

SPECIAL ISSUE

Kenya Gazette Supplement No. 239 (National Assembly Bills No. 61)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

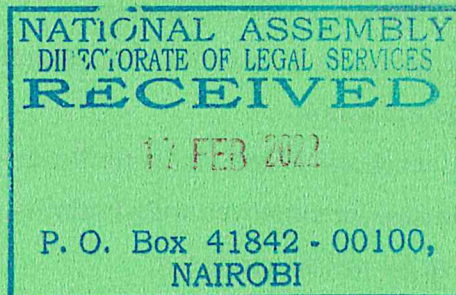
NAIROBI, 31st December, 2021

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THE PERSONS WITH DISABILITIES BILL, 2021

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; and for connected purposes

PART I—PRELIMINARY

1. This Act may be cited as the Persons with Disabilities Act, 2021. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.
“adjustment order” means an order made by the Council under section 28 of this Act;

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

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

“Council” means the National Council for Persons with Disabilities as restructured under section 33 of this Act;

“disability” Loss, limitations or restriction of capacity owing to physical, sensory, mental, psychological or other impairment, conditions or illness that has, or is perceived

by significant sector of the community to have, a substantial or long term effect on an individual ability to carry out ordinary day to day activities and interactions.

“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;

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

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

Cap 253.

“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;

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

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

“organizations of persons with disabilities” means associations, 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 permanent 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 fulfill 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—

- (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 differences and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disability and respect for the right of children with disability to preserve their identities.

PART II—RIGHTS OF PERSONS WITH DISABILITIES

4. (1) Every person with disability is—

Right to Equality
and Non-
Discrimination.

(a) equal before the law in the social, cultural, economic, political, or any other field of life and is guaranteed to protection, benefit of the law and to effective legal protection against discrimination on all grounds;

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

(2) 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.

5. (1) Persons with disabilities have the right to recognition everywhere as persons before the law, and to

Right to Legal
Capacity.

enjoy legal capacity on an equal basis with others in all aspects of life.

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

(3) Persons with disabilities have equal right to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

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

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.

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

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.

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

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.

9. 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; and
- (d) age-appropriate assistance to realize his or her rights.

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

11. 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—

Older members of Society with disabilities.

- (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.

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

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.

13. Every Person with disability has a right to respect for his or her physical and mental integrity and the right to

Right to physical and mental Integrity.

security of the person including his or her survival, liberty, protection and development.

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

Right to Human Dignity.

15. (1) Every person with disability has the right to be protected against all forms of abuse, neglect, exploitation and physical, mental, sexual, or emotional violence on their person 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.

16. (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 Defense 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.

17. (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.

18. (1) Every 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 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 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) development of a least restrictive environment by adaptation and structural adjustments of all educational institutions to the needs of persons with disabilities
 - (iii) establishment of specialized institutions that undertake research and development in education for learners with disabilities;

- (iv) establishment of at least one assessment center in each county to support educational institutions within the county, by way of teacher trainers, educational aids, equipment and materials;
- (v) promotion of the use of appropriate augmentative and alternative modes, means and formats of communication, adoptive technologies, including Braille and Kenya Sign Language; and
- (vi) introduction of Kenya sign language interpretation 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) 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.

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

12 (1) 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 counseling, audio-logical assessments, habilitation, and aural and oral rehabilitation for children with disabilities; and
- (c) together with the County Education Committees in charge of education make policy, legislation

and sustainable financial frameworks in each financial year to achieve full realization of the right to education for persons with disabilities.

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

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

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

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 solely on account of disability;
- (d) not conduct any test or examination to establish whether an applicant is a person with a disability or as to the nature or severity of the person's disability; and
- (e) be required to carry out appropriate modifications in their work premises to accommodate the employment of persons with disabilities;

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

(4) Every employer shall apply 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 a qualified employee with disability, than the amount paid to others performing the same work;
- (e) favoring an employee without disability over a qualified employee with disability with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;
- (f) re-assigning or transferring a qualified employee with disability from a task or position the employee is able to 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 paragraph (5) (a) “reasonable accommodation” for purposes of employment includes—

- (a) (i) making existing facilities used by employees readily accessible to and usable by persons with disabilities; and
- (ii) job restructuring, part time or modified work schedules, reassignment to a vacant or suitable position, acquisition or modification of equipment or devices, appropriate adjustments or modifications of examinations, training materials or policies, the provisions of qualified readers or interpreters, and other similar accommodations for persons with disabilities.
- (b) “employer” means an employer in the public and private sector;
- (c) “discrimination” includes—
 - (i) limiting or classifying a job applicant or employee in an adverse way;
 - (ii) denying employment opportunities qualified persons;
 - (iii) not making reasonable accommodation for the known physical or mental limitations of an employee with disabilities;
 - (iv) not advancing employees with disabilities in employment; and
 - (v) not providing necessary accommodations in training materials or policies; and the provision of qualified readers or interpreters.

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

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.

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

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.

22. (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.

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

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

(4) 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.

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

(6) No person shall subject a person with disability to any medical procedure which leads to or could lead to infertility without that person's express consent: Provided that where the person with a disability is a minor such procedure may in cases of medical necessity confirmed by a medical practitioner, be performed with the parent or guardian's consent.

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

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 and privately owned health institutions;
- (d) availing health services and field medical personnel to persons with disabilities at an affordable cost; and
- (e) prompt attendance by medical personnel to persons with disabilities.

(2) Every person with disability has a right to information, communications technologies and systems

which includes talking software, Braille materials, hearing aids and other communication devices.

24. (1) Every person with disability has the right to access information, communication and other services including the right to freedom of expression and opinion, the freedom to seek, receive and impart information and ideas, electronic and emergency services open or provided to the public on an equal basis with others in a timely manner and without additional cost and through all forms of communication of his or her choice.

Access to information and communication technology services.

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

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

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

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

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

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

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

25. (1) Every person with disability has a right to effective access to justice on an equal basis

Access to Justice.

with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, at investigative and other preliminary stages.

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

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

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

- (a) the exemption of persons with disabilities from the payment of court fees in relation to matters or cases described in subsection (2) ; 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 endeavor to 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.

26. (1) Every person with disability has a right to take part on an equal basis with others in sports, recreation,

Sports,
Recreation,
Leisure and

leisure and cultural activities national, regional and international levels. Culture.

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

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

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

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

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

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

27. (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility. 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 the right to free movement with his or her assistive devices and services including guide animals and no person with disability shall be denied access to any public place because of the nature of his or her assistive devices and services.

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

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

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

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

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

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

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

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

28. (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), the person concerned may appeal to the High Court against the confirmation or issue of the Adjustment Order.

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

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

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

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

Civic and Political rights for persons with disabilities.

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

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

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

30. (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 hardship allowance to or for a family of a person with disability.

31. (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.

32. (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;
- (c) existing organizations of or for persons with disabilities may apply in the prescribed manner to the Council for registration;
- (d) organizations of or for Persons with Disabilities and any integrated organization with at least seventy per cent persons with disabilities may within 12 months of formation, apply to the Council, in the prescribed manner, for registration.
- (e) The Council shall not deny a person with disability who is not registered from accessing any of the services set out under this part.

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

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

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

33. (1) 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.

34. (1) The headquarters of the Council shall be in Nairobi.

Headquarters and other offices of the Council.

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

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

35. (1) 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; and
 - (xv) ensure that private entities offering facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) facilitate systematic collection, analysis and use of national statistics and 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.

36. 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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37. 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.

38. (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) Principal Secretary in the Ministry responsible for finance or a representative duly appointed in writing;
- (d) the following appointed by the Cabinet Secretary—
 - (i) four persons representing 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 of persons with mental disabilities;

(e) the Executive Director of the Council who shall be the Secretary to the Council.

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

(a) there is equitable representation of 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.

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

(a) is a Kenyan citizen;

(b) holds at least a first degree from a university recognized in Kenya;

(c) has knowledge and at least ten years' working experience, of which five years shall be on matters relating to disabilities, human rights or social development; and

(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;

(c) has knowledge and at least five years working

Qualifications for appointment of chairperson and members.

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.

40. (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.

41. (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.

42. (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*.

43. (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; and
- (d) at least three years' experience on matters of Disabilities.
- (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.

44. 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.

45. 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 of
Chairperson and
Members.

Remuneration Commission.

46. (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.

47. (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.

48. (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.

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

Funds of the Council.

- (a) funds voted 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.

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

Financial Year.

51. (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.

52. (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 IV—RELIEFS AND INCENTIVES

53. (1) A person with disability who is in employment may apply to the Cabinet Secretary responsible for finance for exemption from income tax on employment 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.

(3) Materials, articles and equipment, including motor vehicles specially designed 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.

54. (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.

55. 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.

Access to credit.

56. (1) 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

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

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

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

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.

**PART V— RELATIONSHIP BETWEEN THE
NATIONAL GOVERNMENT AND COUNTY
GOVERNMENTS ON MATTERS OF DISABILITY**

58. (1) Each County may establish policy or enact county legislation to establish an institutional framework for ensuring inclusive and effective initiation and implementation of the county's functions, pursuant to Article 186 of the Constitution, in relation to persons with disabilities resident in the county.

Relation with
County
Government

(2) Council offices at County level shall implement the functions of the Council as directed by the Council and shall for that purpose, where applicable—

- (a) liaise with other relevant county offices of the national government; and
- (b) liaise with any relevant county institutional framework established pursuant to sub-clause (1) of this section.

(3) Without prejudice to the generality of the foregoing, policies or legislation referred to in sub-section (1) shall—

- (a) ensure the full inclusion and participation of persons with disabilities and their representative organisations in decision-making processes at the county level;
- (b) take account of the functions of county governments as set out under the Fourth Schedule to the Constitution;
- (c) ensure that any standards set are not less advantageous to persons with disabilities than standards set by national legislation; and
- (d) consider the areas of overlap in the functions of the Council and those of the county government and establish necessary frameworks for partnership and collaboration between relevant county and national agencies.

PART VI—OFFENCES AND PENALTIES

59 (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 is guilty of 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 only of his or her disability of any of the following—

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

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

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 concealment, 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.

61. (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 a term of imprisonment not exceeding one year or to both.

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

Denial of food and fluids.

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

Degrading treatment of a Person with disability.

64. (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 Kenya Shillings two million or to imprisonment for a term not exceeding one year, or both.

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

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

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

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

65. (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;
- (d) by exhibition of pictures, models, photographs, films or any other form of exhibition.

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

66. 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.

67. 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

Failure to furnish Information.

exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months, or both.

PART VII— MISCELLANEOUS

68. 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.

69. (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.

70. (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.

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

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

Prohibition of discrimination relating to goods, facilities and services.

72. 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.

73. (1) All government ministries, departments and Agencies 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.

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

Housing.

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

Markets.

76. (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).

77. 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

78. (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.

79. (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

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

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

81. (1) Notwithstanding section 80—

Transitional and savings provisions.

- (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.

(2) The National Development Fund for Persons with Disabilities established in the Persons with Disabilities Act 2003 shall transition and be operationalized in accordance with the Public Finance Management Act, 2012.

FIRST SCHEDULE

(s.41(3))

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

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

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

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

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

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

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

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

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

9. Subject to this Schedule, the Council may determine its own procedure and the procedure for any committee of the Board and for

attendance of any other persons at the meetings and may make standing orders in respect thereof

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

- (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 section shall be recorded in the minutes of the Council.

SECOND SCHEDULE

(s.27(9))

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

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

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

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

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

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

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

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

6. Duty to provide access to buildings —

(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

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 Constitution of Kenya, 2010. The Bill places emphasis on human rights approach towards realization of the rights of person 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 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 III 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 IV 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 V 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 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 of delegation of legislative powers and limitation of fundamental rights and freedoms.

Clause 79 of the Bill delegated regulation making powers to the Cabinet Secretary for purposes set out in the Clause.

Statement on whether the Bill concerns county Governments

This Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution as it does not affect the functions and powers of County Governments as set out in the Fourth Schedule of the Constitution.

Statement of the Financial Implications of the Bill

The enactment of this Bill may occasion additional expenditure of public funds, which will be provided for in the estimates.

Dated the 24th December, 2021.

AMOS KIMUNYA,
Leader of the Majority Party.