persons with disability;
 - (b) promote integration of persons with disability in schools;
 - (c) promote inclusion of persons with disability in the public service; and
 - (d) implement preferential procurement measures for persons or entities managed with persons with disabilities.
9. On the other hand, county governments are mandated to among other functions—
 - (a) implement the national policy and strategy on persons with disabilities;
 - (b) allocate adequate resources to programmes targeting persons with disabilities;
 - (c) promote inclusion of persons with disability in the county public service; and
 - (d) develop mechanisms for identification of persons with disabilities residing within the county.
10. The Bill seeks to review the membership of the National Council for Persons with Disabilities to include a person nominated by the Council of Governors to represent county governments. The Bill, further seeks to provide for qualifications for appointment, procedure for appointment, vacation of office, tenure of office and remuneration of Council members.

11. In order to align the functions of the Council with the Constitution of Kenya, the Bill proposes to enhance the powers and functions of the National Council for Persons with Disabilities by including functions that will require the Council to liaise and consult with county governments and other relevant agencies. The Bill seeks to ensure that county governments are consulted by the Ministry responsible for sports when developing designs to make sports facilities accessible to persons with disabilities.

12. Further, in keeping with the current technological developments, the Council is required to undertake research and recommend development of new technologies including assistive devices suitable for use by persons with disability.

13. The Bill proposes to include a part to deal with realization of specific rights and incentives for persons with disabilities. The Bill is specific on the following rights, among others—

(a) right to equality and non-discrimination

14. Under this right, every person with disability is 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 and entitled to the full and equal enjoyment of the goods, services, facilities, or accommodations on an equal basis with others.

(b) right to legal capacity

15. Under this right, every person with disability is entitled to the support services he or she may require in exercising the right to legal capacity. Additionally, 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.

(c) right to marry and form a family

16. Under this right, 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. Further, a person with disability shall not be separated from their child on the ground of disability.

(d) right to human dignity

17. The right provides that in addition to respecting and protecting a person with disability's right to human dignity, a person with disability should not to be

referred to by demeaning, embarrassing, derogatory and any other term that may be considered as lowering his or her human dignity.

(e) right to education

18. Under this right, among other things—
- (i) 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; and
 - (ii) 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.

(f) right to work

19. Every public service employer is expected to -
- (i) reserve at least five per cent direct employment opportunities for persons with disability to secure employment;
 - (ii) formulate policies and programmes to promote basic human rights, improve working conditions and enhance employment opportunities for persons with disability; and
 - (iii) carry out appropriate modifications in their work premises to accommodate the employment of persons with disability.

(g) right to health

20. Under this right -
- (i) every person with a disability has the right to free medical care and treatment on condition of his or her disability in public owned health institutions;
 - (ii) 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; and
 - (iii) 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.
21. The Bill makes a provision against harmful practices, torture and cruel treatment against persons living with disabilities and provides for life imprisonment on conviction.
22. Additionally, the Bill amends the Films and Stage Plays Act to compel makers or exhibitors of films to make such films accessible to persons with disabilities.
23. The Bill also contains other amendments of general nature to align the Act with the 2010 Constitution.

1.2. Consequences of the Bill

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

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.0 Committee Undertakings

25. Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the *Daily Nation* and *Standard* Newspapers on Friday, 24th May, 2023, inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms.
26. The Committee received written memoranda from various stakeholders including the Ministry of Labour and Social Protection, Council of Governors, National Gender and Equality Commission, Kenya National Commission on Human Rights, Transparency International, Digital Accessibility for Persons with Disabilities (KICTANet), Amazing Grace Bawo Foundation, Consortium of Disabled Persons Organizations in Kenya (CDPOK), Kesho Kenya.
27. The Committee also received submissions from individuals including Dennis Ochieng' Orengo Juma, Timothy W. Mwangi, Nathaniel Mtunji and Evans Gichia.
28. The Committee met with stakeholders on the Persons with Disabilities Bill, 2023 on 18th April, 2023. The Kenya National Commission on Human Rights and the National Gender and Equality Commission made their submissions on the Bill.
29. A detailed public participation matrix is attached as *Appendix 5*.
30. The Committee considered the public hearing submissions Thursday, 11th May, 2023. The Committee considered the Committee stage amendments on Friday, 12th May, 2023 and adopted its report thereafter. The minutes of the Committee in considering the Bill are annexed to this Report as *Appendix 2*.

2.1 Overview of Stakeholder Submissions on the Bill

31. Below is an overview of the stakeholder submissions on the Persons with Disabilities Bill, 2023 (Senate Bills No.7 of 2023).
32. The Ministry of Labour and Social Protection rejected the Bill.
33. The Council of Governors agreed with the contents of the Bill and made the following amendments –
 - a) clause 2 - amend the definition of the term “assistive devices” to include “**prosthetics**”.
 - b) clause 4 - include a clause on capacity building, funding and consultation of county governments.
 - c) clause 5 - include a clause on increase of funding by the national government to enable counties mainstream disability rights in all county plans, programmes and projects.
 - d) clause 10, 11 and 13 - amend the clauses to include protection from sexual abuse, sexual exploitation and harmful practices.
 - e) clause 20 - include consultation with county governments.
 - f) clause 20 (8) (c) (vi) to read— introduction of Kenya sign language interpretation course in all learning and training institutions
 - g) Amend clause 20 (2) (a) to apply to employers in the public sector only.
 - h) Amend clause 31 by introducing consultation and collaboration with the county governments and other government regulatory agencies.
 - i) Amend clause 40 to increase membership of COG to the Council from one to three.
 - j) delete clause 42.
34. The Kenya National Commission on Human Rights was in support of the Bill and made the following submissions –
 - a) Amend the long title to include: “to provide for the recognition and protection of the rights of persons with disabilities and to promote their full and equal participation in society.”
 - b) Consider including in the long title a liner on further operationalization of the provisions of the Convention on the Rights of Persons with Disabilities. Alternatively, as a separate Clause on ‘purpose/object’.

- c) Include the word enforce to read in clause 4 (g): Prescribe and enforce 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.
- d) Amend clause 4 (i) to read as follows: “ensure access to free and compulsory inclusive education, training and other social amenities to learners and trainees with disabilities, including by setting aside 15 per cent of all public-funded bursaries for pupils with disabilities;”
- e) Add a subclause in clause 4 that provides for community-based health care services.
- f) Add a new subclause to read: Ensure participation and involvement of organizations of/ for persons with disabilities in every aspect of policy and development.
- g) Include another obligation to read as: “Put in place affirmative action to waive licenses and fees of new businesses established by persons with disabilities”
- h) Add a subclause under 21 (2) (e) to the effect that every employer shall provide reasonable accommodation for employees with disabilities.
- i) Delete 21 (3).
- j) Add a subclause in clause 24 to the effect that: ‘every person with a disability has the right to access health care on the basis of his/her free and informed consent’.
- k) Amend 24 (8), to read - (8) Persons with disabilities, including children, have the right to retain their fertility on an equal basis with others.
- l) In 55 (1), insert the word “permanent” before “exemption” to read: All persons with disabilities who are in receipt of an income may apply to the Cabinet Secretary responsible for finance for permanent exemption from income tax and any other levies on such income.
- m) In 55 (2), amend to a transparent figure applicable across the board.
- n) In 60 (2), include “denial of reasonable accommodation” as a form of discrimination.
- o) Delete Clause 61.
- p) clause 62 (1) add the words “or any other institution” immediately after the word “disabilities”.
- q) Review the penalty for the offence of concealment of persons with disabilities in 62 (2).
- r) clause 65, harmonise the offence and penalty with the provisions of Prevention of Torture Act.
- s) Merge the National Fund for the Disabled of Kenya with the National Council for Persons with Disabilities and ensure parliamentary oversight for accountability.

35. The Kenya National Gender and Equality Commission were in support of the Bill and made the following submissions –

- a) Amend by inserting additional clauses on the obligations of National Human Rights Commissions and the Civil Society as follows—

Obligations of the National Human Rights Institutions

4A. The Kenya National Commission on Human Rights and the National Gender and Equality Commission are designated entities for monitoring the national implementation of the Convention on the Rights of Persons with Disability.

4B. All public entities shall submit quarterly reports on compliance of mainstreaming of disability in their respective entities to the National Gender and Equality Commission who shall issue a certificate of compliance for determination of budgetary allocations.

5A Civil society organizations shall be part of the governance structures at both national and County Levels to represent the interests of Persons with Disabilities and their organizations and shall be involved and participate fully in the monitoring process of the Convention.

- b) Amend Clause 13(a) by inserting after the word “Programmes” the following “for themselves and their care givers”
- c) Amend subclause 20 (1) by inserting the word “Suitable” after the word “any”
- d) Amend by 20 (1) (b) by inserting after the word “children” the word “and learners”
- e) Amend clause 21 by inserting an additional sub-clause as below-; (f) submit all job advertisements to the Council.
- f) Amend clause 21(3) by inserting after the word “Council” the following “and The National Gender and Equality Commission”.
- g) Propose to amend subclause 24(6) by inserting after the word “Facility “the following; - “and shall be signed by a designated and gazetted County Medical Officer”.
- h) Amend clause 24 (7) by substituting the words “Every national or referral” with the word “All”
- i) Amend clause 26 by inserting “the’ after the word “Public “the word “and private” in subclauses 4, 5 and 9.
- j) Amend clause 28(1) by inserting after the word ‘procedural” the word “reasonable”
- k) Amend clause 31 by inserting after the word “Council “the following “in collaboration with the relevant Regulatory Agencies”

- l) Amend clause 32(2) by inserting an additional subclause as follows;
“(d)Ensuring that there is compliance by political parties on the requirement of nominative seats reserved for persons with disability.”
36. The Consortium of Disabled Persons Organizations in Kenya (CDPOK) were in support of the Bill and submitted as follows –
- a) In the long title-
 - i) Remove the word restructure and replace with the word ‘strengthen’ instead.
 - ii) Remove the word illness and replace with the word ‘condition’
 - b) Amend clause 26, by adding Kenyan sign language/television inset and or closed captioning, the inset should cover a third of television screen.
 - c) Amend clause 29 by reinstating the right to free access to recreational facilities for PWDs
 - d) Amend clause 32 to read that IEBC should consult the National Council for Persons with Disabilities to determine nomination for PWDs in Senate, National Assembly and County Assemblies.
 - e) Amend clause 37 to read - all institutions including political parties should work closely with NCPWD to collect and keep disintegrated data of PWDs members. Add standardization of data collection tools and central storage of PWDs data under this section
37. Transparency International was in support of the Bill and submitted as follows –
- a) Amend clause 2 - the definition of “discrimination” to read— “discrimination on the basis of disability” 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. It includes all forms of discrimination, including denial of, and or failing to make reasonable accommodation.
 - b) Amend clause 11 by including subclauses on protection from abuse, exploitation and harmful practices and living with family for as long as is necessary.
 - c) Amend clause 14 by stating that the documents should be issued at no cost.

38. Kesho Kenya, in clause 20 stated that the National and County governments to undertake review of budgetary allocations to inclusive/special needs education and make adjustments accordingly and the National government institute subsidies for assistive devices and technologies being imported in the country.

39. Mr. Timothy W Mwangi, submitted as follows –

a) Amend clause 2 by inserting new definitions of “building” and “reasonable accommodation” as follows—

i) “building” includes any structure or erection and any part of a building or works

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

b) Amend clause 4 by inserting a new paragraph immediately after 4(d) to read— (da) prescribe and disseminate minimum standards and guidelines for construction of buildings or structures to facilitate reasonable access to and movement for persons with disabilities.

c) Amend clause 30 by inserting a new sub clause immediately after 30(1) to read— The National Construction Authority shall within one year of commencement of this Act disseminate to county governments standards for construction of buildings that allow barrier free and disability friendly environment.

i) The National Construction Authority shall within six months of commencement of this Act submit to Parliament a report on progress made in (a).

d) Insert a new clause immediately after clause 49 to read:

(a) The Council may establish committees which shall consist of members as it deems appropriate to perform such functions as the Board may determine.

(b) Unless otherwise provided by the Act, the Council shall appoint chairpersons of committees established.

(c) The decisions of the committees shall be ratified by the Council unless otherwise provided for in this Act’.

(d) The Council may co-opt not more than four persons, whose knowledge and skills are found necessary for the performance of

the functions of the Council. Co-opted members have no right to vote at a meeting of the Council.

- e) Insert a new subclause immediately after 54(2)(b) to read: “progress made in realization of aspirations of Article 54 of the Constitution”
-

CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 Committee Observations on the Bill

40. Following extensive deliberations on the Bill, the Committee made the following observations-

- (a) That though the committee had extensively engaged the Ministry of Labour and Social Protection and the National Council for Persons with disability, the Ministry totally rejected the Bill; and
- (b) All the other organizations and institutions were in support of the Bill.

3.1 Committee Recommendations

41. Arising from the above observations, the Committee **recommends** that the Senate passes the Persons with Disabilities Bill, 2023 (Senate Bills No.7 of 2023) with the following amendments -

- a) In clause 2—
 - (i) insert the definition of the term “building” as provided for under the Physical and Land Use Planning Act; and
 - (ii) include the words “failing to make reasonable accommodation” in the definition of the term “discrimination on the basis of disability”.
- b) In clause 4—
 - (i) mandate the national government to develop and enforce 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; and
 - (ii) include a clause on capacity building, funding and consultation of county governments.
- c) In clause 5, mandate county governments to liaise with the Council to maintain a database of persons with disability in respective counties and include measures for affirmative action on persons with disabilities by county governments.
- d) Include a clause on social assistance to persons with disabilities care givers.
- e) In clause 14, make all registration documents free of charge.
- f) In clause 20, align the clause on education with the terms used in the Basic Education Act and introduce a clause on introduction of Kenyan Signed language in all learning institutions.

- g) In clause 24, amend to include employment of Kenyan Sign language interpreters in all health institutions and include the right of every person with a disability to access health care on the basis of his/her free and informed consent.
- h) Amend clause 29 to provide for the right to free access to recreational facilities for persons with disabilities.
- i) Amend clause 29 by introducing consultation and collaboration with the county governments and other government regulatory agencies in issuance of adjustment orders.
- j) Amend clause 60 to include “denial of reasonable accommodation” as a form of discrimination.
- k) Align the offences and penalties under clause 62 and 65 to other Acts of Parliament on the same.
- l) Amend clause 84 to merge the National Fund for the Disabled of Kenya with the National Council for Persons with Disabilities and ensure parliamentary oversight for accountability.

42. The Committee Stage Amendments are attached as *Appendix 1* to this report.

APPENDICES

Appendix 1: Committee Stage Amendments

Appendix 2: Minutes of the sittings of the Committee in considering the Bill

Appendix 3: The Employment (Amendment) Bill (Senate Bills No. 11 of 2022)

Appendix 4: Advertisement published in the *Daily Nation* and *Standard* Newspapers on Tuesday, 28th February, 2023

Appendix 5: The Public Participation Matrix

Appendix 6: Public Participation Submissions

24th May, 2023

The Clerk of the Senate,
Parliament Buildings,

NAIROBI.

**RE: COMMITTEE STAGE AMENDMENTS TO THE PERSONS WITH
DISABILITIES BILL, 2023, SENATE BILLS NO. 7 OF 2023**

NOTICE is given that Sen. Recha Julius Murgor, the Chairperson to the Standing Committee on Labour and Social Welfare, intends to move the following amendments to the Persons with Disabilities Bill, 2023, Senate Bills No. 7 of 2023, at the Committee Stage—

CLAUSE 4

THAT clause 4 of the Bill be amended by inserting the following paragraphs immediately after paragraph (m)—

(n) provide capacity building, funding and technical assistance to the county governments on all matters relating to persons with disabilities;

(o) consult county governments on any matter relating to persons with disabilities that affect the functions and powers of county governments; and

(p) develop programmes for care givers of persons with disabilities on specialised training, counselling and economic development.

CLAUSE 5

THAT clause 5 of the Bill be amended in subclause 2 (c) by deleting the word “establish” appearing in the introductory part of the subclause and substituting therefor the words “liaise with the Council to maintain”.

CLAUSE 14

THAT clause 14 of the Bill be amended in subclause (1) by inserting the words “free of charge” at the end of the subclause.

CLAUSE 20

THAT clause 20 (8) (c) of the Bill be amended by deleting subparagraph (vi) and substituting therefor the following paragraph—

(vi) introduction of Kenyan Sign language courses in all learning and training institutions.

CLAUSE 24

THAT clause 24 of the Bill be amended by—

(a) deleting subclause (7) and substituting therefor the following —

(7) The national and county governments shall ensure that all health institutions have an adequate number of Kenyan Sign language interpreters in their institutional structures; and

(b) inserting the following new subclause immediately after subclause (7)—

(7A) Every person with a disability has the right to access health care on the basis of free and informed consent.

CLAUSE 26

THAT clause 26 of the Bill be amended—

- (a) in subclause (3) by inserting the words “and private” immediately after the word “Public”;
- (b) in subclause (4) by inserting the words “and private” immediately after the word “public”;
- (c) in subclause (5) by inserting the words “and private” immediately after the word “public”; and
- (d) by deleting subclause (9) and substituting therefor the following subclause—

(9) All public and private institutions of higher learning shall have a common course in Kenyan Sign language.

CLAUSE 29

THAT clause 29 of the Bill be amended –

(a) in subclause (1) by inserting the words “at the” immediately after the words “cultural activities”; and

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

(1A) Every person with disability shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the national and county governments during social, sporting or recreational activities.

CLAUSE 31

THAT clause 31 of the Bill be amended by inserting the following new subclause immediately after subclause (5)—

(5A) The Council shall consult and collaborate with the county governments and other government regulatory agencies in exercise of its functions under this section.

CLAUSE 60

THAT clause 60 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (j)—

(k) reasonable accommodation.

CLAUSE 62

THAT clause 62 of the Bill be amended by deleting subclause (2).

NEW CLAUSES

NEW CLAUSE 78A

THAT the Bill be amended by inserting the following new clause immediately after clause 78 —

Consultation
between the
National and
county their
governments. functions and powers under this Act on the basis of
consultation and cooperation.

78A. (1) The national and county governments shall perform

(2) The Council shall, in carrying out its functions under this Act, consult the council of county governors on any matter that affects the functions and powers of county governments.

NEW CLAUSE 84A

THAT the Bill be amended by inserting the following new clause immediately after clause 84 —

Abolishment of the National Fund for the Disabled of Kenya.

84A. (1) The National Fund for the Disabled of Kenya established under the Trustees (Perpetual Succession) Act is hereby abolished.

(2) Notwithstanding subsection (1), the National Fund for the Disabled of Kenya shall be merged with the National Development Fund for Persons with Disabilities established under section 32 of the Persons with Disabilities Act, No. 14 of 2003.

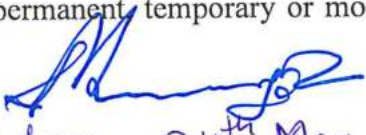
(3) The National Fund for the Disabled in Kenya shall continue to be administered by the Board of Trustees of the National Development Fund for Persons with Disabilities until the National Development Fund for Persons with Disabilities is reestablished by the Cabinet Secretary responsible for matters relating to finance through regulations made under the Public Finance Management Act, No. 18 of 2012.

(4) The provisions of section 84 (1) shall, with modifications, apply to the abolished National Fund for the Disabled of Kenya.

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the following definition immediately after definition of the term "assistive devices"—

"building" means any structure or erection and any part of any structure or erection of any kind whatsoever whether permanent, temporary or movable, and whether completed or uncompleted;

Date.  Wednesday, 24th May, 2023.

Sen. Recha Julius Murgor,
Chairperson,
Committee on Labour and Social Welfare.



MINUTES OF THE 45TH MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 12TH MAY, 2023 AT 9.00 AM IN MADUNGUNI CONFERENCE ROOM, PRIDE INN PARADISE RESORT, MOMBASA COUNTY.

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Sen. Julius Murgor Recha, MP | - Chairperson |
| 2. Sen. George Mungai Mbugua, MP | - Vice-Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 4. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 5. Sen. Alexander Munyi Mundigi, MP | - Member |
| 6. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |
| 7. Sen. Gloria Orwoba, MP | - Member |
| 8. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--------------------------------------|----------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
|--------------------------------------|----------|

SECRETARIAT

- | | |
|-----------------------|------------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Ms. Marale Sande | - Principal Research Officer |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Mr. Rhyan Injendi | - Research Officer |
| 5. Mr. Joseph Otieno | - Audio Officer |
| 6. Mr. John Chege | - SAA |

MIN/SEN/SCLSW/210/2023: PRAYERS

The Chairperson called the meeting to order at 9.26 am followed by a word of prayer.

MIN/SEN/SCLSW/211/2023: ADOPTION OF AGENDA

The Agenda of the fourth session of the Retreat Program was adopted having been proposed by Sen. Miraj Abdillahi, MP and seconded by Sen. Crystal Asige, MP as follows-

1. Prayers;
2. Adoption of the Agenda;
3. Consideration and adoption of the Committee Stage Amendments of the Persons with Disabilities Bill, 2023, (Senate Bills No. 7 of 2023);
4. Consideration and adoption of the Report of the Persons with Disabilities Bill, 2023, (Senate Bills No. 7 of 2023);
5. Any Other Business; and
6. Adjournment.

**MIN/SEN/SCLSW/212/2023: CONSIDERATION OF THE COMMITTEE
STAGE AMENDMENTS OF THE PERSONS
WITH DISABILITIES BILL, 2023, (SENATE
BILLS NO. 7 OF 2023);**

The Committee considered the following amendments and resolved to pass them at the Committee stage -

1. In clause 2—
 - (a) insert the definition of the term “building” as provided for under the Physical and Land Use Planning Act; and
 - (b) include the words “failing to make reasonable accommodation” in the definition of the term “discrimination on the basis of disability”.
2. In clause 4—
 - (a) mandate the national government to develop and enforce 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; and
 - (b) include a clause on capacity building, funding and consultation of county governments.
3. In clause 5, mandate county governments to liaise with the Council to maintain a database of persons with disability in respective counties and include measures for affirmative action on persons with disabilities by county governments.
4. Include a clause on social assistance to persons with disabilities care givers.
5. In clause 14, make all registration documents free of charge.
6. In clause 20, align the clause on education with the terms used in the Basic Education Act and introduce a clause on introduction of Kenyan Signed language in all learning institutions.
7. In clause 24, amend to include employment of Kenyan Sign language interpreters in all health institutions and include the right of every person with a disability to access health care on the basis of his/her free and informed consent.
8. Amend clause 29 to provide for the right to free access to recreational facilities for persons with disabilities.

9. Amend clause 29 by introducing consultation and collaboration with the county governments and other government regulatory agencies in issuance of adjustment orders.
10. Amend clause 60 to include “denial of reasonable accommodation” as a form of discrimination.
11. Align the offences and penalties under clause 62 and 65 to other Acts of Parliament on the same.
12. Amend clause 84 to merge the National Fund for the Disabled of Kenya with the National Council for Persons with Disabilities and ensure parliamentary oversight for accountability.

MIN/SEN/SCLSW/213/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PERSONS WITH DISABILITIES BILL, 2023, (SENATE BILLS NO. 7 OF 2023);

Members considered the Report on the Persons with Disabilities Bill, 2023, (Senate Bills No. 7 of 2023) and adopted it after being proposed by Sen. George Mungai Mbugua, MP, and seconded by Sen. Crystal Asige, MP.

MIN/SEN/SCLSW/214/2023 ADJOURNMENT AND TIME OF THE NEXT MEETING

There being no other business, the meeting was adjourned at 10. 50 am, and the time of the next meeting scheduled for 11.00 am.

SIGNED.....

DATE Monday, 22nd May 2023

(CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



MINUTES OF THE 42ND MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 11TH MAY, 2023 AT 10.22 AM IN MADUNGUNI CONFERENCE ROOM, PRIDE INN PARADISE RESORT, MOMBASA COUNTY.

MEMBERS PRESENT

- | | |
|--|--------------------|
| 1. Sen. Julius Murgor Recha, MP | - Chairperson |
| 2. Sen. George Mungai Mbugua, MP | - Vice-Chairperson |
| 3. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 4. Sen. Alexander Munyi Mundigi, MP | - Member |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |
| 6. Sen. Gloria Orwoba, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|----------|
| 1. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 2. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |

SECRETARIAT

- | | |
|------------------------|------------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Ms. Getrude Nthiiri | - First Clerk Assistant |
| 3. Ms. Marale Sande | - Principal Research Officer |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Rhyan Injendi | - Research Officer |
| 6. Mr. Joseph Otieno | - Audio Officer |
| 7. Mr. John Chege | - SAA |

MIN/SEN/SCLSW/195/2023: PRAYERS

The Chairperson called the meeting to order at 10.22 am followed by a word of prayer. This was followed by a round of introductions by all present.

MIN/SEN/SCLSW/196/2023: ADOPTION OF AGENDA

The Program of the Meeting was unanimously adopted and the Agenda of the first session was adopted having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. George Mungai Mbugua, MP as follows-

1. Prayers & Introductions;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. Consideration of the Public Participation matrix of the Persons with Disabilities Bill, (Senate Bills No. 7 of 2023);
5. Any Other Business; and
6. Adjournment.

MIN/SEN/SCLSW/197/2023: COMMUNICATION FROM THE CHAIRPERSON

The Chairperson welcomed the Members and Staff to the retreat, noting that the retreat provided the Committee with an opportunity to conclude on some of its pending legislative business. He then invited the Senator of Mombasa County, Sen. Mohammed Faki to welcome the Committee, who was also allowed the Senator from Mombasa County, Sen. Miraj to make some welcoming remarks.

MIN/SEN/SCLSW/198/2023: CONSIDERATION OF THE PUBLIC PARTICIPATION MATRIX OF THE PERSONS WITH DISABILITIES BILL, (SENATE BILLS NO. 7 OF 2023);

1. The Legal Counsel informed the Committee that the Committee had received oral and written submissions from the following stakeholders, the Council of Governors, the Ministry of Labour and Social Protection, the National Gender and Equality Commission, the Kenya National Commission on Human Rights, Transparency International, Digital Accessibility for Persons with Disabilities KICTANet, Amazing Grace Bawo Foundation, Mr. Dennis Ochieng' Orengo Juma, the Consortium of Disabled Persons Organizations in Kenya (CDPOK), Mr. Timothy W. Mwangi, Kesho Kenya, Mr. Nathaniel Mtunji and Evans Gichia.
2. He then took the Committee through the submissions and the Committee resolved as outlined in the table below –

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
Long title	Consortium of Disabled Persons	Remove the word restructure and replace with the word 'strengthen' instead.	The word restructure is ambiguous.	Not adopted.
	Organizations in Kenya (CDPOK)	Remove the word illness and replace with the word 'condition'	Disability is not an illness.	Not adopted.
	Kenya National Commission on Human Rights (KNCHR)	Amend the long title to include: "to provide for the recognition and protection of the rights of persons with disabilities and to promote their full and equal participation in society." Also consider including in the long title a liner on further operationalisation of the provisions of the Convention on the Rights of Persons with Disabilities. Alternatively, as a separate Clause on 'purpose/object'.	This will broaden the focus of the bill from the institutions but also the persons with disabilities themselves. The Bill also resonates hugely with the provisions of the CRPD	Not adopted.
2	Timothy W. Mwangi.	Insert new definitions of "building" and "reasonable accommodation" as follows— "building" includes any structure or erection and any part of a building or works "reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental	This ensures that employers provide a conducive environment for persons living with disabilities to effectively discharge their duties. Reasonable accommodation enables an employee with a disability to fulfil the inherent requirements of a job.	Adopt and cross reference definition to Physical and Land Use Planning Act. Not adopted. The matter is already covered under

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		freedoms;		
	Transparency International.	Amend the definition of "discrimination" to read— "discrimination on the basis of disability" 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. It includes all forms of discrimination, including denial of, and or failing to make reasonable accommodation.	Denial of reasonable accommodation may imply that reasonable accommodation has been made but is being refused while in many instances especially when it comes to design of programmes and physical spaces, there has been failure to incorporate the unique needs of People with Disabilities(PWDS) to makes such spaces and programmes accessible.	Adopted.
	COG	Amend the definition of the term "assistive devices" to include " prosthetics ".	They are critical to independent living as well as for body image and self esteem.	Not adopted. Already included in the definition.
4	National Gender and Equality Commission (NGEC)	Amend by inserting additional clauses on the obligations of National Human Rights Commissions and the Civil Society as follows— Obligations of the National Human Rights Institutions. 4A. The Kenya National Commission on Human Rights and the National Gender and Equality Commission are designated entities for monitoring the national	a. This is in compliance with Article 33 of the Convention on the Rights of Persons with Disability (CRPD) on the national implementation and monitoring of the convention. b. Section 8 (d) on the functions of the Commission in the NGEC Act 2011 states as follows-; (d) co-ordinate and facilitate mainstreaming of issues	Not adopted. Already provided for in different Acts .

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Convention on the Rights of Persons with Disability.	Disability and other marginalised groups in national development and to advise the Government on all aspects thereof;	
		<p>4B. All public entities shall submit quarterly reports on compliance of mainstreaming of disability in their respective entities to the National Gender and Equality Commission who shall issue a certificate of compliance for determination of budgetary allocations.</p> <p>5A Civil society organizations shall be part of the governance structures at both national and County Levels to represent the interests of Persons with Disabilities and their organizations and shall be involved and participate fully in the monitoring process of the Convention.</p>	<p>c. Civil society organization in particular of Persons with Disabilities and their representative organizations, need to be involved and participate fully in the monitoring process.</p>	
	Timothy W. Mwangi.	<p>Insert a new paragraph immediately after 4(d) to read—</p> <p>(da)prescribe and disseminate minimum standards and guidelines for construction of buildings or structures to facilitate reasonable access to and movement for persons with disabilities.</p>	<p>Prescription of standards is a function of the National Government – Article 191 (3)</p> <p>(b) as read with 186 (1) (3) of the Constitution.</p>	Adopted.
	KNCHR	<p>Include the word enforce to read in 4 (g):</p>	<p>Enforcement is key in ensuring actual implementation of the</p>	Adopted.

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		<p>Prescribe and enforce 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.</p>	<p>standards and guidelines.</p>	
		<p>Amend 4 (i) to read as follows: “ensure access to free and compulsory inclusive education, training and other social amenities to learners and trainees with disabilities, including by setting aside 15 per cent of all public-funded bursaries for pupils with disabilities;”</p>	<p>Inclusive education is in line with the provisions of the Sector Policy and Implementation Guidelines for Learners and Trainees with Disabilities. It is also in line with Article 54(1)(b) of the Constitution and Article 24 of the Convention on the Rights of Persons with Disabilities. S</p>	<p>Not adopted. Already catered for.</p>
		<p>Amend 4 (m) to read as follows: “promote affirmative action, including increase in capitation, to ensure that learners with disabilities are enrolled in all levels of learning institutions;”</p>	<p>It is important that costing be done for educating/training a learner with various forms with disabilities and the same implemented in budgeting.</p>	<p>Not adopted. Already catered for in the</p>
		<p>Add a sub-clause that provides for community-based health care services.</p>	<p>Having access to community-based health care services is key in achieving inclusive health services for persons with disabilities.</p>	<p>Adopted. Align with other Acts of law on health.</p>
		<p>Add a new sub-clause to read: Ensure participation and involvement of organizations of/ for persons with disabilities in every aspect of policy</p>	<p>This is an imperative under the CRPD.</p>	<p>Not adopted.</p>

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		and development.		
	COG	Include a clause on capacity building, funding and consultation of county governments.	This is to enable pwd mainstreaming in the counties.	Adopted.
5	KNCHR.	Include another obligation to read as: “Put in place affirmative action to waive licenses and fees of new businesses established by persons with disabilities”	Waiving licenses and fees required to establish a business is in line with Article 27 (1) (f) of the Convention on the Rights of Persons with Disabilities that requires State Parties to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business.	Adopted. Have a clause on affirmative action to cater for variety of issues.
	COG	Include a clause on increase of funding by the national government to enable counties mainstream disability rights in all county plans, programmes and projects.	Counties need to be adequately resourced to ensure effective implementation of programmes on persons with disabilities in the counties.	Not adopted. Counties should adequately fund their activities.
		Amend clause 5 (1) (c) to read— (c) liaise with the Council to maintain a database of persons with disability in respective counties;	This is to avoid duplicity of records.	Adopted.
10, 11,13	COG	Amend the clauses to protection from sexual abuse, sexual exploitation and harmful practices.	Sexual exploitation and abuse is on the rise.	Not adopted.
11	Transparency International	Include clauses on protection from abuse, exploitation and harmful practices and living with family for as long as is necessary.	There is need to add all other forms of violence, neglect, inhuman treatment and punishment, and hazardous or exploitative labour other than protection from abuse, exploitation and harmful practices. There is need to also add “cultural” to the harmful practices.	Not adopted

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			There is also need to add to parental care and protection, which includes equal responsibility of the mother and father to provide for the child.	
13	NGEC	Amend Clause 13(a) by inserting after the word "Programmes" the following "for themselves and their care givers"	Older members with disability require continual care giving services and this can only be achieved through support of the full time care givers by way of stipend. Article 10 of the African Union Protocol on Rights of Older Persons requires state parties to provide incentives to family members who provide care for older persons	Adopted. Include aides for all categories of PWDS
14	Transparency International	The documents should be issued at no cost.	Majority of PWDs struggle with the fees needed for the disability identification card and may have to travel far to collect the card.	Adopted.
20	NGEC	Amend sub clause (1) by inserting the word "Suitable" after the word "any" b. Amend by inserting after the word "children" the word "and learners"	a. This is specific to learners who will not necessarily fit in any mainstream school but require an institution specific to their needs i.e special school b. The interpretation of child in the constitution is an individual who has not attained the age of 18 years while the right to education is applicable to learners in Technical, Vocational Education and Training (TVET)	Adopted. The clause should refer to learners.

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			make reference to the Kenya Sector Policy for Learners and Trainees with Disabilities, 2018.	
	Kesho Kenya	National and County governments to undertake review of budgetary allocations to inclusive/special needs education and make adjustments accordingly. National government institute subsidies for assistive devices and technologies being imported in the country.	Inadequate funding has been a major setback in the equipping of schools and provision of assistive devices and technologies to learners and trainees with disabilities. The high cost of assistive devices e.g hearing aid and braille have left many learners struggling as they aren't affordable.	Not adopted. The Bill has made adequate provisions on funding for the persons with disabilities.
	COG	Include consultation with county governments and amend clause 20 (8) (c) (vi) to read— (vi) introduction of Kenya sign language interpretation course in all learning and training institutions;	ECDE is devolved. The Competency Based Curriculum provides for the inclusion of Kenya Sign Language as a means of instruction in all schools and training institutions for learners and trainees with special needs.	Adopted.
21	NGEC	a. Amend clause 21 by inserting an additional sub-clause as below-; (f) submit all job advertisements to the Council b. Amend Clause 21(3) by inserting after the word "Council" the following "and The National Gender and	Job advertisements submitted to the Council will be posted on its website and circulated within the networks of Persons with Disability and enable them to apply for available jobs. b. The mandate of the National Gender and Equality Commission is promotion of Gender equality and freedom from discrimination, and	Not adopted

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Equality Commission”	<p>PWD as a Special Interest Group is one of the target groups for the Commission.</p> <p>The proposal also helps the Bill to comply with the provisions of the CRPD.</p>	
	KNCHR.	Add a sub-clause under 21 (2) (e) to the effect that every employer shall provide reasonable accommodation for employees with disabilities.		
		Delete 21 (3)	Section 16 of the Public Service (Values and Principles) Act requires each service Commission to prepare an annual report on the status of the promotion of the values and principles of public service. The reports are submitted to the President and Parliament. To address the challenges of multiplicity/parallel channels of reporting/accountability.	Not adopted
	COG	Amend clause 20 (2) (a) to apply to employers in the public sector only.	This should only apply to the public sectors since there are incentives already provided for in the private sector.	Not adopted
24	NGEC	<p>Propose to amend sub clause 24(6) by inserting after the word “Facility “the following;-</p> <p>“and shall be signed by a designated and gazetted County Medical Officer”</p>	<p>This will speed up the issuance of cards because there will no longer a need to have cards signed by the Director of Medical Services in Nairobi.</p> <p>All health institutions which are part of places where services are offered to the public need sign language interpretation services</p>	Adopted. Have a department to cater for pwds

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		words “Every national or referral” with the word “All”		
	KNCHR.	The Commission proposes the addition of a clause to the effect that: ‘every person with a disability has the right to access health care on the basis of his/her free and informed consent’.	To offer redress for the current situation where many persons with disabilities have medical interventions performed against their will.	Adopted.
		Amend 24 (8) to read- (8) Persons with disabilities, including children, have the right to retain their fertility on an equal basis with others.	To align the Bill with Article 23(1)(c) of the CRPD on respect for home and the family. Under this Article, States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.	Not adopted.
26	NGEC	Amend by inserting the after the word “Public “ the word “and private” in sub-clauses 4, 5 and 9.	All institutions whether private or public must provide information and technology services to members of public that they provide services to in accessible formats.	Not adopted.
26	CDPOK	Add Kenyan sign language/television inset and or closed captioning, the inset should cover a third of television screen.	For ease of communication.	Not adopted
28	NGEC	Amend 28(1) by inserting after the word ‘procedural’ the	Reasonable accommodation is	Not adopted

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		following word "reasonable"	interpreted in the interpretations and it includes the courts being accessible to all categories of persons with disability. Inaccessibility of courts is one of the greatest impediments on access to justice.	
29	CDPOK	Reinstate the right to free access to recreational facilities for PWDs	PWDs should be allowed free access to recreational facilities as captured in the current PWDs Act, 2003 Section 28 (1)	Adopted. Have free access to public recreational facilities.
30.	Timothy W. Mwangi.	Insert a new subclause immediately after 30(1) to read— The National Construction Authority shall within one year of commencement of this Act disseminate to county governments standards for construction of buildings that allow barrier free and disability friendly environment. (b) The National Construction Authority shall within six months of commencement of this Act submit to Parliament a report on progress made in (a)	This is in line with section 5 of the National Construction Authority Act.	Not adopted
31	NGEC	Amend by inserting after the word "Council" the following "in collaboration with the relevant Regulatory Agencies"	The Council as established does not have enforcement powers. There is need for collaboration with Regulatory agencies e.g.	Adapted

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			<p>the orders issued.</p> <p>The current Act No 14 of 2003</p> <p>has the same provision on adjustment orders which has</p> <p>however never been implemented by the Council</p> <p>because the Council does not</p> <p>have enforcement powers.</p>	
	COG	Amend the clause by introducing consultation and collaboration with the county governments and other government regulatory agencies.	<p>This is part of government functions.</p> <p>Development control is a function of the county governments.</p>	Adopted.
32	NGEC	<p>Amend 32(2) by inserting an additional sub-clause as follows-;</p> <p>“(d)Ensuring that there is compliance by political parties on the requirement of nominative seats reserved for persons with disability.”</p>	<p>This will entrench the rights of</p> <p>Persons with Disabilities in nominative seats and also attach an obligation of the</p> <p>electoral body to ensure that</p> <p>there is compliance with the</p> <p>provisions on special interest</p> <p>seats in the houses.</p>	Adopted.
	CDPOK	IEBC should consult the National Council for Persons With Disabilities to determine nomination for PWDs in Senate, National Assembly and County Assemblies.	To avoid instances of shortchanging deserving PWDs in nomination processes.	Not adopted.
37	CDPOK	All institutions including political parties should work closely with NCPWD to collect	It is a good practice to have an up to date data of	Not adapted

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		and keep disintegrated data of PWDs members. Add standardization of data collection tools and central storage of PWDs data under this section	all PWDs in the country. It is important to standardize tools for PWDs data collection and also to store the data in a central place.	
40	COG	Increase membership of COG to the Council from one to three.	This is to adequately represent county governments due to the multi sectoral nature of PWDs mainstreaming and the functions that counties play in the same.	Not adopted
42	COG	Delete clause 42.	Mwongozo code discourages the establishment of the office of vice chairpersons in state corporations.	Not adopted
49	Timothy W Mwangi.	Insert a new clause immediately after clause 49 to read: (a) The Council may establish committees which shall consist of members as it deems appropriate to perform such functions as the Board may determine. (b) Unless otherwise provided by the Act, the Council shall appoint chairpersons of committees established. (c) The decisions of the committees shall be ratified by the Council unless	This is in accordance with Mwongozo Guidelines.	Not adopted

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Act' (d) The Council may co-opt not more than four persons, whose knowledge and skills are found necessary for the performance of the functions of the Council. Co-opted members have no right to vote at a meeting of the Council.		
54	Timothy W Mwangi.	Insert the a new subclause immediately after 54(2)(b) to read : “progress made in realization of aspirations of Article 54 of the Constitution”	This will enable Kenyans monitor and evaluate progress made towards compliance with article 54.	Not adopted
55	KNCHR.	In 55 (1) insert the word “permanent” before “exemption” to read: All persons with disabilities who are in receipt of an income may apply to the Cabinet Secretary responsible for finance for permanent exemption from income tax and any other levies on such income.	Requiring persons with disabilities who have been assessed and registered with the NCPWD to periodically present themselves for disability assessment is demeaning and amounts to stigma and discrimination.	Not adopted
		In 55 (2) We propose that the tax exemption should be a transparent figure applicable across the board, for example, currently, it is for earnings above KES 150,000/-or for the first Kes. 1.8 M per annum.	Leaving the tax exemption to the discretion of the Cabinet Secretary to be determined on a case-by-case basis adds a layer of bureaucracy and opaqueness unnecessarily.	Not adopted
60	KNCHR	In 60 (2) Include “denial of reasonable accommodation” as a form of discrimination	Denial of reasonable accommodation for persons with disabilities is a major contributor to discrimination against them. To affirm this, the Committee on the Rights of Persons with Disabilities in its 2015	Adopted.

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			Concluding Observations to Kenya, urged the State to “ensure legal recognition of the denial of reasonable accommodation as a form of discrimination.”	
61	KNCHR	Delete the clause.	The acts listed under clause 61 (2) have been provided for under the preceding clauses. The preceding clauses also provide for different penalties which differ from the one provided for under clause 61 (1). Deletion of the clause will bring clarity. Alternatively, there could be separate sections on exploitation and physical violence.	Not adopted
62	KNCHR	In 62 (1) add the words “or any other institution” immediately after the word “disabilities”.	The provision only applies to parents, guardians, next of kin and institutions of persons with disabilities, yet persons with disabilities may also be concealed by other institutions.	Adopt.
		Review the penalty for the offence of concealment of persons with disabilities in 62 (2).	The two hundred thousand shilling fine provided for under the section is too lenient especially for institutions. Additionally, Sections 63 (1) and (2) recognize “concealment” as a harmful practice which attracts a penalty of life imprisonment. Section 62 (2) therefore needs to be reviewed to align with Section 63 (2).	Adopted.
65	KNCHR	Harmonise the offence and penalty with the provisions of Prevention of Torture Act.	For uniformity. Section 31 of the Prevention of Torture	Adopted.

CLAUSE	STAKE HOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			2017) provides that if there is a conflict between the provisions of the Act and the provisions of any other law in regard to the crime of torture or cruel, inhuman or degrading treatment or punishment, the provisions of the Prevention of Torture Act shall prevail.	
84	KNCHR	Merge the National Fund for the Disabled of Kenya with the National Council for Persons with Disabilities and ensure parliamentary oversight for accountability.	The Fund should be managed by the Council since the latter is in charge of the various projects/ programmes that assist persons with disabilities.	Adopted.

3. The Legal Counsel concluded by outlining the Comments from the other stakeholders as follows -

- a) Digital Accessibility for Persons with Disabilities (KICTANet) made submissions of general nature and submitted that information should be accessible to persons with disabilities.
- b) Dennis Ochieng' Orengo Juma made comments of a general nature on the Bill reiterating the contents of the Bill.
- c) Amazing Grace Bawo Foundation raised the issue of the implementation of the laws passed by the Kenyan Parliament.
- d) The Ministry of Labour and Social Protection opposed the Bill, indicating that they would introduce a similar legislation in the National Assembly.

MIN/SEN/SCLSW/199/2023

ADJOURNMENT AND TIME OF THE NEXT MEETING

There being no other business, the meeting was adjourned at 12.50 pm for the health break. The next meeting was scheduled for 13.00 pm.

SIGNED.....

(CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

DATE. Monday, 22nd May, 23



**MINUTES OF THE 33RD MEETING OF THE STANDING COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 18TH APRIL, 2023
9.00 AM AT THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS.**

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Sen. Julius Murgor Recha, MP | - Chairperson |
| 2. Sen. George Mungai Mbugua, MP | - Vice-Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 4. Sen. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--------------------------------------|----------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 2. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 3. Sen. Alexander Munyi Mundigi, MP | - Member |
| 4. Sen. Gloria Orwoba, MP | - Member |

IN ATTENDANCE

National Gender and Equality Commission

- | | |
|---------------------------|-----------------------------|
| 1. Dr. Joyce Mutinda | - Chairperson, NGEC |
| 2. Mr. Thomas Koror | - Commissioner |
| 3. Ms. Caroline Lentupuru | - Commissioner |
| 4. Ms. Betty Sungura | - CEO |
| 5. Mr. Bernard Sompoika | - Personal Assistant to CEO |
| 6. Mr. John Nzioka | - Programme Officer |
| 7. Ms. Caroline Mutiso | - P.A to Mr. Nzioka |
| 8. Mr. Joshua Ogembo | - Legal Officer |
| 9. Mr. Aane Anyango | - Legal Officer |
| 10. Ms. Josphine Mwatibo | - Programme Officer |
| 11. Mr. Sylvester Mbithi | - Programme Officer |
| 12. Ms. Nancy Mwangi | - Programme Officer |

Kenya National Commission on Human Rights

- | | |
|----------------------|-------------------|
| 1. Dr. Domis Wandera | - Commissioner |
| 2. Ms. Anne Okotoyi | - Director, KNCHR |

- | | |
|-----------------------|----------------------------|
| 3. Mr. Martin Pepela | -Assistant Director, KNCHR |
| 4. Ms. Janet Kabaya | - Senior Officer |
| 5. Ms. Clara Amwen | - Human Rights Officer |
| 6. Mr. Archie Weloba | - Human Rights Officer |
| 7. Mr. Kelvin Sindani | - Human Rights Officer |
| 8. Mr. Stephen Tenge | - Human Rights Officer |

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Ms. Getrude Nthiiri | - First Clerk Assistant |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Mr. Rhyan Injendi | - Research Officer |
| 5. Ms. Felistas Mutune | - Media Relations Officer |
| 6. Ms. Swaluha Yusuf | - Protocol Officer III |
| 7. Mr. John Chege | - SAA |

MIN/SEN/SCLSW/146/2023: PRAYERS

The Chairperson called the meeting to order at 9.22 am followed by a word of prayer. The Chairperson then welcomed participants to the meeting, followed by a round of introductions.

MIN/SEN/SCLSW/147/2023: ADOPTION OF AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Miraj Abdulahi Abdulrahman, MP and seconded by George Mungai Mbugua, MP as follows-

1. Prayers & Introductions;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. Meeting with Stakeholders on the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023);
5. Any Other Business; and
6. Adjournment/Date of the Next Meeting.

MIN/SEN/SCLSW/148/2023: COMMUNICATION FROM THE CHAIRPERSON

The Chairperson outlined the mandate of the Committee and presented a brief on the Persons with Disabilities Bill, (Senate Bills No. 7 of 2023). He then invited the stakeholders to make their submissions on the Persons with Disabilities Bill, (Senate Bills No.7 of 2023).

MIN/SEN/SCLSW/149/2023: MEETING WITH STAKEHOLDERS ON THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7 OF 2023)

a) Submissions by the National Gender and Equality Commission (NGEC)

1. The Chairperson, NGEC thanked the Committee for inviting stakeholders to give their submissions on the very important Bill, and congratulated the Sponsor of the Bill, Sen. Crystal Asige, who was also a Member of the Committee. She then invited the CEO to present the submission of the Commission.
2. The CEO made the following submissions -
 - i. PART II- OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS
 3. The Commission proposed to introduce a new clause on the obligations of National Human Rights Commissions and the Civil Society.
 - ii. PART III—RIGHTS OF PERSONS WITH DISABILITY
 4. The Commission proposed to amend the following clauses 13, 20, 21, 24, 26, 28, 31 and 32, and concluded by stating that the Bill was a money Bill in reference to the Constitution.

b) Submission by the Kenya National Commission on Human Rights (KNCHR)

1. The meeting was informed that KNCHR had made similar submission on the Bill in 2021, however the Bill lapsed in the 12th Parliament. The Commission thanked the Committee for the invitation to present its submission.
2. The Commission proposed to amend the following clauses 4, 5, 21, 24, 33, 37, 38, 55, 58, 60, 61, 62, 63, 65, 71, 72, 74, 76, 77, 78, 84 and the long title.

c) Committee Observations and Resolutions

The Committee noted the submission and resolved to ensure that the Bill was passed in the Senate.

MIN/SEN/SCLSW/150/2023 ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at 10.17 am. The next meeting was scheduled for Wednesday 19th April, 2023 at 8:30 am via Zoom online platform.

SIGNED.....

DATE.....

Thursday, 4th May, 2023

(CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



MINUTES OF THE 23RD MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 28TH MARCH, 2023 11.00 AM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS

MEMBERS PRESENT

- | | |
|----------------------------------|----------------------|
| 1. Sen. Gloria Orwoba, MP | - Member (Ag. Chair) |
| 2. Sen. George Mungai Mbugua, MP | - Vice-Chairperson |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|---------------|
| 1. Sen. Julius Murgor Recha, MP | - Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 3. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 4. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 5. Sen. Alexander Munyi Mundigi, MP | - Member |
| 6. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Mr. Rhyan Injendi | - Research Officer |
| 4. Ms. Lilian Onyari | - Fiscal Analyst |
| 5. Ms. Felistas Mutune | - Media Relations Officer |
| 6. Ms. Swaluha Yusuf | - Protocol Officer III |
| 7. Mr. Bernard Sika | - SAA |

PRAYERS

The Chairperson called the meeting to order at 11.20 am followed by a word of prayer.

MIN/SEN/SCLSW/95/2023

- ADOPTION OF AGENDA

The Agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP. and seconded by Sen. George Mungai Mbugua, MP. as follows-

1. Prayer
2. Adoption of the Agenda;
3. Communication from the Chair;

4. Confirmation of Minutes –

- a) Minutes No. 14 of Thursday, 2nd March, 2023 at 10.00 am;
 - b) Minutes No. 16 of Monday, 13th March, 2023 at 2.00 pm;
 - c) Minutes No. 20 of Monday, 20th March, 2023 at 2.00 pm; and
 - d) Minutes No. 22 of Friday, 24th March, 2023 at 2.30 pm.
5. Consideration of the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023), and the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023) (Committee Paper No. 11)
6. Any Other Business; and
7. Adjournment and Date of the Next Meeting.

MIN/SEN/SCLSW/96/2023

COMMUNICATION FROM THE CHAIR

The Chairperson welcomed the Members to the meeting and informed them that members were going to be briefed on two bills that had been referred to the Committee on Wednesday, 22nd March, 2023.

MIN/SEN/SCLSW/97/2023

CONSIDERATION AND ADOPTION OF MINUTES

- a) The Minutes of the 22nd Sitting held on Friday, 24th March, 2023, at 2.30 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. George Mungai Mbugua, MP;
- b) The Minutes of the 20th Sitting held on Monday, 20th March, 2023 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Gloria Orwoba, MP;
- c) The Minutes of the 16th Sitting held on Monday, 13th March, 2023 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Gloria Orwoba, MP; and
- d) The Minutes of the 14th Sitting held on Thursday, 2nd March, 2023 at 10.00 am were postponed due to lack of quorum of Members present.

MIN/SEN/SCLSW/98/2023

-CONSIDERATION OF THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7 OF 2023), AND THE HERITAGE AND MUSEUMS BILL, 2023 (SENATE BILLS NO. 8 OF 2023) (COMMITTEE PAPER NO. 11)

1. The Legal Counsel took the Committee through the Persons with Disabilities Bill, 2023 whose principal object is to repeal the Persons with Disabilities Act, No. 14 of 2003 and have in place a law that is consistent with the Constitution. The Bill places emphasis on human rights approach towards the realization of specific rights for persons with disabilities. The Bill also sets out the obligations of both the National and County Governments in line with the Constitution to ensure that the County Government obligations are delineated in accordance with the provisions of the Fourth Schedule to the Constitution.

2. Members were also briefed on the Heritage and Museums Bill, 2023 whose principal object is to repeal the National Museums and Heritage Act and enact a new Bill that conforms to the Constitution which proposes to—
- (a) retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006;
 - (b) provide for national and county museums;
 - (c) provide for the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and
 - (d) repeal the National Museums and Heritage Act, 2006.


Resolutions

The Committee noted that the advertisement calling for written submissions was posted in the local dailies on Friday, 24th March, 2023 and therefore set the public hearing dates for the Heritage and Museums Bill, 2023 on Tuesday, 11th April, 2023; and for the PWD Bill, 2023 on Thursday, 13th April, 2023.

MIN/SEN/SCLSW/99/2023

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at 12.16 pm and the next meeting was on notice.

SIGNED.....

DATE Thursday, 30th March, 2023

(CHAIRPERSON: SEN. JULIUS MURGOR, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



MINUTES OF THE 18TH MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY, 15TH MARCH, 2023 AT 11.00 A.M IN THE SHIMBA HILLS HALL, KENYATTA INTERNATIONAL CONFERENCE CENTRE

MEMBERS PRESENT

- | | |
|---|---------------|
| 1. Sen. Julius Murgor Recha, MP | - Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 3. Sen. Mohamed Faki Mwinyihaji, MP | - Member |
| 4. Sen. Alexander Munyi Mundigi, MP | - Member |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |
| 6. Sen. Gloria Orwoba, MP | - Member |
| 7. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--------------------------------------|--------------------|
| 1. Sen. George Mungai Mbugua, MP | - Vice-Chairperson |
| 2. Sen. Erick Okong'o Mogeni, SC, MP | - Member |

IN ATTENDANCE

- | | |
|----------------------------------|---------------------------------|
| 1. Sen. Kamau Joseph Gathuku, MP | - Senator, Lamu County |
| 2. Mr. James Gakonga | - Football Coach-United Kingdom |
| 3. Mr. Benson Kamau | - Civil Servant |
| 4. Mr. Joel Kimani | - Grassroots foot-ball Coach |

SECRETARIAT

- | | |
|------------------------|--------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Mr. Jeremy Chabari | - Legal Counsel I |
| 4. Mr. Ryan Injendi | - Research Officer III |
| 5. Ms. Lilian Onyari | -Fiscal Analyst III |
| 6. Ms. Juliet Masinde | - Media Officer |
| 7. Mr. Wilson Bosiment | - Chief SAA |
| 8. Mr. John Chege | - SAA I |
| 9. Ms. Swaluha Hassan | - Protocol Officer |
| 10. Mr. Joseph Otieno | - Audio Officer |

MIN/SEN/SCLSW/75/2023

PRAYERS & INTRODUCTIONS

The Chairperson called the meeting to order at 11.28 a.m. followed by a word of prayer. This was followed by introductions from all present.

MIN/SEN/SCLSW/76/2023

ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Miraj Abdulahi Abdulrahman, MP. and seconded by Sen. Crystal Asige, MP. as follows-

1. Prayers & Introductions;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. Meeting with Petitioners on the Petition concerning Linda Soka tapping into the Kshs. 302 Billion Football Economy;
5. Any Other Business; and
6. Adjournment/Date of the Next Meeting.

MIN/SEN/SCLSW/77/2023

MEETING WITH PETITIONERS ON THE PETITION CONCERNING LINDA SOKA TAPPING INTO THE KSHS. 302 BILLION FOOTBALL ECONOMY;

1. The Chairperson invited the leader of the petitioners, Mr. James Gakonga, a football coach stationed in the United Kingdom to present his petition before the Committee.
2. Mr. James Gakonga submitted that –
 - a) Kenya enjoyed a well-deserved representation as a sporting nation. However, this representation was not reflected in the football sector;
 - b) the football administration in Kenya had been marred by corruption, mal-administration and lack of accountability which had negatively impacted on the industry, leaving the football players and other public without hope in the sector;
 - c) many youths talented as football players had opted to move to other countries in search of opportunities to play professional football and thus, the transformation of the sector would be quite beneficial to many youths seeking to establish themselves in professional football and in turn the football economy would be boosted;
 - d) the adoption of Linda Soka tapping into Kshs302 billion football economy presented a good opportunity to restore the sector and transform Kenya and the football economy as a whole; and
 - e) the petitioners had made efforts to have the matter addressed by the Ministry of Sports, Culture and Heritage, all of which had not been successful.

3. The Petitioners prayed that the Senate -
- a) through the Committee intervenes by introducing a legislation on sports management, administration and governance to address matters in sports including Football development and management;
 - b) propose allocation of more resources on sports to the counties to enable county governments invest in sports development; and
 - c) compels the National government to adopts the -
 - i. Kenya Football Vision (Vision Total Football Kenya);
 - ii. Kenya Football Economic Charter;
 - iii. Football Transformation Implementation Proposal
4. The Committee appreciated the Petitioners for taking their time to seek solutions for challenges affecting the football sector and noted that the proposal presented was very well written and comprehensive.
5. The Committee undertook to sponsor the Legislation on Football to assist in governing the sector.
6. The Committee then resolved to invite the Cabinet Secretary, Youth Affairs, Sports and the Arts, Sport Kenya, Sports Fund and the Sports Registrar to a discuss further on the contents in the petition.

MIN/SEN/SCLSW/78/2023

AOB, ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at 12.19 p.m and the date of the next meeting to be by notice.

SIGNED.......... DATE Monday, 29th May, 2023.....

(CHAIRPERSON: SEN. JULIUS MURGOR, MP)

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

SPECIAL ISSUE

Kenya Gazette Supplement No. 16 (Senate Bills No. 7)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 20th February, 2023

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THE PERSONS WITH DISABILITIES BILL, 2023
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- 2—Interpretation.
- 3—Guiding Values and Principles.

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- 4—Obligations of the National government.
- 5—Obligations of county governments.

**PART III—RIGHTS OF PERSONS WITH
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- 7—Right to Legal Capacity.
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-
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55—Exemptions.

56—Incentives.

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58—Exemption from taxable income of employers of persons with disability.

59—Exemption from postal charges.

PART VI— OFFENCES AND PENALTIES

60—Discrimination contrary to Article 27 of the Constitution.

61—Prohibition of abuse exploitation or violence.

62—Concealment of Persons with Disabilities.

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66—Negligence by medical practitioners.

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- 71—Protection of road users with disabilities.
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- 74—Prohibition of discrimination relating to goods, facilities and services.
- 75—Apprenticeship, Technical, vocational Training, Rehabilitation and Self-Employment.
- 76—Disability Mainstreaming Units and Inspectors.
- 77—Awareness Raising.
- 78—Public Participation.
- 79—Markets.
- 80—Appointment of Public Prosecutor.
- 81—General Penalty.
- 82—Regulations.
- 83—Repeal of the Persons with Disabilities Act No. 14 of 2003.
- 84—Transitional and savings provisions.

SCHEDULES

FIRST SCHEDULE—Provisions as to the Conduct of Business and affairs of the Council.

SECOND SCHEDULE—Access to Buildings, Auxiliary aid, Sporting Venues and Public Facilities.

THE PERSONS WITH DISABILITIES BILL, 2023

A Bill for

AN ACT of Parliament to give effect to Article 54 of the Constitution; to restructure the National Council for Persons with Disabilities and to provide for its functions and powers; to provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities; to provide for incentives and reliefs, and for connected purposes

ENACTED by Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. This Act may be cited as the Persons with Disabilities Act, 2023.

Short title.

2. In this Act—

Interpretation.

“adjustment order” means an order made by the Council under section 29 of this Act;

“assistive devices” includes implements, tools, equipment, taped texts, audio, visual and pictorial recording, Braille equipment and materials, tactile equipment, orthopaedic appliances, software and other devices and machines for persons with disabilities for their socio-cultural, economic, civil, political wellbeing of persons with disabilities;

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

“communication” includes languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia and written, audio, plain-language, easy to read, pictorial, 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 as restructured under section 34 of this Act;

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that

has or is perceived to have a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities;

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

“discrimination on the basis of disability” 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. It includes all forms of discrimination, including denial of reasonable accommodation;

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

“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” means an approach where learners and trainees with disabilities are provided with appropriate educational interventions within regular institutions of learning with reasonable accommodations and support;

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

“media enterprise” means an organization whose business involves the collection, processing and

dissemination of news or news articles, or in entertainment and education through the media;

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

“older member of society” has the meaning assigned to it under Article 260 of the Constitution;

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

“organisations of persons with disabilities” means associations, societies or other membership groups led and controlled by persons with disabilities to represent the rights and interests of persons with disabilities;

“persons with disabilities” includes persons with long term physical, mental, intellectual, developmental or sensory impairments, including 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 used, constructed or adapted to be used as a shop, office, hospital, learning institution or used for purposes of public entertainment or public assembly and accessed by the general public, and includes its entrance, exit, parking space, footpath and other appurtenant lands.

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

“specific measures” means legislative, 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 fulfil equal enjoyment of rights of persons with disabilities;

“support services” includes support provided by persons, sign language interpreters, guide dogs, 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;

“universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design and it shall not exclude assistive devices for particular groups of persons with disabilities where this is needed;

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

Guiding Values
and Principles.

- (a) respect for inherent dignity and individual autonomy including the freedom to make one’s own choices, and the independence of all persons in the conduct of their private affairs;
- (b) equality and non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) access to information;
- (h) equality between men and women;
- (i) respect for the evolving capacities of children with disability and respect for the right of children with disability to preserve their identities.

PART II—OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

4. The national government shall—

Obligations of the National government.

- (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;
- (i) ensure access to free basic education and other social amenities to every child with a disability;
- (j) allocate adequate resources to programmes specifically targeting persons with disabilities;
- (k) allocate adequate resources for training on persons with disabilities;

- (l) ensure equity in the distribution of resources to all categories of disabilities; and
- (m) promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions.

5. (1) Every county government shall—

Obligations of
county
governments.

- (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 meets 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 of 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 not more than two thirds of its members shall be of the same gender.
- (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.

PART III—RIGHTS OF PERSONS WITH DISABILITIES

6. (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;

Right to Equality
and Non-
Discrimination.

(b) entitled to the full and equal enjoyment of the goods, services, facilities, or accommodations on an equal basis with others.

(2) Pursuant to subsection (1), specific measures, including support services which are necessary to accelerate or achieve equality and eliminate discrimination against persons with disabilities shall not be considered discrimination.

7. (1) Persons with disabilities have the right to recognition everywhere as persons before the law, and to enjoy legal capacity on an equal basis with others in all aspects of life.

Right to Legal Capacity.

(2) Persons with disabilities are entitled to such support services as they may require in exercising their right to legal capacity.

(3) Every person with disability has a right to own and inherit property, to control their own financial affairs and to have access to savings and loan facilities, mortgages and other forms of financial credit on an equal basis with others.

8. (1) Every adult person with disability has the right to marry a person of the opposite sex and form a family based on free consent.

Right to marry and form a family.

(2) Every person with disability has the right to control his or her sexuality and reproductive health.

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

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

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

Right to Privacy.

(2) Every public or private institution shall protect confidential information relating to personal health and habilitation and rehabilitation services for persons with

disabilities with dignity and such information shall not be shared without express authority of the person with disability concerned.

10. 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—

Women with Disabilities.

- (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.

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

Children with Disabilities.

- (a) a name and registration immediately after birth;
- (b) evolving capacities, identities and to enjoy a full and decent life, in conditions which promote and ensure dignity, self-reliance, and independence;
- (c) freedom to express his or her views on all matters affecting him or her;
- (d) age and gender appropriate assistance to realize his or her rights;
- (e) living with his or her family for as long as is necessary;
- (f) accessing quality education;
- (g) accessing appropriate health care services; and
- (h) protection from abuse, exploitation and harmful practices.

(2) In all actions concerning children with disabilities, the best interest of the child shall be the primary consideration and shall be of paramount importance.

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

Youth with Disabilities.

(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 organizations 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;
- (g) developing and implementing specific measures to facilitate full and equal participation of youth with disabilities in training, sports, culture, science and technology; and
- (h) ensuring that youth with disabilities have access to appropriate sexual and reproductive health education on an equal basis with others.

13. Older members of society who have disabilities have the right to enjoyment of human rights and

Older members of Society with disabilities.

fundamental freedoms on an equal basis with others, including the right to—

- (a) access social protection programmes;
- (b) exercise their legal capacity and that appropriate measures and safeguards are put in place to provide them with the support they may require to exercise their legal capacity; and
- (c) access inclusive services.

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

Right to documents of registration or identification.

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

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

Right to physical and mental Integrity.

16. 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.

Right to Human Dignity.

17. (1) Every person with disability has the right to be protected against all forms of abuse, neglect, exploitation and physical, mental, sexual, or emotional violence on their person in all settings at all places including, home, 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.

Protection from abuse, exploitation and violence.

(2) Any person or organization working with a person with disability, or any person, who has reason to believe

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

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

18. (1) Persons with disabilities have the right to protection in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

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

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

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

(4) The Kenya Defence Forces, the National Police Service and any other establishment whether public or private, engaged in emergency or humanitarian services shall give priority or and specific attention to persons with disabilities, in all situations of risk, take appropriate measures to ensure the safety and protection of persons with disabilities.

(5) Construction and reconstruction emergency or humanitarian programmes and activities undertaken by the Government and any other establishment whether public or private shall, after consultation with the Council, take into account the accessibility requirements of persons with disabilities.

(6) For purposes of this section, situations of risk include fire, floods, earthquakes, epidemics, cattle rustling, ethnic conflicts and terrorism.

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

Specific measures
for persons with
Disabilities.

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

20. (1) Every person with disability has a right to admission to any institution of learning and access to an inclusive, quality education on an equal basis with others.

Right to
Education.

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

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

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

(5) Every child with disability has the right to free and compulsory basic education.

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

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

(8) The Council in consultation with relevant Government establishments shall ensure that—

(a) learning institutions take into account the needs of persons with disabilities with respect to the set entry requirements, pass marks, curriculum,

examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations;

- (b) learning institutions provide individualized support measures, appropriate equipment, assistive devices, adoptive technologies and other supportive services in environments that maximize academic and social development, consistent with the goal of full inclusion of students with disabilities.
- (c) the Ministry responsible for education formulates strategies to implement inclusive education through—
 - (i) enforcement of recruitment and retention of special education teachers in all schools and institutions;
 - (ii) adaptation and structural adjustments of all educational institutions to the needs of persons with disabilities;
 - (iii) establishment of specialized institutions that undertake research and development in education for learners with disabilities;
 - (iv) establishment of at least one assessment center in each county to support educational institutions within the county, by way of teacher trainers, educational aids, equipment and materials;
 - (v) promotion of the use of appropriate augmentative and alternative modes, means and formats of communication, adaptive technologies, including Braille and Kenya Sign Language; and
 - (vi) introduction of Kenya sign language interpretation courses in all training institutions.

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

(10) Each learner with disability including an intellectual disability has a right to be assessed and be placed in an appropriate learning institution in accordance with the outcome of the assessment.

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

(12) In addition to subsection (11) the court may order unconditional admission of the person with disability.

(13) The Cabinet Secretary responsible for education shall—

- (a) facilitate through policies and legislation, the development of persons with disabilities through their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (b) in collaboration with the relevant line ministries shall provide training facilities for speech therapy, occupational therapy, physiotherapy, guidance and counselling, audio-logical assessments, habilitation, and aural and oral rehabilitation for children with disabilities; and
- (c) together with the County Education Committees in charge of education make policy, legislation and sustainable financial frameworks in each financial year to achieve full realization of the right to education for persons with disabilities.

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

(15) 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.

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

Right to work and employment for Persons with Disabilities.

(2) Every employer shall—

- (a) reserve at least five per cent direct employment opportunities for persons with disabilities to secure employment;
- (b) formulate policies and programmes to promote basic human rights, improve working conditions, and enhance employment opportunities for persons with disabilities;
- (c) when recruiting, not discriminate on account of disability;
- (d) not conduct any test or examination to establish whether an applicant is a person with a disability or as to the nature or severity of the person's disability; and
- (e) be required to carry out appropriate modifications in their work premises to accommodate the employment of persons with disabilities;

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

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

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

- (a) limiting, segregating or classifying a job applicant with disabilities in a manner which adversely affects his or her work opportunities;
- (b) using qualification standards, employment tests or other selection criteria that screen out or tend to

screen out or prohibit career progression of persons with disabilities;

- (c) utilizing standards, criteria, or methods of administration showing the effect of discrimination on the basis of disability or perpetuating the discrimination of others who are subject to common administrative control;
- (d) providing less payment, remuneration or fringe benefits, to an employee with disability, than the amount paid to others performing the same work;
- (e) favoring an employee without disability over an 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 an employee with disability from a task or position the employee is able to perform to one which he or she cannot perform because of his or her disability;
- (g) failing to select or administer in the most effective manner, employment tests which accurately reflect the skills, and aptitude of an applicant or employee with disability, rather than the impaired sensory, manual or speaking skills of such applicant or employee: if any; and
- (h) excluding persons with disabilities from membership in trade and labour unions or similar organizations.

(6) For the purposes of subsection (5), the age of retirement for persons with disabilities shall be five (5) years above the mandatory age of retirement set by the Government.

(7) For purpose of this section "reasonable accommodation" for purposes of employment includes—

- (a) (i) making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- (ii) job restructuring, part time or modified work schedules, reassignment to a vacant or suitable

position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or policies, the provisions of qualified readers or interpreters, and other similar accommodations for persons with disabilities; and

- (iii) payment of assistive allowances to employees with disabilities.
- (b) “employer” means an employer in the public and private sector;
- (c) “discrimination” includes—
 - (i) limiting or classifying a job applicant or employee in an adverse way;
 - (ii) denying employment opportunities to qualified persons;
 - (iii) not making reasonable accommodation;
 - (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.

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

No dismissal for employee with disability.

Provided that—

- (a) if any employee with disability is placed under undue stress or disadvantage in the usual course of employment as a result of the disability, such employee shall be eligible for a position at the same rank with adequate support; and
- (b) such an 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.

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

Incentive for private employer.

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

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

24. (1) Persons with disabilities have the right to the enjoyment of the highest attainable standard of health, including health-related habilitation and rehabilitation services, without discrimination on the basis of disability.

Right to Health.

(2) Persons with disabilities have the right to the enjoyment of sexual and reproductive health rights on an equal basis with other persons.

(3) Persons with disabilities have the right to information to enable them to make responsible and informed choices about their sexual and reproductive health.

(4) Persons with disabilities have a right to be treated with respect, privacy and dignity while seeking health related services.

(5) Persons with disabilities shall be entitled to free medical care and treatment in public health institutions.

(6) Medical assessment reports for persons with disabilities, including for purposes of registration under the Act, shall be done free of charge in public health institutions.

(7) Every national or referral health institution shall employ at least two Kenya sign language interpreters with gender consideration in their institutional structure;

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

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

25. 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—

Council to participate in Health Programmes.

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

26. (1) Every person with disability has the right to access information, communication and other services including the 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.

Access to information and communication technology services.

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

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

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

(5) All public media enterprises and telephone service providers shall provide information and services in accessible formats and technologies appropriate to different kinds of persons with disabilities.

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

(7) The Media Council of Kenya shall develop regulations on maintenance of low levels of risk to persons who have photosensitive epilepsy by television broadcasters.

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

(9) All public institutions of higher learning shall have a common course in Kenya sign language.

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

27. Institutions that provide financial services, including online services and mobile money, shall ensure that their services, equipment and platforms are available to persons with disabilities in accessible formats and technologies.

Access to financial and banking services.

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

Access to Justice.

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

- (a) matters affecting the violation of the rights of persons with disabilities or the deprivation of their property;
- (b) cases involving capital punishment of persons with disabilities; and
- (c) such matters and cases as maybe prescribed in the regulations made by the Attorney General.

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

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

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

(4) The Chief Justice shall ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and the convenience of such persons.

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

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

(2) The Cabinet Secretaries responsible for sports, recreation, leisure and cultural activities, in consultation with the Council, shall take appropriate measures to enable

Sports,
Recreation,
Leisure and
Culture.

persons with disability to have the opportunity to develop and utilize their creative, artistic and intellectual potential.

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

(4) Every public and private institution with sporting, recreation, leisure and cultural activities for their employees shall ensure that such sporting, recreational, leisure and cultural activities are accessible and sensitive to the needs of persons with disabilities.

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

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

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

30. (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Accessibility.

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

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

(4) Every person with disability has a right to personal mobility and the use of assistive devices of his or her choice, including assistance by guide animals, and no person with disability shall be denied access to any public place because of the nature of his or her assistive devices.

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

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

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

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

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

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

(9) All new construction, modification or alterations on built environment immediately after the effective date of

this Act shall fully comply with the standards set out in the Second Schedule on accessibility of the built environment for persons with disabilities.

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

31. (1) This section shall apply to—

Adjustment
Orders.

- (a) all premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise;
- (b) public transport operators and providers of communication and information services; and
- (c) all services or amenities ordinarily provided to members of the public.

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

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

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

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

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

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

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

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

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

Civic and Political rights for persons with disabilities.

(2) It shall be the responsibility of the body conducting elections to facilitate persons with disabilities in the exercise of their civic and political rights by—

- (a) providing voting procedures, facilities and materials which are appropriate, accessible and easy to understand and use;
- (b) protecting the rights of persons with disabilities to vote by secret ballot in elections without intimidation and to offer themselves for elections; and

(c) allowing assistance in 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 strictly in accordance with the instructions of the voter.

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

33. (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.

Right to Independent living.

(2) Subject to subsection (1), an employer may provide special allowance to a person with disability.

34. (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.

Enforcement of rights.

(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.

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

Registration of Persons with Disabilities, organizations and institutions

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

provide services to persons with Disabilities and issue certificates of registration thereof.

(2) Existing organizations of or for persons with disabilities may apply in the prescribed manner to the Council for registration;

(3) Organizations for Persons with Disabilities and any integrated organization with at least seventy per cent persons with disabilities may within twelve months of formation, apply to the Council, in the prescribed manner, for registration.

(4) The Council shall not deny a person with disability who is not registered from accessing any of the services set out under this part.

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

- (a) the holder is a person with disability, or
- (b) the institution, integrated enterprise or organization holding it is registered with the Council.

PART IV—ESTABLISHMENT, POWERS AND FUNCTIONS OF THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

36. There is hereby established a council to be known as the National Council for Persons with Disabilities.

Establishment of the Council.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing;
- (d) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may be lawfully done or performed by a body corporate.

37. The functions of the Council shall be to work with other relevant Government agencies and the private sector to—

Functions of the Council.

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

and related technologies and other similar forms of assistance in both public and private institutions;

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

- provided to the public meet the needs of persons with disabilities;
- (xv) ensure that private entities offering facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities; and
 - (xvi) advice bodies that manage disaster and humanitarian crisis on disability issues to enable them put in place modalities for accessible disaster and humanitarian crisis management.
- (c) advice on systematic collection, analysis and use of national statistics and disaggregated data on issues relating to persons with disabilities;
 - (d) provide—
 - (i) information and technical assistance to institutions, associations and organizations concerned with the rights, habilitation and rehabilitation of persons with disabilities, and
 - (ii) advise on the relative priorities to be given to the implementation of national and international human rights instruments on persons with disabilities.
 - (e) intensive public awareness and education on the rights of persons with disabilities;
 - (f) carry out and publicize research on any matter relating to human rights of persons with disabilities;
 - (g) establish and maintain linkages and networking with local and international organizations, including organizations of and for persons with disabilities;
 - (h) promote the establishment of self-help organization and the setting up of specific projects for the benefits of persons with disabilities, and
 - (i) perform such other functions as may be assigned to the Council under this or any other law.

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

Powers of the Council.

- (a) enforce and generally administer the provisions of this Act and any other related laws;
- (b) issue adjustment orders;
- (c) conduct accessibility audits;
- (d) issue summons or other orders in the conduct of its requiring the attendance of such person, organization or institution as it deems necessary for the fulfilment of its mandate;
- (e) control, supervise and manage the assets and liabilities of the Council in such a manner and as best provides for the purposes of the Act;
- (f) seek and receive any grants, testamentary gifts, donations and make legitimate disbursements from such grants, testamentary gifts and donations for its purposes;
- (g) levy such fees and charges for its services as may be provided in this Act;
- (h) enter into association with other bodies within or outside Kenya which the Council may consider desirable or appropriate;
- (i) subject to the law on Public Finance, the Council invest the funds of the Council not immediately required for the purposes of the Council;
- (j) open and operate such accounts as are necessary for the funds of the Council with a bank or financial institution licensed to conduct banking business under the Banking Act to be approved by the National Treasury which shall be operated and maintained in the manner as may be prescribed by the National Treasury under the Public Finance Management Act; and
- (k) do all such other things or acts as may be necessary for the performance of its functions under this Act.

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

Council may establish Committees.

- (a) constitute committees consisting of its members; and
- (b) co-opt experts, where appropriate, to serve on such committees for a renewable period of one year, and may assign to any committee such functions of the Council as it may determine.

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

Composition of the Council.

- (a) the Chairperson, who shall be drawn from organizations of persons with disabilities and who shall be appointed by the President;
 - (b) the Principal Secretary in the Ministry responsible for matters relating to disabilities or a representative duly appointed in writing;
 - (c) the Principal Secretary in the Ministry responsible for finance or a representative duly appointed in writing;
 - (d) one person nominated by the council of county governors;
 - (e) the following appointed by the Cabinet Secretary—
 - (i) three persons representing different categories of disabilities, nominated by organizations of persons with disabilities;
 - (ii) two persons nominated by organizations for persons with disabilities, one of whom shall be from organizations of parents and guardians of persons with mental disabilities who cannot represent themselves; and
 - (f) the Executive Director of the Council who shall be the Secretary to the Council.
- (2) The appointing authority, in making appointments under this section, shall ensure that—
- (a) there is equitable representation of different categories of persons with disabilities and that not

more than two-thirds of the members are of the same gender;

- (b) at least one of the members of the Council shall be from a rural-based organization;
- (c) persons appointed have knowledge or experience of the requirement of persons with disabilities;
- (d) the requirement of a mix of skills across all functionalities of the Council is observed.

(3) Persons appointed under subsection (1) (d) shall be from organizations that have been in existence for at least three years.

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

Qualifications for appointment of chairperson and members.

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

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

- (a) is a Kenyan citizen;
- (b) holds at least Kenya Certificate of Secondary Education qualification or its equivalent:

Provided that this requirement shall not apply to a member of the Council appointed under section 39(d)(ii);

- (c) has knowledge and at least five years working experience of which three years shall be on matters relating to disabilities;
- (d) meets the requirements of Chapter Six of the Constitution of Kenya.

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

- (a) has been removed from office for contravening the provisions of the Constitution or any other law;
- (b) is a public officer;
- (c) is a member of a governing body of a political party;
- (d) is a member of Parliament or a county assembly;
- (e) has been convicted of a felony and sentenced to a term of imprisonment;
- (f) has been convicted of an offence under this Act;
- (g) has been compelled to resign or been removed from office, on account of abuse of office;
- (h) is adjudged bankrupt or has entered into a composition scheme or arrangement with the creditors; or
- (i) is disqualified under the provisions of any other written law from appointment as such.

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

Election of the Vice-Chairperson.

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

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

Tenure of office of Members of the Council.

- (2) A member may—
 - (a) at any time resign from office by notice in writing to the Cabinet Secretary, or in the case of the Chairperson, to the President; or
 - (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Council without the permission of the chairperson, or in the case of the chairperson, without the permission of the Cabinet Secretary;

- (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with the creditors;
- (iii) is convicted of an offence involving fraud or dishonesty;
- (iv) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (v) is found to have acted in a manner prejudicial to the aims and objectives of this Act;
- (vi) fails to comply with the provisions of this Act relating to disclosure of interest as provided under the First Schedule to this Act; or
- (vii) is otherwise unable or unfit to discharge his or her functions as a member of the Council.

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

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

Procedure for
Appointment.

(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 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*.

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

Executive Director of the Council.

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

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

- (a) is a citizen of Kenya;
- (b) at least a degree from a recognized university;
- (c) has at least ten years of proven work experience three years being at senior management level in a public or private institution;
- (d) at least three years' experience on matters of Disabilities; and
- (e) meets the requirements of Chapter Six of the Constitution.

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

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

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

Removal of the Executive Director.

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

Remuneration of Chairperson and Members.

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

Staff of the Council.

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

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

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

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

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

Delegation by the Council.

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

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

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

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

Inquiry by the Council.

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

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

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

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

Funds of the
Council.

- (a) funds appropriated by the National Assembly for purposes of the Council;
- (b) such moneys, as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions; and
- (c) any grants, testamentary gifts, donations or other endowments given to the Council.

52. The financial year of the Council shall be the period of twelve months ending on the thirtieth June of each year.

Financial Year.

53. (1) The Council shall cause to be kept proper books and records of its income, expenditure, assets and liabilities.

Accounts and
Audit.

(2) The Council shall within a period of not less than three months before the commencement of each financial year, cause to be prepared estimates of its revenue and expenditure, differentiating the recurrent, development and expenditure of the Council for that financial year.

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

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

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

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

Annual Report.

(2) The annual report shall—

(a) provide information regarding the activities and plans of the Council during the year and such additional information or other material as the Cabinet Secretary may request in writing;

(b) outline measures taken by it towards the realization of the values and principles of the public service in accordance with Articles 10 and 232 of the Constitution; and

(c) contain a financial statement in respect of the year.

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

(4) The annual report shall be published and publicized in such other manner as the Council may determine.

PART V—RELIEFS AND INCENTIVES

55. (1) All persons with disabilities who are 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.

Exemptions.

(2) The Cabinet Secretary responsible for finance shall, in consultation with the Council, assess all applications received under subsection (1) and may exempt the applicant wholly or partially in accordance with the Income Tax Act, Cap 470.

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(3) Materials, articles and equipment, including motor vehicles for use by persons with disabilities, shall be exempt from import duty and value added tax to the extent provided under the tax laws.

(4) All goods, items, materials, machinery, tools, articles, implements or equipment donated to institutions and organizations of or for persons with disabilities shall be exempt from import duties and value added tax to the extent provided under the tax laws.

(5) The purchase, importation, transfer or gift of health materials or equipment relating to persons with disability shall be exempted from import duty and value added tax to the extent provided under the tax laws.

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

56. (1) Any donations, bequest, subsidy or financial aid which may be made to institutions or organizations involved in the programmes of persons with disabilities and registered with the Council for the purposes of this section shall, subject to the provision of Income Tax Act and any other law, and on recommendation by the Council, be allowed as deductions for the purposes of computing taxable income of the person giving the donation.

Incentives.

(2) The Cabinet Secretary responsible for finance may in consultation with the Council and subject to the Income Tax Act and any other law, provide incentives to local manufacturers of assistive devices used by persons with disabilities on raw materials, inputs and imported capital equipment.

57. The Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions may on the advice of the Council, from time to time, develop guidelines to ensure the equal right of persons with disabilities to have equal access to bank loans, mortgages and other forms of financial credit.

Access to credit.

58. Any person who employs a person with disability and who incurs reasonable expenses on account of—

Exemption from taxable income of employers of persons with disability.

- (a) reasonable accommodation of the employee with disability;
- (b) modification of any part of the work place designed to meet the 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 requirements of the employee with disability,

shall be entitled to deductions of the expenditure incurred in the computation of their taxable income.

59. (1) Pursuant to Article 54(1)(e) of the Constitution the following materials and devices shall be exempted from postal charges chargeable by a public postal licensee —

Exemption 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 orthopedic devices designed for the use by persons with disabilities and sent within or outside Kenya for the purpose of repair or delivery to—
 - (i) persons with disabilities; or
 - (ii) a parent or guardian of a child with disability;
 - (iii) duly registered organizations of or for persons with disabilities.

(c) all types of assistive devices and adaptive technology equipment sent by or delivered to the persons specified in paragraph (b).

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

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

(4) In this section, the term “public postal licensee” has the meaning assigned to it under the Kenya Information and Communications Act, No. 2 of 1998.

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PART VI—OFFENCES AND PENALTIES

60. (1) Any person who willfully and without any lawful justification treats a person with disability in any manner resulting in the contravention of Article 27(4) and (5) of the Constitution commits an offence and shall upon conviction, be liable to a fine not exceeding two million shillings or imprisonment not exceeding two years or both.

Discrimination
contrary to Article
27 of the
Constitution.

(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 of his or her disability of any of the following—

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

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

61. (1) Any person who treats persons with disabilities or does any of the acts specified in subsection (2) by reason of such persons' disability is commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years.

Prohibition of abuse, exploitation or violence.

(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 confinement or detention whether in residential premises or in an institution resulting in denying 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.

62. (1) A parent, guardian, next of kin or a person in charge of institution of persons with disabilities 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.

Concealment of Persons with Disabilities.

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

63. (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.

Harmful practices

(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.

64. Any person who knowingly denies food or fluids to a person with disability who is under his or her care or

Denial of food and fluids.

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 imprisonment for a term not exceeding one year or to both.

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

Degrading
treatment of a
Person with
disability.

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

Negligence by
medical
practitioners.

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

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

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

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

(6) The Cabinet Secretary responsible for matters relating to health shall, within three months of the date of

commencement of this Act, develop or review guidelines on medical practice so as to bring them into conformity with the provisions of this Act.

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

Offensive Publications.

(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; and
- (d) by exhibition of pictures, models, photographs, films or any other form of exhibition.

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

68. Any person who—

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

Giving false information for purposes of registration.

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

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

Torture and cruel treatment.

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

Failure to furnish Information.

PART VII— MISCELLANEOUS

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

Protection of road users with disabilities.

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

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

Public Service vehicles and Transport.

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

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

(4) For the purposes of this section “Para transit services” means special transportation services for persons with disabilities.

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

Denial of admission into premises.

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

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

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

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

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

74. 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 —

Prohibition of discrimination relating to goods, facilities and services.

- (a) refusing to provide to a person with a disability any service which he or she provides to other members of the public; or
- (b) deliberately making it impossible or unreasonably difficult for persons with disabilities to make use of the goods, information, service or facility.

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

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

76. (1) All government ministries, departments, Agencies and county public offices shall establish a Disability Mainstreaming Unit for the purpose of—

Disability
Mainstreaming
Units and
Inspectors.

- (a) mainstreaming disability issues;
- (b) carrying out regular inspections to ensure implementation and compliance with the provisions of this Act; and
- (c) liaising with the Council on disability matters.

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

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

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

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

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

Awareness
raising.

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

78. The National and county governments shall put in place such measures to facilitate the participation of persons with disability in cultural, social and economic life and in public affairs, in particular those affecting them through—

Public
participation.

- (a) targeted public participation; and
- (b) offering information in accessible form.

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

Markets.

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

Appointment of Public Prosecutors. Cap. 75

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

General penalty.

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

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

Regulations.

(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.

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

Repeal of Persons with Disabilities Act No.14 of 2003. Transitional and savings provisions.

84. (1) Notwithstanding section 80—

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

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

- (d) all assets and liabilities which immediately before the commencement of this Act were in place shall be deemed to have been carried out under this Act.
- (e) all actions, suits or legal proceedings by or against the Council subsisting immediately before the commencement of this Act shall be carried out on, prosecuted by, or against the Council, and no such suits, actions or legal proceedings shall abate or be affected by the coming into operation of this Act.
- (f) A direction, notice, order, permit or any other document that was granted, issued or made under the repealed Act, and that was valid immediately before the coming into force of this Act, shall be given effect as if granted, issued or made under this Act.

(2) Notwithstanding section 80, the National Development Fund for Persons with Disabilities established in section 32 of the Persons with Disabilities Act, No. 14 of 2003 shall continue to be administered by the Board of Trustees which was administering the Fund immediately before the commencement of this Act until the Fund is re-established by the Cabinet Secretary responsible for matters relating to finance through regulations made under the Public Finance Management Act, No. 18 of 2012.

(3) Without limiting the generality of paragraph (2), the regulations shall provide, among other things, that—

- (a) the re-established National Development Fund for Persons with Disabilities shall be used for the benefit of persons with disabilities in Kenya; and
- (b) the administration of the re-established National Development Fund for Persons with Disabilities shall be vested in the Council.

(4) In this section, “Board of Trustees” means the Board of Trustees appointed under section 34 of the of the Persons with Disabilities Act, No 14 of 2003.

FIRST SCHEDULE

(s.43(5))

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

1. The Council shall meet at least four times in every year, and not more than three months shall pass between one meeting of the Council and the next.

2. Notwithstanding paragraph (1) the Chairperson may, on his own motion and shall, upon request by a member, convene a special meeting of the Council at any time when he or she deems it expedient for the transaction of the business of the Council.

3. The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Board of the Council at any time, where he or she considers it expedient for the transaction of the business of the Council.

4. Except in the case of a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council by the chief executive officer.

5. The quorum at a meeting of the Council shall be at least two thirds of the members of the Council.

6. The chairperson shall preside over all meetings of the Council at which he or she is present, and in the absence of the chairperson, the vice chairperson shall preside and in the absence of both, the members of the Council present shall elect from amongst themselves, a person to preside over the meetings of the Council.

7. The decisions of the Council shall be decided by a majority of the members present and voting, and in the event of equality of votes, the chairperson or person presiding shall have a casting vote.

8. The proceedings of the Council shall not be invalidated by reason only of a vacancy among the members or a defect in the appointment or qualification of a member.

9. Subject to this Schedule, the Council may determine its own procedure and the procedure for any committee of the Board and for attendance of any other persons at the meetings and may make standing orders in respect thereof

10. (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council shall—

- (a) as soon as reasonably practicable, disclose, in writing, to the Council the full and accurate details of the interest;
- (b) not participate in any discussion by the Council relating to that matter;
- (c) not vote in relation to that matter; and
- (d) be absent from the meeting room when any such discussion or voting is taking place.

11. If a member of the Council makes a disclosure of interest and complies with requirements of subsection (1) in respect of a proposed contract—

- (a) the contract shall not be voided; and
- (b) the member is not liable to account to the entity for any losses that may be incurred upon entering into the contract.

12. If a member of the Council fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the Council shall void the contract.

13. Where a member of the Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that makes it reasonably foreseeable that a conflict might arise with his or her duties as member of the Board of the Council, the member shall as soon as is reasonably practicable, disclose to the Council, in writing, of the full and accurate nature of the interest.

14. A disclosure under this schedule shall be recorded in the minutes of the Council.

SECOND SCHEDULE

(s.30(9), 73(5))

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

1. The design standards issued under this Act by the Council are used to ensure access to the built environment for persons with disabilities. The Standards apply nationwide, in addition to any applicable state or local codes, where facilities are newly built or altered.

2. It shall be the responsibility of all organs in a public or private institution to provide—

- (a) suitable entry and exits for persons with disabilities; and
- (b) universal standards or designs of public buildings and places.

3. A proprietor of a public building shall adapt the public building to suit persons with disabilities in such manner as shall be specified by the Council.

4. Where no modifications are possible wherever practicable, assistive services shall be made available to persons with disabilities or reservation of goods and services for use by persons with disabilities;

5. Facilities shall be provided to persons with disabilities at bus parks, railway stations, air and sea ports that meet the accessibility standards relating inter alia to—

- (a) parking spaces, toilets, ticketing counters, ticketing machines and cruise facilities;
- (b) provide access to all modes of transport that conform to universal design standards;

6. Duty to provide access to buildings —

(d) Any person, who constructs, a building to which the public is invited, shall ensure that persons with disabilities have access through provision of—

- (i) accessible and easy-to-find building entrances, connected by accessible pathways to accessible indoor or outdoor parking areas, local public transit stops and accessible elevators;
- (ii) safe and accessible urinal, bathrooms for the diverse disabilities;
- (iii) safe and well-dimensioned staircases for the comfort of persons with mobility problems;

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

7. An accessible elevator shall—

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

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

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The object of the Bill is to repeal the Persons with Disabilities Act, No. 14 of 2003 and have in place a law that is consistent with the Constitution. The Bill places emphasis on human rights approach towards realisation of persons with disabilities in Kenya and societal responsibility to protect and promote them.

Part I of the Bill contains preliminary provisions. These include the interpretation section of the Bill that defines terms used in the bill, a statement of the guiding principles for the Bill.

Part II of the Bill sets out the interaction between the national and county governments on matters of disability. Each county is enjoined to enact its legislation to establish an institutional framework for ensuring inclusiveness of person with disability and their representative organizations at county level.

Part III of the Bill sets out the rights of person with disabilities as articulated in the Constitution. These rights include the right to equality and non-discrimination, legal capacity, the right to a family, the right to privacy the right to health. The Bill also spells out the rights of women, children and older person with disabilities. It also provides for safety and protection of persons with disabilities and their right to education, justice, sports and recreation and a barrier-free environment. These part also provides for the need to ensure accessibility of persons with disabilities, adjustment orders and enforcement of right.

Part IV of the Bill provides for the establishment, powers and functions of the National Council for person with disabilities. It states that the headquarters of the council shall be Nairobi but other offices may be set up across the nation. This Part also provides for the financial provisions of the Bill.

Part V of the Bill deals with reliefs and incentives. It provides for tax reliefs for employees with disabilities and also tax exemption for materials and equipment imported for use by persons with disabilities. It provides tax incentives for donations, bequests and subsidies made for the benefit of persons with disabilities. Included in the tax exemption expenses incurred by an employer in a bid to make reasonable accommodation in their premises for the benefit of employees with disabilities.

Part VI of the Bill deals with offences and penalties. The offence include discrimination, abuse and exploitation of person with disabilities, degrading treatment and denial of food. Section in this part also

criminalizes negligence by health professionals especially where such negligence causes disability.

Part VII of the Bill contains miscellaneous provisions, including the repeal on Act No. 14 of 2003 and proceeds to provide for the transition provisions that cater for existing offices under the law that is to be repealed as well as actions taken thereunder. This part also provides that the existing national Fund for persons with Disabilities shall be regularized under the Public Finance Management Act, 2012.

First Schedule provides for the conduct of the Business and affairs of the Council

Second Schedule provides for access to Public Building, Auxiliary aid, Spotting venues and public facilities

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 6th February, 2023.

CRYSTAL KEGEHI ASIGE,
Senator.

MPs among Helb defaulters, says Ringera

► Some 140,000 students in universities and TVET colleges may miss out on the funding.

► Helb boss warns that employers are equally liable for any loan default.

MIKE KIHAKI, NAIROBI

Elected leaders are among the people defaulting on repaying their university loans, crippling the fund and "killing many students' career dreams".

Higher Education Loans Board (Helb) Chief Executive Charles Ringera told MPs that the fund is struggling to collect money from legislators, making it difficult for other needy students to advance their studies.

Ringera revealed that some 140,000 students in universities and TVET colleges may miss out on the funding, he said, needs at least Sh5.7 billion to cater for the student, money it does not have.

"At the moment we are cashless and anytime the money comes the following day it is auctioned to nine

authorised banks for disbursement," Ringera said.

Ringera was speaking when he appeared before the Public Investment Committee on Education and Governance on Wednesday.

"Even with this Parliament, what I can complain about are the once who have failed to repay. The MPs are men and women of means and maybe what we need to encourage is for them to come and pay the loans," said Ringera.

Sotik MP Francis Sigei scoffed at legislators who do not repay their loans.

"MPs who do not pay their Higher Education Loans Board loans are painting us in bad light. We should be leading by example," Sigei said.

Sigei said failing to repay Helb loan denies other needy students chance to further their education.

"When you pay the money, you enable the board to lend to other deserving students to advance their education. Chair, you need to write to the National Assembly and the Senate on this issue so that you can be assisted to recover the money," Sigei said.

Ringera however said that in the recent past, there has been a high lev-



Helb CEO Charles Ringera when he appeared before the National Assembly Education Committee on February 27. (Boniface Okendo, Standard)

el of compliance across the market with some employers adhering to the implementation of loans submission.

He warned that the employers are equally liable for any loan default.

Ringera revealed that the waivers given through the credit policy has gone a long way in recovering money from the students, citing the 100 per cent waiver during the Covid-19 pandemic.

"During the Covid-19 waiver, we collected Sh800 million extra, making us in last year alone, a net record of Sh5.2 billion," he stated.

Ringera noted that if the Parliamentary Service Commission fails to recover the loans, a penalty of Sh3,000 per month on the loanee and also the employer will continue to be surcharged.

Ringera further said anytime the loanee fails to engage her account the system charges Sh5,000.

The committee chairman, Bumula MP Jack Wamboka, vowed to ensure all pending bills in government institutions are paid by all defaulters.

"This is a trend in most of our government institutions across the country and we must stop it. We will ensure we force them to pay," Wamboka said.

Ringera also blamed the government for the existing deficit of Sh4.5 billion. newsdesk@standardmedia.co.ke

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At sittings of the Senate held on Wednesday, 22nd March, 2023 and Thursday, 23rd March, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the respective Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills, by way of written memoranda.

The memoranda may be sent by email to the Clerk of the Senate on the address: clerk.senate@parliament.go.ke copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before Monday, 10th April, 2023.

	Committee Referred To	Email
a) The County Boundaries Bill, 2023 (Senate Bills No. 3 of 2023)	Standing Committee on Devolution and Intergovernmental Relations	senate.devolution@parliament.go.ke
b) The Kenya Sign Language Bill, 2023 (Senate Bills No. 9 of 2023)	Standing Committee on Education	educationcommittee.senate@parliament.go.ke
c) The Persons with Disability Bill, 2023 (Senate Bills No. 7 of 2023)	Standing Committee on Labour and Social Welfare	laboursocialwelfarecomm.senate@parliament.go.ke
d) The Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023)	Standing Committee on Labour and Social Welfare	laboursocialwelfarecomm.senate@parliament.go.ke
e) The Division of Revenue Bill, 2023 (Senate Bills No. 9 of 2023)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke

The Bills may be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.



National Environment Management Authority

P.O. Box 67239-00200, Nairobi, Kenya
Tel: (254 020) 6005522, 6001945, Fax: (254 020) 6000597 E-mail: dnema@nema.go.ke Website: www.nema.go.ke

NOTICE TO THE PUBLIC TO SUBMIT COMMENTS ON AN ENVIRONMENTAL IMPACT ASSESSMENT STUDY FOR THE PROPOSED RESIDENTIAL APARTMENT ON PLOT L.R. NO. 10119/7, GARDEN CITY PHASE 2, NAIROBI COUNTY

Pursuant to Regulation 21 of the Environmental Management and Coordination (Impact Assessment and Audit) Regulations, 2003, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project. The proposed development will comprise of 16no. of floors per block with 3beds, 2beds duplexes and 1bed duplexes, 3 parking levels and associated facilities and amenities on Plot L.R. No. 10119/7, Garden City Phase 2, Nairobi County.

The following are the anticipated impacts and proposed mitigation measures:

Impacts	Mitigation measures
Soil erosion	<ul style="list-style-type: none"> Control earthworks; Install drainage structures to control flow of storm water; Ensure management of excavation activities
Loss of vegetation	<ul style="list-style-type: none"> Only areas earmarked for development should be cleared; Plant trees, shrubs and flowers on remaining open spaces
Air pollution	<ul style="list-style-type: none"> Stockpiles of earth should be sprayed with water or covered during dry seasons; Provide dust masks for the personnel in dusty areas; Sensitize construction workers on pollution control measures; Cover all trucks hauling soil, sand and other loose materials; Provide dust screen where necessary
Noise pollution	<ul style="list-style-type: none"> Install portable barriers to shield compressors and other small stationary equipment where necessary; Display signs to indicate construction activities; Maintain all equipment; Adhere to provisions of Noise Prevention and Control Rules 2005, Legal notice no. 24 regarding noise limits at the workplace as well as NEMA Noise and Excessive Vibration Pollution Control Regulations, 2000.
Road traffic disruption	<ul style="list-style-type: none"> No overloading of trucks and good driving practices to be practiced. Suitable junction/access point to be provided. Use of appropriate & legible signage. Employment of formal flagmen / women to ensure the public safety.
Water Sources	<ul style="list-style-type: none"> Observe, protect and conserve the riparian reserve in compliance with the water Act 2016 and water reserve management rules 118 (1);
Increased generation of waste	<ul style="list-style-type: none"> Adopt waste minimization at source; Monitoring the fate of disposed wastes to ensure they are legally land filled at a recognized controlled site. Adhering to waste management regulations of 2006
Public health and occupational safety	<ul style="list-style-type: none"> Ensure proper solid waste disposal and collection facilities; Ensure dustbin cubicles are protected from animals, rains and are well covered; Provide suitable safety gear for all personnel; Proper treatment of waste water; Adherence to the ministry of health guidelines on preventing spread of the SARS-CoV-19 virus

The full report of the proposed project is available for inspection during working hours at:

- Principal Secretary, Ministry of Environment Climate Change and Forestry, NHF Building, 12th Floor, Ragati Road, Upper Hill, P. O. BOX 30126 - 00100, NAIROBI, NAIROBI COUNTY
- Director General NEMA, P.O. BOX 67239-00200 NAIROBI
- County Director of Environment

A copy of the EIA report can be downloaded at www.nema.go.ke

NEMA invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director General, NEMA to assist the Authority in the decision making process for this project. Kindly quote ref. No. NEMA/EIA/S/2024.

Comments can also be e-mailed to dnema@nema.go.ke

DIRECTOR GENERAL

This advertisement is sponsored by the proponent.

THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

STAKEHOLDER VIEWS ON THE PERSONS WITH DISABILITIES BILL, 2023
(SENATE BILLS NO. 7 OF 2023)

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
Long title	Consortium of Disabled Persons Organization in Kenya (CDPOK)	Remove the word restructure and replace with the word 'strengthen' instead. Remove the word illness and replace with the word 'condition'	The word restructure is ambiguous. Disability is not an illness.	
	Kenya National Commission on Human Rights (KNCHR)	Amend the long title to include: "to provide for the recognition and protection of the rights of persons with disabilities and to promote their full and equal participation in society." Also consider including in the long title a liner on further operationalisation of the provisions of the Convention on the Rights of Persons with Disabilities. Alternatively, as a separate Clause on 'purpose/object'.	This will broaden the focus of the bill from the institutions but also the persons with disabilities themselves. The Bill also resonates hugely with the provisions of the CRPD	
2	Timothy W. Mwangi.	Insert new definitions of "building" and "reasonable accommodation" as follows— "building" includes any structure or erection and any part of a building or works	This ensures that employers provide a conducive environment for persons living with disabilities to effectively discharge their duties.	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		<p>“reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;</p>	<p>Reasonable accommodation enables an employee with a disability to fulfil the inherent requirements of a job.</p>	
	<p>Transparency International.</p>	<p>Amend the definition of “discrimination” to read— “discrimination on the basis of disability” 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. It includes all forms of discrimination, including denial of, and or failing to make reasonable accommodation.</p>	<p>Denial of reasonable accommodation may imply that reasonable accommodation has been made but is being refused while in many instances especially when it comes to design of programmes and physical spaces ,there has been failure to incorporate the unique needs of People with Disabilities(PWDS) to makes such spaces and programmes accessible.</p>	
4	<p>COG National Gender and Equality</p>	<p>Amend the definition of the term “assistive devices” to include “prosthetics”.</p> <p>Amend by inserting additional clauses on the obligations of National Human Rights Commissions and the Civil Society as follows—</p>	<p>They are critical to independent living as well as for body image and self esteem.</p> <p>a. This is in compliance with Article 33 of the Convention on the Rights of Persons with Disability (CRPD) on the national</p>	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	Commission (NGEC)	<p>Obligations of the National Human Rights Institutions.</p> <p>4A. The Kenya National Commission on Human Rights and the National Gender and Equality Commission are designated entities for monitoring the national implementation of the Convention on the Rights of Persons with Disability.</p> <p>4B. All public entities shall submit quarterly reports on compliance of mainstreaming of disability in their respective entities to the National Gender and Equality Commission who shall issue a certificate of compliance for determination of budgetary allocations.</p> <p>5A Civil society organizations shall be part of the governance structures at both national and County Levels to represent the interests of Persons with Disabilities and their organizations and shall be involved and participate fully in the monitoring process of the Convention.</p>	<p>implementation and monitoring of the convention.</p> <p>b. Section 8 (d) on the functions of the Commission in the NGEAC Act 2011 states as follows-; (d) coordinate and facilitate mainstreaming of issues of gender, Persons With Disability and other marginalised groups in national development and to advise the Government on all aspects thereof;</p> <p>c. Civil society organization in particular of Persons with Disabilities and their representative organizations, need to be involved and participate fully in the monitoring process.</p>	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	Timothy W. Mwangi.	<p>Insert a new paragraph immediately after 4(d) to read—</p> <p>(da)prescribe and disseminate minimum standards and guidelines for construction of buildings or structures to facilitate reasonable access to and movement for persons with disabilities.</p>	<p>Prescription of standards is a function of the National Government – Article 191 (3) (b) as read with 186 (1) (3) of the Constitution.</p>	
	KNCHR	<p>Include the word enforce to read in 4 (g):</p> <p>Prescribe and enforce 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.</p>	<p>Enforcement is key in ensuring actual implementation of the standards and guidelines.</p>	
		<p>Amend 4 (i) to read as follows:</p> <p>“ensure access to free and compulsory inclusive education, training and other social amenities to learners and trainees with disabilities, including by setting aside 15 per cent of all public-funded bursaries for pupils with disabilities;”</p>	<p>Inclusive education is in line with the provisions of the Sector Policy and Implementation Guidelines for Learners and Trainees with Disabilities.</p> <p>It is also in line with Article 54(1)(b) of the Constitution and Article 24 of the Convention on the Rights of Persons with Disabilities.</p>	
		<p>Amend 4 (m) to read as follows:</p> <p>“promote affirmative action, including increase in capitation, to</p>	<p>It is important that costing be done for educating/training a learner with various forms with disabilities</p>	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		<p>ensure that learners with disabilities are enrolled in all levels of learning institutions;"</p> <p>Add a sub-clause that provides for community-based health care services.</p>	<p>and the same implemented in budgeting.</p>	
		<p>Add a new sub-clause to read:</p> <p>Ensure participation and involvement of organizations of/ for persons with disabilities in every aspect of policy and development.</p>	<p>Having access to community-based health care services is key in achieving inclusive health services for persons with disabilities.</p> <p>This is an imperative under the CRPD.</p>	
	COG	<p>Include a clause on capacity building, funding and consultation of county governments.</p>	<p>This is to enable gender mainstreaming in the counties</p>	
5	KNCHR.	<p>Include another obligation to read as:</p> <p>"Put in place affirmative action to waive licenses and fees of new businesses established by persons with disabilities"</p>	<p>Waiving licenses and fees required to establish a business is in line with Article 27 (1) (f) of the Convention on the Rights of Persons with Disabilities that requires State Parties to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business.</p>	
	COG	<p>Include a clause on increase of funding by the national government to enable counties mainstream disability rights in all county plans, programmes and projects.</p>	<p>Counties need to be adequately resourced to ensure effective implementation of programmes on</p>	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Amend clause 5 (1) (c) to read— (c) liaise with the Council to maintain a database of persons with disability in respective counties;	persons with disabilities in the counties. This is to avoid duplicity of records.	
10, 11,13	COG	Amend the clauses to protection from sexual abuse, sexual exploitation and harmful practices.	Sexual exploitation and abuse is on the rise.	
11	Transparency International	Include clauses on protection from abuse, exploitation and harmful practices and living with family for as long as is necessary.	There is need to add all other forms of violence, neglect, inhuman treatment and punishment, and hazardous or exploitative labour other than protection from abuse, exploitation and harmful practices. There is need to also add “cultural” to the harmful practices. There is also need to add to parental care and protection, which includes equal responsibility of the mother and father to provide for the child.	
13	NGEC	Amend Clause 13(a) by inserting after the word “Programmes” the following “for themselves and their care givers”	Older members with disability require continual care giving services and this can only be achieved through support of the full time care givers by way of stipend. Article 10 of the African Union Protocol on Rights of Older Persons requires state parties to	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
14	Transparency International	The documents should be issued at no cost.	provide incentives to family members who provide care for older persons Majority of PWDs struggle with the fees needed for the disability identification card and may have to travel far to collect the card.	
20	NGEC	Amend sub clause (1) by inserting the word "Suitable" after the word "any" b. Amend by inserting after the word "children" the word "and learners"	a. This is specific to learners who will not necessarily fit in any mainstream school but require an institution specific to their needs i.e special school b. The interpretation of child in the constitution is an individual who has not attained the age of 18 years while the right to education is applicable to learners in Technical, Vocational Education and Training (TVETs) and adult learners. We make reference to the Kenya Sector Policy for Learners and Trainees with Disabilities, 2018.	
	Kesho Kenya	National and County governments to undertake review of budgetary allocations to inclusive/special needs education and make adjustments accordingly.	Inadequate funding has been a major setback in the equipping of schools and provision of assistive devices and technologies to	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		National government institute subsidies for assistive devices and technologies being imported in the country.	learners and trainees with disabilities. The high cost of assistive devices e.g hearing aid and braille have left many learners struggling as they aren't affordable.	
	COG	Include consultation with county governments and amend clause 20 (8) (c) (vi) to read— (vi) introduction of Kenya sign language interpretation course in all learning and training institutions;	ECDE is devolved. The Competency Based Curriculum provides for the inclusion of Kenya Sign Language as a means of instruction in all schools and training institutions for learners and trainees with special needs.	
21	NGEC	a. Amend clause 21 by inserting an additional sub-clause as below-; (f) submit all job advertisements to the Council b. Amend Clause 21(3) by inserting after the word “Council” the following “and The National Gender and Equality Commission”	Job advertisements submitted to the Council will be posted on its website and circulated within the networks of Persons with Disability and enable them to apply for available jobs. b. The mandate of the National Gender and Equality Commission is promotion of Gender equality and freedom from discrimination, and PWD as a Special Interest Group is one of the target groups for the Commission.	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
			The proposal also helps the Bill to comply with the provisions of the CRPD.	
	KNCHR.	Add a sub-clause under 21 (2) (e) to the effect that every employer shall provide reasonable accommodation for employees with disabilities. Delete 21 (3)	Section 16 of the Public Service (Values and Principles) Act requires each service Commission to prepare an annual report on the status of the promotion of the values and principles of public service. The reports are submitted to the President and Parliament. To address the challenges of multiplicity/parallel channels of reporting/accountability.	
	COG	Amend clause 20 (2) (a) to apply to employers in the public sector only.	This should only apply to the public sectors since there are incentives already provided for in the private sector.	
24	NGEC	Propose to amend sub clause 24(6) by inserting after the word "Facility" "the following;- "and shall be signed by a designated and gazetted County Medical Officer" Amend 24 (7) by substituting the words	This will speed up the issuance of cards because there will no longer a need to have cards signed by the Director of Medical Services in Nairobi. All health institutions which are part of places where services are	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
	KNCHR.	<p>“Every national or referral” with the word “All”</p> <p>The Commission proposes the addition of a clause to the effect that: ‘every person with a disability has the right to access health care on the basis of his/her free and informed consent’.</p>	<p>offered to the public need sign language interpretation services.</p> <p>To offer redress for the current situation where many persons with disabilities have medical interventions performed against their will.</p>	
		<p>Amend 24 (8) to read- (8) Persons with disabilities, including children, have the right to retain their fertility on an equal basis with others.</p>	<p>To align the Bill with Article 23(1)(c) of the CRPD on respect for home and the family. Under this Article, States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.</p>	
26	NGEC	<p>Amend by inserting the after the word “Public” the word “and private” in sub-clauses 4, 5 and 9.</p>	<p>All institutions whether private or public must provide information and technology services to members of public that they provide services to in accessible formats.</p>	
27	CDPOK	<p>Add Kenyan sign language/television inset and or closed captioning, the inset should cover a third of television screen.</p>	<p>For ease of communication.</p>	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
28	NGEC	Amend 28(1) by inserting after the word ‘procedural’ the following word “reasonable”	Reasonable accommodation is interpreted in the interpretations and it includes the courts being accessible to all categories of persons with disability. Inaccessibility of courts is one of the greatest impediments on access to justice.	
29	CDPOK	Reinstate the right to free access to recreational facilities for PWDs	PWDs should be allowed free access to recreational facilities as captured in the current PWDs Act, 2003 Section 28 (1)	
30.	Timothy W. Mwangi.	<p>Insert a new subclause immediately after 30(1) to read—</p> <p>The National Construction Authority shall within one year of commencement of this Act disseminate to county governments standards for construction of buildings that allow barrier free and disability friendly environment.</p> <p>(b) The National Construction Authority shall within six months of commencement of this Act submit to Parliament a report on progress made in (a)</p>	This is in line with section 5 of the National Construction Authority Act.	

CIA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
31	NGEC	Amend by inserting after the word "Council" the following " in collaboration with the relevant Regulatory Agencies"	The Council as established does not have enforcement powers. There is need for collaboration with Regulatory agencies e.g. KeNHA, NTSA, KURA etc. which can enforce the orders issued. The current Act No 14 of 2003 has the same provision on adjustment orders which has however never been implemented by the Council because the Council does not have enforcement powers.	
	COG	Amend the clause by introducing consultation and collaboration with the county governments and other government regulatory agencies.	This is part of government functions. Development control is a function of the county governments.	
32	NGEC	Amend 32(2) by inserting an additional sub-clause as follows-; “(d)Ensuring that there is compliance by political parties on the requirement of nominative seats reserved for persons with disability.”	This will entrench the rights of Persons with Disabilities in nominative seats and also attach an obligation of the electoral body to ensure that there is compliance with the provisions on special interest seats in the houses.	
	CDPOK	IEBC should consult the National Council for Persons With Disabilities to determine	To avoid instances of shortchanging deserving PWDs in nomination processes.	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
37	CDPOK	<p>nomination for PWDs in Senate, National Assembly and County Assemblies.</p> <p>All institutions including political parties should work closely with NCPWD to collect and keep disintegrated data of PWDs members.</p> <p>Add standardization of data collection tools and central storage of PWDs data under this section</p>	<p>It is a good practice to have an up to date data of all PWDs in the country.</p> <p>It is important to standardize tools for PWDs data collection and also to store the data in a central place.</p>	
40	COG	Increase membership of COG to the Council from one to three.	This is to adequately represent county governments due to the multi sectoral nature of PWDs mainstreaming and the functions that counties play in the same.	
42	COG	Delete clause 42.	Mwongozo code discourages the establishment of the office of vice chairpersons in state corporations.	
49	Timothy W Mwangi.	<p>Insert a new clause immediately after clause 49 to read:</p> <p>(a) The Council may establish committees which shall consist of members as it deems appropriate to perform such functions as the Board may determine.</p> <p>(b) Unless otherwise provided by the Act, the Council shall appoint chairpersons of committees established.</p>	This is in accordance with Mwongozo Guidelines.	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		<p>(c) The decisions of the committees shall be ratified by the Council unless otherwise provided for in this Act'</p> <p>(d) The Council may co-opt not more than four persons, whose knowledge and skills are found necessary for the performance of the functions of the Council. Co-opted members have no right to vote at a meeting of the Council.</p>		
54	Timothy Mwangi. W	<p>Insert the a new subclause immediately after 54(2)(b) to read :</p> <p>“progress made in realization of aspirations of Article 54 of the Constitution”</p>	<p>This will enable Kenyans monitor and evaluate progress made towards compliance with article 54.</p>	
55	KNCHR.	<p>In 55 (1) insert the word “permanent” before “exemption” to read:</p> <p>All persons with disabilities who are in receipt of an income may apply to the Cabinet Secretary responsible for finance for permanent exemption from income tax and any other levies on such income.</p>	<p>Requiring persons with disabilities who have been assessed and registered with the NCPWD to periodically present themselves for disability assessment is demeaning and amounts to stigma and discrimination.</p>	
		<p>In 55 (2) We propose that the tax exemption should be a transparent figure applicable across the board, for example, currently, it is for earnings above KES 150,000/-or for the first Kes. 1.8 M per annum.</p>	<p>Leaving the tax exemption to the discretion of the Cabinet Secretary to be determined on a case-by-case basis adds a layer of bureaucracy and opaqueness unnecessarily.</p>	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
60	KNCHR	In 60 (2) Include “denial of reasonable accommodation” as a form of discrimination	Denial of reasonable accommodation for persons with disabilities is a major contributor to discrimination against them. To affirm this, the Committee on the Rights of Persons with Disabilities in its 2015 Concluding Observations to Kenya, urged the State to “ensure legal recognition of the denial of reasonable accommodation as a form of discrimination.”	
61	KNCHR	Delete the clause.	The acts listed under clause 61 (2) have been provided for under the preceding clauses. The preceding clauses also provide for different penalties which differ from the one provided for under clause 61 (1). Deletion of the clause will bring clarity. Alternatively, there could be separate sections on exploitation and physical violence.	
62	KNCHR	In 62 (1) add the words “or any other institution” immediately after the word “disabilities”.	The provision only applies to parents, guardians, next of kin and institutions of persons with disabilities, yet persons with disabilities may also be concealed by other institutions.	

CLA USE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RESOLUTION
		Review the penalty for the offence of concealment of persons with disabilities in 62 (2).	The two hundred thousand shilling fine provided for under the section is too lenient especially for institutions. Additionally, Sections 63 (1) and (2) recognize “concealment” as a harmful practice which attracts a penalty of life imprisonment. Section 62 (2) therefore needs to be reviewed to align with Section 63 (2).	
65	KNCHR	Harmonise the offence and penalty with the provisions of Prevention of Torture Act.	For uniformity. Section 31 of the Prevention of Torture Act, 2017 (No. 12 of 2017) provides that if there is a conflict between the provisions of the Act and the provisions of any other law in regard to the crime of torture or cruel, inhuman or degrading treatment or punishment, the provisions of the Prevention of Torture Act shall prevail.	
84	KNCHR	Merge the National Fund for the Disabled of Kenya with the National Council for Persons with Disabilities and ensure parliamentary oversight for accountability.	The Fund should be managed by the Council since the latter is in charge of the various projects/programmes that assist persons with disabilities.	

OTHER COMMENTS

1. Digital Accessibility for Persons with Disabilities (KICTANet) made submissions of general nature and submitted that information should be accessible to persons with disabilities.
2. Dennis Ochieng' Orengo Juma made comments of a general nature on the Bill reiterating the contents of the Bill.
3. Amazing Grace Bawo Foundation raised the issue of the implementation of the laws passed by the Kenyan Parliament.
4. The Ministry of Labour and Social Protection opposed the Bill, indicating that they would introduce a similar legislation in the National Assembly.

LIST OF STAKE HOLDERS

1. Council of Governors.
2. Ministry of Labour and Social Protection.
3. National Gender and Equality Commission.
4. Kenya National Commission on Human Rights.
5. Transparency International.
6. Digital Accessibility for Persons with Disabilities KICTANet
7. Amazing Grace Bawo Foundation
8. Dennis Ochieng' Orengo Juma
9. Consortium of Disabled Persons Organizations in Kenya (CDPOK)
10. Timothy W. Mwangi.
11. Kesho Kenya.
12. Nathaniel Mtunji



REPUBLIC OF KENYA
MINISTRY OF LABOUR AND SOCIAL PROTECTION
OFFICE OF THE CABINET SECRETARY

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Nairobi, KENYA

Ref. MLSP/SP/9/44

Date: 17th April, 2023

Jeremiah M. Nyegenye, CBS
Clerk of the Senate
P.O. Box 41842 -00100
Parliament Buildings
NAIROBI

① DSEC
DLS
Deal - e
18/4/2023

Dear Jeremiah,

**RE: STAKEHOLDERS' ENGAGEMENT ON THE PERSONS WITH
DISABILITIES BILL, 2023 (SENATE NO. 7 OF 2023)**

Reference is made to your letter Ref SEN/DSEC/SCLSW/2023/47 inviting me to make submissions on the above-mentioned Bill. I wish to notify that I will not be available to make the submissions before the Committee on the scheduled date as it coincides with a full day cabinet meeting which I am required to participate in.

The Ministry had also submitted a comprehensive Memorandum on the Bill to the Senate Standing Committee on Labour and Social Welfare for consideration vide letter Ref. MLSP/SP/9/44 dated 6th April, 2023 which we attach for your reference.

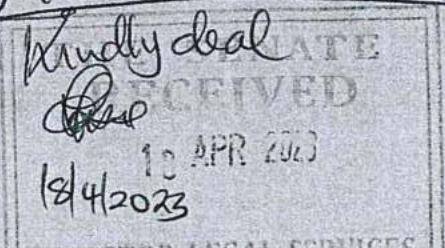
The purpose of this letter therefore is to notify you of my inability to attend the Committee session on 18th April, 2018 for the reasons explained and to forward the copies of the Memorandum submitted by the Ministry which details the comments of the Ministry on the Persons with Disabilities Bill, 2023 (Senate No. 7 of 2023)

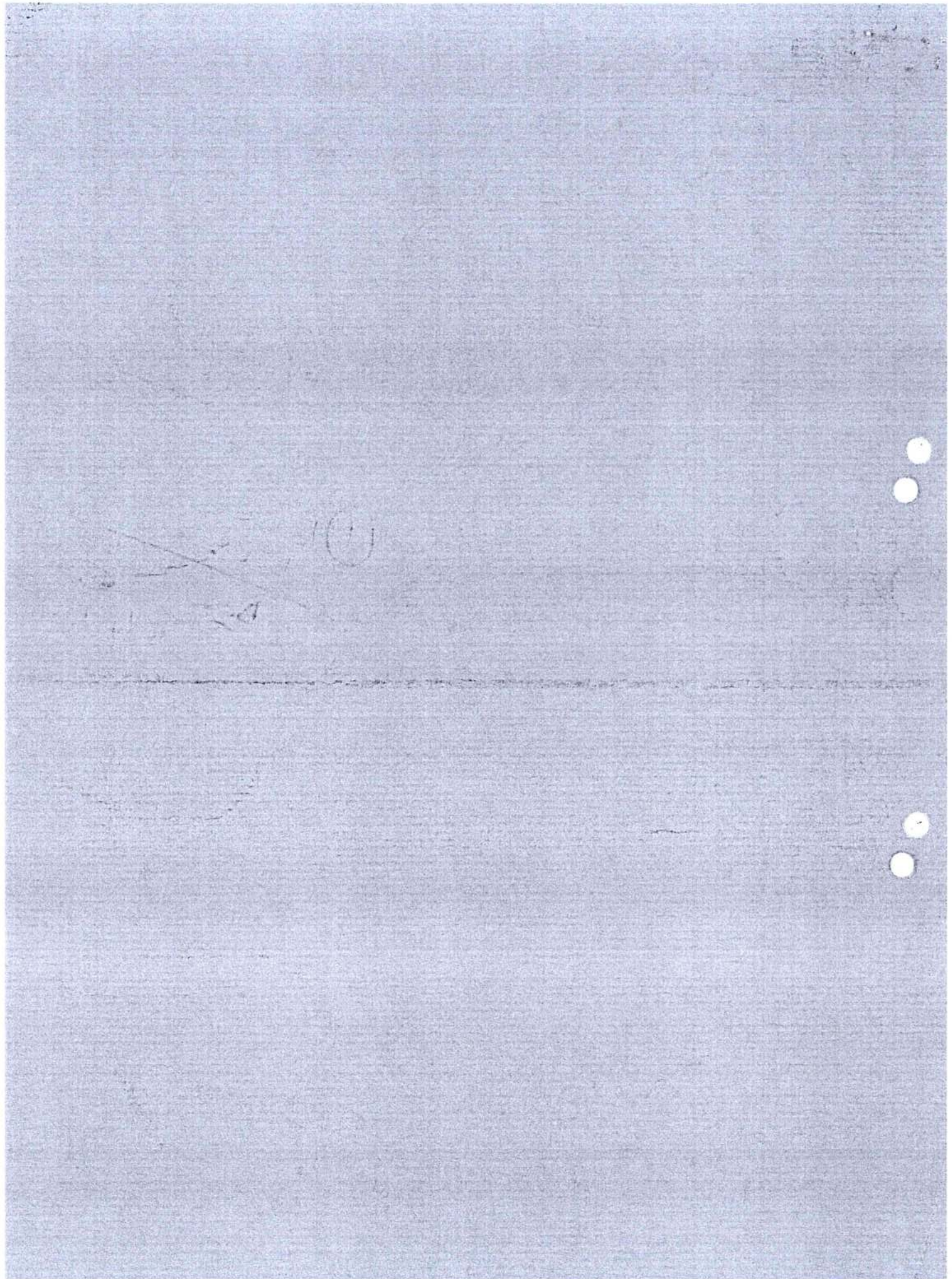
Yours Sincerely,

Hon. Florence Bore
CABINET SECRETARY

③ Mr. Mwanata
My deal.

② Hon. Ms. Libati







**MINISTRY OF LABOUR AND SOCIAL PROTECTION
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NAIROBI

Ref. MLSP/SP/9/44

Date: 6th April, 2023.

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate,
Parliament Buildings,
NAIROBI

Dear Jeremiah,

**RE: MEMORANDUM TO THE SENATE ON THE PERSONS
WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7
OF 2023) BY HON. CRYSTAL KEGEHI ASEGI, SENATOR**

Reference is made to the above matter.

The Ministry of Labour and Social Protection under Executive Order No. 1 of 2023 is mandated to undertake Policy and Programmes for Persons with Disabilities, Vocational Training and Rehabilitation of Persons with Disabilities and the Protection and Advocacy of Needs of Persons with Disabilities.

The Ministry began the process of repealing the Persons with Disabilities Act, 2003 (No. 14 of 2003) in 2017 and on 14th August, 2018 during the 3rd Cabinet meeting the Cabinet approved a Government Sponsored Repeal Bill through Cabinet Memorandum No. CAB (16)70, for submission to Parliament.

PERSONS WITH DISABILITIES BILL, 2021 (NATIONAL ASSEMBLY BILLS NO. 61 OF 2021) was passed by the National Assembly on 25th May, 2022 and the Bill was transmitted to the Senate for consideration by the Senate.

Regrettably, the 12th Parliament adjourned *sine die* before the enactment of the Repeal Bill and as a consequence, the Bill lapsed in the Senate in the last Parliament.

The repeal of the Persons with Disabilities Act, 2003 is informed by many developments key among them is the promulgation of the Constitution of Kenya; Vision 2030; Ratification by Kenya of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2007 and 2008 respectively. The review has also benefited from the recent initiatives of the African Union disability agenda and the East Africa Community (EAC) Disability Policy.

The lapsed Bill was vigorously subjected to public participation by the Ministry as per the Constitution of Kenya, 2010 and the views of the stakeholders consolidated in the final Bill. The consultations with stakeholders involved; the National Treasury & Economic Planning, the Commission for Implementation of the Constitution, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, Office of the Attorney General & Department of Justice, Government Ministries and Departments, Organizations of and for Persons with Disabilities, parents' support groups and other stakeholders.

The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) is a copy-paste of the Government sponsored Persons with Disabilities (Repeal) Bill 2021 but drastically alters the tax reliefs and incentives negotiated and approved by the Cabinet, National Treasury & Economic Planning and Hon. Attorney General thereby rendering the Persons with Disabilities, 2023 (Senate Bills No. 7 of 2023) a money Bill, contrary to the letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

My office has again resubmitted the Government Sponsored Persons with Disabilities (Repeal) Bill, 2021 that was passed by the National Assembly and transmitted by the National Assembly to the Senate but lapsed in the Senate prior to its enactment when the last Parliament adjourned *sine die*, to the Hon. Attorney General to cause the lapsed Bill republished in the National Assembly.

The Ministry of Labour and Social Protection is opposed to the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) by Hon. Senator Crystal Kegehi Asige, since the Bill is overtly unconstitutional and therefore requests that the Bill be withdrawn from the Senate.

Enclosed herewith, please find our comprehensive memorandum to the Standing Committee on Labour and Social Welfare, for the Senate Standing Committee's consideration and/or further necessary action.

Yours Sincerely



Florence Bore
CABINET SECRETARY

encl.

Copy to: **Mogosi J. Motari, MBS**
Principal Secretary
State Department for Social Protection and
Senior Citizen Affairs



MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION AND SENIOR CITIZEN
AFFAIRS

**SUBMISSION OF MEMORANDUM ON THE PERSONS WITH DISABILITIES BILL
(SENATE BILLS NO. 7 OF 2023) BY THE CABINET SECRETARY FOR LABOUR
AND SOCIAL PROTECTION**

I. Introduction

The Ministry of Labour and Social Protection under Executive Order No. 1 of 2023 is mandated to undertake Policy and Programmes for Persons with Disabilities, Vocational Training and Rehabilitation of Persons with Disabilities and the Protection and Advocacy of Needs of Persons with Disabilities.

The Ministry began the process of repealing the Persons with Disabilities Act, 2003 (No. 14 of 2003) in 2017 and on 14th August, 2018 during the 3rd Cabinet meeting the Cabinet **approved** a Government Sponsored Repeal Bill through Cabinet Memorandum No. CAB (16)70, for submission to Parliament.

The Persons with Disabilities Bill, 2021 (National Assembly Bills No. 61 of 2021) was **passed** by the National Assembly on 25th May, 2022 and the Bill was transmitted to the Senate for consideration by the Senate.

regrettably, the 12th Parliament adjourned *sine die* before the enactment of the Repeal Bill and as a consequence, the Bill lapsed in the Senate in the last Parliament.

2. Justification

The repeal of the Persons with Disabilities Act, 2003 is informed by many developments key among them is the promulgation of the Constitution of Kenya; Vision 2030; Ratification by Kenya of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2007 and 2008 respectively. The review has also benefited from the recent initiatives of the African Union disability agenda and the East Africa Community (EAC) Disability Policy.

The National Assembly's Persons with Disabilities Bill, 2021 places emphasis on **human rights approach** towards realization of rights of persons with disabilities in Kenya and societal responsibility to protect and promote them. The Bill further provides a broader protection of the rights of persons with disabilities in Kenya, and ensures that they have a say in the elaboration of policies, legislations, programmes, and strategies that directly affect them at National and County levels of Government.

It sets standards to achieve the realization of economic social rights and political rights of Persons with Disabilities in Kenya; the right to accessibility in all aspect of life; the right to education, employment, health care and use public transportation among others.

The Bill was vigorously subjected to **public participation** by the Ministry as per the Constitution and the views of the stakeholders consolidated in the final Bill. The consultations with stakeholders involved; the National Treasury & Economic Planning, the Commission for Implementation of

the Constitution, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, Office of the Attorney General & Department of Justice, Government Ministries and Departments, Organizations of and for Persons with Disabilities, parents' support groups and other stakeholders.

3. Salient Issues and/or Concerns by the Ministry with respect to the Persons with Disabilities Bill (Senate Bills No. 7 of 2023) by Hon. Senator Crystal Kegehi Asige

- a) The Ministry has a government sponsored Bill that has already been resubmitted to the Office of the Attorney General and Department of Justice for the Hon. Attorney to cause the lapsed Bill to be republished in the National Assembly.

- b) The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) in Clauses 55-59 of the Bill (Part V of the Bill) provides reliefs and incentives open to all persons with disabilities who are in receipt of an income to apply to the Cabinet Secretary for finance for exemption from income tax and any other levies on such income whereas the National Assembly's Persons with Disabilities Bill, 2021 (No. 61 of 2021) in Part IV on reliefs and incentives, provides for exemption from tax relief for persons with disabilities who are in employment to apply to the Cabinet Secretary for finance for exemption from income tax on employment income and sets out other Materials, articles, and equipment, including motor vehicles specially designed for use by persons with disabilities, exempt from import duty and value added tax to the extent provided under the tax laws under Clause 53 in the Bill.

- c) Clause 57 in the Senate Bill, No. 7 of 2023 provides that the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions may on the advice of the

Council, from time to time, develop guidelines to ensure the equal right of persons with disabilities to have equal access to bank loans, mortgages and other forms of financial credit.

d) Clause 55 in the Government sponsored Bill that lapsed in the Senate after the 12th Parliament adjourned *sine die*, provided that the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions may on the advice of the Council, from time to time, ensure access to credit by persons with disabilities. The Senate Bill, 2023 under Clause 57 expands that scope further, to the development of guidelines by the Cabinet Secretary to ensure the equal right of persons with disabilities in having equal access to bank loans, mortgages and other forms of financial credit, inextricably in a private Member's Bill in the Senate, contrary to Article 109 (5) of the Constitution of Kenya, 2010.

e) The Memorandum of Objects and Reasons of the Persons with Disabilities Senate Bill No. 7 of 2023 erroneously implies that this Bill is not a money Bill within the meaning of Article 114 of the Constitution. However, a close scrutiny of Clauses 55-59 of the Senate Bill, 2023 reveals that the Bill is a money Bill in accordance with Article 114 (3) of the Constitution of Kenya, 2010 since it contains provisions dealing with-(a) taxes; (b) the imposition of charges on a public fund or the variation or repeal of any of those charges; (c) the appropriation, receipt, custody, investment or issue of public money; (d) the raising or guaranteeing of any loan or its repayment; or (e) matters incidental to any of those matters.

This therefore clearly indicates that the Senate Bill, 2023 is a Money Bill within the meaning of Article 114 of the Constitution of Kenya 2010 contrary to letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

f) **Article 107 (5) of the Constitution of Kenya, 2010 provides that a Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114.**

g) Under Part II of the Senate Bill, 2023 on the Obligations of National and County Governments, there is a proposal to impose obligations to the Counties, whereas to our best level of understanding, persons with disabilities issues are not devolved functions but rights and privileges that cut across all levels of Government and in addition, many County Government have developed their County legislations on how best to deliver services to persons with disabilities within their Counties and imposing additional obligations in them will go against the spirit and tenor of the Constitution of Kenya, 2010 on their independence.

4. CONCLUSION

The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) is a copy-paste of the Government sponsored Persons with Disabilities (Repeal) Bill 2021 but drastically alters the tax reliefs and incentives negotiated and approved by the Cabinet, National Treasury & Economic Planning and Hon. Attorney General thereby rendering the Persons with Disabilities, 2023 (Senate Bills No. 7 of 2023) a money Bill, contrary to the letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

In line with Standing Order No. 141 (4) of the Standing Orders of the National Assembly, the State Department for Social Protection and Senior Citizen Affairs has again resubmitted the Government Sponsored Persons with Disabilities (Repeal) Bill, 2021 that was passed by the National Assembly and transmitted by the National Assembly to the Senate but lapsed in the Senate prior to its enactment when the last

Parliament adjourned *sine die*, to the Hon. Attorney General to cause the lapsed Bill republished in the National Assembly.

The Ministry of Labour and Social Protection is opposed to the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) by Hon. Senator Crystal Kegehi Asige, since the Bill is overtly unconstitutional and therefore requests that the Bill be withdrawn from the Senate.



Hon. Florence Bore
CABINET SECRETARY.

Dated: 6th April, 2023



(a-1)

THE SENATE
RECEIVED
15 APR 2023
DIRECTOR LEGAL SERVICES



17 APR 2023

**MINISTRY OF LABOUR AND SOCIAL PROTECTION
OFFICE OF THE CABINET SECRETARY**

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Office of the Cabinet Secretary
Kindly deal
[Signature]

Ref. MLSP/SP/9/44

Date: 6th April, 2023.

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate,
Parliament Buildings,
NAIROBI

THE SENATE
RECEIVED
18 APR 2023
DIRECTOR COMMITTEE SERVICES
(DSEC)

DSEC.
D&LS.
Deal.
[Signature]
18/4/2023

Dear *Jeremiah,*

RE: MEMORANDUM TO THE SENATE ON THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7 OF 2023) BY HON. CRYSTAL KEGEHI ASEGI, SENATOR

Reference is made to the above matter.

The Ministry of Labour and Social Protection under Executive Order No. 1 of 2023 is mandated to undertake Policy and Programmes for Persons with Disabilities, Vocational Training and Rehabilitation of Persons with Disabilities and the Protection and Advocacy of Needs of Persons with Disabilities.

The Ministry began the process of repealing the Persons with Disabilities Act, 2003 (No. 14 of 2003) in 2017 and on 14th August, 2018 during the 3rd Cabinet meeting the Cabinet approved a Government Sponsored Repeal Bill through Cabinet Memorandum No. CAB (16)70, for submission to Parliament.

3) Ms. Mwanate
Kindly deal.
[Signature]
18/4/2023

The Persons with Disabilities Bill, 2021 (National Assembly Bills No. 61 of 2021) was passed by the National Assembly on 25th May, 2022 and the Bill was transmitted to the Senate for consideration by the Senate.

Regrettably, the 12th Parliament adjourned *sine die* before the enactment of the Repeal Bill and as a consequence, the Bill lapsed in the Senate in the last Parliament.

The repeal of the Persons with Disabilities Act, 2003 is informed by many developments key among them is the promulgation of the Constitution of Kenya; Vision 2030; Ratification by Kenya of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2007 and 2008 respectively. The review has also benefited from the recent initiatives of the African Union disability agenda and the East Africa Community (EAC) Disability Policy.

The lapsed Bill was vigorously subjected to public participation by the Ministry as per the Constitution of Kenya, 2010 and the views of the stakeholders consolidated in the final Bill. The consultations with stakeholders involved; the National Treasury & Economic Planning, the Commission for Implementation of the Constitution, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, Office of the Attorney General & Department of Justice, Government Ministries and Departments, Organizations of and for Persons with Disabilities, parents' support groups and other stakeholders.

The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) is a copy-paste of the Government sponsored Persons with Disabilities (Repeal) Bill 2021 but drastically alters the tax reliefs and incentives negotiated and approved by the Cabinet, National Treasury & Economic Planning and Hon. Attorney General thereby rendering the Persons with Disabilities, 2023 (Senate Bills No. 7 of 2023) a money Bill, contrary to the letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

My office has again resubmitted the Government Sponsored Persons with Disabilities (Repeal) Bill, 2021 that was passed by the National Assembly and transmitted by the National Assembly to the Senate but lapsed in the Senate prior to its enactment when the last Parliament adjourned *sine die*, to the Hon. Attorney General to cause the lapsed Bill republished in the National Assembly.

The Ministry of Labour and Social Protection is opposed to the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) by Hon. Senator Crystal Kegehi Asige, since the Bill is overtly unconstitutional and therefore requests that the Bill be withdrawn from the Senate.

Enclosed herewith, please find our comprehensive memorandum to the Standing Committee on Labour and Social Welfare, for the Senate Standing Committee's consideration and/or further necessary action.

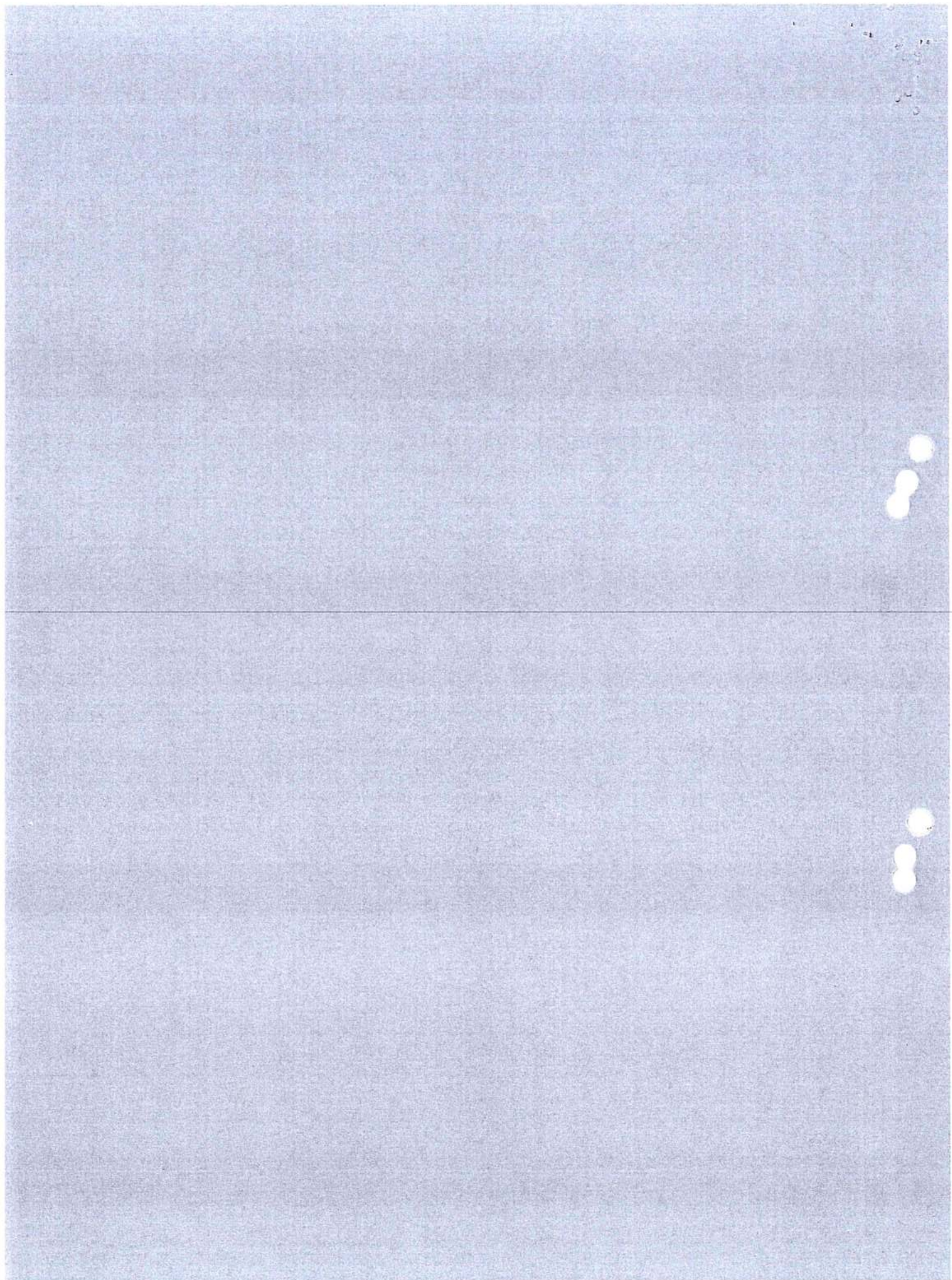
Yours *Sincerely*



Florence Bore
CABINET SECRETARY

Encl.

Copy to: Mogosi J. Motari, MBS
Principal Secretary
State Department for Social Protection and
Senior Citizen Affairs





**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION AND SENIOR CITIZEN
AFFAIRS**

**SUBMISSION OF MEMORANDUM ON THE PERSONS WITH DISABILITIES BILL
(SENATE BILLS NO. 7 OF 2023) BY THE CABINET SECRETARY FOR LABOUR
AND SOCIAL PROTECTION**

1. Introduction

The Ministry of Labour and Social Protection under Executive Order No. 1 of 2023 is mandated to undertake Policy and Programmes for Persons with Disabilities, Vocational Training and Rehabilitation of Persons with Disabilities and the Protection and Advocacy of Needs of Persons with Disabilities.

The Ministry began the process of repealing the Persons with Disabilities Act, 2003 (No. 14 of 2003) in 2017 and on 14th August, 2018 during the 3rd Cabinet meeting the Cabinet **approved** a Government Sponsored Repeal Bill through Cabinet Memorandum No. CAB (16)70, for submission to Parliament.

The Persons with Disabilities Bill, 2021 (National Assembly Bills No. 61 of 2021) was **passed** by the National Assembly on 25th May, 2022 and the Bill was transmitted to the Senate for consideration by the Senate.

Regrettably, the 12th Parliament adjourned *sine die* before the enactment of the Repeal Bill and as a consequence, the Bill lapsed in the Senate in the last Parliament.

2. Justification

The repeal of the Persons with Disabilities Act, 2003 is informed by many developments key among them is the promulgation of the Constitution of Kenya; Vision 2030; Ratification by Kenya of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2007 and 2008 respectively. The review has also benefited from the recent initiatives of the African Union disability agenda and the East Africa Community (EAC) Disability Policy.

The National Assembly's Persons with Disabilities Bill, 2021 places emphasis on **human rights approach** towards realization of rights of persons with disabilities in Kenya and societal responsibility to protect and promote them. The Bill further provides a broader protection of the rights of persons with disabilities in Kenya, and ensures that they have a say in the elaboration of policies, legislations, programmes, and strategies that directly affect them at National and County levels of Government.

It sets standards to achieve the realization of economic social rights and political rights of Persons with Disabilities in Kenya; the right to accessibility in all aspect of life; the right to education, employment, health care and use public transportation among others.

The Bill was vigorously subjected to **public participation** by the Ministry as per the Constitution and the views of the stakeholders consolidated in the final Bill. The consultations with stakeholders involved; the National Treasury & Economic Planning, the Commission for Implementation of

the Constitution, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, Office of the Attorney General & Department of Justice, Government Ministries and Departments, Organizations of and for Persons with Disabilities, parents' support groups and other stakeholders.

3. Salient Issues and/or Concerns by the Ministry with respect to the Persons with Disabilities Bill (Senate Bills No. 7 of 2023) by Hon. Senator Crystal Kegehi Asige

- a) The Ministry has a government sponsored Bill that has already been resubmitted to the Office of the Attorney General and Department of Justice for the Hon. Attorney to cause the lapsed Bill to be republished in the National Assembly.
- b) The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) in Clauses 55-59 of the Bill (Part V of the Bill) provides reliefs and incentives open to all persons with disabilities who are in receipt of an income to apply to the Cabinet Secretary for finance for exemption from income tax and any other levies on such income whereas the National Assembly's Persons with Disabilities Bill, 2021 (No. 61 of 2021) in Part IV on reliefs and incentives, provides for exemption from tax relief for persons with disabilities who are in employment to apply to the Cabinet Secretary for finance for exemption from income tax on employment income and sets out other Materials, articles, and equipment, including motor vehicles specially designed for use by persons with disabilities, exempt from import duty and value added tax to the extent provided under the tax laws under Clause 53 in the Bill.
- c) Clause 57 in the Senate Bill, No. 7 of 2023 provides that the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions may on the advice of the

Council, from time to time, develop guidelines to ensure the equal right of persons with disabilities to have equal access to bank loans, mortgages and other forms of financial credit.

d) Clause 55 in the Government sponsored Bill that lapsed in the Senate after the 12th Parliament adjourned *sine die*, provided that the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions may on the advice of the Council, from time to time, ensure access to credit by persons with disabilities. The Senate Bill, 2023 under Clause 57 expands that scope further, to the development of guidelines by the Cabinet Secretary to ensure the equal right of persons with disabilities in having equal access to bank loans, mortgages and other forms of financial credit, inextricably in a private Member's Bill in the Senate, contrary to Article 109 (5) of the Constitution of Kenya, 2010.

e) The Memorandum of Objects and Reasons of the Persons with Disabilities Senate Bill No. 7 of 2023 erroneously implies that this Bill is not a money Bill within the meaning of Article 114 of the Constitution. However, a close scrutiny of Clauses 55-59 of the Senate Bill, 2023 reveals that the Bill is a money Bill in accordance with Article 114 (3) of the Constitution of Kenya, 2010 since it contains provisions dealing with-(a) taxes; (b) the imposition of charges on a public fund or the variation or repeal of any of those charges; (c) the appropriation, receipt, custody, investment or issue of public money; (d) the raising or guaranteeing of any loan or its repayment; or (e) matters incidental to any of those matters.

This therefore clearly indicates that the Senate Bill, 2023 is a Money Bill within the meaning of Article 114 of the Constitution of Kenya 2010 contrary to letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

f) **Article 109 (5) of the Constitution of Kenya, 2010 provides that a Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114.**

g) Under Part II of the Senate Bill, 2023 on the Obligations of National and County Governments, there is a proposal to impose obligations to the Counties, whereas to our best level of understanding, persons with disabilities issues are not devolved functions but rights and privileges that cut across all levels of Government and in addition, many County Government have developed their County legislations on how best to deliver services to persons with disabilities within their Counties and imposing additional obligations in them will go against the spirit and tenor of the Constitution of Kenya, 2010 on their independence.

4. CONCLUSION

The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) is a copy-paste of the Government sponsored Persons with Disabilities (Repeal) Bill 2021 but drastically alters the tax reliefs and incentives negotiated and approved by the Cabinet, National Treasury & Economic Planning and Hon. Attorney General thereby rendering the Persons with Disabilities, 2023 (Senate Bills No. 7 of 2023) a money Bill, contrary to the letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

In line with Standing Order No. 141 (4) of the Standing Orders of the National Assembly, the State Department for Social Protection and Senior Citizen Affairs has again resubmitted the Government Sponsored Persons with Disabilities (Repeal) Bill, 2021 that was passed by the National Assembly and transmitted by the National Assembly to the Senate but lapsed in the Senate prior to its enactment when the last

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

PETITION NO. E002 OF 2023

COUNTY PENSIONERS ASSOCIATION APPELLANT

VERSUS

THE NATIONAL SOCIAL SECURITY

FUND BOARD OF TRUSTEES1ST RESPONDENT

CABINET SECRETARY FOR LABOUR,

SOCIAL SECURITY AND SERVICES 2ND RESPONDENT

THE COMPETITION AUTHORITY 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

THE RETIREMENT BENEFITS AUTHORITY5TH RESPONDENT

KENYA COUNTY GOVERNMENT WORKERS UNION ... 6TH RESPONDENT

KENYA TEA GROWERS ASSOCIATION 7TH RESPONDENT

AGRICULTURAL EMPLOYERS' ASSOCIATION8TH RESPONDENT

KENYA QUARRY AND MINE WORKERS UNION9TH RESPONDENT

KENYA BUILDING, CONSTRUCTION, TIMBER

FURNITURE AND ALLIED TRADES

EMPLOYEES UNION.....10TH RESPONDENT

KENYA UNION OF ENTERTAINMENT &

MUSIC INDUSTRY EMPLOYEES11TH RESPONDENT

UNION OF NATIONAL RESEARCH

INSTITUTES STAFF OF KENYA (UNRISK)12TH RESPONDENT

KENYA GLASS WORKERS UNION13TH RESPONDENT

NKAURAKI EDWIN LESIDAI & 89 OTHERS14TH RESPONDENT

CENTRAL ORGANIZATION OF TRADE

UNIONS (COTU) 15TH RESPONDENT

FEDERATION OF KENYA EMPLOYERS (FKE)16TH RESPONDENT

2ND, 3RD & 4TH RESPONDENTS' REPLYING AFFIDAVIT TO THE PETITION

(Pursuant to Rule 42 of the Supreme Court Rules)

I, **Geoffrey E. Kaituko**, a resident of Nairobi, and of P O Box 40326-00100, NAIROBI within the Republic of Kenya, do hereby solemnly make oath and state as follows;

1. **THAT** I am the Principal Secretary in the State Department for Labour and Skills Development and conversant with the facts related to the matter, hence competent to swear this Affidavit.
2. **THAT** I swear this Affidavit on behalf of the 2nd, 3rd and 4th Respondents having been duly authorized.
3. **THAT** I have read and understood, the contents of the Appellant's Petition and Supporting Affidavit sworn by Charles Ikenye Muiruri dated 16th day of February, 2023 together with the annexures thereto, and where necessary has been explained to me by the Counsel on record on behalf of the 2nd, 3rd and 4th Respondents, and in response swear as follows:
4. **THAT** I have been advised by my counsel on record, which advice I verily believe to be

true, that the Appellant did not participate during the hearing in the proceedings at the Superior Court and was allowed late in the proceedings as an Interested Party after all parties had filed their pleadings and submissions to the consolidated Petitions and it indicated to the Court that it was only filing submissions.

5. **THAT** thereafter the matter was severally mentioned in Court but the Appellant did not appear in court after filing its submissions.
6. **THAT** the matter at the Superior Court proceeded for hearing in open Court before the bench of three Judges on 6th June, 2022 where parties highlighted their submissions but the Appellant did not appear.
7. **THAT** the judgement of the Superior Court was delivered on 19th September, 2022, three months after the hearing and the same was publicized and was within the knowledge of majority of Kenyans and the Appellant did not protest and has to-date not protested to the Superior Court for its having been left out of the proceedings.
8. **THAT** the 2nd, 3rd and 4th Respondents lodged a Notice of Appeal dated 3rd October, 2022 and filed an application for stay of execution and served upon all parties as named in the pleadings and Superior Court Judgment with the hard copies as there were at the time no supplied email addresses to effect the service. **(Annexed herein and marked "GEK 1" are copies of the Notice of appeal and request for proceedings duly filed and served**

upon all named parties.)

9. **THAT** nevertheless, following the Superior Court's judgment and filing of the notice of appeal and applications for stay of execution by the 1st -4th Respondents, Counsel for all parties including Dr. Muthomi, Counsel for the Appellant held a meeting on 18th October, 2022 at Sarova Panafric Hotel in Nairobi to try resolve the matter. The issue of service of the Appeal and application for stay came up and counsel for all parties supplied their email addresses to the Counsel on record and they were again duly served via email. **(Annexed herein and marked "GEK 2" are copies of the email addresses supplied by counsel in own handwriting, the respective emails of service and application for stay and notice of appeal served upon the Appellant and other parties).**
10. **THAT** when the 1st Respondent filed the appeal to the Court of Appeal and an application for stay of execution which was certified urgent and served upon the parties, the 2nd -4th Respondents filed a Notice of Cross Appeal dated 31st October, 2022, and submissions to the appeal dated 14th December, 2022, the same were served upon all the parties and the Appellant's Advocate via email. **(Annexed herein and marked "GEK 3" are copies of the emails for service and the pleadings served).**
11. **THAT** from the foregoing, it is clear the Appellant was all along well aware of the proceedings and the judgment of the Superior Court and the proceedings before the Appellate Court and chose not to participate in the court hearings and it cannot be heard

to allege its right to fair hearing was infringed.

12. **THAT** the Appeal was heard where all parties participating submitted and the Court of Appeal delivered its judgment on 3rd February, 2023.

13. **THAT** the Appellant filed this Petition on 17th February, 2023 following the judgement, as such, the Appellant has not come to court with clean hands as it is guilty of misrepresentation and concealment of material facts and all along the Appellant knew how the matter was proceeding before the Courts and cannot be heard to allege otherwise.

14. **THAT** without prejudice to the foregoing, the Appellant has to date not disclosed when it became aware of the proceedings and judgment of both the Superior and the Appellate Court to necessitate filing this Petition.

15. **THAT** I have been advised by my counsel on record, which advice I verily believe to be true, that without prejudice to the foregoing, the law is very clear on the process of addressing the grievances as raised by the Appellant which process the Appellant has chosen not to pursue and the Appellant is in abuse of the court process and guilty of laches, and the maxim of "equity does not aid the indolent" does not come to his aid.

16. **THAT** the issues raised herein by the Appellant are a preserve of the Superior Court and the Appellate Court and the proceedings herein are an abuse of the Court process and an attempt to derail access to justice to Kenyans and it is not in the best interest of justice.

17. **THAT** the National Social Security Fund Act, 2013 (No. 43 of 2013) is a legislation geared towards actualizing the right of every Kenyan to social security under Article 43 of the Constitution of Kenya, 2010 and it is in the great public interest that this right is attained by every Kenyan.
18. **THAT** further, the implementation of the National Social Security Fund Act, 2013 is for the great public interest as the employees, volunteer contributors and Kenyans at large are able to make contributions towards their pensions to ensure financial capability at retirement.
19. **THAT** section 18 of the Act provides for the Funds and the members the Act applies to; Section 19 of the Act provides for registration of employers and employees to the National Social Security Fund; Section 20 of the Act provides for the mandatory contributions to the Fund; and section 71 of the Act provides for the application of the Retirement Benefits Act (Cap. 197) to the National Social Security Fund. These provisions are for the best interest of Kenyans.
20. **THAT** the Appellant is a representative Society of approximately 6,000 retirees who were former employees of Local Authorities and/or County Governments whose retirement benefits were paid to **Local Authorities Pension Trust (LAPTRUST DB Scheme)**, which is a defined Pension Scheme, closed in 2012 and exists only for the purpose of paying out benefits to the last members, to *wit*, retirees and then it will be wound up, and

its members during their employment, were not members and/or affected by the National Social Security Fund Act, 2013 (No. 43 of 2013) and/or the repealed Cap. 258 post-retirement and therefore the NSSF Act, 2013 is not applicable to the **LAPTRUST DB Scheme.**

21. **THAT** without prejudice, the Appellant being an association representing retirees has not demonstrated the prejudice and/or harm it is suffering or likely to suffer if the appeal as filed is not allowed as the provisions of the National Social Security Fund Act, 2013 and particularly sections 18, 19, 20 and 71 do not affect its members.
22. **THAT** the Appellate Court rightly held that the Superior Court did not have the requisite jurisdiction to determine the constitutionality of the National Social Security Fund Act, 2013 as the same is a preserve of the High Court as clearly set out in Article 165 of the Constitution.
23. **THAT** the Appellate Court rightly held that the National Social Security Fund Act, 2013 is not a legislation touching on the powers and functions of the County Governments as envisaged under Article 110 of the Constitution.
24. **THAT** I have been advised by my counsel on record, which advice I verily believe to be true, that although the Appellant was enjoined as an Interested Party in August 2015, this in totality cannot confer any status other than that of an Interested Party and the total sum

of the above is that the Appellant cannot purport to expand the scope of its mandate from being an Interested Party to a primary party and cannot appeal or litigate in respect of any issues raised by primary parties.

25. **THAT** I have been advised by my counsel on record, which advice I verily believe to be true, that the Appellant is not competent to file an Appeal against the Court of Appeal Judgement.

26. **THAT** further, I have been advised by my counsel on record, which advice I verily believe to be true, that Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice Procedure Rules, 2013 stipulates that an Interested Party is not a party to the proceedings and may not be directly involved in the litigation and therefore the overriding interest in any matter is that of the principal and/or primary parties, to prosecute or litigate.

27. **THAT** I have been advised by my counsel on record, which advice I verily believe to be true, that the Interested Parties who had participated in the hearing at the trial court were COTU and FKE. Both Interested Parties attended the hearings in the Court of Appeal without any qualms.

28. **THAT** it is in the great public interest that this Appeal is dismissed and Kenyans allowed to continue making their contributions towards ensuring the right to social security and a better future in old age is attained.

29. **THAT** the funds as contributed are safe and the Kenyans are in a position to access the funds as retirement or at the opportune time and the great public interest touching on the issues raised in this matter outweighs the personal interest of the Appellant as there is no prejudice the appellant is going to suffer if the orders sought are not granted.
30. **THAT** I have been advised by my counsel on record, which advice I verily believe to be true, that there is a presumption of Constitutionality of an Act of Parliament, and therefore, public interest and Constitutional values dictates for the implementation of the National Social Security Fund Act, 2013 (No. 43 of 2013) of the laws of Kenya.
31. **THAT** the Appellant stands to suffer no irreparable injury or prejudice in case the conservatory orders sought in the Petition of staying the matter until the High Court determines the Petition are not granted and this being public interest litigation, it would be in the great public interest that the orders sought are declined as set out in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR**.
32. **THAT** conservatory orders are discretionary and their scope and purpose is limited and can only be granted in the most deserving circumstances and it will be in the interest of justice that they are denied.
33. **THAT** the conservatory orders sought ought not to issue as the Appellant's Petition has no legal basis, is frivolous, vexatious and an abuse of the due process of this Honorable

Court and should therefore be dismissed with costs.

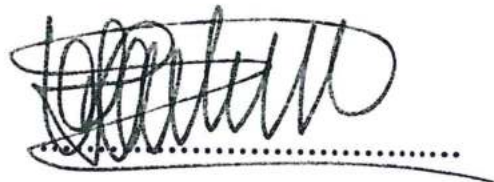
34. THAT I make this Affidavit in opposition to the Petition herein dated 16th February, 2023 and pray that the same be dismissed with costs to the Respondents.

35. THAT what is deponed to herein is true to the best of my knowledge, information sources whereof are disclosed.

SWORN at NAIROBI by the said)

Geoffrey E. Kaituko)

this 13th day of MARCH 2023)



DEPONENT

BEFORE ME:-)

COMMISSIONER FOR OATHS.)

Drawn & Filed By:

**The Hon. Attorney General,
Attorney Generals Chambers,
P.O. Box 40112-00100
NAIROBI (AG/SUP/ML/1/23)**

Email: oredi@gmail.com / scolabilo@gmail.com / communications@ag.o.ke / info@ag.go.ke

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(b)



COUNCIL OF GOVERNORS

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17 APR 2023

Our Ref: COG/2/10/VOL.18 (2023)

14th April 2023

Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI



① DSEC Deal.

[Signature]
17/04/2023

Dear Mr. Nyegenye,

② ~~HOD~~ Ms. Kibati
Kindly deal
[Signature]

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE PERSONS WITH DISABILITIES BILL, 2023

The above matter refers.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council of Governors has reviewed the Persons With Disabilities Bill, 2023 and would like to forward for your consideration the legislative memorandum attached herewith.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

17/04/2023
③ Ms. Mwanate
Kindly deal
[Signature]
18/04/2023





2009/08/08 10:10

10/10/2009 10:10:10

10/10/2009 10:10:10



COUNCIL OF GOVERNORS

MEMORANDUM ON THE

The Persons with Disabilities Bill, 2023

TO

THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

FROM

THE COUNCIL OF GOVERNORS

Introduction

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution;

Aware that all men are created equal and that the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the State;

Also aware that every person is entitled to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right and fundamental freedom.

The Council hereby notes as follows on the **Persons with Disabilities Bill (Senate Bills No. 7:)**

(a) General Comments

- i. The Council supports the proposed amendments contained in the Bill as County Governments are recognized and key roles and responsibilities have been assigned for implementation by County Governments.
- ii. The Council has oversight and service roles and these would lead to duplication of roles. The Bill is not clear what the State Department responsible for matters relating to disabilities will henceforth do as they currently undertake service related functions. Importantly, funds relating to matters to do with disabilities are given to the State Department, to the Council and to the National Development Fund for Persons with Disabilities established in section 32 of the Persons with Disabilities Act, No. 14 of 2003. There is need to have part of the funding go to County Governments considering the roles assigned to Counties.

- iii. There is urgent need to have a national policy on disabilities taking into consideration the devolved system of Governance. This ideally ought to have been developed before the Bill is drafted.
- iv. One of the critical functions of the National Government under Sec 32 of the Part 1 of the fourth Schedule is to build capacity for County Governments, this has not adequately be done by the national government institution and this is key for the counties to deliver on the functions assigned to them in the Bill.

(a) Specific Comments

Provisions of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
<p>ART I—PRELIMINARY</p>	<p>“assistive devices” includes implements, tools, equipment, taped texts, audio, visual and pictorial recording, Braille equipment and materials, tactile equipment, orthopaedic appliances, software and other devices and machines for persons with disabilities for their socio-cultural, economic, civil, political wellbeing of persons with disabilities;</p>	<p>Amend to read: “assistive devices” includes implements, prosthetics, tools, equipment, taped texts, audio, visual and pictorial recording, Braille equipment and materials, tactile equipment, orthopaedic appliances, software and other devices and machines for persons with disabilities for their socio-cultural, economic, civil, political wellbeing of persons with disabilities;</p>	<p>There is a need to include prosthetic devices since prostheses are often not perceived, technically, as assistive devices, yet assist / aid persons with Disabilities. They are also critical to independent living as well as body image and self-esteem particularly for women with disability.</p>
<p>ART II—OBLIGATIONS OF NATIONAL AND COUNTY GOVERNMENTS</p> <p>Section 4: Obligations of the National Government</p>	<p>The national government shall— (a) develop policies on the protection and promotion of the welfare of persons with disability;</p>	<p>Amend to read: (a) In consultation with County Governments, develop policies on the protection and promotion of the welfare of persons with disability;</p>	<p>The obligations of the National Government under the Bill intersect with those of the Counties in terms of implementation including, rehabilitation, integration into schools and transport among others. The National Government should therefore develop policies in consultation with County Governments</p>

ses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
			for harmonization of efforts towards the wellbeing of 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;	<p>Amend to read:</p> <p>(g) prescribe minimum standards and guidelines to be adhered to by public transport, Public communication service companies and infrastructure developers to facilitate reasonable access by persons with disability;</p>	Vehicle means a bus, train or other vehicle used for transportation of passengers and their goods on roads. The minimum standards should apply to all public transportation systems which include both the typical commercial passenger carrying flights and trains.
(i) promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions.		<p>Amend to read:</p> <p>(i) <i>In consultation with County Governments</i>, promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions.</p> <p>Amend as follows:</p> <p>Add (n) Enhance the capacity of County Governments and provide technical</p>	<p>It is critical that County Governments are involved owing to the fact that ECDE is a learning institution and a fully devolved function</p> <p>There has been slow uptake of disability mainstreaming at the county level due to low levels of capacity.</p>

Uses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
<p>ART II –</p> <p>Provisions of county governments</p> <p>Section 4:</p>	<p>(4) Where the county executive member constitutes a committee under subsection (3) the committee shall consist</p> <p>(a) a person who represents persons with disability in the county;</p> <p>(b) two public officers serving in the respective county public service;</p> <p>(c) two members of the public with knowledge or experience on matters relating to the welfare, rehabilitation and the management of persons with disability and belong to a related group or organization; and</p> <p>(d) such other persons, not</p>	<p>assistance to counties in mainstreaming disability issues in programming</p> <p>Amend to read:</p> <p>(a) Three persons nominated by organizations representing persons with various categories of disabilities within the county</p> <p>(c) two members of the public who are residents of the County 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;</p> <p>(b) Three members not below the level of a director representing the departments responsible for the following-</p> <p>i. Culture and social</p>	<p>- PWDs mainstreaming takes a multi sectoral approach and therefore would cut across a number of departments at the County level. In order to cure duplication then it is critical that a number of officers are incorporated.</p> <p>- For the effective performance of the functions and to ensure that County Governments fulfill their obligations under the Act, members of the public ought to be drawn from the residents domiciled in the respective Counties.</p>

ses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
	<p>exceeding two, as the county executive committee member shall consider necessary for the performance of the functions of the committee.</p>	<p>services; ii. Education; iii. Labour; and (c) Such other members as maybe co-opted by the board with the approval of CECM and provided that the membership of the board shall not exceed ten persons, out of whom at least half the members shall be persons with disabilities</p>	
<p>se 5:</p>	<p>5. (1) Every county government shall— (b) allocate adequate resources to programmes specifically targeting persons with disability;</p>	<p>Introduce a new clause immediately after clause b to read as follows (bi) The National Government shall increase the County's Equitable share of revenue to enable Counties to mainstream disability rights in all county plans, programmes and projects.</p>	<p>In order to ensure to effective implementation of programmes on persons with disability at the County level, Counties need to be adequately resourced. In this regard, the County Equitable share of revenue should be increased to enable counties to set aside</p>

ises of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
	<p>(c) establish a database of persons with disability residing within the respective county containing the following information regarding the persons with disability—</p> <p>d) co-ordinate and disseminate information on government sponsored and non-government sponsored programmes targeting persons with disability within the respective counties;</p> <p>(e) formulate and implement programmes aimed at promoting the socio-economic development, including</p>	<p>Amend to read as follows; Liaise with the Council to maintain a database of persons with disability in respective counties;</p> <p>Amend to read as follows; Coordinate the implementation of programmes and projects of government and non-governmental organizations targeting persons with disability within the respective counties</p> <p>Introduce a new clause immediately after clause b to read as follows (e) The National Government shall</p>	<p>funds for implementation of programmes related to persons with disabilities.</p> <p>The National Council of Persons with Disability is mandated to register and maintain a national database of persons with disabilities in the country. This clause proposes the establishment of a similar database which will be duplicating the existing role of the NCPWD. The proposal is to have the County Governments gain</p> <p>Dissemination, programme and project issues are not strategic to be in law</p> <p>In order to ensure to effective implementation of programmes on persons with disability at the County</p>

ses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
	<p>participation in cultural life, recreation and sports, by persons with disability in the county;</p> <p>5. (1) Every county government shall—</p> <p>(a) implement national policies for the protection and promotion of the welfare of persons with disability;</p> <p>5(2)(f)</p>	<p>increase the County Equitable share of revenue to enable Counties undertake programmes on persons with disabilities.</p> <p>Amend to read:</p> <p>5. (1) Every county government shall—</p> <p>(a) With additional resource allocation from the National Government implement national policies for the protection and promotion of the welfare of persons with disability;</p> <p>Delete entire clause</p>	<p>level, Counties need to be adequately resourced. In this regard, the County Equitable share of revenue should be increased to enable counties to set aside funds for implementation of programmes related to persons with disabilities.</p> <p>The national policies will require Counties to implement new activities. There is therefore need for resource allocation</p> <p>This is a repetition since the duty has already been assigned to the County Government</p>
se 10: Women with bilities	Every woman with disability has the right to enjoyment of her human rights and fundamental freedoms without	Amend to read: (b) protection from sexual exploitation and abuse and gender-based	It is critical that the bill expressly covers sexual abuse since it's very rampant. Sexual Exploitation and Abuse is a form of

Uses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
	<p>discrimination on an equal basis with others, including the right to—</p> <p>(b) protection from sexual and gender-based violence;</p> <p>(c) be provided with habilitation, rehabilitation and psychosocial support against sexual and gender-based violence;</p>	<p>violence;</p> <p>Amend to read: (c) be provided with habilitation, rehabilitation and psychosocial support against Sexual Exploitation and Abuse and gender-based violence;</p>	<p>GBV but not all GBV speak to Sexual exploitation and abuse. Most victims of sexual Exploitation and violence are women</p>
<p>Use 11: Children with disabilities</p>	<p>(h) protection from abuse, exploitation and harmful practices.</p>	<p>Amend to read: (h) protection from sexual abuse, sexual exploitation and harmful practices.</p>	<p>Children also are victims of Sexual Exploitation and abuse</p>
<p>Use 13: Older members of Society with disabilities</p>	<p>13. Older members of society who have disabilities have the right to enjoyment of human rights and fundamental freedoms on an equal basis with others, including the right to—</p>	<p>Amend to read: Older members of society who have disabilities have the right to enjoyment of human rights and fundamental freedoms on an equal basis with others, including the right</p>	<p>In the recent past, cases of Sexual Exploitation and abuse against the elderly have also increased</p>

ses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
<p>se 20: Right to Education</p>	<p>(vi) Introduction of Kenya sign language interpretation courses in all training institutions.</p>	<p>to—</p> <p>(d) protection from sexual abuse and gender-based violence;</p> <p>Amend to read:</p> <p>(a) the Ministry responsible for education in Consultation with County Governments formulates strategies to implement inclusive education through—</p> <p>(vi) Introduction of Kenya sign language interpretation course in all learning and training institutions.</p>	<p>County Governments should be involved owing to the fact that ECDE is a devolved function.</p> <p>The Competency Based Curriculum provides for the inclusion of Kenya Sign Language as a means of instruction in all schools and training institutions for learners and trainees with special needs.</p>
<p>se 21: Right to work and Employment for Persons with Disabilities.</p>	<p>(2)(a) Every employer shall—</p> <p>(a) reserve at least five per cent direct employment opportunities for persons with disabilities to secure employment;</p>	<p>Amend to read:</p> <p>(2)(a) Every employer in the public sector shall—</p> <p>(a) reserve at least five per cent direct employment opportunities for persons with disabilities to secure employment;</p>	<p>This should only apply to the public sectors since there are incentives already provided for the private sector</p>

uses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
<p>use 25: Council to participate in Health programmes</p>	<p>Not provided for</p>	<p>Add (f) (f)The Council to develop standards for implementation by government agencies</p>	<p>– The Council is not required to sit in a County Government project/programme implementation committee. It is unnecessary. The Council should develop the standards, norms to be gazetted by the CS to be implemented by Counties.</p>
<p>use 30: Accessibility</p>	<p>(6) The Council shall work with relevant government agencies and the private sector in the development and promulgation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public</p>	<p>Amend to read: (6) The Cabinet secretary in consultation with the Council and relevant agencies and the private sector in the development and minimum standards and guidelines for the accessibility of facilities and services open or provided to the public</p>	<p>– This is a function of the office of the Cabinet Secretary.</p>
<p>use 31: Adjustment Orders</p>	<p>(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;</p>	<p>Amend to read: (2) If the County Government considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other</p>	<p>– This is a county government function. The Cabinet Secretary to gazette standards for enforcement by County Governments. Development control is a function of the County Governments.</p>

ses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
	<p>(b) public transport operators and providers of communication and information services; and</p> <p>(c) all services or amenities ordinarily provided to members of the public.</p>	<p>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</p>	
<p>se 35: Registration of persons with disabilities, and institutions</p>	<p>35(1) In order to facilitate access by persons with disabilities to the services set out under this Part, the Council shall register on a continuous basis—</p> <p>(f) persons with disabilities, to whom it shall issue disability identification cards in such form as it may determine;</p>	<p>Amend to read: In order to facilitate access by persons with disabilities to the services set out under this Part, the Council shall:</p> <p>Amend to read: Issue disability identification cards in such form as it may determine;</p>	<p>The National Council for Persons with Disability should build the capacity of County Governments and other institutions to enable them to collect data on PWDs.</p>

Uses of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
	<p>(g) institutions, entities owned by Persons with Disabilities, associations and organizations, including those controlled and managed by the Government, which promotes the rights of and</p>	<p>Amend to read: Build the capacity of institutions, entities owned by Persons with Disabilities, associations and organizations, including those controlled and managed by the Government, which promote the rights of PWDs to collect data on PWDs that is desegregated by sex, age and Gender</p> <p>Amend to read: Add (c) the data obtained by the Council shall be shared on the Council's website/portal which other users can access.</p>	<p>The data is essential for use by stakeholders for purposes of planning and program development. Frequent requests for data by different organizations may create fatigue and apathy</p>

Section of the Bill	Provision of Clauses in the Bill	Proposed Amendment	Rationale/Justification for Amendment
<p>Section 40: Composition of Council</p>	<p>(1) The Council shall consist of the following—</p> <p>(d) one person nominated by the council of county governors;</p>	<p>Amend as follows:</p> <p>(c) three persons nominated by the council of county governors with knowledge and at least three years' experience on matters relating to disabilities;</p>	<p>Noting that there are 47 County Governments and owing to the multi sectoral nature of PWDs mainstreaming, there is need to increase their representation in the National Council for Persons with Disabilities to so as to adequately represent the interests of all the Counties.</p>
<p>Section 42: Election of the Chairperson</p>	<p>42. (1) The members of the Council shall, at their first meeting elect one among their number to be a vice chairperson.</p> <p>(2) The person elected under subsection (1) shall be of opposite gender and of a different category of disability from the Chairperson.</p>	<p>Amend by deleting the two provisions</p>	<p>Mwongozo Code discourages the establishment of the office of Vice Chairpersons in state corporations</p>

(c)



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When replying please quote

Ref: No:.....NGEC/CS/NAS/005/VOL.III (92)

6th April 2023



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Dear Mr. Nyegenye,

MEMORANDA ON THE PERSONS WITH DISABILITY BILL, 2023 (SENATE BILLS NO. 7 OF 2023)

Reference is made to your call for the submission of memoranda on the Persons with Disabilities Bill, 2023 (Senate Bills No.7 of 2023).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established to promote gender equality and freedom from discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, 'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'.

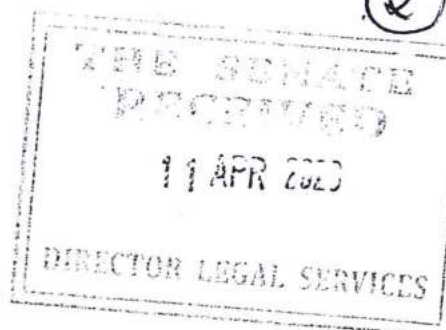
In line with its mandate, the Commission wishes to submit the attached memorandum analyzing the proposed amendments and making proposals where necessary.

Yours sincerely,

(2) HOD - Ms. Kibati

Betty Sungura, MBS
COMMISSION SECRETARY/CEO

Encl.



Kindly deal
12/04/2023
Ms. Mwanate

NATIONAL GENDER AND EQUALITY COMMISSION



MEMORANDA WITH COMMENTS AND INPUTS ON THE PERSONS WITH DISABILITY BILL 2023 (SENATE BILLS NO.7 OF 2023)

Submitted to : clerk.senate@parliament.go.ke; laboursocialwelfarecomm.senate@parliament.go.ke

S/NO	PROVISION	PROPOSAL FOR AMENDMENTS	RATIONALE/ JUSTIFICATION
PART II- OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS			
1.	New clauses to be introduced obligations of National Human Rights Commissions and the Civil Society	Amend by inserting additional clauses on the obligations of National Human Rights Commissions and the Civil Society a. Obligations of the National Human Rights Institutions 4A. The Kenya National Commission on Human Rights and the National Gender and Equality Commission are designated entities for monitoring the national implementation of the Convention on the Rights of Persons with Disability.	a.The Commission’s proposal is in line with objectives in the long title of the Bill as follows-; “ ...to provide for the institutional framework for protecting, promoting and monitoring the rights of Persons With Disabilities” This is in compliance with Article 33 of the Convention on the Rights of Persons with Disability (CRPD) on the national implementation and

monitoring of the convention as follows-;

Article 33 -National implementation and monitoring

2. States parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.



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b. Section 8 (d) on the functions of the Commission in the NGEC Act 2011 states as follows-;
(d) co-ordinate and facilitate mainstreaming of issues of gender, Persons With Disability and other marginalised groups in national

b. 4B. All public entities shall submit quarterly reports on compliance of mainstreaming of disability in their respective entities to the National Gender and Equality Commission who shall issue a certificate of compliance for determination of budgetary allocations.

development and to advise the Government on all aspects thereof;

The proposal on determination of budgetary allocations based on compliance is based on a precedent on compliance as provided for in Section 25 (2) of the Political Parties Fund which gives conditions as follows-;


- 2) Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund under subsection (1) if—
 - (a) more than two-thirds of its registered office bearers are of the same gender;
 - (b) the party does not have, in its governing body, representation of special interest groups;

c. Obligations of the Civil Societies


5A Civil society organizations shall be part of the governance structures at both national and County Levels to represent the interests of Persons with Disabilities and their organizations and shall be involved and participate fully in the monitoring process of the Convention.

- c. 3. Civil society organization in particular of Persons with Disabilities and their representative organizations, need to be involved and participate fully in the monitoring process

PART III—RIGHTS OF PERSONS WITH DISABILITY

<p>2. Clause 13 Older members of society with disabilities</p> <p>Older members of society who have disabilities have the right to enjoyment of human rights and fundamental freedoms on an equal basis with others including the right to— (a) access social protection programmes (b) exercise their legal capacity and that appropriate measures and safeguards are put in place to provide them with the support they may require to exercise their legal capacity; and (c) Access inclusive services.</p>		<p>a. Amend Clause 13(a) by inserting after the word “Programmes” the following “<i>for themselves and their care givers</i>”</p> <p>b. Amend clause 11(c) by deleting the same without replacement.</p>
	<p>a. Older members with disability require continual care giving services and this can only be achieved through support of the full time care givers by way of stipend.</p> <p>Article 10 of the African Union Protocol on Rights of Older Persons requires state parties to provide incentives to family members who provide care for Older Persons</p> <p> 32900-file-protocol_on_the_rights_of_olde</p> <p>b. Inclusive Services means housekeeping service once per week, linen and towel change once per week, use of electricity, gas, water, sewerage, council tax, TV license, however the Bill does not interpret the term.</p> <p>The Commission is of the opinion that the provision as is, maybe unrealistic but caregiving services is practical if the caregivers can benefit from the social protection programs as proposed in Clause (a).</p>	

		<p>c. Amend clause 11 by inserting additional sub-clauses, c, d and e as below-;</p> <p>11 (c). Adopt legislation and other measures to protect the rights of Older Persons with Disabilities;</p> <p>11(d) Ensure that such legislation and measures comply with regional and international standards; and</p> <p>11(e) Ensure that Older Persons with Disabilities have access to assistive devices and specialized care, which respond to their needs within their communities</p>	<p>Most of the older persons live in the rural set up where inclusive services may not be available but a caregiver who is benefiting from a stipend will take care of the vulnerable older person.</p> <p>c. The proposed additional sub clauses have been lifted from Article 13 of the Protocol to the African Charter on the Rights of Older Persons. Kenya has ratified the protocol.</p>
<p>3.</p> <p>Clause 20</p> <p>Right to Education.20(1) (1) Every person with disability has a right to admission to any institution of learning and access to an inclusive, quality education on an equal basis with others.</p> <p>(9)The Cabinet Secretary in charge of education shall develop an adaptable examination framework and award a certificate to children with intellectual disabilities after completion of their education</p>	<p>a. Amend sub clause (1) by inserting the word "Suitable" after the word "any"</p> <p>b. Amend by inserting after the word "children" the word "and learners"</p>	<p>a. This is specific to learners who will not necessarily fit in any mainstream school but require an institution specific to their needs i.e special school</p> <p>b. The interpretation of child in the constitution is an individual who has not attained the age of 18 years while the right to education is applicable to learners in Technical, Vocational Education and Training (TVETs) and adult learners. We make reference to the Kenya Sector Policy for Learners and Trainees with Disabilities, 2018</p>	

	<p>4. Clause 21 Right to work and Employment for Persons with Disabilities.</p>	<p>a. Amend clause 21 by inserting an additional sub-clause as below-; (f) submit all job advertisements to the Council</p> <p>b. Amend Clause 21(3) by inserting after the word "Council" the following "and The National Gender and Equality Commission"</p>	 <p>kenya_sector_policy_1 earners_trainees_disa</p> <p>a. Job advertisements submitted to the Council will be posted on its website and circulated within the networks of Persons with Disability and enable them to apply for available jobs.</p> <p>b. The mandate of the National Gender and Equality Commission is promotion of Gender equality and freedom from discrimination, and PWD as a Special Interest Group is one of the target groups for the Commission.</p> <p>The proposal also helps the bill to comply with the provisions of the CRPD</p> <p>Article 33 of the CRPD on National implementation and monitoring</p> <p>Make reference to serial No 1.</p>
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<p>5.</p> <p>Clause 24 Right to Health.</p> <p>24(6) Medical assessment reports for persons with disabilities, including for purposes of registration under the Act, shall be done free of charge in public health institutions</p> <p>24(7) Every national or referral health institution shall employ at least two Kenya Sign Language interpreters with gender consideration in their institutional structure;</p>	<p>Propose to amend sub clause 24(6) by inserting after the word "Facility" "the following;- "and shall be signed by a designated and gazetted County Medical Officer"</p> <p>Amend by substituting the words "Every national or referral" with the word "All"</p>	<p>Rationale- this will speed up the issuance of cards because there will no longer a need to have cards signed by the Director of Medical Services in Nairobi</p> <p>All health institutions which are part of places where services are offered to the public need sign language interpretation services.</p>
<p>6.</p> <p>Clause 26 Access to information and communication technology services.</p> <p>(4) Public institutions shall accept and facilitate the use of Kenya sign language, Braille, augmentative and alternative communication, and all other accessible means and usable formats of communication to accommodate the needs of persons with disabilities;</p> <p>(5) All public media enterprises and telephone service providers shall provide information and services in accessible formats and technologies appropriate to</p>	<p>Amend by inserting the after the word "Public" "the word "and private" in sub-clauses 4, 5 and 9</p>	<p>All institutions whether private or public must provide information and technology services to members of public that they provide services to in accessible formats.</p>

	<p>different kinds of persons with disabilities.</p> <p>(9) All public institutions of higher learning shall have a common course in Kenya sign language.</p> <p>(10) Any public institution which fails to comply with the provisions of this section shall have its license suspended and shall not be reinstated until it complies.</p>		
7.	<p>Clause 28 Access to justice</p> <p>28. (1) Every person with disability has a right to effective access to justice on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, at investigative and other preliminary stages.</p>	<p>a. Amend 28(1) by inserting after the word 'procedural' the following word "reasonable"</p> <p>b. Amend 28(1) by inserting additional sub-clauses as below-;</p> <p>b. States Parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.</p>	<p>Reasonable accommodation is interpreted in the interpretations and it includes the courts being accessible to all categories of persons with disability. Inaccessibility of courts is one of the greatest impediments on access to justice.</p> <p>b. The additional proposed clauses have been lifted from Article 13 of the African Union Protocol on persons with Disability</p> <p>The additional sub-clauses lifted from the protocol will protect</p>

<p>persons with disabilities from cultural and societal prejudices</p>	<p>c. All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognized and implemented without discrimination.</p> <p>d. States Parties shall ensure legal assistance including legal aid to persons with disabilities.</p>	
<p>The Council as established does not have enforcement powers. There is need for collaboration with Regulatory agencies e.g. KeNHA, NTSA, KURA etc. which can enforce the orders issued.</p> <p>The current Act No 14 of 2003 has the same provision on adjustment orders which has however never been implemented by the Council because the Council does not have enforcement powers.</p> <p>Clause 37 (1) allows the council to work with other agencies as follows-;</p> <p>37. The functions of the Council shall be to work with other relevant Government agencies and the private</p>	<p>Amend by inserting after the word "Council" " the following " in collaboration with the relevant Regulatory Agencies"</p>	<p>8. Clause 31 Adjustment orders</p> <p>(3) Before serving the Adjustment Order under subsection (2), the Council shall serve notice upon the person concerned</p>

<p>9. Civil and Political rights for persons with disabilities.</p> <p>32. (1) Every Person with disability has a right to participate in political and public life and the opportunity to enjoy them on an equal basis with others, and to vote for and be voted directly or through freely chosen representatives in any public or political office.</p> <p>(2) It shall be the responsibility of the body conducting elections to facilitate persons with disabilities in the exercise of their civic and political rights by-</p> <p>(a) providing voting procedures, facilities and materials which are appropriate, accessible and easy to understand and use;</p> <p>(b) protecting the rights of persons with disabilities to vote by secret ballot in elections without intimidation and to offer themselves for elections;</p> <p>(c) allowing assistance in voting by a</p>	<p>Amend 32(2) by inserting an additional sub-clause as follows-;</p> <p>“(d)Ensuring that there is compliance by political parties on the requirement of nominative seats reserved for persons with disability.”</p>	<p>sector to— (a) advise on, and enforce accessibility,</p> <p>However, the Council needs to be specifically empowered through collaboration with the relevant authorities so that this provision is implemented through enforcement.</p> <p>This will entrench the rights of Persons with Disabilities in nominative seats and also attach an obligation of the electoral body to ensure that there is compliance with the provisions on special interest seats in the houses.</p>

	<p>person of their own choice, on request and facilitating the use of assistive and appropriate technologies; and</p>		
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General comment

The memorandum of objects and reasons states that this is not a money Bill. However, the Commission submits that this is a money Bill if you make reference to Article 114 of the Constitution of Kenya 2010.

(d)



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

ADVISORY ON THE PERSONS WITH DISABILITIES BILL, 2023

PRESENTED TO

THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

17TH APRIL, 2023

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A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect of human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations *Paris Principles* on the establishment and functioning of independent national human rights institutions commonly referred to as the Paris Principles and as such enjoys an “A” status accreditation.
2. The National Commission under **Article 249** of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. The Commission submits this memorandum pursuant to its constitutional mandate and special mandate to monitor implementation of the UN Convention on the Rights of Persons with Disabilities (Article 33(2) of the CRPD).

B. GENERAL COMMENTS

4. The Constitution obligates all state organs and all public officers to address the needs of vulnerable groups within society. In this regard, the Kenya National Commission on Human Rights welcomes the efforts to amend the Persons with Disabilities Act enacted in 2003. The Act came into force prior to the Constitution and Kenya’s ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2008.
5. The Constitution provides for an expanded bill of rights, which provides specific protection to persons with disabilities. Article 21 (3) of the Constitution identifies vulnerable groups in society as including persons with disabilities. Article 54 of the Constitution obligates the state to put in place measures to ensure access to educational institutions and facilities for persons with disabilities that are integrated into society, reasonable access to all places, public transport and information, to use sign language, braille or other appropriate means of communication and access to materials and devices to overcome constraints arising from a person’s disability. Article 54 (2) obligates the state to ensure the progressive implementation of ensuring that at least five percent of members of the public in elective and appointive bodies are persons with disabilities. The Constitution establishes a devolved system of

governance and attributes responsibilities on both the national and county governments under the fourth schedule of the Constitution.

6. The United Nations Committee on the Rights of Persons with Disabilities in its review of Kenya's state report submitted under article 35 of the Convention has called upon Kenya to, 'complete as a matter of priority and within a specified time frame of the process to review the Persons with Disabilities Act 2003 and to bring it in line with the provisions of the Convention and human rights-based approach to disability.'
7. The adoption of the 2010 constitution and the ratification of the United Nations Convention on the Rights of Persons with Disabilities therefore necessitate the revision of the Persons with Disabilities Act. Furthermore, the 2030 Agenda for Sustainable Development in which Kenya fully participated in and whose clarion call is to leave no one behind provides further impetus to ensuring that vulnerable members of society, including persons with disabilities, are protected and included in development.
8. On a positive note, the Commission welcomes the clear delineation of the complementary roles between the national and county governments towards the realization of the rights of persons with disabilities as provided for under Part II of the Bill. This is critical towards ensuring that the respective governments understand their roles in protecting and promoting the rights of persons with disabilities.
9. The Commission lauds the additional provisions in the Bill that seek to adequately provide for the rights of persons with disabilities captured in the Convention on the Rights of Persons with Disabilities. In deed the much-awaited Bill affords an opportune moment for the country to not only align the provisions with the Constitution but also domesticate the progressive provisions of the CRPD which Kenya ratified over a decade ago. As such, the Commission welcomes the introduction of the guiding principles under Clause 3 of the bill, which are aligned with Constitutional principles, as well as the UN Convention on the Rights of Persons with Disabilities ratified by Kenya in 2008.
10. Furthermore, Part III of the Bill has outlined under the respective clauses rights such as those relating to equality and non-discrimination (Clause 6), legal capacity (Clause 7), right to marry and form a family (Clause 8), right to privacy (Clause 9), women with disabilities (Clause 10), children with disabilities (Clause 11), right to education (Clause 20), right to health (Clause 24), access to justice (Clause 28, right to independent living (Clause 33) amongst other provisions are in line with the requirements and provisions under the CRPD. In addition, the Commission notes that the Bill has reflected the progressive provisions in the Protocol to the African Charter on Human and Peoples' Rights on the Persons with Disabilities in Africa, which

Kenya ratified on 15th November 2021. These include clauses on youth with disabilities (Clause 12), older members of the society with disability (Clause 13) and protection from harmful practices (Clauses 11, 63, 69).

11. The Commission further proposes inclusion of a provision in the bill, which specifically designates the Kenya National Commission on Human Rights as an independent national monitoring and reporting agency of implementation of the Persons with Disabilities Bill and the Convention on the Rights of Persons with Disabilities. As mentioned in point No. 3 above, the Commission is currently designated (vide a letter) by the Hon. Attorney General as the national monitoring agency under **Article 33 (2)** of the Convention on the Rights of Persons with Disabilities.¹ The Commission is expected to work with the National Gender and Equality Commission in its role as the monitoring agency. The re-designation of KNCHR as the monitoring agency under Article 33 of the Convention was made pursuant to the Concluding Observations of the Committee on the Rights of Persons with Disabilities upon Kenya's review on its implementation of the Convention in 2015. The CRPD Committee in expressing its concern that the Commission did not form part of the national mechanism for monitoring the Convention specifically recommended that *'...the state party establish a national mechanism to monitor the implementation of the Convention with the participation of the Commission as an institution in compliance with the Paris Principles'*. The designation of the Commission is important towards monitoring and advising the state on its obligations under the CRPD and the Constitution of Kenya, 2010. Recognising the role of the Commission as the independent mechanism under Article 33(2) takes into account, *'... principles relating to the status and functioning of national institutions for protection and promotion of human rights'* within the wording of the Convention. Such a move would enhance the monitoring role under the CRPD. Noteworthy, this role is distinct of the executive role played by the National Council for Persons with Disabilities under Article 33(1) of the Convention, which requires State parties to designate a focal point on implementation.

¹ Letter from the Hon Attorney General dated 9th June 2017 re-designating the Commission as the National Monitoring Agency under Article 33 (2) of the Convention on the Rights of Persons with Disabilities.

C. SPECIFIC COMMENTS

No.	Clause & Title	Proposed amendment	Justification
1.	Long title	<p>Amend the long title to include: <i>“to provide for the recognition and protection of the rights of persons with disabilities and to promote their full and equal participation in society.”</i></p> <p><i>Also consider including in the long title a liner on further operationalisation of the provisions of the Convention on the Rights of Persons with Disabilities. Alternatively, as a separate Clause on ‘purpose/object’.</i></p>	<p>This will broaden the focus of the bill from the institutions but also the persons with disabilities themselves.</p> <p>The new law serves to align the 2003 law with the 2010 Constitution as well as the Convention on the Rights of Persons with Disabilities (CRPD). Kenya acceded to the CRPD in 2008. According to Article 2(6) of the Constitution, the CRPD forms part of the laws of Kenya.</p> <p>The Bill also resonates hugely with the provisions of the CRPD.</p>
2.	Clause 4 (g) obligations of the National Government.	<p>Include the word <i>enforce</i> to read: Prescribe and <i>enforce</i> 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.</p>	<p>Enforcement is key in ensuring actual implementation of the standards and guidelines.</p>
3.	Clause 4(i) Obligations of the National Government	<p>Amend to read as follows: <i>“ensure access to free and compulsory <u>inclusive education, training and other social amenities to learners and trainees with disabilities, including by setting aside 15 per cent of all public-funded bursaries for pupils with disabilities;</u>”</i></p>	<p>Inclusive education is in line with the provisions of the <u>Sector Policy and Implementation Guidelines for Learners and Trainees with Disabilities</u>.</p> <p>It is also in line with Article 54(1)(b) of the Constitution and Article 24 of the <u>Convention on the Rights of Persons with Disabilities</u>. See also <u>General Comment No. 4 on Article 24 of CRPD- the right to inclusive education</u>. The provision obliges State Parties to ensure an inclusive education system at all levels and lifelong learning directed to:</p>

			<p>a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;</p> <p>b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; and</p> <p>c. Enabling persons with disabilities to participate effectively in a free society.</p> <p>Article 24(2) specifically requires that in realising this particular provision that State Parties ensure that:</p> <p>"a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;</p> <p>b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;</p> <p>c) Reasonable accommodation of the individual's requirements is provided;</p> <p>d) Persons with disabilities receive the support required, within general education system, to facilitate their effective education;</p> <p>e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion".</p>
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			Setting aside 15 per cent of all public-funded bursaries for pupils with disabilities is one of the promises the Kenya Kwanza Administration to persons with disabilities. It is important that this is anchored in law for posterity. See page 54 of the Kenya Kwanza Manifesto.
4.	Clause 4(m) Obligations of the National Government.	Amend to read as follows: <i>“promote affirmative action, including increase in capitation, to ensure that learners with disabilities are enrolled in all levels of learning institutions;”</i>	As one of the past KNCHR research studies have unveiled, the cost of providing education to learners with special needs and disabilities is relatively high and constitutes the single most limiting factor to increased enrolment. ² It is important that costing be done for educating/training a learner with various forms with disabilities and the same implemented in budgeting. Increase capitation of pupils with disabilities by 50 per cent is one of the promises the Kenya Kwanza Administration promised persons with disabilities. It is important that this is anchored in law for posterity. See page 54 of the Kenya Kwanza Manifesto
5.	Clause 4 obligations of the national government.	Add a sub-clause that provides for community-based health care services.	Having access to community-based health care services is key in achieving inclusive health services for persons with disabilities.
6.	Clause 4- obligations of the national government.	Add a new sub-clause to read: Ensure participation and involvement of organizations of/ for persons with disabilities in every aspect of policy and development.	This is an imperative under the CRPD. 33 (3) of the CRPD that obliges State Parties to involve and ensure the full participation civil society, in particular persons with disabilities and

² KNCHR'S Objects of Pity or Individuals with Rights: The Right to Education for Children with Disabilities accessible at <https://www.knchr.org/Portals/0/OccasionalReports/Objects%20of%20Pity%20OR%20Individuals%20with%20Rights%20-%20Final%20April%202007.pdf?ver=2013-02-21-145735-310>

			<p>their representative organizations in the monitoring process of the rights secured under the Convention.</p> <p>To accord with 29 of the CRPD on full and effective participation and inclusion in society of persons with disabilities.</p> <p>In response to the concerns by the Committee on the Rights of Persons with Disabilities in 2015, over lack of mechanisms to ensure permanent and formal consultation with organizations of persons with disabilities in processes to enact legislation, and in the discussion and adoption of public policies, both at the national and the county levels (See paras, 7, 8(b), 59 & 60 of the Concluding Observations).</p>
7.	Clause 5 Obligations of county governments	<p>Include another obligation to read as:</p> <p><i>"Put in place affirmative action to waive licenses and fees of new businesses established by persons with disabilities"</i></p>	<p>Waiving licenses and fees required to establish a business is in line with Article 27 (1) (f) of the Convention on the Rights of Persons with Disabilities that requires State Parties to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business.</p> <p>The Kenya Kwanza Administration had pledge to "encourage" counties to waive licenses and fees of new businesses established by persons with disabilities.</p> <p>See page 54 of the Kenya Kwanza Manifesto</p>
8.		<p>Add a new sub-clause to read:</p> <p>Ensure participation and involvement of organizations of / for persons with disabilities in every aspect of development.</p>	<p>To be in line with Article 29 of the CRPD on full and effective participation and inclusion in society of persons with disabilities.</p>

9.	Clause 21 (2) - Right to work and employment for persons with disabilities.	Add a sub-clause under 21 (2) (e) to the effect that every employer shall provide reasonable accommodation for employees with disabilities.	
10.	Clause 21 (3) – right to work and employment for persons with disabilities	Delete	<p>Section 16 of the Public Service (Values and Principles) Act requires each service Commission to prepare an annual report on the status of the promotion of the values and principles of public service. The reports are submitted to the President and Parliament.</p> <p>To address the challenges of multiplicity/parallel channels of reporting/accountability.</p> <p>2. Will the National Council for Persons with Disabilities have the capacity to interrogate all the annual reports submitted by the agencies while still discharging its core mandate of protection and promotion of the rights of persons with disabilities?</p>
11.	Clause 24 – Right to health	The Commission proposes the addition of a clause to the effect that: 'every person with a disability has the right to access health care on the basis of his/her free and informed consent'.	To offer redress for the current situation where many persons with disabilities have medical interventions performed against their will.
12.	Clause 24 (8)- Right to health	The Commission proposes a deletion of Clause 24(8) of the Bill. We propose to replace with the following proposed new sub clause 8: <i>(8) Persons with disabilities, including children, have the right to retain their fertility on an equal basis with others.</i>	To align the Bill with Article 23(1)(c) of the CRPD on respect for home and the family. Under this Article, States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that persons with disabilities, including children, retain their fertility on an equal basis with others.

13.	Clause 33 – Right to independent living	The Clause should identify, for greater protection, persons with disabilities who are in particular risk of being institutionalised – these are older members of society with disabilities and children with disabilities.	To uphold the right to independent living.
14.	Clause 37 (c) – functions of the Council	At the end of the statement, add ' <i>disaggregated by gender, age, disability and geographical location</i> ' to read: <i>"advice on systematic collection, analysis and use of national statistics and disaggregated data on issues relating to persons with disabilities <u>disaggregated by gender, age, disability and geographical location</u>".</i>	Availability of accurate disaggregated data on persons with disabilities will support stronger planning, resource allocation and accountability, and this also aligns with Kenya's commitments at the 2018 Global Disability Summit.
15.	Clause 38- Powers of the Council	Include a provision that the Council will collaborate with the National Gender and Equality Commission to investigate cases of discrimination and take appropriate action.	This aligns with Article 54(3) of the Kenyan constitution, which requires the state to ensure that persons with disabilities are protected from all forms of discrimination.
16.	Clause 55(1) exemption	Insert the word " <i>permanent</i> " before " <i>exemption</i> " to read: <i>All persons with disabilities who are in receipt of an income may apply to the Cabinet Secretary responsible for finance for <u>permanent</u> exemption from income tax and any other levies on such income.</i>	Requiring persons with disabilities who have been assessed and registered with the NCPWD to periodically present themselves for disability assessment is demeaning and amounts to stigma and discrimination. Take the example of albinism, which is a permanent condition, as are all other disability domains. Furthermore, the definition of the term disability presupposes that this is a long-term condition.
17.	Clause 55 (2) – Exemptions	The Clause provides that: <i>The Cabinet Secretary responsible</i>	Leaving the tax exemption to the discretion of the Cabinet Secretary to be determined on a case-by-case basis adds a layer of bureaucracy and opacity unnecessarily.

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.”

We propose that the tax exemption should be a transparent figure applicable across the board, for example, currently, it is for earnings above KES 150,000/-or for the first Kes. 1.8 M per annum.

		<p><i>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.”</i></p> <p>We propose that the tax exemption should be a transparent figure applicable across the board, for example, currently, it is for earnings above KES 150,000/-or for the first Kes. 1.8 M per annum.</p>	
18.	Clause 58 -Exemption from taxable income of employers of persons with disabilities	The Clause should be moved to the general section on employment (clause 21-23).	For better flow
19.	60(2) Discrimination contrary to Article 27 of the Constitution	Include “denial of reasonable accommodation” as a form of discrimination.	Denial of reasonable accommodation for persons with disabilities is a major contributor to discrimination against them. To affirm this, the Committee on the Rights of Persons with Disabilities in its 2015 Concluding Observations to Kenya, urged the State to “ensure legal recognition of the denial of reasonable accommodation as a form of discrimination.” ³
20.	61 (1) Prohibition of abuse, exploitation or violence	Delete the word “is” appearing immediately after the word “disability” and immediately before the word “commits”.	For clarity.

³ Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Kenya (2015), available at https://www.cbm.org/fileadmin/user_upload/Publications/G1522337.pdf Section 10 (b)

21.	61 Prohibition of abuse, exploitation or violence	Delete the clause.	The acts listed under clause 61 (2) have been provided for under the preceding clauses. The preceding clauses also provide for different penalties which differ from the one provided for under clause 61 (2). Deletion of the clause will bring clarity. Alternatively, there could be separate sections on exploitation and physical violence.
22.	62 (1) Concealment of persons with disabilities	Add the words "or any other institution" immediately after the word "disabilities".	The provision only applies to parents, guardians, next of kin and institutions of persons with disabilities, yet persons with disabilities may also be concealed by other institutions such as churches. A key example is the detention of mentally ill patients at the Holy Ghost Coptic church in Kisumu. ⁴
23.	62(2) Concealment of persons with disabilities	Review the penalty for the offence of concealment of persons with disabilities.	The two hundred thousand shilling fine provided for under the section is too lenient especially for institutions. Additionally, Sections 63 (1) and (2) recognize "concealment" as a harmful practice which attracts a penalty of life imprisonment. Section 62 (2) therefore needs to be reviewed to align with Section 63 (2).
24.	63(2) Harmful practices	Delete the word "is" appearing immediately after the word "disability" and immediately before the word "commits".	For clarity.
25.	Clause 65- Degrading treatment of a person with disability	Harmonise the offence and penalty with the provisions of Prevention of Torture Act. The Clause provides that: Any person who 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	For uniformity. Section 31 of the Prevention of Torture Act, 2017 (No. 12 of 2017) provides that if there is a conflict between the provisions of this Act and the provisions of any other law in regard to the crime of torture or cruel, inhuman or degrading treatment or punishment, the provisions of the Prevention of Torture Act shall prevail.

⁴ See <https://www.the-star.co.ke/news/2023-01-24-holy-ghost-coptic-church-father-sued-for-holding-mentally-ill-in-poor-conditions/>

		thousand shillings or to a term of imprisonment not exceeding one year or to both.	
26.	65 Degrading treatment of a person with disability	The provision should be reviewed so it does not severely restrict freedom of expression. What if the perpetrator under the provision is a child?	To balance between freedom of expression and the right to dignity of persons with disabilities.
27.	Clause 71(a) Protection of road users with disabilities.	Insert the words <i>"with braille markings"</i> after the word <i>"system"</i>	
28.	Clause 72 (2) Public Service vehicles and Transport.	Include a provision for time period within which the CS Finance responds to the application, including recourse if no response is given	
29.	Clause 74 Prohibition of Discrimination relating to goods, facilities and services.	Include penalty for non-compliance	
30.	Clause 76(5) Disability Mainstreaming Units and Inspectors.	Include the word <i>"annually"</i> after <i>"report"</i>	
31.	Clause 77(2) Awareness raising.	Insert the words <i>"with nationwide circulation"</i> after <i>"media"</i>	
32.	Clause 78 Public participation.	Before the words <i>"facilitate the"</i> , Insert the words <i>"effective and meaningful"</i>	
33.	Clause 84(2) Transitional and savings provisions.	Merge the National Fund for the Disabled of Kenya with the National Council for Persons with Disabilities and ensure parliamentary oversight for accountability.	The Fund should be managed by the Council since the latter is in charge of the various projects/ programmes that assist persons with disabilities. The Kenya Kwanza Administration had pledged, in its Manifesto, to <i>Merge the National Fund for the Disabled of Kenya (NFDK) with National Council for Persons with Disabilities (NCPWD) and ensure parliamentary oversight for accountability</i> ⁵ .

⁵ The Kenya Kwanza Plan: The Bottom-Up Economic Transformation Agenda 2022-2027, page 54

SIGNED BY:

A handwritten signature in black ink, appearing to read 'Bernard Mogesa', with a stylized flourish underneath.

Dr. Bernard Mogesa, PhD, CPM

Commission Secretary/CEO



TRANSPARENCY
INTERNATIONAL
KENYA

TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE PERSONS WITH DISABILITIES (AMENDMENT) BILL (SENATE BILLS NO. 7 OF 2023).

Organization

Transparency International - Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. The vision of TI-Kenya is that of a corruption free society.

Introduction

The Senate made an invitation for public participation on The Persons with Disabilities Bill (Senate Bills No. 7 of 2023). This was pursuant to Article 118 (1) of the Constitution and "Standing orders 145(5) of the Senate Standing Orders which is to the effect that the departmental committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism."

In this regard, TI-Kenya wishes to make the following specific recommendations to the Persons with Disability Bill 2023

Section	Provisions of the Bill	Proposed Amendment	Rationale for Amendment Recommendation
Part1 No.1 Paragraph 8	<p>discrimination on the basis of disability” 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. It includes all forms of discrimination, including denial of reasonable accommodation;</p>	<p>discrimination on the basis of disability” 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. It includes all forms of discrimination, including denial of, and or failing to make reasonable accommodation.</p>	<p>Denial of reasonable accommodation may imply that reasonable accommodation has been made but is being refused while in many instances especially when it comes to design of programmes and physical spaces, there has been failure to incorporate the unique needs of People with Disabilities(PWDS) to makes such spaces and programmes accessible.</p>
No.14	<p>1) Every person with disability has a right to be issued with a certificate of birth, national identification card, passport, disability identification card and any other document of registration or identification.</p>	<p>1)a) Every person with disability has a right to be issued with a certificate of birth, national identification card, passport, disability identification card and any other document of registration or identification. b) the disability Identification Card shall be upon application be issued at no cost or fees and availed to the nearest point of administrative unit for convenience and ease of collection</p>	<p>Majority of PWDs struggle with the fees needed for the disability identification card and may have to travel far to collect the card.</p>



34	a) persons with disabilities, to whom it shall issue disability identification cards in such form as it may determine;	a) persons with disabilities, to whom it shall issue disability identification cards in such form as it may determine at no cost or fees.	Majority of PWDs struggle with the fees needed for the disability identification card
32		4) It shall be the responsibility of both National and County governments to adopt affirmative action with regard to PWDs while making appointments to public office .	This is to ensure PWDs are not excluded in government appointments
11.	(1) Every child with disability has the right and freedom on an equal basis with other children (1) Every child with disability has the right and freedom on an equal basis with other children	This is in respect to— (h) protection from abuse, exploitation and harmful practices. (e) living with his or her family for as long as is necessary;	There is need to add all other forms of violence, neglect, inhuman treatment and punishment, and hazardous or exploitative labour other than protection from abuse, exploitation and harmful practices. There is need to also add “cultural” to the harmful practices. There is also need to add to parental care and protection, which includes equal responsibility of the mother and father to provide for the child There is need to add parental care and protection, which includes equal responsibility of the mother and father to provide for the child



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(f)



To: Clerk of the Senate
Cc: Standing Committee Labour and Social Welfare
From: Digital Accessibility for Persons with Disabilities
KICTANet

Submitted: 10/04/2023

Subject: Comments on the Persons with Disability Bill, 2023

PART II—OBLIGATIONS OF THE NATIONAL AND
COUNTY GOVERNMENTS

4.
(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;

This should read :

(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, in the national and per county are filled by persons with
disability;

Reason:

The public service has offices within counties

5.
2(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.

This should read as :



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(g)!prepare and publish reports in accessible formats containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation to persons with disability.

Reason:

An accessible format will promote inclusion of persons with disability reading the reports for themselves and NOT relying on a third party to read it for them.

4(a)! a person who represents persons with disability in the county;

Should read:

(a)! a person with disability representing persons with disability in the county;

Reason:

This will promote the saying, “Nothing for us, without us”.

PART III—RIGHTS OF PERSONS WITH DISABILITIES

8. (1) Every adult person with disability has the right to marry a person of the opposite sex and form a family based on free consent.

Should read:

Every person with disability of the age of (21yrs) has the right to marry a person of the opposite sex and form a family based on free consent.

Reason:

Most of the persons with disabilities begin school late, so at age 18(Adult), most are still in school and we have witnessed them being taken out of school for marriage



10.

(c)! be provided with habilitation, rehabilitation and psychosocial support against sexual and gender-based violence;

Should read:

(c)! be provided with habilitation, rehabilitation and psychosocial and legal support against sexual and gender-based violence, both online and offline

Reason:

We are in a digital era and our women should be protected even in the online spaces. Legal support is of utmost of importance in any gender related violence

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

Should read:

12. (1) Every person with disability who is a youth(upto 40 years of age) is entitled to enjoyment of human rights and fundamental freedoms on an equal basis with other youth

Reason:

The legal age for Youth is 35yrs, but for Persons with disability is 40 yrs. It is important to have the small details in place.

(h)!ensuring that youth with disabilities have access to appropriate sexual and reproductive health education on an equal basis with others.

Should read:

(h)!ensuring that youth with disabilities have access to



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appropriate sexual and reproductive health
education on an equal basis with their peers who have no disability

Reason:

“Others” is a very broad term

18.

(5) Construction and reconstruction emergency or humanitarian programmes and activities undertaken by the Government and any other establishment whether public or private shall, after consultation with the Council, take into account the accessibility requirements of persons with disabilities.

Should read:

(5) Construction and reconstruction emergency or humanitarian programmes and activities undertaken by the Government and any other establishment whether public or private shall, adhere to the building standards including and not limited to KS ISO 21542 standard on building construction — Accessibility and usability of the built environment .

Reason:

Consulting with Council would be tedious process while they dont have the capacity in the 47 counties.

24.

Persons with disabilities have the right to information to enable them to make responsible and informed choices about their sexual and reproductive health

Should read :

Persons with disabilities have the right to information in accessible format to enable them to make responsible and informed choices about their sexual and reproductive health



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Reason:

An accessible format allows the individual to be able to read for and by themselves



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(9)

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10/04/2023

TO: STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

REF: THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO .7 OF 2023)

THE IMPLEMENTATION OF THE BILL AND JOB PLACEMENT

Kenya has made a very positive direction towards the issues affecting the people with disabilities (PWDs) in terms of good paper work, however, through implementation it is poor and big challenge. This is the reason we are asking for the serious implementation process to be done with speed.

When it comes to job placement in the government where it is known that at least 5% should be left for PWDs in both private and public sectors it reads very minimal and consideration is needed to fill the gap. If this can be implemented to its fullness then the majority of over 8,000,000 PWDs shall be employed.

NOTE: Take as Safaricom which as tried and currently they are about 2.8 percent of the 5% required.

BUILDINGS ACCESSIBILITIES FOR PWDs.

Disability mainstream should be focused on hence to make our environment friendly for the performance of their activities we need proper accessibilities to every departments. All constructions taking place should be approved if they are PWDs friendly i.e. having good entrance wide enough for accessibility of difference wheelchairs to move in and the building should have ram.

We thank the government unit for the special unit within the government public schools, though when it comes to equipping the institutions/schools is poor and down. You find one school has only one teacher handling more than 60 children with disabilities yet it should be done that one teacher per ten children. Some institutions do not have good playground and rams for easy accessibilities.

HEALTH/MEDICAL BILLS RATE

We have the categories of disabilities like Cerebral palsy, Autism, Intellectual mental, and Epileptics etc. These categories of PWDs require medication throughout their live or be in medication care in 24/7, this make them to spend a lot in buying medicines, yet majority are job less and earn below 300 kshs per day, this make some to die due to the fact that they cannot raise medical bills. There is a need to be attended because this lack of medical attention that results to lose of lives on PWDs.

PWDs should not be compared to youths or young women because some are affected when already grown up through accident, this can make some not to go back to school to study.

In conclusion we wish to recommend that the government put in place a body which can carry out the implementation. If the implementations are well done over one million of PWDs shall be in full formal employment

. FROM: AMAZINGGRACE BAWO FOUNDATION

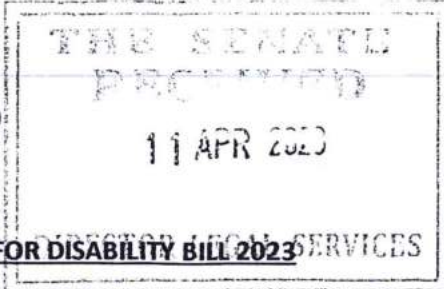


The Clerk of the Senate

Parliament Buildings

P.O BOX 41842-00100

NAIROBI



RE: MEMORANDUM FOR DISABILITY BILL 2023



(h)
① DSEC
DLS,
Note and deal.
11/4/2023

② DSEC &
Hep - Mr. Kibaki
Kindly deal
12/07/2023

③ Ms. Mwanate
Kindly deal.
12/04/2023

I the undersigned, DENNIS OCHIENG'ORENGO JUMA citizen of the Republic of Kenya, and resident of Mathare Constituency, Nairobi county draw the attention of the Senate in submission of the above mentioned memorandum regarding the following:-

1. RIGHT TO ACCESS JUSTICE

- 1.1 Every disabled person can move to High Court of Kenya to enforce his or her fundamental rights.
- 1.2 No person including the disabled irrespective of his belonging can be treated as untouchable.

2. LABOUR RELATIONS

- 2.1 There can be no traffic in human beings (including the disabled) and other forms of forced labour is prohibited and the same to be punishable by law.
- 2.2 No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious groups.

3. CIVIL RIGHTS

- 3.1 Every disabled person (like the non-disabled) on attainment of 18 years of age becomes eligible for inclusion of his name in the general election roll and to vie for office.

4. MARRIAGE RIGHTS

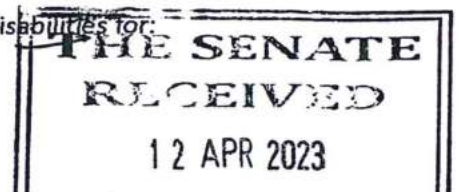
- 4.1 A disabled person shall not be subject to marriage where one party is unable to give a valid consent due to *unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children.'*

5. RIGHT TO OWN PROPERTY

- 5.1 No Disabled person owning property (like the non-disabled) can be deprived of his or her property except by law. Any an unauthorized deprivation of property can be challenged by suit and for relief by way of damages.

6. AFFIRMATIVE ACTION

- 6.1 Allotment of land shall be made at concessional rates to the people with disabilities for:



(I) House

(ii) Business

(III) Factories by Entrepreneur with Disability.

(iv) Special Schools

(V) Special Recreational Centres

(Vi) Research Schools

7. THAT, none of these issues raised in this memorandum is pending in any court of Law. WHEREFORE, I humbly pray that the Senate considers the above memorandum.

Dated this 10th Day of April, 2023

DENNIS OCHIENG'ORENGO JUMA



ID 29475649

0725-414-968



MEMORANDA

TO

REPUBLIC OF KENYA

THE SENATE OF THE REPUBLIC OF KENYA

MEMORANDA ON THE KENYAN SIGN LANGUAGE BILL, 2023 AND THE PERSONS WITH DISABILITIES BILL, 2023

Pursuant to the provisions of Article 118 of the constitution and standing order 145 (5) of the senate Standing Orders.

Following the invitation from the Senate Standing Committee on Education, and the Standing Committee on Labour and Social Welfare.

We, the Consortium of Disabled Persons Organizations in Kenya (CDPOK), on behalf of Organizations of Persons with Disabilities (OPDs) and Political Parties in Kenya through Kenya Inclusive Political Parties programme (KIPP) wish to submit these memoranda to the Senate of the Republic of Kenya regarding the two Bills captioned above.

The Kenya Sign Language Bill, 2023

Section of the Bill	Proposed Amendment/change	Reason
Under objects and purposes	Add/reference Article 120 of the constitution as well.	To promote the use of sign language in Parliament and County Assemblies as a good practice for disability inclusion.
All sections	Letter 'd' in deaf should be capitalized all through the Bill.	The Deaf is a community and is therefore a Noun.

Under definition – Kenya sign language	Only use Kenyan Sign Language instead of....Kenya sign English language.	Kenyan sign language is an independent language and therefore there is no need to say Kenya sign English language – to avoid confusion.
Under definition	Include definition for Kenyan sign language interpreters.	The interpreters should be those who are conversant with Kenyan sign language
Section 9	Include Organizations of Persons With Disabilities (OPDs) in all matters requiring consultation.	It is a good practice to also consult the organizations of persons with disabilities in developing the action plan and for all matters requiring consultation.
The role of National Council for Persons with Disabilities (NCPWDs)	Include the role of the NCPWDs as vetting sign language interpreters.	Sign language interpreters should be qualified and therefore their qualification should be determined by the NCPWD
Section 19 (1) change ‘for’ with ‘of’ in Association for the deaf ‘persons’. Also remove the word persons after deaf, and add hard of hearing instead.	It should be Association of the Deaf and hard of hearing	The Deaf community include hard of hearing as well.
Section 12 (1) Cabinet Secretary shall designate a ‘public officer’	Replace the ‘public officer’ with a person who has knowledge and experience on Deaf culture and Kenyan sign language	
Section 12 (2)in consultation with the most representative registered association for sign language interpreters.	Also add Association of the Deaf and hard of hearing	
To promote inclusive communication, add a section	Add Kenyan sign language/television inset and or closed captioning, the inset should cover a third of television screen.	For ease of communication with the Deaf and hard of hearing.

The Persons with Disabilities Bill, 2023

Section of the Bill	Proposed Amendment/change	Reason
Purpose of the Bill... to restructure the NCPWD	Remove the word restructure and replace with the word ‘strengthen’ instead	The word restructure is ambiguous
Under definition of disability	Remove the word illness and replace with the word ‘condition’	Disability is not an illness

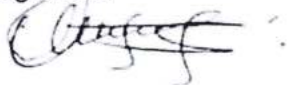
Section 27	Add Kenyan sign language/television inset and or closed captioning, the inset should cover a third of television screen.	For ease of communication.
Section 29 (6)	Reinstate the right to free access to recreational facilities for PWDs	PWDs should be allowed free access to recreational facilities as captured in the current PWDs Act, 2003 Section 28 (1)
Various sections.	Penalties provided under section 81 (1) should be the irreducible minimum for all the offenses.	Penalties provided for committing offenses under this Bill are too low/meagre for effective deterrence.
Under nomination section	IEBC should consult the National Council for Persons With Disabilities to determine nomination for PWDs in Senate, National Assembly and County Assemblies.	To avoid instances of shortchanging deserving PWDs in nomination processes.
Section 37	All institutions including political parties should work closely with NCPWD to collect and keep disintegrated data of PWDs members.	It is a good practice to have an up to date data of all PWDs in the country.
Section 37 (c)	Add standardization of data collection tools and central storage of PWDs data under this section	It is important to standardize tools for PWDs data collection and also to store the data in a central place.

Name: Joseph Atela

Organization: Consortium of Disabled Persons Organizations in Kenya (CDPOK)

Date: 7th April 2023

Signature:





**NATIONAL COUNCIL
FOR PERSONS WITH
DISABILITIES**



NAME: TIMOTHY WAIYA MWANGI
REG. NO.: NCPWD/P/428595
DISABILITY: PHYSICAL,
COUNTY: NAKURU
SUB-COUNTY: NAKURU TOWN EAST

Date of Issue: 15/01/2018

Serial No.: 0160410

Authorized Officer

Vision A vibrant agency promoting disability
mainstreaming in National Development

Mission To mainstream disability issues in all aspects
of social-cultural, economical and political
development

This card is a property of:

National Council for Persons with Disabilities
P.O Box 66577 00800, Nairobi
Tel./Fax No. +254-20-237 5994 / +254-20-2314621
Waiyaki Way, Westlands Opp. ABC Place

COMMENTS ON THE PERSONS WITH DISABILITIES BILL, 2023

S/No.	CLAUSE	ISSUE	RECOMMENDATIONS	REMARKS
1	2	Definition of the words building and reasonable accommodation	<ul style="list-style-type: none"> ● Insert a new definition to read “building includes any structure or erection and any part of a building or works ” ● Amend definition of “ reasonable accommodation” to read : “reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; 	<ul style="list-style-type: none"> ● This ensures that employers provide a conducive environment for persons living with disabilities to effectively discharge their duties Refer to the following judgments : High Court of Kenya Petition No. 434 of 2019 - Wilson Macharia Vs Safaricom PLC, Supreme Court of India judgement in Ravinder Kumar Vs The Union of India, Supreme Court of America Judgement in Brackeen Verses Haaland and the

				<p>Constitutional Court of South Africa judgement in Adam Damons Vs City of Cape Town</p> <ul style="list-style-type: none"> ● Reasonable accommodation enables an employee with a disability to fulfil the inherent requirements of a job
2	3	Accommodation of persons living with disabilities	Insert a new paragraph (j) immediately after 3(i) to read “ reasonable accommodation ”	<ul style="list-style-type: none"> ● This is in keeping with best international practices . Refer to Article 2 of Convention on the Rights of Persons With Disabilities ● Reasonable accommodation enables an employee with a disability to fulfil the inherent requirements of a job. Refer to paragraph 141 of the Constitutional Court of South Africa judgement

				<p>in Adam Damons Vs City of Cape Town</p> <ul style="list-style-type: none"> • Prescription of standards is a function of the National Government – Article 191 (3)(b) as read with 186 (1) (3) of the Constitution • Under the Intergovernmental Relations Act, 2012 the National Government has responsibility to build capacity of county governments • This is in keeping with best international practices . Refer to Article 2 of Convention on the Rights of Persons With
3	4	Obligations of the National Government	<p>Insert a new paragraph immediately after 4(d) to read “ prescribe and disseminate minimum standards and guidelines for construction of buildings or structures to facilitate reasonable access to and movement for persons with disabilities “</p>	
4	21	Reasonable accommodation at a place of work of persons with disabilities	<ul style="list-style-type: none"> • Amend clause 21 (2)(e) to read “ be required to reasonably accommodate persons with disabilities by carrying out appropriate physical modifications in their work premises and providing appropriate job descriptions and specifications in order to reduce the impact of the 	

			<p>impairment of the person's capacity to fulfill the essential functions of a job"</p> <ul style="list-style-type: none"> ● Insert the word " assigning" immediately before the word " re assigning" in clause 21(5) (f) 	<ul style="list-style-type: none"> ● Disabilities Reasonable accommodation is more that consideration of physical facilities it includes terms and conditions of work e.g flexible working hours not overworking persons with disabilities ● To ensure that persons with disabilities are on an equal footing with employees without disabilities as far as the operational requirements and performance of the job are concerned . Refer to paragraph 141 of the Constitutional Court of South Africa
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			<ul style="list-style-type: none"> ● Insert a new sub clause immediately after subclause 21(7)(c) (iii) to read “ retaining employees who are or in the course of employment become disabled, on less favourable terms and conditions than employees undertaking the same work , for reasons connected with the disability ” 	<p>judgement in Adam Damons Vs City of Cape Town</p> <ul style="list-style-type: none"> ● This will cater for (a) persons with disabilities before they are employed and (b) those who in the course of employment become persons with disabilities
5	30	Accessibility	<p>Insert a new subclause immediately after 30(1) to read: “(a) The National Construction Authority shall within one year of commencement of this Act disseminate to county governments standards for construction of</p>	<ul style="list-style-type: none"> ● Section 5 of the National Construction Authority Act, 2011

			<p>buildings that allow barrier free and disability friendly environment (b) The National Construction Authority shall within six months of commencement of this Act submit to Parliament a report on progress made in (a)</p>	<p>mandates the Authority to undertake or commission research into any matter relating to the construction industry ;provide consultancy and advisory services with respect to the construction industry ;promote and ensure quality assurance in the construction industry encourage the standardization and improvement of construction techniques and materials</p> <ul style="list-style-type: none"> ● It is expected that the National Government (The National Construction Authority is one of the technical arms of the National
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6	40	Constitution of the Council	<ul style="list-style-type: none"> ● Amend clause 40(1)(a) to read: ● ‘the Chairperson, who shall be appointed by the president from persons nominated by organizations of persons with disabilities; ● Amend clause 40(1)(a) to read: “ one person nominated by the principal secretary in the Ministry responsible for persons with disabilities” 	<p>Government) should formulate and disseminate standards for construction of buildings keeping in view technological advancements vis a vis the needs of persons with disabilities</p> <ul style="list-style-type: none"> ● For clarity
				<ul style="list-style-type: none"> ● The principal secretary cannot be an operator . It is better for him or her to nominate a person. In addition , a principal secretary is busy and may never find time to attend Council

		<ul style="list-style-type: none"> ● Amend clause 40(1)(d) to read: “ one person living with a disability nominated by the Council of Governors” ● Insert a new sub clause immediately after 40(1) (d) to read : “ a registered medical practitioner nominated by the Director General of Medical Services” ● Amend clause 40(1)(e) to read: “ Five persons nominated by organizations of persons with disabilities one of whom shall represent persons with mental disabilities appointed by the cabinet secretary’ 	<p>meetings</p> <ul style="list-style-type: none"> ● To ensure that the Council of Governors <u>nominate a person living with a disability</u> to represent the forty seven county governments ● This aims at providing for a registered medical practitioner to sit on the Council to <u>provide technical expertise</u> ● For clarity and inclusiveness
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		<p>● Insert a new clause immediately after clause 49 to read:</p> <p>(a) The Council may establish committees which shall consist of members as it deems appropriate to perform such functions as the Board may determine.</p> <p>(b) Unless otherwise provided by the Act, the Council shall appoint chair persons of committees established</p> <p>(c) The decisions of the committees shall be ratified by the Council unless otherwise provided for in this Act'</p> <p>(d) The Council may co-opt not more than four persons, whose knowledge and skills are found necessary for the performance of the functions of the Council. Co-opted members have no right to vote at a meeting of the Council</p> <p>(e) The Council shall within six months of the end of each financial year submit to Parliament a status report on progressive realization of aspirations of Article 54 of the Constitution</p>	<p>● This is in accordance with Mwangozo Guidelines</p> <p>● This will enable the Council benefit from diverse skills in the society</p> <p>● This will enable Kenyans monitor and evaluate progress made towards compliance with article 54</p>
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7	54	Progressive realization of the implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities	<ul style="list-style-type: none"> ● Insert the a new subclause immediately after 54(2)(b) to read : “progress made in realization of aspirations of Article 54 of the Constitution” 	<ul style="list-style-type: none"> ● This will enable Kenyans monitor and evaluate progress made towards compliance with article 54
9	20	Accessibility and mobility	<ul style="list-style-type: none"> ● Insert the words “ as prescribed in the National Building Code” immediately after the word “public” in clause 30(3) ● Insert a new clause immediately after clause 30(10) to read :- 31 (a) The National Construction Authority shall within one year of commencement of this Act disseminate to county governments standards for construction of buildings that allow barrier free and disability friendly environment (b) The National Construction Authority shall within six months of commencement of this Act submit to Parliament a report on progress made in (a) 	<ul style="list-style-type: none"> ● Section 5 of the National Construction Authority Act,2011 mandates the Authority to undertake or commission research into any matter relating to the construction industry ;provide consultancy and advisory services with respect to the construction industry ;promote and ensure quality assurance in the construction industry encourage the standardization

				<p>and improvement of construction techniques and materials</p> <ul style="list-style-type: none"> It is expected that the National Government (The National Construction Authority is one of the technical arms of the National Government) should formulate and disseminate standards for construction of buildings keeping in view technological advancements vis a vis the needs of persons living with disabilities
10	55	Exemption from income tax	<p>Insert a new sub clause immediately after 55(2) read:- (a) A person assessed by a medical team as having permanent disability may be issued with a tax exemption certificate for a period of ten years after which a</p>	<ul style="list-style-type: none"> Reassessment is necessary for purposes of bio data of persons living with disabilities and to

			<p>reassessment shall be carried out</p>	<p>comply with Rule 10 of The Persons With Disabilities (Income Tax Deductions And Exemptions) Order, 2010</p> <ul style="list-style-type: none"> • Reassessment of a person living with permanent disability after every five years(as is the practice today), is too soon and cumbersome
			<p>(b) A person assessed by a medical team as having temporary disability may be issued with a tax exemption certificate for a period of five years after which a reassessment shall be carried out .</p>	<ul style="list-style-type: none"> • Reassessment is necessary for purposes of bio data of persons living with disabilities • A temporary disability may

				<p>either exacerbate or improve hence the need for reassessment and to comply with Rule 10 of The Persons With Disabilities (Income Tax Deductions And Exemptions) Order, 2010</p>
<p>11</p>	<p>New clause 60</p>	<p>Income tax deduction exemption order</p>	<p>Insert a new clause 60 with a marginal note – Amendment of The Persons With Disabilities (Income Tax Deductions And Exemptions) Order, 2010 to read :- “The Persons With Disabilities (Income Tax Deductions And Exemptions) Order, 2010 is amended by deleting rule 8 and inserting the following new rule:- (i) A person assessed by a statutory medical team as having permanent disability may be issued with a tax exemption certificate valid for ten years subject to stipulated conditions after which a reassessment shall be carried out</p> <p>(ii) A person assessed by a statutory medical team as having a temporary</p>	<ul style="list-style-type: none"> • Reassessment is necessary for purposes of bio data of persons living with disabilities and to comply with Rule 10 of The Persons With Disabilities (Income Tax Deductions And Exemptions) Order, 2010 and clause 3 (2B) (2) (c) of the Bill

			<p>disability may be issued with a tax exemption certificate valid for ten years subject to stipulated conditions after which a reassessment shall be carried out</p>	<ul style="list-style-type: none"> • Reassessment of a person living with permanent disability after every five years is too soon and cumbersome • A temporary disability may either exacerbate or improve , hence the need for reassessment and to comply with Rule 10 of The Persons With Disabilities (Income Tax Deductions And Exemptions) Order, 2010
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Ref: Kesho Kenya 4/2023/Vol. 1

KESHO KENYA
PAMODZI FOR INCLUSIVE EDUCATION IN SOUTH-EAST AFRICA PROJECT

TO:
THE CLERK OF THE SENATE

REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT
THE SENATE

THE STANDING COMMITTEE ON
MEMORANDUM ON
THE PERSONS WITH DISABILITIES BILL, 2023
(SENATE BILLS NO. 7 OF 2023)

10th APRIL, 2023

For more information please email: info@keshokenya.org
or view the website: www.keshokenya.org

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We, Kesho Kenya organization, with the support of the Global Partnership for Education(GPE) Education Out Loud Program on advocacy and social accountability, through the Pamodzi for Inclusive Education in South-East Africa, seek your indulgence by way of this memorandum to ensure the realization of inclusive and equitable quality education for all.

We acknowledge the development of the Persons with Disabilities Bill(2023) as part of the continued investments, and indicative of the ongoing commitment to enhancing inclusive education and promoting lifelong learning opportunities for all, including learners and trainees with disabilities.

1) About Kesho Kenya

Kesho Kenya was founded in the year 2004 in Kilifi County to address concerns over the lack of educational opportunities for children and youth from disadvantaged families. Kesho Kenya is a Non-Governmental Organization in Kenya of registration number OP.218/051/15-179/10159.

Vision

We envision a coast of Kenya where all young people are educated, fulfill their potential and broaden their experience of the world, irrespective of poverty, ethnicity, gender, religion or special needs

Mission

We exist to advance access to education and employment for vulnerable young people living in the coast of Kenya, through a long-term holistic integrated approach.

Core Values:

- A belief in education
- Putting children first
- Strong governance
- Non-discrimination & inclusivity
- Relevant and rooted in the community
- Participation
- Transparency
- Dynamic spirit

2) Inclusive Education In Kenya; A Policy Perspective

Kenya affirms that education is a fundamental right that should be available to all learners and trainees as embodied in the Kenyan Constitution (2010) and the Basic Education Act (2013). The specific guidelines that cover inclusion of learners and trainees with disabilities are contained in the 2018 Ministry of Education Sector Policy for Learners and Trainees with Disabilities; whose goal is to mainstream and provide for inclusive education and training at all levels of learning.

The policy defines inclusive education as an approach according to which 'learners and trainees with disabilities are provided with appropriate educational interventions within regular institutions of learning with reasonable accommodations and support'.

For learners and trainees with disabilities, and those with special education needs, policies and other legal instruments that do not address the challenges of disability and special needs education holistically present a disconnect between the policy frameworks and implementation in light of universal education indicators such as access, quality, transition and inclusion.



3) Submissions:

In line with the various legal instruments on which inclusive education is premised, including the realization of SDG No.4 on inclusive and equitable quality education for all, and promotion of lifelong learning opportunities, we submit:

Clauses of the Bill	Provision of Clauses in the Bill	Rationale/Justification for Amendment	Proposed Amendment
PART II— OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS	The national government shall undertake investigations, surveys and research into the causes and nature of disabilities and development of new assistive devices.	Majority of learners and Trainees with Disabilities continue to grapple with the challenge of lacking assistive devices and technologies even in instances where the availability of such is the only way to have them learn by having learning materials/information in accessible forms applicable to individual needs	<i>At school level, a needs assessment and subsequent provision for learners and trainees with disabilities in respect to specific assistive devices/technologies required by each learner</i>
PART II— OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS	The national government shall promote the integration of persons with disability in schools. ensure access to free basic education and other social amenities to every child with a disability.	The implementation of the sector policy for learners and trainees with disability is greatly lacking yet this is the policy on which inclusive education is anchored and delivery of special needs education in Kenya hinges on.	Integration of PwDs in schools be done inline with and through the full implementation of the Sector Policy for Learners and Trainees with Disability(2018)



Clauses of the Bill	Provision of Clauses in the Bill	Rationale/Justification for Amendment	Proposed Amendment
PART II— OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS	That the national government shall promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions.	There are glaring gaps in special needs education budget within the education budget. The budgetary allocation for a five year period FY 2016-FY2021 has been reduced yet there has been increased enrollment. These gaps in special needs education delivery require responsive budgeting.	That the national government shall commission a national level needs mapping of inclusive education facilities and service providers and audit of available resources (human and material/infrastructure) as well establish actual number of learners enrolled
PART II— OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS	County governments shall ensure access to free pre-primary education and other social amenities to every child with disability;	Pre-primary/ Early Childhood Education is critical for learners with disabilities especially since it's the foundational level. The role of early intervention cannot be over-emphasized in enhancing education outcomes for learners with disabilities.	<p><i>For early intervention, operationalize and resourcing/equipping of Education Assessment and Resource (EARC) Centers, at least 1 at each sub-county education assessment and placement in school</i></p> <p><i>Undertake measures including employment of Special Needs Education trained teachers at Pre-primary/ECD level</i></p>



Clauses of the Bill	Provision of Clauses in the Bill	Rationale/Justification for Amendment	Proposed Amendment
20. (1) Every person with disability has a right to admission to any institution of learning and access to an inclusive, quality education on an equal basis with others.	<p>(4)The National and County Governments shall ensure that persons with disabilities have access to inclusive education, without discrimination and on an equal basis at all levels.</p> <p>(6)Children with disabilities shall not be excluded from free and compulsory early childhood, primary or secondary education, on the basis of disability.</p> <p>(7)Every child with disabilities has a right to equal access to play, recreation and leisure and sporting activities, including those activities in the school system.</p>	That learners in the home-based program be followed up regularly. The level of attention & quality of learning is in question since they are not in school like other learners. Inadequate teachers in special units and schools have made this difficult, with the focus being more on learners in the classroom, thus disadvantaging those in the home-based program.	Provisions be made on home-based programs as well as targeted interventions for out-of schools learners with disabilities to enroll in school-facilitation of education and medical assessments and right placements in school, as well as follow ups on progress with the curriculum support officers and EARC officers.
20. (1) Every person with disability has a right to admission to any institution of learning and access to an inclusive, quality education on an equal basis with others.	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.	<p>Inadequate funding has been a major setback in the equipping of schools and provision of assistive devices and technologies to learners and trainees with disabilities</p> <p>The high cost of assistive devices e.g hearing aid and braille have left many learners struggling as they aren't affordable</p>	<p><i>National and County governments to undertake review of budgetary allocations to inclusive/special needs education and make adjustments accordingly</i></p> <p><i>National government institute subsidies for assistive devices and technologies being imported in the country</i></p>

For more information please email: info@keshokenya.org
or view the website: www.keshokenya.org



4) Conclusion

Whereas Kenya has made significant strides by putting in place policies that promote inclusive education, the implementation is still low. This can be attributed to a number of reasons including, but not limited to issues of budgetary constraints/inadequate funding, policy awareness gaps, and lack of implementation guidelines and policy accountability frameworks.

According to the Kenya Institute of Curriculum Development, the Basic Education Curriculum Framework provides for a differentiated curriculum for learners with special needs. Learners follow the regular curriculum with adaptations, an enriched and accelerated curriculum, a specialized or home/hospital based intervention programmes; all these to ensure that no learner is left behind.

While the design of the competence based curriculum took into consideration the diverse needs of learners & trainees with disabilities, and those with special education needs, the implementation of the same is lacking in respect to the special needs education model. This is more so in the area of educational assessment and placement as well as classroom support & home-based program as applicable to the learner, as well as the broader special needs education management and administration.

With the reigning debate concerning the Competency Based Curriculum (CBC) implementation, the Persons with Disabilities Bill(2023) is a timely intervention in charting a path for the effectiveness and efficiency in inclusive education delivery in the country. Hinged on the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, this Memorandum has been submitted in good faith, and in confidence to marshal the support of the Standing Committee on Labour and Social Welfare for the submissions made.

Submitted by Kesho Kenya

For Kesho Kenya:

Name: Wanjiru Mbugua



Designation: Inclusive Education Policy Advocacy Officer

Email: hannah.wanjiru@keshokenya.org / info@keshokenya.org

Date: 10/04/2023

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KESHOK Tel (Mobile) +254 728 413 227

KESHOK funds children
to attend school and is
also a Cooperating
Institution of Rotary





(1)

mwanate shaban <mwanateshaban@gmail.com>

Fwd: SUBMISSION OF MEMORANDA

Jeremy Chabari <chabarim@gmail.com>
To: mwanate shaban <mwanateshaban@gmail.com>

Wed, May 24, 2023 at 2:49 PM

----- Forwarded message -----

From: **Mwanate Shaban** <mwanate.shaban@parliament.go.ke>
Date: Thu, 13 Apr 2023 at 12:39
Subject: Fwd: SUBMISSION OF MEMORANDA
To: chabarim <chabarim@gmail.com>, Marale Sande <marale.sande@parliament.go.ke>, Rhyan Injendi Maulu <rhyan.maulu@parliament.go.ke>, maralesande16 <maralesande16@gmail.com>, gettiebundi <gettiebundi@gmail.com>, rhyaninjendi <rhyaninjendi@yahoo.com>

From: Clerk <clerk.senate@parliament.go.ke>
To: Mwanate <mwanate.shaban@parliament.go.ke>
Date: Monday, 3 April 2023 3:31 PM EAT
Subject: Fwd: SUBMISSION OF MEMORANDA

Clerk of the Senate/ Secretary, Parliamentary Service Commission

Email: clerk.senate@parliament.go.ke

Telephone: +254(20) 28480000

Parliament Buildings.

P.O.Box 41842-00100

Nairobi, Kenya

From: NATHANIEL <nathaniel.mtunji@gmail.com>
To: clerk <clerk.senate@parliament.go.ke>
Date: Monday, 3 April 2023 1:35 PM EAT
Subject: SUBMISSION OF MEMORANDA

Find attached my comments for the above as requested. Thank you.

Yours,
Nathaniel Mtunji

Mail - Fwd: SUBMISSION OF MEMORANDA

<https://mail.google.com/mail/u/0/?ik=780c2ef407&view=pt&search...>



Comments on Persons with disability Bill, 2023.docx

16K

DATE: April 3, 2023

TO: Clerk, Senate

Att. Standing Committee on Labour and Social Welfare

FROM: Nathaniel Mtunji

SUBJECT: INVITATION FOR SUBMISSION OF MEMPORANDA, PESRONS WITH DISABILITY BILLS:

As requested, following the Senate sitting on Wednesday, 22nd March, 2023 and Thursday 23rd March, 2023 on the Bills introduced in parliament, I would like to comment on the Persons with Disability Bill, 2023 (Senate Bills no. 9 of 2023). First to highly commend the exhaustiveness of the whole bill. Below is my comment (suggestion) for inclusion:

PART II—OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS 4. The national government shall—

(i) ensure access to free basic education and other social amenities to every child with a disability;

Additional: Make arrangements for provision of full school uniforms for school going children with disability

PART III—RIGHTS OF PERSONS WITH DISABILITIES

21: Right to work and Employment for Persons with Disabilities.

Additional: a component on physical support to persons with disability in addition to section 7 (a) i:

Support PWD by creating an enabling environment to perform their work, in terms of special physical equipment that will support a person with disability to deliver in his/her roles while at work.

