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**THE NATIONAL ASSEMBLY**  
**THIRTEENTH PARLIAMENT – THIRD SESSION – 2024**

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**DIRECTORATE OF DEPARTMENTAL COMMITTEES**  
**DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION**

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**REPORT OF THE DEPARTMENTAL COMMITTEE ON SOCIAL  
PROTECTION ON ITS CONSIDERATION OF  
THE PERSONS WITH DISABILITIES BILL  
(SENATE BILL NO. 7 OF 2023)**

THE NATIONAL ASSEMBLY PAPERS LAID	
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TABLED BY:	HON. ALICE NGAUSA, MP CHAIRPERSON, DEPT. COMM. ON SOCIAL PROTECTION
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NAIROBI

December 2024

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## LIST OF ABBREVIATIONS AND ACRONYMS

ACEPA	African Centre for Parliamentary Affairs
CBM	Christian Blind Mission
KEDIPA	Kenya Disability Parliamentary Association
KHPC	Kenya Housing and Population Census
KNAD	Kenya National Association for the Deaf
NDI	National Democratic Institute
NYS	National Youth Service
NDF	Nairobi Disability Forum
NGEC	National Gender and Equality Commission
NONDO	Northern Nomadic Disabled Persons Organization
ODP	Open Door Programme
SEC	Special Employment Credit
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities.
UDPK	United Disabled Persons of Kenya
WHO	World Health Organization

## LIST OF ANNEXURES

1. Report Adoption Schedule
2. Committee Minutes
3. Copy of the newspaper advertisement on public participation
4. Letters inviting stakeholders to meetings with the Committee
5. Stakeholders' submissions



## CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Social Protection on its consideration of the Persons with Disabilities Bill (Senate Bill No. 7 of 2023). The Bill underwent First Reading in the National Assembly on 28<sup>th</sup> February 2024 and was thereafter committed to the Departmental Committee on Social Protection for consideration and reporting to the House pursuant to the provision of Standing Order 127(1).

The Bill contains seven Parts comprised of 86 clauses and two schedules. The Bill seeks to give effect to Article 54 of the Constitution, restructure the National Council for Persons with Disabilities, provide for its functions and powers, provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities, to provide for incentives and reliefs and for connected purposes. The Bill repeals the Persons with Disabilities Act, 2003.

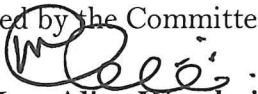
Following placement of advertisements in the print media on 8<sup>th</sup> March 2024 seeking public and stakeholder views on the Bill pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committee on Social Protection received memoranda from the Ministry of Labour and Social Protection (State Department for Social Protection and Senior Citizens Affairs), the National Council for Persons with Disabilities, the Kenya Disability Parliamentary Association (KEDIPA) and the Nairobi Disability Forum.

The Committee also invited stakeholders vide letter Reference No. NA/DCC/SP/BILL/2024/091 dated 11<sup>th</sup> June 2024, as well letter Reference No. NA/DDC/SP/CORR/2024/122 dated 20<sup>th</sup> November, 2024 for stakeholders' engagement meetings on the Bill which was held in several meetings venues within the precincts of Parliament on 15<sup>th</sup> August, 2024 and 29<sup>th</sup> November, 2024. The Mover of the Bill, Sen. Crystal Asige, additionally made presentations before the Committee and provided written submissions on the Bill.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the Mover of the Bill, Sen. Crystal Asige and all stakeholders who made their respective submissions on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made valuable input during consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Social Protection and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of The Persons with Disabilities Bill (*Senate Bill No. 7 of 2023*).

I thus wish to table this Report on **The Persons with Disabilities Bill (*Senate Bill No. 7 of 2023*)** in this Honourable House, with the recommendation that the Bill be **approved with amendments** as reported by the Committee, which are contained in the Schedule of Amendments of this Report.



The Hon. Alice Wambui Ng'ang'a, CBS, M.P.

Chairperson, Departmental Committee on Social Protection

## PART ONE

### 1 PREFACE

#### 1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Social Protection is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
  - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
  - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - iv. ***To study and review all the legislation referred to it;***
  - v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
  - viii. *To examine treaties, agreements and conventions;*
  - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - xi. *To examine any questions raised by Members on a matter within its mandate.*

#### 1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider, social welfare and security, pension matters, gender affairs, equality and affirmative action, affairs of children, youth, persons with disability and senior citizens.
3. In executing its mandate, the Committee oversees the following State departments and Commission;
  - i. The State Department for Social Protection and Senior Citizen Affairs
  - ii. The State Department for Gender and Affirmative Action
  - iii. The State Department for Youth Affairs and Creative Economy
  - iv. The State Department for Public Service (NYS)
  - v. The National Gender and Equality Commission (NGEC)

### 1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Social Protection was constituted by the House on 27<sup>th</sup> October 2022 and comprises of the following Honourable Members:

#### **Chairperson**

Hon. Alice Wambui Ng'ang'a, CBS, MP  
Thika Town Constituency  
**UDA Party**

#### **Vice-Chairperson**

Hon. Hillary Kiplang'at Koskei, MP  
Kipkelion West Constituency  
**UDA Party**

Hon. (Dr.) James Wambura Nyikal, MP  
Seme Constituency  
**ODM Party**

Hon. Timothy Wanyonyi Wetangula, MP  
Westlands Constituency  
**ODM Party**

Hon. (Dr.) Lilian Achieng Gogo, MP  
Rangwe Constituency  
**ODM Party**

Hon. Mark Ogolla Nyamita, MP  
Uriri Constituency  
**ODM Party**

Hon. Edith Vethi Nyenze, MP  
Kitui West Constituency  
**WDM-K PARTY**

Hon. Betty Njeri Maina, MP  
Murang'a County  
**UDA PARTY**

Hon. Michael Wambugu Wainaina, MP  
Othaya Constituency  
**UDA Party**

Hon. Sulekha Hulbale Harun, MP  
Nominated Member  
**UDM Party**

Hon. Amina Abdullahi Dika, MP  
Tana River County  
**KANU PARTY**

Hon. Hussein Abdi Barre, MP  
Tarbaj Constituency  
**UDA Party**

Hon. Susan Nduyo Ngugi, MP  
Tharaka Nithi County  
**TSP PARTY**

Hon. Agnes Mantaine Pareiyo, MP  
Narok North Constituency  
**JUBILEE PARTY**

Hon. Linet Chepkorir, MP  
Bomet County  
**UDA PARTY**

#### 1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Parliamentary staff:

Mr. Finlay Muriuki  
**Lead Clerk/ Head of Secretariat**

Mr. Ahmednoor Hassan  
**Clerk Assistant III**

Ms. Jemimah Waigwa  
**Legal Counsel**

Mr. Adan Ahmed Abdi  
**Fiscal Analyst II**

Ms. Grace Maneno  
**Research Officer III**

Mr. Benjamin Ochutsi  
**Hansard Officer III**

Ms. Naomi Onsomu  
**Public Communications Officer**

Mr. Derrick Kathurima  
**Media Relations Officer**

Mr. Cosmas Akhonya  
**Audio Recording Officer**

Ms. Eva Kaare  
**Serjeant-at-Arms**

Ms. Fiona Musili  
**Research Officer**

## **PART TWO**

### **2. BACKGROUND OF LEGISLATIONS OF PERSONS WITH DISABILITIES IN KENYA**

#### **2.1 INTRODUCTION**

6. During implementation of the Persons with Disabilities Act (No. 14 of 2003) following its enactment in 2003, gaps were observed including the lack of express provision of the obligations of the County Governments to the rights and welfare of persons with disabilities. The Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023) thus seeks to address this and other gaps in order to align the law to Article 54 of the Constitution.

#### **2.2 SITUATIONAL ANALYSIS**

7. According to World Health Organization (WHO), at least 1.3 billion people in the world, live with a disability forming the world's largest Minority group at 16% of the global population. The 2019 Kenya Housing and Population Census estimated that there are 0.9 million persons living with disabilities, which translates to 2.2% of Kenya's population. The majority of the disabled population, who make up 66% of the disabled population live in the rural areas. Children between the ages of 0-14 years constitute the highest number of people with disabilities at 43.4% while those above the age of 55 make up 6.7%.
8. In Kenya, the rights and fundamental freedoms of the persons with disabilities are provided for under the Constitution, the Persons with Disabilities Act, 2003, and the UN Convention on the Rights of Persons with Disabilities.
9. Despite the progress made so far, the country currently has no legal framework in place that sets out obligations of the County Governments with regards to persons with disabilities. The proposed Bill is cognizant of the devolved government and has set out functions of both the national and county governments in regards to Persons with Disabilities.

#### **2.3 COMPARATIVE ANALYSIS**

##### **Ghana**

10. In Ghana, the rights of persons with disabilities are promoted and protected under the Persons with Disability Act (Act 715), which was enacted in 2006. The Act provides for rights such as education, employment, accessibility, and social welfare for persons with disabilities. As well as the establishment of a National Council of Persons with Disabilities.
11. The main function of the Council as provided in the Act, is to propose and evolve policies and strategies to enable persons with disability enter and participate in the mainstream of the national developments process.
12. The Act also provides for employment rights and opportunities for persons with disabilities. This includes provisions on access to public buildings, transportation, and information. The Act seeks to ensure the needs of the Persons with Disabilities are taken into account in designing, construction and operation of the transportation network, including importation of non-conventional vehicles and parking for Persons with Disabilities.

13. There are notable similarities between the proposed Bill and Ghana's Act 715 which include the establishment of the National Council for Persons with Disabilities and some of the functions and the right to free medical care and treatment. On the contrary, the proposed Bill provides for tax incentives to encourage employers to participate in the inclusion of PWDs, while the Ghana's Act does not.

## **Singapore**

14. The Constitution of the Republic of Singapore, the Enabling Masterplan and the UNCRPD (in full) form the legal structure that underpins the rights and freedoms for persons with disabilities in Singapore.
15. The Enabling Masterplan, which outlines Singapore's strategies and initiatives for disability rights and inclusion, defines Persons with disability as "those whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory, intellectual and developmental impairments".
16. Article 12 of the Constitution of the Republic of Singapore states that "all persons are equal before the law and entitled to the equal protection of the law". Further, Singapore ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2013.
17. Some of the initiatives by the Singapore Government to ensure disability mainstreaming include —
- i. Special Employment Credit (SEC) offered as an incentive for companies to hire Singaporean workers with disabilities.
  - ii. The Code on Accessibility in the Built Environment 2013 is a set of guidelines and requirements for improving accessibility in Singapore. The Code only applies to buildings that are constructed after the Code came into effect. There is no legislation to ensure older buildings are accessible.
  - iii. Schemes that provide funding support to companies to make their workplace and buildings more accessible to persons with disabilities. The two schemes are as follows—
    - a) Open Door Programme (ODP) provides up to 90% subsidy of workplace modification.
    - b) Accessibility Fund subsidises up to 80% of the construction cost of basic accessibility features such as ramps, lifts, accessible toilets and signage.
18. Singapore has been able to formulate programmes to implement the provisions of its Constitution which ensure that the Persons with Disabilities are catered for by ensuring accessibility, funding and support to companies that make their workplaces accessible to Workers with Disabilities.
19. Similar to the proposals in the proposed Bill, Singapore offers employment incentives and wage offsets for employers of Persons with Disabilities, as well as subsidies of the cost of construction of accessibility features.

## **Australia**

20. Australia's Disability Discrimination Act of 1992 prohibits discrimination against Persons with Disabilities in various aspects of public life including employment, education, access to goods and services, renting or buying a house and accessing public places. The Act covers people who have temporary and permanent disabilities; physical, intellectual, sensory, neurological, learning and

psychosocial disabilities, diseases or illnesses, physical disfigurement, medical conditions and work-related injuries.

21. To ensure disability mainstreaming, Australia has various accessibility standards and regulations, including—

- i) the Disability (Access to Premises - Buildings) Standards 2010, which specify requirements for accessible building design;
- ii) the Disability Standards for Accessible Public Transport 2002 to ensure accessibility in public transportation;
- iii) the Disability Discrimination Act 1992, together with the Disability Standards for Education 2005 to promote inclusive education. The educational institutions are required to provide reasonable adjustments and support for students with disabilities.

## PART THREE

### **3 OVERVIEW OF THE PERSONS WITH DISABILITIES BILL (SENATE BILL NO. 7 OF 2023)**

#### **3.1 INTRODUCTION**

22. The Persons with Disabilities Bill (Senate Bill No. 7 of 2023) is a Bill sponsored by Sen. Crystal Asige that was forwarded to the National Assembly for consideration having been passed by the Senate.
23. The Bill seeks to give effect to Article 54 of the Constitution, restructure the National Council for Persons with Disabilities, provide for the Council's functions and powers, provide for the institutional framework for protecting, promoting and monitoring the rights of persons with disabilities, to provide for incentives and reliefs and for connected purposes. The Bill repeals the Persons with Disabilities Act, 2003.
24. The Bill is divided into seven Parts comprised of 86 clauses and two schedules. The following are the key highlights of the Bill:

#### ***Part 1-Preliminary Provisions***

25. Part 1 of the Bill provides for the preliminary provisions which are the short title, definition of terms as used in the Bill and the guiding values and principles.

#### ***Part 2- Obligations of the National and County Governments***

26. Part 2 of the Bill prescribes the obligations of the national and county governments. Clause 4 provides that the national government shall be responsible for among other things developing policies on the protection and promotion of the welfare of persons with disabilities. Clause 5 provides for the obligations of every county government which is to implement the national policies for the protection and promotion of the welfare of persons with disabilities.

#### ***Part 3- Rights of Persons with Disabilities***

27. Part 3 of the Bill provides for the rights of persons with disabilities which are:
- a) Clause 6-Right to equality and non-discrimination;
  - b) Clause 7-Right to legal capacity;
  - c) Clause 8-Right to marry and form a family;
  - d) Clause 9-Right to privacy;
  - e) Clause 10-Rights of women with disabilities;
  - f) Clause 11-Rights of children with disabilities;
  - g) Clause 12-Rights of youth with disabilities;
  - h) Clause 13-Rights of older members of society;
  - i) Clause 14-Right to documents of registration and identification;
  - j) Clause 15-Right to physical and mental integrity;
  - k) Clause 16-Right to human dignity;
  - l) Clause 17-Right to be protected from abuse, exploitation and violence;



- m) Clause 18-Protection and safety of persons with disabilities in situations of risk and humanitarian emergencies;
- n) Clause 19-Specific measures for persons with disabilities;
- o) Clause 20-Right to education;
- p) Clause 21-Right to work and employment for persons with disabilities;
- q) Clause 22-No dismissal of employee with disability;
- r) Clause 23-Incentives for private employers who engages a person with disability as an employee. The employer shall enjoy a deduction from taxable income of 25% of the total amount paid as salaries for such employees and where they have modified physical structures to provide reasonable accommodation for employees with disabilities, the employer shall be entitled to additional deductions of 50% of the direct costs of the improvements.
- s) Clause 24-Right to health. Persons with disabilities shall be entitled to free medical care and treatment in public health institutions;
- t) Clause 26-Right of access to ICT services;
- u) Clause 27- Access to financial and banking services;
- v) Clause 28-Acess to justice;
- w) Clause 29-Right to take part on an equal basis with others in sports, recreation, leisure and cultural activities;
- x) Clause 30-Right to a barrier free and disability friendly environment to enable them to have access to buildings, roads and other social amenities and assistive devices;
- y) Clause 32-Civic and political rights for persons with disabilities;
- z) Clause 33- Right to independent living.

28. This Part also provides for the enforcement of the rights specified in the Bill through application to the High Court.

#### ***Part IV-Establishment of the National Council of Persons with Disabilities.***

29. Part IV of the Bill provides for the establishment of the National Council of Persons with Disabilities, its functions and powers.
30. Clause 37 provides that the functions of the Council shall include to advise on formulation and development of policy and advise on, and enforce accessibility, reasonable accommodation and non-discrimination for persons with disabilities.
31. Clause 40 of the Bill provides for the composition of the Council which shall consist of:
- a. Chairperson draw from organizations of persons with disabilities who shall be appointed by the President;
  - b. Principal Secretary responsible for matters relating to disabilities;
  - c. Principal Secretary for finance;
  - d. One person nominated by Council of Governors;
  - e. Three persons nominated by organizations of persons with disabilities representing different categories of disabilities appointed by the Cabinet Secretary;
  - f. Two persons nominated by the organization of persons with disabilities, one of whom shall be from organizations of parents and guardians of persons with mental disabilities who cannot represent themselves, appointed by the Cabinet Secretary; and

- g. The Executive Director of the Council.
32. This Part further provides for the powers of the Council; qualifications for appointment of the chairperson and members of the Council; the funds of the Council and the tenure of the Members of the Council which shall be five years renewable once.

### ***Part V-Reliefs and Incentives***

33. Part V of the Bill provides for reliefs and incentives for persons with disabilities which are:
- a. Clause 55-All persons with disabilities who are in receipt of income may apply to the Cabinet Secretary for finance for exemption from income tax;
  - b. Clause 56- A parent or guardian of a person certified with severe disability and incapable of catering of their basic need may apply to the Cabinet Secretary for finance for a tax exemption of Kshs 150, 000.
  - c. Additionally, the Cabinet Secretary on social protection may on application of a parent or guardian who is indigent and is responsible for the care of a person certified with severe disability, grant a long-term social assistance monthly cash transfer of not less than Kshs. 10, 000 in accordance with the Social Assistance Act.
  - d. Clause 57-Any donations to organizations dealing with persons with disabilities shall be allowed deductions in computing taxable income.
  - e. Local manufacturers of assistive devices may also be provided with incentives on raw materials, inputs and imported capital equipment.
  - f. Clause 58 of the Bill provides that the Cabinet Secretary responsible for matters relating to cooperatives and other lending institutions may develop guidelines to ensure persons with disabilities have equal access to bank loans, mortgages and other form of financial credit.
  - g. Clause 59 provides for exemption from taxable income of employers of persons with disabilities.
  - h. Clause 60 provides for exemption from postal charges for materials and devices used by persons with disabilities.

### ***Part VI-Offences and Penalties***

34. Part VI of the Bill provides for the following offences among others:
- a. Clause 61 creates the offence against discrimination of persons with disabilities.
  - b. Clause 62 prescribes the offence against abuse, exploitation or violence of person with disabilities.
  - c. Clause 63 creates the offence against concealment of persons with disabilities.
  - d. Clause 64 provides for the offence against perpetrating harmful practices against persons with disabilities which is punishable with life imprisonment.
  - e. Clause 65 provides for the offence against denial of food and fluids of persons with disabilities.
  - f. Clause 66 creates the offence against the degrading treatment of persons with disabilities.
  - g. Clause 67 provides for the offence against negligence by medical practitioners and care givers.
  - h. Clause 70 provides for the offence against torture and cruel treatment of persons with disabilities.

### ***Part VII-Miscellaneous***

35. Part VII of the Bill provides for miscellaneous provisions which include provisions on protection of roads users with disabilities; obligations and incentives of owners of public service transport;

provisions against denial or admission into premises; and establishment of disability mainstreaming units in all government ministries and county public offices.

36. This Part also provides for the general penalty, regulations making authority of the Council, repeal, transitional and saving provisions.

37. The First Schedule provides for the conduct of business and affairs of the Council and the Second Schedule provides for access to public buildings.

## PART FOUR

### 4 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

Following the call for memoranda from the public through placement of adverts in the print media on 8<sup>th</sup> March 2024 and vide a letters reference numbers REF: NA/DC-SP/BILL/2024/091 REF and NA/DC-SP/BILL/2024/091 inviting stakeholders for meetings, the Committee received memoranda from the following stakeholders:

- i. The Ministry of Labour and Social Protection (State Department for Social Protection and Senior Citizens Affairs);
  - ii. The National Council for Persons with Disabilities (NCPWD) in conjunction with Light for the World, Sightsavers and Christian Blind Mission (CBM) International;
  - iii. Democracy and Legal Aid Centre through Ms. Emily Muriguh the Chief Executive Officer in conjunction with Nairobi Waldorf School;
  - iv. African Centre for Parliamentary Affairs (ACEPA)
  - v. The Mover of the Bill, Sen. Crystal Asige, and
  - vi. The Nairobi Disability Forum composed of;
    - a) Kenya National Association for the Deaf (KNAD)
    - b) Action for Children With Disabilities
    - c) Kenya Union of the Blind
    - d) Kenya Association of the Intellectually Handicap
    - e) Sight of Relief Organization
    - f) United Disabled Persons of Kenya (UDPK)
    - g) Youth on the Move Kenya
    - h) Northern Nomadic Disabled Persons Organization (NONDO)
    - i) National Democratic Institute (NDI)
38. The Committee held a meeting with the State Department for Social Protection and Senior Citizen Affairs as well as the National Council for Persons with Disabilities (NCPWD) from 19<sup>th</sup> April to 21<sup>st</sup> April 2024, and again on 29<sup>th</sup> November 2024; and with the Nairobi Disability Forum, the Kenya Parliamentarians Disability Forum and Hon. Crystal Asige on 15<sup>th</sup> August 2024. The analysis of the submissions made by the stakeholders are contained hereunder.

#### 4.1 Submissions by the Stakeholders

39. In their written and oral submissions in response to the advertisement and the Committee's invitation, the stakeholders submitted as follows:

#### Long Title

##### **Submission by the Nairobi Disability Forum**

The long title be amended to read "AN ACT of parliament to give effect to the provisions of Constitution relating to persons with disabilities; to re-establish 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”.

#### **Observations**

The long title of the Bill as it is presently is clear and more specific that it seeks to give effect to the provisions of Article 54 of the Constitution on persons with disabilities. The proposed amendments are already captured in the long title of the Bill.

#### **40. Clause 2 of the Bill**

##### **Submission by the Nairobi Disability Forum**

Amend clause 2 to add “assistive technologies” and define “Assistive Technology as an umbrella term for assistive products and their related systems and services.” There are some clauses in the Bill that will require to be complement by assistive technology rather than assistive devices.

Further, remove the word “illness” and add “or” after the word “impairment” in the definition of the term disability and add “Affirmative Action” to the interpretation part to have the same meaning as prescribed in Article 260 of the Constitution.

#### **Observations**

The Bill as it is, applies the use of the term assistive devices. The inclusion of the term assistive technologies would broaden the use to other aspects not contained in the Bill such as supply chain, training and services in assistive devices ecosystem hence creating ambiguity. Additionally, the deletion of the word illness in the definition of the term disability is not proper as it negates the meaning of the term disability. Additionally, the term affirmative action is already defined in Article 260 of the Constitution.

#### **41. Clause 3 of the Bill**

##### **Submission by the National Council for Persons with Disabilities**

Amend clause 3 to delete the phrase “in the conduct of their private affairs” as the principle of independence is as broad for persons with disabilities as it is for non-disabled persons, and it should not be limited only to conduct of the private affairs of persons with disabilities.

#### **Observations**

Clause 3(a) defines the principle for respect for inherent dignity and individual autonomy in a broad manner and includes and is not limited to independence in the conduct of private affairs.

#### **42. Clause 4 of the Bill**

##### **Submission by the Nairobi Disability Forum**

Amend clause 4(a) to read that the national government shall, in consultation with county governments, Organizations of and for Persons with Disabilities, the National Council for Persons with Disabilities and other stakeholders, develop and implement policies and laws on the protection and promotion of welfare of persons with disability.

In paragraph (b) replace “assistive devices” with “Assistive Technology”

Add the words ‘and inclusion’ after the word “Integration” in paragraph (e)

Delete the words “by implementing preferential procurement for” and replace with the word “from” in paragraph (h).

In paragraph (i) insert the word ‘compulsory’ between the words ‘free’ and ‘basic’ and in the interpretation part define what the word ‘social amenities’ mean.

In paragraph (j) delete the word “specifically” and insert a new sub section 4 (q) to read “Ensure inclusion of persons with disabilities in all mainstream programs and interventions”

#### **Submission by the National Council for Persons with Disabilities**

Replace the word “welfare” with the word “rights” and in paragraph (e) replace the word “integration” with the word “inclusion”.

#### **Submission by Sen. Asige**

In clause 4(i) insert the word ‘compulsory’ between the words ‘free’ and ‘basic’; and define the word ‘social amenities’ or replace the expression “social amenities” with the expression “public places”. Further, in clause 4(j) delete the word “specifically”; and merge paragraph (j) and (k).

#### **Observations**

Clause 4(a) defines expressly the exclusive obligation of the national government to develop policies on the protection and promotion of the rights of persons with disabilities. Article 10 of the Constitution compels all public officers whenever they make policies to ensure the participation of the people including consultations with the relevant stakeholders.

Reference to preferential treatment in procurement seeks to create clarity on the nature of affirmative actions in procurement of goods and services to be implemented.

Paragraphs (j) and (k) cannot be merged as one is dealing with allocation of resources for training and the other for programmes. The use of the word “specifically” is a qualifier and meant to create clarity. The use of the word “integration in paragraph (e) aligns with the provisions of Article 54(1) (b) however there may need to include the word inclusion to align with the Basic Education Act. The term ‘social amenities’ has an ordinary meaning and may not require further elucidation.

There is need to amend clause 4 to make reference to free and compulsory education in paragraph (i) to create clarity; and replace the word “welfare” with the word “rights” in paragraph (a) to align with the provisions of Article 54. Further, there is need to amend to provide for the general obligation to ensure inclusion of persons with disabilities in all mainstream programs and interventions.

### **43. Clause 5 of the Bill**

## **Submission by the National Council for Persons with Disabilities**

Replace the word “welfare” with the word “rights”.

### **Submission by Sen. Asige**

In clause 5(1) (b) delete the word ‘specifically’ and amend clause 5(4) to provide that the representative is a person with a disability who resides within the respective county.

### **Submission by the Nairobi Disability Forum**

Amend clause 5(1)(b) to delete the word “specifically”; Insert the word ‘compulsory’ between the words ‘free’ and ‘basic’ in paragraph (c); In the interpretation part define what the word ‘social amenities’ mean; add the word “accessible” after the word “disseminate” in paragraph (d); delete the words “by implementing preferential procurement for” and replace with the word “from” in paragraph (f).

Further, insert a new sub section 4 (1)(h) to read “Ensure inclusion of persons with disabilities in all mainstream programs and interventions; in clause 5(2) add the words “responsible for issues dealing with disability” after the word “member” to assign responsibility to a specific line entity; delete the word “Governor” and replace with the word “Government” as the head of the County is the Governor (by using county government this is implied) the CEM can also extend the advisory services across county structures.

Additionally, amend clause 5(3) to include the word “public officer in charge of disability issues....” after the word “Officer” to assign direct responsibility and ensure that a person who is knowledgeable on issues of disabilities is designated; in sub-clause (4)(a) delete the words “a person who represents” and replace with: “Two persons with diverse disabilities, who reside within the respective county” to ensure realization of 5% constitutional threshold as well as ensure the representatives are local persons with disabilities; and amend sub-clause (4)(d) to delete ‘exceeding’ and replace it with ‘less than’ as the term “exceeding” is limiting inclusion of and does not contemplate expansion of County structures.

### **Observations**

The Committee noted its observations in clause 4 on similar amendments. In respect of the proposed amendments to sub-clause (1)(d), the Committee noted that Access to Information Act governs issues of access to information and paragraph (d) deals with issues of dissemination of information. Further, in respect of the proposed amendment to sub-clause (2), the Committee observed that the use of the word “Government” is ambiguous and would imply both the executive and legislative arm of a county government. The proposed amendment to clause 4(d) would also fail to put a cap on the maximum number of persons who may be appointed to the county executive committee. The proposed amendments to clause 5(3) are administrative in nature and fall within the appointing powers of the CEC. The Committee agreed with the proposed amendment to sub-clause (4)(a) save for the increase to two persons would create an even number in terms of composition of the Committee and create paralysis in decision making.

## **44. Clause 6 of the Bill**

### **Submission by the National Council of Persons with Disabilities**

Replace clause 6(1)(a) with the words “equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law” as the current phrasing is unclear and cumbersome. The proposed phrasing covers the four relevant elements of equality

#### **Observations**

Clause 6(1)(a) should be aligned with the provisions of Article 27(1) of the Constitution on equality and freedom from discrimination.

### **45. Clause 7 of the Bill**

#### **Submission by the Nairobi Disability Forum**

Define “support services”. In the interpretation section-there was consensus not to list the support services in order to delineate the types and extend of the envisioned support services that a person with disabilities might need in the process of decision making.

#### **Submission by the National Council for Persons with Disabilities**

Delete the word “services” as the word limits support only to services. The proposal guarantees persons with disabilities all the support they may require to exercise legal capacity, be that services or other measures.

Further, insert the following new sub-clause (2A):

“Relevant government bodies shall, in consultation with the Council, ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.” The provision will ensure that those who provide support to a person with disability conform strictly to the rights, will and preferences of the person with disability

#### **Observations**

The Committee observed that the support services envisaged under clause 7(2) are in relation to exercise by persons with disabilities of their right to legal capacity and to define it would limit its application. Further, the deletion of the word services would create ambiguity on the nature of the support to be extended to person with disabilities. Additionally, Part III of the Bill only defines the various rights of persons with disabilities and the proposed new sub clause (2A) deals with the question of the manner of implementation of the right.

### **46. Clause 8 of the Bill**

#### **Submission by the State Department for Social Protection**

Clause 6(1) of the National Assembly Bill provides for free and full consent.

#### **Submission by the Nairobi Disability Forum**

Delete the word “sexuality” and replace with the word “sexual” in clause 8(2) to align with Constitution and other legal frameworks regarding sexual and reproductive health.



### **Submission by the Association of Social Work Educators**

Amend clause 8(1) to provide for the right to marry by persons with intellectual capacity. Once, this is provided for, amend to qualify the meaning of “consent” so as to take into account consent by persons with intellectual capacity. Amend 8(2) to read “... sexual and reproductive health”.

### **Observations.**

Clause 8 of the Bill aligns with the provisions of Article 45 of the Constitution which recognises the right of every adult to marry a person of the opposite sex, based on the free consent of the parties. The Committee agreed with the proposal to delete the word sexuality and replace with “sexual”.

## **47. Clause 9 of the Bill**

### **Submission by Sen. Asige**

Amend clause 9 to provide for exceptions to take care of PWDs who may require the assistance of another person such as a care giver or an interpreter which may be interpreted as a violation of the right to privacy if such person’s accesses information relating to the PWD. This is to ensure that PWDs are not impeded in receiving services such as healthcare and the PWD require the assistance of another person to receive such services.

### **Observations**

Clause 9 of the Bill deals with the right to privacy as envisaged under Article 31 of the Constitution and does not limit provision of assistance to a person with disabilities by a care giver.

## **48. Clause 11 of the Bill**

### **Submission by the Nairobi Disability Forum**

In clause 11 (1) (f) add the words “and inclusive” after the word “quality” to address the need for consistency in complying with the CRPD on inclusive education.

### **Observations**

The Committee agreed with the proposal for amendment as it aligns with the Basic Education Act.

## **49. Clause 12 of the Bill**

### **Submission by Sen. Asige**

Amend 12(2)(e) to include the word “political” to further provide for the right to political participation by youth with disability in line with Articles 38, 54 and 100 of the Constitution.

### **Submission by National Council for Persons with Disabilities**

Replace sub-clause 12(2) with the following:

“The National and County Governments and other state agencies shall, subject to standards established by and in consultation with the Council, take policy, legislative, administrative and other measures to ensure that the rights of youth with disabilities are fully respected, including by—”. The

primary obligation to provide services to all persons, whether disabled or not, lies with the government through its various line ministries/departments. It is the government that makes laws and policies.

#### **Submission by the Nairobi Disability Forum**

In paragraph (e): Add the word “and political ...” to promote participation of person with disabilities in all spheres of life including in governance and political landscapes as espoused in Article 38 and 54, 100 of Constitution.

#### **Observations**

The Committee noted that paragraph (e) deals with issues of economic opportunities such as employment and insertion of the word political would create ambiguity. In any event, the Committee noted that Article 55(b) already obligates the State to take measures to ensure that the youth have opportunities to participate in political spheres of life. Additionally, sub-clause (1) aligns with the functions of the Council under clause 37.

### **50. Clause 13 of the Bill**

#### **Submission by the Democracy and Legal Aid Centre**

Amend 13(a) by inserting the words ‘for themselves and their care givers’ after the word ‘Programs’.

#### **Observations**

The matter of care givers is beyond the scope of the Bill as published.

### **51. Clause 14 of the Bill**

#### **Submission by the Sen. Asige**

Replace the word “card” with the word “document”. The use of the “card” is limiting. There could be other forms of identification, including electronic identification.

#### **Submission by Nairobi Disability Forum**

Delete the word ‘Card’ and substitute with “document” as the Card’ is limiting. There are other forms of identification as systems change.

#### **Observations**

Clause 14 makes reference to “a disability identification card and **any other document of registration or identification** free of charge” and this shall allow the use of any other form of identification including electronic identification as may be appropriate.

### **52. New clause 15A of the Bill**

#### **Submission by the National Council for Persons with Disabilities**

Insert the following new clause:

“Every person with disability has the inherent right to life and integrity, and that right shall be respected and protected.” Violations of the right to life of persons with disabilities continues to happen, for example, with the killing of persons with albinism, and the law should cover this.

### **Observations**

Article 26 of the Constitution guarantees the right to life of every person. Clauses 64 and 70 of the Bill addresses the issues of ritual killings or other harmful practices against persons with disabilities.

## **53. Clause 18 of the Bill.**

### **Submission by the Nairobi Disability Forum**

Define “situations of risk” in the interpretation section – There was consensus not to list the situations of risk.

### **Observations**

Clause 18 of the Bill provides that 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. The clause is exhaustive and open ended and hence there is no need to define the situations of risk in clause 2.

## **54. Clause 20 of the Bill**

### **Submission by the Nairobi Disability Forum**

In clause 20(6): add the word “tertiary” after the word “secondary” as the right to education under Article 43 and Article 53 of constitution is across board; Amend clause 20(8) (c) by adding the word “trained” after the words “retention of” as the aspect having been trained is critical component in prison of quality and inclusive education; and in sub-clause (9) add “curriculum” after the word “adaptable” and replace the word “intellectual” with “Neurodiverse”. The examination processed from the curricula which needs to be adopted inline learners and trainees with disabilities sector policy and Basic Education Act. Neurodiverse is an umbrella term encompassing intellectual and other developmental disabilities.

### **Submission by the Democracy and Legal Aide Centre**

In clause 20(8): replace with ‘The Ministry of Education in consultation with the Council shall ensure that-

In clause 20(8c): replace with ‘The Ministry responsible for education in consultation with the Council formulates strategies to implement inclusive education through-

### **Submission by the National Council of Persons with Disabilities**

Replace chapeau with the following:

“Relevant Government establishments shall, subject to the standards established by and in consultation with the Council, ensure that—

Replace the word “adoptive” with the word “adaptive”.

Replace sub-clause with the following: “Relevant agencies of National and County Governments shall, in consultation with the Council, work 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.”

#### **Submission by Sen. Asige**

THAT Clause 20 of the Bill be amended by inserting the following new subclause immediately after subclause (15)—

(16) Accessibility audit shall be offered as a discipline or a course of study at technical and vocational training institutions and institutions of higher learning

#### **Observations**

Pursuant to section 30 of the Basic Education Act, primary and secondary education is compulsory and hence the inclusion of tertiary education may not be in line with the Act. The proposed amendments to subclause (9) creates ambiguity and the use of the word neurodiverse is a technical term that would require further definition. The Council plays an advisory role in terms of advising the relevant government agencies on matters relating to persons with disabilities. As such, it is the role of the relevant government agencies to work in consultation with the Council to make provisions for an integrated system of special and non-formal schools and institutions. On the proposed new sub-clause (16), it is the role of the relevant government agencies and institutions responsible for curriculum development to structure appropriate courses and programmes of study. The Committee agreed with the proposal on reference to the word adaptive.

### **55. Clause 21 of the Bill**

#### **Submission by the Democracy and Legal Aid Centre**

In clause 21(2)(a) add the word employment’ after the proviso.

#### **Submission by the National Council of Persons with Disabilities**

In clause 21(2)(a) insert the phrase “Where an employer has at least 20 employees,” before the word “reserve” to ensure undue burden is not placed on employers with few staff. Further, in clause 21(5)(e) by deleting the word “solely”. Use of the word “solely” effectively allows employers to discriminate employees on the ground of disability when it is accompanied by another ground.

#### **Observations**

The Committee agreed with the proposals for amendments.

### **56. Clause 24 of the Bill**

#### **Submission by Sen. Asige**

THAT clause 24 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (7)—

(7A) The national and county governments shall ensure that health institutions have—

(a) designated disability desks that are accessible to persons with disabilities for provision of health services specific to persons with disabilities;

(b) medical health practitioners who are trained on health matters relating to persons with disabilities for provision of health services specific to persons with disabilities; and;

(c) medical practitioners that are trained in sign language interpretation for provision of health services to deaf persons

#### **Submission by the National Council of Persons with Disabilities**

In clause 24(5) insert the phrase “habilitation and rehabilitation services” after the word “treatment”. The services are as essential for a disabled person as medical treatment. Habilitation enables a disabled person to gain new skills, abilities and knowledge. Rehabilitation rebuilds the skills, abilities or knowledge that a person may have lost as a result of a disability. Delete the proviso in sub-clause (9) as it is redundant and should be regulated in laws that apply to all persons.

#### **Submission by the Democracy and Legal Aid Centre**

In clause 24(5) add “rehabilitation services” after the word ‘treatment’.

#### **Submission by the Nairobi Disability Forum**

In clause 24(3)(3) add “accessibility” before the word “information” to guarantee access to information on equal basis.

#### **Observations**

The Committee observed that 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. Further, the Committee noted that under clause 67(6) the Cabinet Secretary responsible for matters relating to health is obligated to, within three months of the date of commencement of the Act, develop or review guidelines on medical practice so as to bring them into conformity with the provisions of the Act. Additionally, clause 24(7) requires the national and county governments to ensure that all health institutions have an adequate number of Kenyan Sign language interpreters in their institutional structures. The Access to Information Act governs matters relating to accessibility of information. Clause 24(3)(3) simply restates the right to information. The Committee noted the proposed amendments to clause 24(5) in already covered in sub-clause (1). The proposed amendment to clause 24(9) should be retained as it is inter-linked with clause 67(4) which deals with negligence of medical practitioners.

### **57. Clause 25 of the Bill**

#### **Submission by the Nairobi Disability Forum**

Clause 25(e) be amended by inserting the words “putting in place mechanisms for” immediately before the phrase “prompt attendance by medical personnel...” There is need for clarity as to processes and structures for delivering health services to persons with disabilities

### **Observations**

The Committee agreed with the proposed amendments.

## **58. Clause 26 of the Bill**

### **Submissions by the Nairobi Disability Forum**

Amend clause 26(2) to insert the words “forms of” immediately before “communication and devices” to take cognizance of existence of different modes of communication not tied to devices and gadgets

In sub-clause (7), delete “Media Council of Kenya” and substitute therefore with “Communication Authority of Kenya”. The Communication Authority of Kenya is the regulator of all communication in Kenya, including media houses.

In sub-clause (8), delete ‘sub-title’ and replace with “closed captioning” and add the word “appropriate” before the word “Kenya Sign”. Closed captioning is used specifically for Deaf viewers who cannot hear. This will ensure the size and other accessibility criteria of the inset are met.

In sub-clause (9), insert “Deaf studies” immediately after “Kenya Sign Language”. Deaf studies is an area of scholarly work that has been neglected and needs to be mainstreamed.

### **Submissions by the National Council for Persons with Disabilities**

Replace sub-clause (1) with the following:

“Every person with disability has the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, and the right to access information, on an equal basis with others, in a timely manner and without additional cost.” This is to avoid the confusing phrasing in the provision and to distinguish clearly between freedom of expression and access to information.

Further, replace the sub-clause (2) with the following:

“Every person with disability has the right to access information using accessible formats and communication technology, including Kenyan Sign Language, Braille, tactile communication, large print, accessible multimedia, and written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication.” The right as stated in the Bill is convoluted. The aim here is to assert the right of persons with disabilities to access information using accessible formats and communication technologies. Also, reference to “talking software” is a mischaracterisation.

In sub-clause (7), insert the phrase “in consultation with the Council” after the word “shall”. In light of the Council’s role as the regulator for disability standards. Additionally, in sub-clause (10) delete the word “public”. This sub-clause should apply both to public and private entities. At the

same time, sanctions for the whole clause should be graduated, from a warning, to limited suspension and in due course to permanent suspension.

#### **Submissions by Sen. Asige**

In clause 26(7), replace “Media Council of Kenya” with “Communication Authority of Kenya”. The Communication Authority of Kenya is the regulator. Further, replace ‘sub-title’ with “closed captioning” in 26(8). Closed captioning is the universal trend and there is need to be in conformity.

#### **Observations**

The Committee agreed with the proposed amendments save for the proposed amendment to redefine sub-clause (2). The Committee noted that sub-clause (4) is intended to ensure the right to access to information is realised. Further, it is the role of the Council in consultation with the relevant government agencies to determine the appropriate curriculum and common courses for persons with disabilities.

### **59. Clause 27 of the Bill**

#### **Submissions by National Council for Persons with Disabilities**

Insert the following new sub-clause immediately after sub-clause (1):

“(2) The Governor of the Central Bank of Kenya and other relevant financial authorities, in consultation with the Council, shall make regulations to ensure that persons with disabilities have access to financial services, equipment and platforms on an equal basis with others, including through the provision of reasonable accommodation and other support.

The provision addresses instances where individuals have been denied financial services such as bank accounts on account of disability, or where banks and other vendors have deployed inaccessible financial platforms such as touch ATMs (automatic teller machines) OR PDQ (Process Data Quickly) Machines.

#### **Observations**

The proposed amendment is not in accordance with the provisions of Article 94(6) of the Constitution on regulatory making power.

### **60. Clause 28 of the Bill**

#### **Submissions by the Nairobi Disability Forum**

Amend clause 28(1) to delete the word ‘age appropriate’ and replace with “reasonable”. The use of the term age appropriate is discriminatory and limiting.

#### **Submissions by Sen. Asige**

In clause 28(3)(b) replace Kenya Sign language with Kenyan Sign Language to align with the language of the Constitution.

#### **Observations**



The Committee agreed with the proposed amendments to sub-clause (3). The Committee noted that reference to age-appropriate accommodation in sub-clause (1) is intended to ensure that the rights of children with disabilities in the justice system are upheld.

#### **61. Clause 29 of the Bill**

Amend clause 29(4) replace to replace Kenya Sign language with Kenyan Sign Language

##### **Observations**

The Committee agreed with the proposed amendments.'

#### **62. Clause 33 of the Bill**

##### **Submission by the Democracy and Legal Aid Centre**

Amend clause 33(2): rephrase it as "subject to subsection (1) the government shall provide the necessary resources to support independent living of persons with disabilities in the community.

##### **Observations**

The proposed amendment is feasible but contains an element of ambiguity.

#### **63. New clauses**

##### **Submission by the National Council for Persons with Disabilities**

Amend clause 33(2) on right to independent living by replacing sub-clause (2) with the following sub-clause:

"Subject to subsection (1), the Government shall provide the necessary resources to support independent living of persons with disabilities in the community." This is an obligation of the state, not that of the employer.

Insert the following new clause 33A:

"The Government shall, in relation to its various housing construction programmes, and in consultation with the Council, avail housing for acquisition by persons with disabilities on an affirmative basis and on subsidised terms. This provision will make the right to housing for persons with disabilities operational.

In clause 35(3) replace the sub-clause with the following:

"Organizations of and for persons with disabilities may within twelve months of formation, apply to the Council, in the prescribed manner, for registration" to streamline with the rest of the Bill. Further, delete sub-clause (4).

#### **64. Clause 34 of the Bill**

##### **Submission by the Democracy and Legal Aid Centre**

Amend clause 34(1) and (2): replace 'high court' with á court of law.

##### **Observations**



The proposed amendment is feasible.

#### **65. Submission by Sen. Asige**

##### **New clause 35A**

THAT the Bill be amended by inserting the following new clause immediately after Clause 35—  
Council to register accessibility auditor professionals.

35A. (1) The Council shall register accessibility audit professionals.

(2) The accessibility audit professionals shall carry out periodic accessibility audits to ensure that persons with disabilities access, on an equal basis with others, the physical environment, transportation, information and communications, including information and communications technologies and systems, and other facilities and services open or provided to the public, both in urban and in rural areas.

(3) The Council shall prescribe the requirements for registration of accessibility audit professionals.

(4) The Council shall prescribe the manner and subject matter of courses pertaining to training and continuing professional.

##### **Observations**

In respect of the proposed amendment to clause 33, the Committee observed that it is the role of employers to provide special allowances to persons with disabilities. Clause 35(3) seeks to create clarity on the threshold for registration and sub-clause (4) seeks to create clarity that the Council shall not deny a person with disability who is not registered from accessing any of the services set out under the part. Further, the Committee observed that clause 37 of the Bill already provides for the role of the Council to consult with the relevant government agencies to ensure the provision of suitable and affordable housing for persons with disabilities. The proposed amendment on regulation of accessibility audit professionals expands the scope of the Bill to matters that are not provided for contrary to Standing Order 133.

#### **66. Clause 37**

##### **Submissions by the Nairobi Disability Forum**

In clause 37, add “National” and “County” after the word “relevant” The idea is to make sure the council services are accessible throughout the country. In paragraph (d)(i): add the word “accessible” before the word “information”. To ensure right to access information on an equal basis and in paragraph (d) (e): Insert the wordings “in collaboration with organizations of persons with disabilities conduct....” at the begging of the statement.

##### **Submission by Sen. Asige**

Amend to provide that services provided by the Council are easily accessible throughout the country.

##### **Submission by the National Council for Persons with Disabilities**

In paragraph (a), substitute the word “enforce” with the word “regulate” and in paragraph (b)(i), for Council to play advisory role. Further, review (viii), (ix) and (xi).

### **Observations**

Clause 37 of the Bill creates clarity on the role of the Council and hence the amendments may not be necessary.

## **67. Clause 40 of the Bill**

### **Submission by the National Council for Persons with Disabilities**

In clause 40(1)(e)(ii) delete the word “mental”. The aim of the provision is to ensure the Council’s membership includes the parents of persons with severe disabilities. Persons with mental disabilities can sit and have sat on the Council on their own behalf and do not need to be represented by their parents.

### **Submission by the Nairobi Disability Forum**

Clause 40(e)(i): be amended to read “with disabilities” to ensure the appointees are persons with disabilities. In clause 40(e)(ii) delete the words “parents and guardians” and replace with “Caregivers. Delete the term “mental disabilities” with “neuro-diverse disabilities” Parents or guardians do not automatically equate to be a caregiver. The term “mental disability” is decapricated.

### **Observations**

Clause 40(1)(e) of the Bill seeks to provide for appointment by the Cabinet Secretary of three persons representing different categories of disabilities, nominated by organizations of persons with disabilities; and two persons nominated by organizations for persons with disabilities, one of whom shall be from organizations of parents and guardians of persons with mental disabilities who cannot represent themselves. The clause seeks to ensure inclusivity in the composition of the Council by allowing the representation of persons with disabilities in the membership of the Council including persons with mental disabilities. Further, parents or guardians are the legally recognized persons with parental responsibility. The use of the term neuro-diverse disabilities may have different interpretation.

## **68. Clause 50 of the Bill**

### **Submissions by the Nairobi Disability Forum**

Amend clause 50(1) and insert new clause 50(1)(c) to read “upon request by an individual or any member of the public” to provide opportunity for members of public to report and require investigation where necessary. In sub-clause (3) add “or a member of public” after the word “regulatory body”.

### **Submission by Sen. Asige**

Amend clause 50(3) to provide for requests by members of the public. There may be instances where members of the public including PWDs may request for the undertaking of investigation on an issue touching of PWDs.

### **Observations**

The Committee agreed with the proposed amendments.

## **69. Clause 55 of the Bill**

### **Submission by the Nairobi Disability Forum**

Clause 55 (3); add the words “and permanently exempted from paying income tax”. Addressed the requirement for regular renewal of tax exemption certificate

### **Submission by Sen. Asige**

THAT Clause 55 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)—

A person with a permanent disability shall be issued with a tax exemption certificate which shall permanently exempt the person from paying income tax in future tax assessments without need for application of a new tax exemption certificate.

By inserting the following new sub-clauses immediately after sub-clause (6) —

(6A) A person with disability shall be entitled to exemption of stamp duty payable on purchase of property.

(6B) A person with disability shall apply to the Cabinet Secretary responsible for finance for exemption of stamp duty on purchase of property.

### **Observations**

Clause 55(3) of the Bill already provides that if an assessment demonstrates that an individual has a permanent disability, that person will be exempt from future assessments. The Committee noted that exemption for stamp duty may have money Bill implications.

## **70. Clause 56 of the Bill**

### **Submission by the National Council for Persons with Disabilities**

Insert the phrase “or primary caregiver” after the word “guardian” each time the word appears in the sub-clause. Delete the phrase “an income tax exemption of Kshs 150,000=” and replace it with the phrase “a partial or full income tax exemption”. Insert the phrase “or primary caregiver” after the word “guardian” each time the word appears in the sub-clause. Delete the phrase “of not less than 10,000/=” and replace it with the phrase “a partial or full income tax exemption”.

### **Submission by the Nairobi Disability Forum**

Define the term “severe disability” and delete the words “parent or guardian” and replace with “caregiver”. Add the words “not less than” before the amount of Ksh 150,000/

### **Submission by Sen. Asige**

Delete the term “severe” on severe disability. In clause 56(1) remove the capping of 150,000/.

### **Observations**

Parents or guardians are the legally recognized persons with parental responsibility. Deletion of the term severe would create ambiguity and in any event the social protection assistance is to be provided to persons who have been certified as having severe disability. The Committee agreed with the proposal to delete reference to figures and provide for the amount as shall be prescribed by the Cabinet Secretary.

#### **71. Clause 57 of the Bill**

##### **Submission by the Nairobi Disability Forum**

In clause 57(2) add the words “and providers of assistive technologies, medicine, other daily disability related medication and support by diverse person with diverse disabilities” after manufactures. Medication required to treat neuro-diverse illnesses have doubled in price which has put a strain on the quality of life for the people with neuro-diverse disabilities. Access to health is a right under Article 43 of the Constitution.

##### **Submission by Sen. Asige**

Amend 57 (2) to include medicine as well as other commodities such as sunscreen lotions required for daily support by PWDS.

THAT clause 57 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (2) —

(3) An insurer which provides subsidized insurance products to persons with disabilities, learning institutions or resource centers for persons with disabilities shall be entitled to deductions on taxable income as the Cabinet Secretary for finance may determine.

(4) An insurer may apply to the Cabinet Secretary responsible for finance for deductions on taxable income

#### **Observations**

The Committee noted that the proposed amendments may have money Bill implications.

#### **72. Clause 60 of the Bill**

##### **Submission by the Nairobi Disability Forum**

Amend clause 60 to insert a new clause (d) to read “easy to read and other adapted materials for use by a person with disability”. Accessible formats for various categories of disabilities.

##### **Observations**

Clause 60 already provides for exemption of braille, printed or recorded literature, including any materials in tactile format.

#### **73. Clauses on Offences: Clauses 62, 64, 65 and 66 of the Bill**

##### **Submission by the Nairobi Disability Forum**

Amend clause 62 (1) to align it with the penal code and other relevant acts of Parliament. Further, amend clause 64 to harmonize with clause 62.

**Submission by Sen. Asige**

THAT Cause 62 of the Bill be amended by deleting the words “one million” and substituting therefor the words “two million”.

THAT Clause 65 of the Bill be amended by deleting the words “two hundred thousand shillings” and substituting therefore the words “two million shillings”.

THAT Clause 66 of the Bill be amended by deleting the words “two hundred thousand shillings” and substituting therefore the words “two million shillings”.

THAT the Bill be amended by inserting the following new clause immediately after Clause 66-

Begging and receiving alms 66A.

A person who causes, procures, encourages or solicits a child or an adult with disabilities to engage in begging or receiving alms commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years, or to both.

**Observations**

The Committee agreed with the proposed amendments to enhance the offences and create the offence against begging and receiving alms.

**74. Clause 67 of the Bill****Submission by the Nairobi Disability Forum**

Amend clause 67(1) to add the word “including sexual and reproductive health...” after the words “health care”.

**Observations**

Clause 67 applies to provision of health care and other services to persons with disabilities and this include sexual and reproductive health care.

**75. Clause 69 of the Bill****Submission by Sen. Asige**

Amend to capture the refund of other monetary and non-monetary benefits such as tax exemptions fraudulently obtained as well as other benefits obtained from KRA.

**Observations**

Clause 69 already creates an offence for any person who knowingly gives false information to the Council for the purpose of acquiring any right or privilege due to persons so registered.

**76. Clause 72 of the Bill****Submission by the National Council for Persons with Disabilities**

Replace paragraph(a) with the following:

“Equipping pedestrian crossings with appropriate and accessible traffic control signals”.



Insert the following new paragraph:

(c) Ensuring that bus-stops are barrier-free”.

### **Observations**

The Committee agreed with the proposed amendments to paragraph (c). In respect of the proposed amendment to paragraph (a) the Committee noted that paragraph (a) as presently contained in the Bill creates clarity on the traffic control signals.

## **77. Clause 73 of the Bill**

### **Submission by Sen. Asige**

THAT clause 73 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (5) —

(6) A registered owner of public transport who subsidizes the cost of use of public transport by persons with disabilities shall be entitled to deductions on taxable income as the Cabinet Secretary for finance may determine.

(7) A registered owner of public transport may apply to the Cabinet Secretary responsible for finance for deductions on taxable income.

(8) A person with disability may upon certification by a medical practitioner operate a public service vehicle in accordance with the requirements of the relevant laws

### **Observations**

The Committee noted that exemption for deductions may have money Bill implications.

## **78. Clause 74 of the Bill**

### **Submission by the National Council for Persons with Disabilities**

In sub-clause (1), delete the word “only” after the word “disability” and in sub-clause (2), delete the word “alone” after the word “disability”.

### **Observations**

The Committee agreed with the proposed amendments to delete reference to the word “alone” appearing in sub-clauses (1) and (2).

### **General submissions by the National Council for Persons with Disabilities**

79. The Council proposed that the language in the Bill be changed to ensure that wherever the phrases “persons with disability”, “children with disability” or “women with disability” appear, they be replaced with the phrase “persons with disabilities”, “children with disabilities” or “women with disabilities” as appropriate. The Committee noted that this could be affected at that the time of preparation of the Vellum by the Senate.
80. The Bill seeks to replace the Persons with Disabilities Act (No. 14 of 2003) which has been Kenya’s flagship law on disability for the past two decades.
81. Four significant events have taken place in the last two decades which have made the Act an anachronism.

82. First, in 2008, Kenya became party to the United Nations Convention on the Rights of Persons with Disabilities (2006) (CRPD) which established transformative norms and standards on the rights of persons with disabilities. Second, in 2010, the Constitution of Kenya was promulgated, including specific and robust provisions covering the rights of persons with disabilities. Then, in 2015, the Committee on the Rights of Persons with Disabilities issued its initial concluding observations to Kenya, making multiple recommendations on how Kenya should ensure the rights of persons with disabilities. Finally, in 2022, Kenya ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018) (Disability Rights Protocol), which affirms and contextualises the rights of persons with disabilities on the continent.
83. In the meantime, during the past decade, disability stakeholders have made over 40 unsuccessful attempts to enact new disability legislation. They have doggedly discussed multiple draft bills, and lobbied and badgered the executive and parliament repeatedly to table bills for replacing the Act. On the few occasions Parliament has published repeal or amendment bills (invariably as private members' bills), they have lapsed for want of priority.
84. However, in 2022, the predecessor to the Committee, oversaw the Persons with Disabilities Bill (2022), which was sponsored by the Government, through its first and second readings. The Council indeed made written and oral submissions before that Committee.
85. The Council, therefore, welcomes the fact that this Bill has already been adopted by the Senate, and that this, therefore, is the most opportune moment to finalise new legislation to address matters of disability in Kenya.
86. The Council also welcomes the fact that the tabled Bill takes account of many proposals which disability stakeholders have made over the years.
87. The suggestions for amendments made in this memorandum are guided by the following key considerations:
- a. That the enacted law on disability must respect the letter and spirit of the Constitution which establishes a clear framework for the exercise of human rights by persons with disabilities as well as their full participation in all spheres of life, including political, social and economic fields.
  - b. That while flagship legislation for persons with disabilities is necessary, all national legislation should make provisions as necessary to address disability guided by the principles of inclusion and mainstreaming.
  - c. That the enacted law must abide and be guided by the rights approach to disability encapsulated in the CRPD.
  - d. That the law must be anchored on the social model of disability which recognises that it is society that disables the individual by failing to address physical, social and economic barriers.
  - e. That the language and terms of art used in the law must abide by minimum standards of accepted usages, thereby ensuring effective communication and avoiding repetition, ableism and stigmatisation.
  - f. That some of the provisions in Act No. 14 remain revolutionary in their service to persons with disabilities, and that there are many elements in that Act which must be retained in the new law.
  - g. That the functions assigned to the Council in the new disability legislation should empower it as a regulatory body as distinct from an implementation/executing body. In other words, it is the core business of the Ministry of Education and the Ministry of Health, respectively, to ensure/implement the right to education and the right to health for persons with disabilities: that is their core business. The core business of the Council should be to provide requisite disability-specific advice and standards.

### Submissions by the African Centre for Parliamentary Affairs (ACEPA)

<i>Title and clause in the bill</i>	<i>Current gaps /misrepresentation in the bill</i>	<i>Proposed gender responsive recommendations</i>
Articles 8-11 highlights the rights of women, children, youth and <i>elder</i> persons with disabilities	Article 8 – women with disabilities; Article 9: children with disabilities; Article 10 Youth with Disabilities and Article 11 older members of society with disabilities	<b>Include an Article with the rights of men with disabilities;</b> this is missing in the entire document and would result in marginalization old men with disabilities
Article 15 (3); protection from abuse, exploitation and violence	Any offence committed through abuse, exploitation and violence on a person with disability shall attract a fine of Ksh. 50,000 and an imprisonment term not exceeding one year or both	Any offence committed through abuse, exploitation and violence on a person with disability shall attract a <b>fine of Ksh. 500,000 and an imprisonment term not exceeding three years or both</b>
Article 16 (6) Protection and safety of persons with disabilities in situations of risk and humanitarian emergencies	For purposes of this section, situations of risk include fires, floods, earthquakes, epidemics, cattle rustling, ethnic conflicts and terrorism.	The section <b>should include Draught and pandemics</b> as situation of risk and humanitarian emergencies
Article 18, (8c)		What is this restrictive environment? There is need to adjust the language
Article 18 (9)	Adaptable education framework and examination framework	Include adaptable examination and the curriculum
Article 20 (b); no dismissal for employee with disability	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 <i>or he attains the age of retirement, whichever is earlier.</i>	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 <b>he/she</b> attains the age of retirement, whichever is earlier.
Article 27		
Article 36 (j) Powers of the Council  Powers of the council	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	It is not clear if the Council will be funded in the annual national treasury budget, if so, there is need to include that <b>the council will prepare annual budgets to support its functions.</b>



<i>Title and clause in the bill</i>	<i>Current gaps /misrepresentation in the bill</i>	<i>Proposed gender responsive recommendations</i>
	and maintained in the manner as may be prescribed by the national treasury under the PFM Act 2012	
Article 38 Composition of the council  (1)Composition of the council (a,b,c and d)	The council shall consist of the following: 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	There is need to <b>ensure gender equality in the appointment and nomination of the council composition. In instances where the Principal Secretary in relevant ministry, organizations of persons with disability, Principal Secretary in finance and appointed members are of the same gender.</b>  d. The following appointed by the Cabinet Secretary (i) Four persons <b>(two males, two female)</b> representing different categories of disabilities, nominated by organizations of persons with disabilities (ii) Two persons <b>(one male and one female)</b> nominated by organizations for persons with disabilities, one of whom shall be from organizations of parents with mental disabilities
Article 52 Annual reports  2. The annual report shall:	a. Provide information regarding activities and plan of the council during the year and such additional information or other materials 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 article 10 and 232 of the constitution	Include part c. Through the cabinet secretary prepare and submit <b>annual reports to the Parliament of Kenya on persons with disabilities</b> including proposing ways of promoting access and inclusion including multi-sectoral opportunities in promoting inclusion for all.
Article 54 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	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 and <b>local retail outlets providing assistive devices</b> used by persons with disabilities on raw materials, inputs and imported capital equipment and <b>imported assistive devices and mobility aids</b> <b>The Cabinet secretary responsible and the council in consultation with the</b>

<i>Title and clause in the bill</i>	<i>Current gaps /misrepresentation in the bill</i>	<i>Proposed gender responsive recommendations</i>
		Ministry of health and the National Health Fund, ensure access to health services including insurance cover to support affordable assistive devices and mobility aids
Article 2- Interpretations	There is no definition of basic education and social amenities	Basic education should be defined so that some categories of disabilities are not left out when it comes to education and to give clear instruction on what basic education entails. Social amenities should be defined to include Schools, health care facilities, parks and gardens, electricity water, sanitation, toilet facilities, solid waste management, transportation, entertainment options
Article 3- Guiding values and principles Introduction part	Some entities may argue they are not listed in what is provided.  Not limited to all is not included	not limited not all should be included in the clause for all entities not listed to be captured.  to read: In promoting and protecting the rights of persons with disability under this Act or any other law, every state organ, state officer, public officer and all persons including incorporated and unincorporated business associations, civil society and organizations of and for persons with disability not limited to.
Article 5 – Obligation of County governments	It's the County government mandate to provide early childhood education, some learners with disabilities more so those on the autism spectrum disorder and other related developmental disabilities are left out of education since there are no early intervention centers to cater for their education needs at the tender age.	Add another clause that every county should have early intervention centers for learners with autism and related developmental disabilities.
Article 20 – Right to education Article 20,8	The responsibility of providing education in Kenya remains with the ministry of education. (8) The council in consultation with relevant government establishments shall ensure that—	Amend for ministry of education to be the lead The ministry of education in consultation with the council and other relevant government establishments shall ensure that—
Article 20,8 (c)	The ministry of education	

<i>Title and clause in the bill</i>	<i>Current gaps /misrepresentation in the bill</i>	<i>Proposed gender responsive recommendations</i>
	formulates strategies to implement inclusive education through— <b>in consultation with the Council</b> has been omitted the council being the National body for persons with disabilities it should work closely with the ministry.	The ministry of education in consultation with the Council formulates strategies to implement inclusive education through—
Article 21 - Right to work and employment for Persons with Disabilities Article 20,7	(7) For purpose of this section “reasonable accommodation” for purposes of employment includes— <b>not limited to</b> is not included	<b>but not limited to</b> should be inserted after the word includes since there many more grounds a person with disability can be discriminated. To read: (7) For purpose of this section “reasonable accommodation” for purposes of employment includes the following but not limited to-
Article 35- Registration of Persons with Disabilities, organizations and institutions. Article 35 (3)	(3) Organizations for Persons with Disabilities and any integrated organization with at least seventy per cent persons with disabilities may within twelve months of formation, apply to the Council, in the prescribed manner, for registration. <b>Organizations of persons with disabilities are not included</b>  <b>Registration being done at 5 years. Registration should start early.</b>	Organizations of persons with disabilities should be included since they are defined in Part I Article 2 on interpretations. To read: <b>3) Organizations of and for Persons with Disabilities and any integrated organization with at least seventy per cent persons with disabilities may within twelve months of formation, apply to the Council, in the prescribed manner, for registration.</b>  Amend by introducing a clause on registration for some disabilities should be at birth. e.g. Physical persons born without arms, cases of extreme Cerebral palsy.
Article 73 - Denial of admission into premises. Article 73 (1)	(1) No person shall, on the ground of disability <b>alone</b> , deny a person with disability— The word alone should be removed.	Disability should not be a ground for discrimination.  To read:  1) No person shall, on the ground of disability, deny a person with disability—
<i>Other Recommendations by ACEPA</i>		



Title and clause in the bill	Current gaps /misrepresentation in the bill	Proposed gender responsive recommendations
<ol style="list-style-type: none"> <li>1. Consider individual disabilities: discrimination, violence and abuse.</li> <li>2. Consider neurodiversity disabilities: give more specific definitions for each mental disability.</li> <li>3. Explore mechanisms in which persons with disabilities can get an enabling environment for them to work from wherever they are.</li> </ol>		

### **Submissions by the State Department for Social Protection and Senior Citizens**

88. The Ministry began the process of repealing the Persons with Disabilities Act (Cap 133) Laws of Kenya, in 2017 and on 14<sup>th</sup> August 2018, the Cabinet approved a Government Sponsored Repeal Bill through Cabinet Memorandum No. CAB (16)70, for submission to Parliament.
89. The proposal to repeal the Persons with Disabilities Act (Cap 133) is informed by many developments key among them is the promulgation of the Constitution of Kenya 2010; Vision 2030; Ratification by Kenya of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2007 and 2008 respectively. The review has also benefited from the recent initiatives of the African Union disability agenda and the East Africa Community (EAC) Disability Policy.
90. The Government sponsored Persons with Disabilities Bill, 2021 (National Assembly Bills No. 61 of 2021) was passed by the National Assembly on 25<sup>th</sup> May, 2022 and the Bill was transmitted to the Senate for consideration by the Senate. Regrettably, the 12<sup>th</sup> Parliament adjourned *sine die* before the enactment of the Repeal Bill and as a consequence, the Bill lapsed in the Senate in the last Parliament.
91. The Ministry again resubmitted the Government Sponsored Persons with Disabilities (Repeal) Bill, 2021 to the Hon. Attorney General to cause the lapsed Bill republished in the National Assembly. The Government sponsored Bill was Persons with Disabilities Bill, 2023 (National Assembly Bill No. 26 of 2023) (hereinafter "the National Assembly Bill") was received in the National Assembly on 26<sup>th</sup> June 2023.
92. The National Assembly Bill was vigorously subjected to public participation by the Ministry as per the Constitution of Kenya, 2010 and the views of the stakeholders consolidated in the final Bill. The consultations with stakeholders involved; the National Treasury & Economic Planning, the Commission for Implementation of the Constitution, the Kenya National Commission on Human Rights, the National Gender and Equality Commission, Office of the Attorney General & Department of Justice, Government Ministries and Departments, Organizations of and for persons with disabilities, parents' support groups and other stakeholders.
93. The Senate Bill No.7 of 2023 is a replica of the Government-sponsored National Assembly Bill No.26 of 2023 but drastically alters the tax reliefs and incentives negotiated and approved by the Cabinet, National Treasury & Economic Planning and Hon. Attorney General thereby rendering the Persons

with Disabilities, 2023 (Senate Bills No. 7 of 2023) a money Bill, contrary to the letter and spirit of Article 109 (5) of the Constitution of Kenya, 2010.

*STATE DEPARTMENT FOR SOCIAL PROTECTION'S COMPARISON BETWEEN THE PERSONS WITH DISABILITIES (NATIONAL ASSEMBLY BILL No. 26 of 2023) AND THE PERSONS WITH DISABILITIES BILL (SENATE BILL No. 7 of 2023)*

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
RIGHTS OF PERSONS WITH DISABILITIES	5(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.	7 (3) Every person with disability has a right to own and inherit property, to control their own financial affairs and to have access to savings and loan facilities, mortgages and other forms of financial credit on an equal basis with others.	The Senate Bill provides that persons with disabilities not only have access loan facilities, mortgages, and other forms of financial credit but they can also engage in Financial saving activities.
	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 of full consent.	8.(1) Every adult person with disability has the right to marry a person of the opposite sex and form a family based on free consent.	The National Assembly Bill provides for free and full consent.
	9. Every child with disability has the right and freedom on an equal basis with other children in respect to - (d) age-appropriate assistance to realize his or her rights.	11. (1) Every child with disability has the right and freedom on an equal basis with other children in respect to-  (d) age and gender appropriate assistance to realize his or her rights;  (e.) living with his or her family for as long as is necessary;  accessing quality education;  (g) accessing appropriate health care services; and protection from abuse,	The Senate Bill 11(1) (d), (e), (f), (g), (h) provides more in regards to the rights and freedoms of a child with disability.

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		exploitation and harmful practices.  11 (2) In all actions concerning children with disabilities, the best interest of the child shall be the primary consideration and shall be of paramount importance.	Clause 11 (2) of the Senate Bill provides that the best interest of a child with disability should be considered first in all actions related to them.
	10. (1) Every young person with a disability is entitled to enjoyment of human rights and fundamental freedoms on an equal basis with other youth.	12. (1) Every person with disability who is a youth is entitled to enjoyment of human rights and fundamental freedoms on an equal basis with other youth.	Clause 12(1) of Senate bill places more emphasis on youth who are persons with disabilities It highlights the rights of young people with disabilities specifically, ensuring they Receive equal treatment and opportunities as their non-disabled peers.
	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.	14.(1) Every person with disability has a right to be issued with a certificate of birth, national identification card, passport, disability identification card and any other document of registration or identification free of charge.	The Senate Bill provides that the issuance of the documents should be free of charge.
	18. (1) Every person with disability has a right to admission to an institution of learning and access to an inclusive, quality and free primary and secondary education on an equal basis with others.	20.(1) Every person with disability has a right to admission to any institution of learning and access to an inclusive, quality education on an equal basis with others.	The National Assembly Bill provides that persons with disabilities should get free primary and secondary education.
	18 (5) Every Child with	20(5) Every child with a	The Senate Bill added basic



PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	disability has the right to free and compulsory education.	disability has the right to free and compulsory basic education.	education
	<p>18 (8) The Council in consultation with relevant Government establishments shall ensure that—</p> <p>(c) (ii) development of a least restrictive environment by adaptation and structural adjustments of all educational institutions to the needs of persons with disabilities.</p> <p>18(8)(c) (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</p> <p>18(8)(c)(vi) introduction of Kenya sign language in all training interpretation courses institutions.</p>	<p>20(8) The Council in consultation with relevant Government establishments shall ensure that-</p> <p>(c) the Ministry responsible for education formulates strategies to implement inclusive education through-</p> <p>(ii) adaptation and structural adjustments of all educational institutions to the needs of persons with disabilities.</p> <p>(v) promotion of the use of appropriate augmentative and alternative modes, means and formats of communication, adaptive technologies, including Braille and Kenya Sign Language; and</p> <p>(vi) introduction of Kenyan Sign language courses in all learning and training institutions.</p>	<p>There is a difference in wording between Clause 18(8) (c) (ii) of the National Assembly Bill and Clause 20(8) (c)(ii) of the Senate Bill.</p> <p>The difference between adoptive technologies under the National Assembly Bill and adaptive technologies under the Senate Bill.</p> <p>Difference in wording between Clause 18(8) (c)(vi) of the National Assembly Bill and Clause 20(8)(vi) of the Senate Bill.</p>
	19(5)(e) Without limiting the generality of subsection (2) (c), the following may constitute acts of	20 (10) Each learner with disability including an intellectual disability has a right to be assessed and be placed in an appropriate	The Senate Bill Clause 20(10) provides for an addition to include the intellectually disabled learners for assessment

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>discrimination— (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.</p> <p>19(5)(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;</p>	<p>learning institution in accordance with the outcome of the assessment.</p> <p>21(5) Without limiting the generality of subsection (2)(c), the following may constitute acts of discrimination—</p> <p>(e) favoring an employee without disability over an employee with disability with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;</p> <p>(f) re-assigning or transferring an employee with disability from a task or position the employee is able to perform to one which he or she cannot perform because of his or her disability;</p>	<p>and placement in the appropriate learning institutions.</p> <p>The National Assembly Bill under Clause 19(5) (2) (e) adds: over a qualified employee with disability</p> <p>The National Assembly Bill adds: a qualified employee with disability</p>
	<p>19(7) (c) (iii) For purpose of this paragraph (5) (a) “reasonable accommodation” for purposes of employment includes—</p>	<p>21(7) For purpose of this section “reasonable accommodation” for purposes of employment include:</p> <p>(iii) not making reasonable accommodation;</p>	<p>The National Assembly Bill provides an addition; discrimination includes not making reasonable accommodation for the known physical or mental limitations of an employee</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>(c) discrimination includes (iii) not making reasonable accommodation for the known physical or mental limitations of an employee with disabilities;</p> <p>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:</p> <p>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;</p> <p>22(5) Every national or referral health institution shall employ at least two Kenya sign language interpreters with gender consideration in their institutional structure;</p>	<p>23(1) A private employer who engages a person with a disability either as a regular employee, apprentice or learner shall be entitled to apply for a deduction from its taxable income equivalent to twenty-five percent of the total amount paid as salary and wages to such employee:</p> <p>24(7) The national and county governments shall ensure that all health institutions have an adequate number of Kenyan Sign language interpreters in their institutional structures.</p>	<p>with disabilities.</p> <p>Addition of "Solely" under the National Assembly Bill</p> <p>The National Assembly Bill adds a person with disabilities "with the required skills or qualifications"</p> <p>The National Assembly Bill requires all health institutions to have a minimum of two sign language interpreters of opposite gender while the Senate Bill mandates the national and county governments to ensure the health institutions have</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
			enough sign language interpreters
	23(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(8) Every person with a disability has the right to access health care on the basis of free and informed consent.	<p>The Senate Bill provides further that PWDs have the right to medical care based on free and informed consent.</p> <p>23(2) of the National Assembly Bill to be placed under the section "Access to Information and Communication Technology Services"</p>
	<p>24(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.</p> <p>24(3) Public institutions shall accept and facilitate the Use of Kenya sign language, Braille, augmentative and alternative communication, and all other accessible</p>	<p>26(3) Public and private institutions shall provide information intended for the general public, including through the internet, to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities.</p> <p>26(4) Public and private institutions shall accept and facilitate the use of Kenya sign language, Braille, augmentative and alternative communication,</p>	<p>The Senate Bill adds "Public and Private institutions"</p> <p>The Senate Bill adds "public and private institutions"</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>means and usable formats of communication to accommodate the needs of persons with disabilities;</p> <p>24(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.</p>	<p>and all other accessible means and usable formats of communication to accommodate the needs of persons with disabilities;</p> <p>26(5) All public and private media enterprises and telephone service providers shall provide information and services in accessible formats and technologies appropriate to different kinds of persons with disabilities.</p> <p>26(7) The Media Council of Kenya shall develop regulations on maintenance of low levels of risk to persons who have photosensitive epilepsy by television broadcasters.</p> <p>27. Institutions that provide financial services, including online services and mobile money, shall ensure that their services, equipment and platforms are available to persons with disabilities in accessible formats and technologies.</p> <p>29 (2) Every person with disability shall be entitled</p>	<p>The Senate Bill provides for “public and private media”.</p> <p>The Senate Bill introduces a new section which require the Media Council of Kenya to develop regulations in regard to persons with disabilities who have photosensitive epilepsy</p> <p>The Senate Bill introduces a new section: “Access to financial and banking services”</p> <p>The Senate Bill adds 29 (2)</p>
	26(4) Every public and		



PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>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.</p> <p>27(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</p>	<p>to the use of recreational or sports facilities owned or operated by the national and county governments during social, sporting or recreational activities, free of charge.</p> <p>29(5) Every public and private institution with sporting, recreation, leisure and cultural activities for their employees shall ensure that such sporting, recreational, leisure and cultural activities are accessible and sensitive to the needs of persons with disabilities.</p> <p>30 (4) Every person with disability has a right to personal mobility and the use of assistive devices of his or her choice, including assistance by guide animals, and no person with disability shall be denied access to any public place because of the nature of his or her assistive devices.</p> <p>31.(6) The Council shall consult and collaborate with the county governments and other government regulatory agencies in exercise of its</p>	<p>under the sports, recreation, leisure and culture section.</p> <p>The Senate Bill adds; accessible and sensitive to the needs of persons with disabilities.</p> <p>The Senate Bill provides for a right to personal mobility and the use of assistive devices whereas the national assembly bill provides for the right to free movement with his or her assistive devices.</p> <p>The Senate Bill provides for an additional clause under 31(6).</p> <p>The Senate Bill provides for a special allowance while the National Assembly Bill provides for the hardship allowance.</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	30(2) Subject to subsection (1), an employer may provide hardship allowance to or for a family of a person with disability.	functions under this section.  33. (2) Subject to subsection (1), an employer may provide special allowance to a person with disability.	
ESTABLISHMENT, POWERS AND FUNCTIONS OF THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES	<p>34.(1) The headquarters of the Council shall be in Nairobi.</p> <p>(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.</p> <p>(3) The Council shall be the successor in title to the National Council for Person with Disabilities existing immediately before the commencement of this Act and upon such commencement the transitional provisions set out in section 8 shall apply</p> <p>35(c) Facilitate systematic collection, analysis and use of national statistics and disaggregated data on issues relating to persons with disabilities.</p> <p>38(d) the following appointed by the cabinet secretary-</p> <p>(i) four persons representing different categories of disabilities,</p>	<p>37(a)(xvi) Advise bodies that manage disaster and humanitarian crisis on disability issues to enable them to put in modalities for accessible disaster and humanitarian crisis management.</p> <p>37(c) Advice on systematic collection, analysis and use of national statistics and disaggregated data on issues relating to persons with disabilities.</p> <p>40(d) One person nominated by the Council of county governors.</p> <p>40(e)(i) three persons representing different categories of disabilities, nominated by organizations of persons with disabilities.</p> <p>45(4) The Executive Director shall hold office for a term of five years' renewable once</p>	<p>The Senate Bill has omitted Clause 34 of the National Assembly Bill on Headquarters of the Council</p> <p>The Senate Bill has added Clause 37(a)(xvi)</p> <p>Clause 35(c) of the National Assembly Bill- Facilitate systematic collection, analysis and use of national statistics and disaggregated data on issues relating to persons with disabilities.</p> <p>While 37(c) of the Senate Bill Advice on systematic collection, analysis and use of national statistics and disaggregated data on issues relating to persons with disabilities.</p> <p>The Senate bill has added Clause 40(d) One person nominated by the Council of county governors.</p> <p>Section 38(d)(i) of the National Assembly</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>nominated by Organizations of persons with disabilities.</p> <p>43(4) The Executive Director shall hold office for a term of three years' renewable once</p>		<p>Bill provides that the following appointed by the cabinet secretary-</p> <p>(i) four persons representing different categories of disabilities, nominated by organizations of persons with disabilities.</p> <p>While Clause 40(e)(i) of the Senate Bill provides that the following appointed by the cabinet secretary-</p> <p>(i) three persons representing different categories of disabilities, nominated by persons with disabilities.</p> <p>Clause 43(4) of the National Assembly Bill provides that - the Executive Director shall hold office for a term of three years' renewable once.</p> <p>While Clause 45(4) of the Senate bill provides that the Executive Director shall hold office for a term of five years' renewable once.</p>
OFFENCES AND PENALTIES	<p>61(2) Any person who contravenes subsection (I) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not</p>	<p>61(1)(2)(k) reasonable accommodation</p>	<p>Clause 61(2) under the National Assembly Bill provides for a penalty if one is found guilty by a court of law for concealment of persons with disabilities</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>exceeding one year or to both.</p> <p>64(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.</p> <p>64(8) The medical practice guidelines shall be revised to harmonize them with the provisions of this Act.</p>	<p>64(1) The national and county governments shall take such measures as it considers necessary to eliminate harmful practices committed against a person with disability, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.</p> <p>64(2) A person who perpetrates a harmful practice against a person with disability commits an offence and shall be liable, on conviction, to life imprisonment.</p> <p>64(3) A person who willfully aids, abets or is an accessory to an offence in subsection (2), commits an offence and shall be liable, on conviction, to life imprisonment.</p> <p>67(6) The Cabinet</p>	<p>The Senate Bill provides for an additional Clause 61(1)(2)(k).</p> <p>Clause 64(4) is an addition to the National Assembly Bill.</p> <p>Clause 64(8) is an addition to the National assembly Bill.</p> <p>Clause 64 is a new addition to the Senate Bill.</p>



PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>Secretary responsible for matters relating to health shall, within three months of the date of commencement of this Act, develop or review guidelines on medical practice so as to bring them into conformity with the provisions of this Act.</p> <p>70. A person who causes harm or death of a person with disability through torture, cruel treatment, ritual killings or other harmful practices commits an offence and shall be liable, on conviction, to life imprisonment</p>	<p>The Senate Bill provides for Clause 67(6) as an addition</p> <p>Clause 70 in regards to torture and cruel treatment is also a new addition to the senate bill</p>
MISCELLANEOUS	74. Every Government agency putting up residential 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	<p>79. The National and county governments shall put in public place such measures to facilitate the participation of persons with disability in cultural, social and economic life and in public affairs, in particular those affecting them through- targeted public participation; and offering information in accessible form.</p> <p>80. (1) The national and county governments shall perform their functions and</p>	<p>The National Assembly Bill provides Clause 74 in regards to housing which is not provided for under the senate bill.</p> <p>The Senate Bill introduces a Clause on public participation.</p> <p>The Senate Bill, Clause 80(1) introduces the aspect of consultation between the National and county governments.</p>



PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>powers under this Act on the basis of consultation and cooperation.</p> <p>(2) The Council shall, in carrying out its functions under this Act, consult the council of county governors on any matter that affects the functions and powers of county governments.</p>	<p>Clause 80(2) Senate Bill requires NCPWD in carrying out its mandate to consult the Council of Governors in issues affecting the functions and powers of county governments.</p>
<b>RELATIONSHIP BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENT ON MATTERS DISABILITY</b>	<p>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</p> <p>(2) Council offices at County level shall implement the function of the Council as directed by the Council and shall for that purpose, where applicable-</p> <p>(a) Liaise with other relevant county offices of the national government. Liaise with any relevant county institutional framework established pursuant to sub-clause</p>	<p>4. The national government shall-</p> <p>(a) develop policies on the protection and promotion of the welfare of persons with disability;</p> <p>undertake investigations, surveys and research into the causes and nature of disabilities and development of new assistive devices;</p> <p>(c) put in place measures for the prevention of disabilities and rehabilitation of persons with disability;</p> <p>(d) provide facilities and infrastructure for the training of professionals in the rehabilitation and habilitation of persons with disability;</p> <p>(e) promote the integration of persons with disability in schools;</p> <p>(f) promote the inclusion of persons with disability in</p>	<p>The National Assembly Bill sets out the relationship between the national government and the county government while the Senate Bill sets out obligations of the national government and the county government.</p>

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
	<p>(1) of this section</p> <p>(3) Without prejudice to the generality of the foregoing, policies or legislation referred to in sub-section (1) shall-</p> <p>(a) Ensure the full inclusion and participation of persons with disabilities and their representative organizations in decision-making processes at the county level;</p> <p>(b) Take account of the Functions of county governments as set out under the fourth schedule to the Constitution;</p> <p>(c) Ensure that any standards set are not less advantageous to persons with disabilities than standards set by national legislation; and</p> <p>(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.</p>	<p>the public service and put in place measures to ensure that at least five per centum of the employment positions are filled by persons with disability;</p> <p>(g) prescribe minimum standards and guidelines to be adhered to by public transport vehicles, communication service companies and infrastructure developers to facilitate reasonable access by persons with disability;</p> <p>(h) adopt affirmative action measures in procurement of national government goods and services by implementing preferential procurement for persons or entities managed by persons with disability;</p> <p>(i) ensure access to free basic education and other social amenities to every child with a disability;</p> <p>promote affirmative action to ensure that learners with disabilities are enrolled in all levels of learning institutions;</p> <p>provide capacity building, funding and technical assistance to the county governments on all matters relating to persons with disabilities;</p> <p>consult county governments on any matter</p>	

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>relating to persons with disabilities that affect the functions and powers of county governments; and develop programmes for caregivers of persons with disabilities on specialized training, counseling and economic development.</p> <p>5.(1) Every county government shall- implement national policies for the protection and promotion of the welfare of persons with disability;</p> <p>(b) allocate adequate resources to programmes specifically targeting persons with disability;</p> <p>(c) ensure access to free pre-primary education and other social amenities to every child with disability;</p> <p>(d) coordinate and disseminate information on government sponsored and non-government sponsored programmes targeting persons with disability within the respective counties;</p> <p>(e) promote the inclusion of persons with disability</p>	

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>in the county public service by putting in place measures to ensure that at least five per centum of the employment positions are filled by persons with disability; and</p> <p>(f) adopt affirmative action in procurement of county government goods and services by implementing preferential procurement for individuals or entities established or managed by persons with disability.</p> <p>(2) In ensuring that a county government meet its obligations under subsection (1), the county executive committee member in each county shall-</p> <p>(a) advise the respective county governor on the appropriate measures and interventions to be put in place for the protection of persons with disability in the county;</p> <p>(b) develop mechanisms for the identification of persons with disability residing in the county;</p>	

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>(c) liaise with the Council to maintain a database of persons with disability residing within the respective county containing the following information regarding the persons with disability-</p> <p>(i) the name, age and place of residence of the person;</p> <p>(ii) the type of disability of the person;</p> <p>(iii) the education level of the person;</p> <p>(iv) the health needs of the person;</p> <p>(v) the employment status of the person;</p> <p>(vi) any interventions made in relation to the person;</p> <p>and</p> <p>(vii) any other information that the county executive committee member may consider necessary;</p> <p>(d) monitor and evaluate the progress by the county in ensuring the realization of the rights of persons with disabilities under Article 54(1) of the Constitution;</p> <p>(e) formulate and implement programmes aimed at promoting the socio-economic development, including participation in cultural life, recreation and sports, by</p>	



PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>persons with disability in the county;</p> <p>(f) coordinate the implementation of programmes developed by the Council and the Authority relating to persons with disability in the county; and</p> <p>(g) prepare and publish reports containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation to persons with disability.</p> <p>(3) The county executive committee member may, for the effective performance of the functions under subsection (2), designate a public officer within the county public service or constitute a committee to perform such functions as the county executive member may determine.</p> <p>(4) Where the county executive member constitutes a committee under subsection (3), the committee shall consist of-</p> <p>a (a) person who represents persons with disability in the county;</p> <p>(b) two public officers</p>	

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>serving in the respective county public service;</p> <p>(c)two members of the public with knowledge or experience on matters relating to the welfare, rehabilitation and the management persons with disability and belong to a related group or organization; and</p> <p>(d) such other persons, not exceeding two, as the county executive committee member shall consider necessary for the performance of the functions of the committee.</p> <p>5) In constituting a committee under subsection (4), the county executive committee member shall ensure that not more than two thirds of its members shall be of the same gender.</p> <p>(6) The respective county government shall enact county specific legislation to provide for-</p> <p>(a) procedure for nomination and appointment of the members of the committee;</p> <p>(b) such further qualifications for appointment to the</p>	

PART	NATIONAL ASSEMBLY BILL	SENATE BILL	COMMENTS
		<p>committee as may be considered appropriate;</p> <p>(c) the term of appointment;</p> <p>(d) the criteria and procedure for removal of a member from the committee; and</p> <p>(e) such other matters as the county government shall consider necessary.</p>	

*SPECIFIC COMMENTS BY THE STATE DEPARTMENT FOR SOCIAL PROTECTION AND SENIOR CITIZENS AFFAIRS*

94. Under Part II of the Senate Bill on the relationship between the national government and county government on matters disability, there is a proposal to impose obligations to the Counties whereas matters on persons with disabilities under the Ministry of Labour and Social Protection are not a devolved function but rights and privileges that cut across all levels of government. Additionally, many County governments have developed County-specific legislation on how best to deliver services to persons with disabilities and hence imposing additional obligations on them will go against the spirit of the Constitution of Kenya, 2010.

95. The Senate Bill in Clauses 55-59 (Part V of the Bill) provides reliefs and incentives open to all persons with disabilities who are in receipt of an income to apply to the Cabinet Secretary for finance for exemption from income tax and any other levies on such income whereas the National Assembly Bill in Part IV on reliefs and incentives, provides for exemption from tax relief for persons with disabilities who are in employment to apply to the Cabinet Secretary for finance for exemption from income tax on employment income and sets out other Materials, articles, and equipment, including motor vehicles specially designed for use by persons with disabilities, exempt from import duty and value added tax to the extent provided under the tax laws under Clause 53 in the Bill.

96. Clause 55 in the National Assembly Bill provides that the Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions may on the advice of the Council, from time to time, ensure access to credit by persons with disabilities. The Senate Bill under Clause 57 expands that scope further, to the development of guidelines by the Cabinet Secretary to ensure the equal right of persons with disabilities in having equal access to bank loans, mortgages and other forms of financial credit, inextricably in a private Member's Bill in the Senate, contrary to Article 109 (5) of the Constitution of Kenya, 2010.

97. Part V of this Senate Bill contains provisions dealing with—(a) taxes; (b) the imposition of charges on a public fund or the variation or repeal of any of those charges; (c) the appropriation, receipt, custody, investment or issue of public money; (d) the raising or guaranteeing of any loan or its repayment; or (e) matters incidental to any of those matters. This therefore clearly indicates that the Senate Bill 2023 is a Money Bill within the meaning of Article 114 of the Constitution of Kenya 2010 as it provides for reliefs and incentives. Article 109(5) of the Constitution of Kenya provides that a Money Bill may be introduced only in the National Assembly in accordance with Article 114.
98. Clause 45(4) of the Senate Bill provides that the Executive Director shall hold office for a term of five years renewable once. This is in contravention of the Mwongozo Code of Governance for State Corporations which limits the tenure to a cumulative term of 6 years or two terms of 3 years each.
99. It is noted that the Senate Bill, since submission to Parliament, has been passed by the Senate and referred to the National Assembly for consideration wherein it underwent the first reading on 28<sup>th</sup> February 2024. The National Assembly Bill on the other hand is yet to undergo the first reading despite submission to Parliament on 26<sup>th</sup> June 2023.
100. It is our considered view that the proposals in the Senate Bill are constructive. In the circumstances, the State Department for Social Protection and Senior Citizen Affairs, taking into consideration our submissions, will have no objection to a merger of the two Bills for adoption by the National government.

### **Committee Observations**

101. The Committee considered all submissions made by the different stakeholders at length. Further, the Committee undertook an analysis of the National Assembly and the Senate Bills and noted that they were largely similar in content save for the following areas for harmonization:
- Amend clause 8 to provide for the requirement for free and full consent in respect of the right to marry;
  - The Senate Bill provides for free and compulsory pre-primary, primary education and secondary education.
  - There is need to provide for the headquarters of the Council as contained in the National Assembly Bill.
  - The term of the Executive Director as spelt out in clause 45(4) should be aligned with the Mwongozo guidelines.
  - Clause 63 of the Senate Bill should be amended to spell out a penalty against the offence of concealment of persons with disabilities;
  - There is need to provide a clause on housing as proposed by clause 74 of the National Assembly Bill in the Senate Bill.
  - The Committee noted the Ministry' comments as contained in the matrix including to clauses 11, 12, 14, 18, 20, 21, 24, 26, 29, 31, 37 and 40. However, the Committee was of the view that the clauses did not warrant any amendments to include the proposals in the National Assembly Bill, as the Senate Bill had either similar or additional provisions on the same.

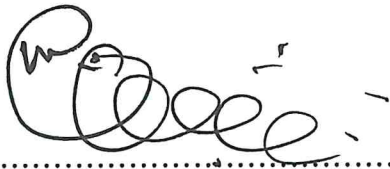
- h. The Senate Bill in clauses 4, 5 and 80 spell out the obligations and the relationship between the national and county governments.
- i. Article 20 of the Constitution provides that the Bill of Rights applies to all and binds all State organs and all persons and hence the county governments have a role to play in ensuring the realisation of the rights of persons with disabilities as provided for in Article 54 of the Constitution.
- j. Both the Senate and the National Assembly Bills provide for reliefs and incentives. Further, the Committee noted that the reliefs and incentives were only accessible upon application and determination by the relevant Cabinet Secretaries as guided by the law.
- k. The Committee additionally noted the concerns relating to the application of Article 109(5) of the Constitution on money Bill provisions but were guided by the decision of the Court of Appeal in Civil Appeal No. E084 of 2021 on the manner of consideration of Bills concerning county governments.



## PART FIVE

### 5 COMMITTEE RECOMMENDATIONS


102. Pursuant to Standing Order 127, the Committee recommends that the National Assembly **APPROVES** the Persons With Disabilities Bill (Senate Bill No. 7 of 2023) **with amendments** as proposed in the Schedule of Amendments under Part Six of this Report.



02-12-2024

SIGNED: ..... DATE: .....

HON. ALICE WAMBUI NG'ANG'A, CBS, M.P.  
(CHAIRPERSON, DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION)

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
<b>DATE: 02 DEC 2024</b>	
<b>DAY: MONDAY</b>	
<b>TABLED BY:</b>	HON. ALICE NG'ANG'A, MP CHAIRPERSON DEPT. COMM. ON SOCIAL PROTECTION
<b>CLERK-AT THE-TABLE:</b>	ESTHER NG'ETO

## PART SIX

### 7 SCHEDULE OF AMENDMENTS

103. The Committee proposed the following amendments to be considered by the House in the Committee Stage:

#### CLAUSE 4

**THAT** clause 4 of the Bill be amended—

- (a) in paragraph (a) by deleting the word “welfare” and substituting therefor the word “rights”;
- (b) in paragraph (e) by inserting the words “inclusion and ” and immediately after the words “promote the ”;
- (c) in paragraph (i) by inserting the words “and compulsory” immediately after the word “free”;
- (d) by inserting the following new paragraph immediately after paragraph (p)—  
“(q) ensure inclusion of persons with disabilities in all mainstream programs and interventions”.

#### Justifications

1. The amendments seek to obligate the national government to develop policies on the protection and promotion of the rights of persons with disabilities.
2. The amendments seek to obligate the national government to promote the inclusion and integration of persons with disabilities in schools.
3. Further, the amendments are necessary to align the Bill with Article 53 of the Constitution which provides that children have a right to free and compulsory basic education.
4. The amendments further seek to provide for the general obligation of the national government to ensure inclusion of persons with disabilities in all mainstream programs and interventions.

#### CLAUSE 5

**THAT** clause 5 of the Bill be amended—

- (a) in sub-clause (1)—
  - (i) in paragraph (a) by deleting the word “welfare” and substituting therefor the word “rights”;
  - (ii) in paragraph (c) by inserting the words “and compulsory” immediately after the word “free”;
  - (iii) by inserting the following new paragraph immediately after paragraph (f)—  
“(g) ensure inclusion of persons with disabilities in all mainstream programs and interventions”.
- (b) in sub-clause (2), by inserting the words “responsible for matters relating to persons with disabilities” immediately after the words “committee member” appearing in the opening statement; and
- (c) in sub-clause (4) by deleting paragraph (a) and substituting therefor the following new paragraph—  
(a) a person with disabilities, who reside within the respective county;

### **Justifications**

1. The amendments seek to obligate the county governments to develop policies on the protection and promotion of the rights of persons with disabilities.
2. Further, the amendments are necessary to align the Bill with Article 53 of the Constitution which provides that children have a right to free and compulsory basic education which includes pre-primary education.
3. The amendments further seek to provide for the general obligation of the county governments to ensure inclusion of persons with disabilities in all mainstream programs and interventions.
4. The amendments also create clarity that the officer in charge of implementing the obligations of a county government is the CEC responsible for matters relating to persons with disabilities.
5. Additionally, the amendments provide clarity that the membership of the committee established in each county shall comprise of among other persons, a person with disabilities, who reside within the respective county. This shall ensure that persons with disabilities participate in making decisions on matters affecting them.

### **CLAUSE 6**

**THAT** clause 6(1) of the Bill be amended by deleting the words “protection, benefit” appearing in paragraph (a) and substitute therefor the words “equal protection, equal benefit”.

### **Justifications**

The amendment is necessary to align clause 6 with the provisions of Article 27(1) of the Constitution on equality and freedom from discrimination.

### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended —

- (a) in sub-clause (1) by deleting the words “on free consent” and “on free and full consent”;
- (b) in sub-clause (2) by deleting the word “sexuality” and substituting therefor the word “sexual”.

### **Justifications**

The amendments seek to ensure that the exercise of the right to marry is based on free and full consent of the parties. The amendment also seeks to delete the word sexuality and replace with “sexual” to make reference to the correct terminology as employed in other statutes which is sexual and reproductive health.

### **CLAUSE 11**

**THAT** clause 11 of the Bill be amended by inserting the word “and inclusive” immediately after the word “quality”.

### **Justifications**

The amendments seek to align the Bill with the provisions of the Basic Education Act which recognizes the right of every child to access quality and inclusive education.

#### **CLAUSE 20**

**THAT** clause 20(8) of the Bill be amended by deleting the word “adoptive” appearing in paragraph (b) and substituting therefor the word “adaptive”.

#### **Justifications**

1. The amendments seek to make reference to the correct terminology which is adaptive technologies.
2. This shall ensure that the Council in consultation with relevant Government establishments shall guarantee that learning institutions provide individualized support measures, appropriate equipment, assistive devices and adaptive technologies that maximize academic and social development, consistent with the goal of full inclusion of students with disabilities.

#### **CLAUSE 21**

**THAT** clause 21 of the Bill be amended—

- (a) in sub-clause (2) by inserting the words “where an employer has at least 20 employees,” immediately before the word “reserve”; and
- (b) in sub-clause (5)(e) by deleting the word “solely”.

#### **Justifications**

1. The amendment seeks to ensure that undue burden is not placed on employers with few staff. In this regard, the requirement that compels employers to reserve at least five per cent direct employment opportunities for persons with disabilities to secure employment, shall only apply to an employer who has at least 20 employees.
2. Further, the amendment deletes the word solely which as used in sub-clause (5) would in effect allow employers to discriminate employees on the ground of disability when it is accompanied by another ground.

#### **CLAUSE 25**

**THAT** clause 25(e) of the Bill be amended by inserting the words “putting in place mechanisms for” immediately before the words “prompt attendance”.

#### **Justifications**

The amendment creates clarity as to processes and structures for delivering health services to persons with disabilities and compels national and county governments to put in place mechanisms that shall ensure prompt attendance by medical personnel to persons with disabilities.

#### **CLAUSE 26**

**THAT** clause 26 of the Bill be amended –

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause –
  - (1) Every person with disability has the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, and the right to access information, on an equal basis with others, in a timely manner and without additional cost”;

- (b) in sub-clause (2) by inserting the words “forms of” immediately after the words “and other”;
- (c) in sub-clause (7) by deleting the words “Media Council of Kenya” and substituting therefor the words “Communication Authority of Kenya in consultation with the Council” ;
- (d) in sub-clause (8) by deleting the words “sub-titles” and substituting therefor the words “closed captioning”; and
- (e) in sub-clause (10) by inserting the words “and private” immediately after the word “public”.

#### **Justifications**

1. The amendment creates clarity on the right of access to information and communication technology services by persons with disabilities.
2. Additionally, the amendments obligate the Communication Authority of Kenya which is the regulator to develop regulations on maintenance of low levels of risk to persons who have photosensitive epilepsy by television broadcasters.
3. Further, the amendments seek to compel all television stations to provide close-captioning in their newscasts and also obligate public and private institutions to comply with the provisions of clause 26.

#### **CLAUSE 28**

**THAT** clause 28(3) of the Bill be amended by deleting the word “Kenya” appearing in paragraph (b) and substituting therefor the word “Kenyan”.

#### **Justifications**

The amendment aligns clause 28 of the Bill with Article 7 of the Constitution which recognises the use of the Kenyan sign language.

#### **CLAUSE 29**

**THAT** clause 29(4) of the Bill be amended by deleting the word “Kenya” and substituting therefor the word “Kenyan”.

#### **Justifications**

The amendment aligns clause 29 of the Bill with Article 7 of the Constitution which recognises the use of the Kenyan sign language.

#### **NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 36—

Headquarters and other  
offices of the Council.

**36A.(1)** The headquarters of the Council shall be in Nairobi.

(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.



### **Justifications**

The amendment seeks to provide for the headquarters of the Council which shall be in Nairobi. Further, the amendment empowers the Council to establish its offices and decentralize its services to ensure access by persons with disabilities throughout Kenya.

### **CLAUSE 45**

**THAT** clause 45(4) of the Bill be amended by deleting the word “five” and substituting therefor the word “three”.

### **Justifications**

The amendment seeks to align the term of office of the Executive Director of the Council with the Mwongozo guidelines which is a term of three years, renewable once.

### **CLAUSE 50**

**THAT** clause 50 of the Bill be amended—

- (a) in sub-clause (1) by inserting the words “upon request by a member of the public or” immediately before the words “where it considers” appearing in paragraph (a);
- (b) in sub-clause (3) by inserting the words “or a member of the public” immediately after the words “regulatory body”.

### **Justifications**

The Bill as it is provides that the Council may conduct an inquiry or a sectoral investigation where it considers it necessary or desirable for the purpose of carrying out its functions; upon receiving a direction by the Cabinet Secretary in writing or at the request of a regulatory body. The amendment seeks to also permit members of the public including PWDs to make request for the undertaking of investigation on an issue touching of PWDs by the Council.

### **CLAUSE 56**

**THAT** clause 56 of the Bill be amended—

- (a) in sub-clause (1) by deleting the expression “of Kshs. 150,000/=” and substituting therefor the words “of such amount as may be prescribed by the Cabinet Secretary”; and
- (b) in sub-clause (2) by deleting the words “of not less than Kshs. 10,000/=” and substituting therefor the words “such amount as may be prescribed by the Cabinet Secretary”.

### **Justifications**

Clause 56 provides for exemptions from income tax and provision of social assistance to parents or guardians of children with severe disabilities. To allow flexibility and variation for increase of the amounts such parents or guardians may be entitled to, the clause should not specify the amounts. The figures should be prescribed in regulations so that where need arises for such amounts to be increased, there may be no need to go through the rigorous processes of amending statutes.

## CLAUSE 62

**THAT** clause 62 of the Bill be amended by deleting the words “one million” and substituting therefor the words “two million”.

### Justifications

The proposed amendment seeks to enhance the penalty of the offence against abuse of persons with disabilities.

## CLAUSE 63

**THAT** clause 63 of the Bill be amended—

- (a) by renumbering the existing clause as sub-clause (1);
- (b) by inserting the following new sub-clause immediately after sub-clause (1)—
  - (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

### Justifications

The proposed amendment seeks to create a penalty of the offence against concealment of persons with disabilities.

## CLAUSE 65

**THAT** clause 65 of the Bill be amended by deleting the words “two hundred thousand shillings” and substituting therefore the words “two million shillings”.

### Justifications

The proposed amendment seeks to enhance the penalty of the offence against denial of food and fluids of persons with disabilities.

## CLAUSE 66

**THAT** clause 66 of the Bill be amended by deleting the words “two hundred thousand shillings” and substituting therefore the words “two million shillings”.

### Justifications

The proposed amendment seeks to enhance the penalty of the offence against degrading treatment of persons with disabilities

## NEW CLAUSE

**THAT** the Bill be amended by inserting the following new clause immediately after clause 66—

Begging and receiving alms	<b>66A.</b> A person who causes, procures, encourages or solicits a child or an adult with disabilities to engage in begging or receiving alms commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years, or to both.
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### **Justifications**

The proposed amendment seeks to create the offence against using persons with disabilities for begging and receiving alms which has become rampant over the years.

### **CLAUSE 72**

**THAT** clause 72 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

(c) ensuring that bus-stops are barrier-free”.

### **Justifications**

The proposed amendment seeks to ensure access by persons with disabilities of public transport by obligating the National and County Governments to make public roads and highways under their respective mandates accessible to persons with disabilities by inter alia ensuring that bus-stops are barrier-free.

### **NEW CLAUSE**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 73—

Housing.

**73A.** 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.

### **Justifications**

The new clause as proposed seek to ensure that persons with disabilities realise the right to housing by compelling every Government agency putting up residential and commercial buildings to 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.

### **CLAUSE 74**

**THAT** clause 74 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “alone” appearing in the opening statement; and
- (b) in sub-clause (2) by deleting the word “alone”.

### **Justifications**

Clause 74 of the Bill provides that no person shall, on the ground of disability alone, deny a person with disability admission into any premises to which members of the public are ordinarily admitted. The use of the word “alone” in clause 74 imply that where the exist another ground, a person with disabilities may be discriminated, hence the proposal to delete the word.

...X...