

# KENYA

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## 1 Population indicators

### 1.1 What is the total population of Kenya?

According to the 2009 Population and Housing Census report,<sup>1</sup> Kenya has a total population of 38 610 097 people.

### 1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Kenya. What criteria are used to determine who falls within the class of persons with disabilities in Kenya?

A national census is used to obtain data on the prevalence of disability in Kenya. The census questionnaire consists of a set of questions meant to solicit information about the household, including questions about disability.<sup>2</sup> Key areas assessed in the 2009 census were: visual, hearing, speech, physical, mental, self-care difficulties and other.<sup>3</sup>

### 1.3 What is the total number and percentage of people with disabilities in Kenya?

According to the 2009 Census, 1 330 312 million (3,5 per cent of the Kenyan population) were reported to have a disability.<sup>4</sup>

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1 Kenya National Bureau of Statistics [http://www.knbs.or.ke/index.php?option=com\\_phoca\\_download&view=category&id=2:2009-census-documents&Itemid=637](http://www.knbs.or.ke/index.php?option=com_phoca_download&view=category&id=2:2009-census-documents&Itemid=637) (accessed 5 May 2014).

2 Kenya National Bureau of Statistics [http://www.knbs.or.ke/index.php?option=com\\_content&view=article&id=150&Itemid=636](http://www.knbs.or.ke/index.php?option=com_content&view=article&id=150&Itemid=636) (accessed 5 May 2014).

3 Kenya National Bureau of Statistics [http://www.knbs.or.ke/index.php?option=com\\_content&view=article&id=155:number-of-persons-with-disability&catid=112&Itemid=638](http://www.knbs.or.ke/index.php?option=com_content&view=article&id=155:number-of-persons-with-disability&catid=112&Itemid=638) (accessed 5 May 2014).

4 As above.

**1.4 What is the total number and percentage of women with disabilities in Kenya?**

According to the 2009 Census, there are 682 623 women with disabilities in Kenya (3,5 per cent).

**1.5 What is the total number and percentage of children with disabilities in Kenya?**

Statistics on this issue are not available.

**1.6 What are the most prevalent forms of disability and/or peculiarities to disability in Kenya?**

According to the 2009 Census, the most prevalent form of disability is 'physical/self care'.<sup>5</sup> The number of persons with disabilities disaggregated by types of disability and gender as per the 2009 Census:

- Physical/Self Care – 215 627 (female), 198 071(male)
- Visual impairment – 177 811 (female), 153 783 (male)
- Hearing impairment – 97 978 (female), 89 840 (male)
- Speech impairment – 75 020 (female), 86 783 (male)
- Mental impairment – 60 954 (female), 75 139 (male)
- Others – 55 233 (female), 44 073 (male)

## **2 Kenya's international obligations**

**2.1 What is the status of the United Nation's Convention on the Rights of People with Disabilities (CRPD) in Kenya? Did Kenya sign and ratify the CRPD? Provide the date(s).**

Kenya signed and ratified the UN Convention on the Rights of Persons with Disabilities on 30 March 2007 and 19 May 2008 respectively.<sup>6</sup>

5 Office of the High Commissioner for Human Rights 'CRPD future sessions' [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=800&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=800&Lang=en) (accessed 23 April 2014).

6 Office of the High Commissioner for Human Rights 'Ratification status for CRPD' [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en) (accessed 23 April 2014).

- 2.2 If Kenya has signed and ratified the CRPD, when was its country report due? Which government department is responsible for submission of the report? Did Kenya submit its report? If so, and if the report has been considered, indicate if there was a domestic effect of this reporting process. If not, what reasons does the relevant government department give for the delay?**

Kenya's country report was due in May 2010. The report was submitted by the Ministry of Gender, Children and Social Development. Kenya held elections in 2013 and government departments were reorganised following the change of government. Currently, the Department of Social Services under the Ministry of Labour, Social Security and Services bears responsibility for disability.

Kenya has already submitted its state report to the UN Committee but the report is yet to be considered.<sup>7</sup>

- 2.3 While reporting under various other United Nations instruments, or under the African Charter on Human and People's Rights, or the African Charter on the Rights and Welfare of the Child, did Kenya also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant 'concluding observations' adopted? If relevant, were these observations given effect to? Was mention made of disability rights in your state's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations/recommendations?**

- **UN Instruments<sup>8</sup>**

- **The International Covenant on Economic, Social and Cultural Rights**

In September 2006, Kenya submitted its state report to the Economic and Social Council. On the rights of persons with disabilities, Kenya reported on the situation of expectant mothers with physical disabilities, stating that they were often unable to access healthcare due to inaccessible hospitals – in particular, hospital beds. Kenya also reported on education for children with disabilities.<sup>9</sup>

In the concluding observations of the Committee, it recommended that Kenya:

- take special measures to increase employment of persons with disabilities;
- take measures to cater to the special needs of children with disabilities in education; and
- take immediate steps to introduce a comprehensive compulsory health insurance scheme for everyone, including persons with disabilities.<sup>10</sup>

Most of these observations and recommendations have been given effect to, at least in law. To illustrate, article 54(2) of the Constitution and section 13 of the Persons with Disabilities Act 14 of 2003 promote the employment of persons with

7 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

8 Office of the High Commissioner for Human Rights 'Ratification status for Kenya' [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=en) (accessed 23 April 2014).

9 Office of the High Commissioner for Human Rights 'Reporting status for Kenya' [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN) (accessed 27 April 2014).

10 As above.

disabilities. However, there is limited data to show whether there has been an actual increase in their employment as a result of the law.

▫ **The Convention on the Rights of the Child**

In March 2013, Kenya submitted its state report to the Committee on the Rights of the Child.<sup>11</sup> On the rights of children with disabilities, Kenya reported that it has adopted 'Concluding Observations' issued by the Committee on the Rights of the Child in 2007. In the 2007 concluding observations, the Committee specifically recommended that Kenya take fully into account General Comment No 9 on the rights of children with disabilities.<sup>12</sup> The actions that Kenya has taken in response to the Committee's observations, as reported in Kenya's 2013 report, include enacting a Constitution that protects the rights of persons with disabilities and setting up a Cash Transfer Programme in 2010 to assist households with severely disabled persons.<sup>13</sup>

• **Regional Instruments**

▫ **African Charter on Human and Peoples' Rights**

In its June 2006 report under the African Charter on Human and Peoples' Rights, Kenya reports that it has taken legislative measures towards protecting the rights of persons with disabilities. The state identified major challenges affecting persons with disabilities to include culture, infrastructure and equipment, lack of reliable data on persons with disabilities, inadequate budgetary allocation on issues of persons with disabilities and poor implementation of the Persons with Disabilities Act.<sup>14</sup> In its concluding observations to Kenya, the African Commission on Human and Peoples' Rights merely commended Kenya for establishing the National Council for Persons with Disabilities but did not make substantive 'Concluding Observations' on disability.<sup>15</sup>

▫ **UN Universal Periodic Review**

Kenya was last reviewed by the Human Rights Council-Universal Periodic Review on 6 May 2010. The state reported that it has enacted some important legislation and adopted progressive policies to promote the rights of persons with disabilities. However, the state noted that there are still gaps in harmonisation of various policy interventions. Kenya was urged to reinforce protection of vulnerable groups, notably children with specific needs.<sup>16</sup>

11 As above.

12 For the full contents of the General Comment No 9 (CRC/C/GC/9), see <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/GC/9> (accessed 5 May 2014).

13 Office of the High Commissioner for Human Rights 'Reporting status for Kenya' (n 9 above).

14 African Commission on Human and Peoples' Rights 'Kenya: Initial report, 1992-2006' <http://www.achpr.org/states/kenya/reports/1st-1992-2006/> (accessed 27 April 2014).

15 Centre for Human Rights 'Concluding observations of the African Commission on Human and Peoples' Rights on the Initial Report of the Republic of Kenya adopted at its 41st Ordinary Session held at Accra, Ghana from 16-30 May 2007' [http://www1.chr.up.ac.za/images/files/documents/ahrdd/kenya/kenya\\_concluding\\_observations\\_2007.pdf](http://www1.chr.up.ac.za/images/files/documents/ahrdd/kenya/kenya_concluding_observations_2007.pdf) (accessed 27 April 2014).

16 Office of the High Commissioner for Human Rights 'Human Rights Council – Universal Periodic Review' <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights6May2010am.aspx> (accessed 27 April 2014).

- 2.4 Was there any domestic effect on Kenya's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Kenya's legislature to incorporate it into the legal system before the instrument can have force in Kenya's domestic law? Have Kenya's courts ever considered this question? If so, cite the case(s).**

Prior to the Constitution of Kenya, 2010, Kenya was a dualist state. Section 2(6) of the Constitution of Kenya can be read as having turned Kenya into a monist state.<sup>17</sup> It provides that 'any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution'.<sup>18</sup>

The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child have been fully domesticated in Kenya through the enactment of the Children's Act.<sup>19</sup> Various aspects of international instruments are given effect in different laws.<sup>20</sup>

- **Case law**

Courts in Kenya have considered the question of international law vis-à-vis Kenya's domestic legal system. On the one hand there is the view, espoused by the High Court in *Re the Matter of Zipporah Wambui Mathara*,<sup>21</sup> that international law supersedes conflicting local law. On the other hand, is the view that international law is not above any local statute as they are both law under the Constitution and hence equal in stature. This was the view of the High Court in *Beatrice Wanjiku v The Attorney General*.<sup>22</sup>

- 2.5 With reference to 2.4 above, has the United Nation's CRPD or any other ratified international instrument been domesticated? Provide details.**

The Persons with Disabilities Act of Kenya was passed in 2003 (prior to the CRPD) and is currently under review to align it with the CRPD.

## 3 Constitution

- 3.1 Does the Constitution of Kenya contain provisions that directly address disability? If so, list the provision, and explain how each provision addresses disability.**

Article 54 of the Constitution is a stand-alone article on disability:

17 For the argument that art 94(5) of the Constitution creates the possibility that Parliament still has a role in the domestication process, see M Oduor 'The current status of international law in Kenya' (2013) *Social Science Research Network* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2326135](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2326135) (accessed 5 May 2014).

18 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

19 As above.

20 As above.

21 (2010) eKLR <http://kenyalaw.org/caselaw/cases/view/71032/> (accessed 27 April 2014).

22 (2011) eKLR <http://kenyalaw.org/caselaw/cases/view/81477/> (accessed 27 April 2014).

- 54.** (1) A person with any disability is entitled –
- (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
  - (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
  - (c) to reasonable access to all places, public transport and information;
  - (d) to use Sign language, Braille or other appropriate means of communication; and
  - (e) to access materials and devices to overcome constraints arising from the person's disability.
- (2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.'

Other articles that address disability directly are the following: 7(3)(b), 21(3), 27(4) and (5), 54, 81(c), 82(2)(c)(i), 83(1)(b), 97(1)(c), 98(1)(d), 99(2)e, 100(b), 120(1), 177(1)(c), 193(2)(d), 227(2)b, 232(1)(i)(iii) and 260.

**3.2 Does the Constitution of Kenya contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.**

The Constitution contains provisions that make reference to 'marginalised persons', 'groups affected by past discrimination' and 'persons or groups previously disadvantaged by unfair competition or discrimination' in articles 10(2)b, 27(6), 91(1)(e) and 227 (2)(b). Persons with disabilities fall under these classifications.

## 4 Legislation

**4.1 Does Kenya have legislation that directly addresses issues relating to disability? If so, list the legislation and explain how the legislation addresses disability.**

The Persons with Disabilities Act, 2003 directly addresses issues related to disability. Currently, the Act is under review.<sup>23</sup> Kenya has also enacted other legislation addresses disability.<sup>24</sup>

• **The Persons with Disabilities Act 14 of 2003<sup>25</sup>**

The aims of the Persons with Disabilities Act are to provide for the rights and rehabilitation of persons with disabilities, to achieve equalisation of opportunities for persons with disabilities, and to establish the National Council for Persons with Disabilities (NCPWD). The Act also establishes the National Development Fund for Persons with Disabilities to provide monetary assistance to organisations and persons with disabilities.

<sup>23</sup> Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

<sup>24</sup> For a comprehensive review of legislation that touches on the right to legal capacity for persons with disabilities, see: Kenya National Commission on Human Rights 'Briefing paper: How to implement Article 12 of Convention on the Rights of Persons with Disabilities regarding legal capacity in Kenya' <http://www.knchr.org/ReportsPublications/ThematicReports/GroupRights.aspx> (accessed 27 April 2014).

<sup>25</sup> Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20133> (accessed 25 May 2014).

The rights provided for in the Act include civil and political rights, equal rights of access to opportunities for suitable employment, to special and non-formal education, appropriate health care, participation in sporting and recreational activities and to a barrier free and disability friendly environment.<sup>26</sup>

Subsidiary legislation under the Act includes The Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, 2009 and The Persons with Disabilities (Income Tax Deductions and Exemptions) Order, 2010.

- **Social Assistance Act 24 of 2013**<sup>27</sup>

Section 23 of the Act provides that a person with a disability is eligible for social assistance under the Act if the person suffers from severe mental or physical disability, the person's disability renders them incapable of catering for their basic needs and there is no known source of income or support for the person.

- **The Mental Health Act 10 of 1989**<sup>28</sup>

The intent of the Act is to amend and consolidate the law relating to: the care of persons who are suffering from a mental disorder or mental subnormality with a mental disorder; the custody of their persons and the management of their estates; and the management and control of mental hospitals.

Section 16 of the Act authorises non-consensual psychiatric treatment as well as detention. Section 26 of the Act provides that the court may make orders for the management of the estate of any person suffering from a mental disorder and for the guardianship of any person suffering from a mental disorder.

- **Matrimonial Causes Act 34 of 1941**<sup>29</sup>

One of the grounds of divorce according to section 8 of the Matrimonial Causes Act is where a spouse is incurably of [unsound mind] and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. Similarly, one of the grounds for nullifying a marriage under section 14(f) is where either party was at the time of marriage of [unsound mind] or subject to [recurrent fits of insanity] or [epilepsy].

- **Criminal Procedure Code**<sup>30</sup>

Sections 162, 163, 164 and 280 of the Criminal Procedure Code establish the procedure through which a court may determine that a person is of unsound mind and the subsequent consequences, including that once so declared a person may be consigned to a mental hospital or, in the wording of section 280, a 'lunatic asylum' until such time as the medical officer or the court or the Attorney General deem such person to be of sound mind.

- **Sexual Offences Act 3 of 2006**<sup>31</sup>

The Act recognises persons with disabilities as 'vulnerable witnesses' under Section 31 and authorises the use of intermediaries to enable the 'vulnerable witnesses' engage with the judicial system. An intermediary is 'a person authorized by a court,

26 E Kamundia 'Choice, support and inclusion: Implementing article 19 of the Convention on the Rights of Persons with Disabilities in Kenya' (2013) 1 *African Disability Rights Yearbook* 65.

27 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=NO.%2024%20OF%202013> (accessed 25 May 2014).

28 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20248> (accessed 25 May 2014).

29 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20152> (accessed 25 May 2014).

30 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2075> (accessed 25 May 2014).

31 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2062A> (accessed 25 May 2014).

on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counselor, guardian, children's officer or social worker.' Section 31(10) provides that an accused shall not be convicted solely on the uncorroborated evidence of an intermediary.

- **The Basic Education Act 14 of 2013**<sup>32</sup>

Part VI of the Basic Education Act focuses on promotion of [special needs] education. This part addresses, inter alia, the establishment and management of [special institutions]. Under the Act, children with [special needs] are identified as including 'intellectually, mentally, physically, visually, emotionally challenged or hearing impaired learners, pupils with multiple disabilities and specially gifted and talented pupils'.<sup>33</sup> The Cabinet Secretary is required to ensure that every special school is provided with appropriate trained teachers and infrastructure for learners with disabilities.<sup>34</sup>

- **Penal Code**<sup>35</sup>

According to Section 12 of the Penal Code, a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission. Section 146 prohibits 'defilements of [idiots] or [imbeciles]'.

- **The Elections Act 24 of 2011**<sup>36</sup>

The Act disqualifies a person of unsound mind from being registered as a voter or being nominated as a Member of Parliament, county assembly, governor, speaker and other public offices. Section 36 outlines the criteria for allocation of special seats by political parties which include a requirement that the list shall include eight candidates, four of whom shall be persons with disabilities.

- **The Employment Act 11 of 2007**<sup>37</sup>

The Employment Act explicitly prohibits an employer from discriminating directly or indirectly against an employee or prospective employee on grounds of disability.

- **The Children's Act 8 of 2001**<sup>38</sup>

The Children's Act explicitly prohibits discrimination against a child on the ground of disability under Section 5. Section 107(2) of the Act provides for the extension of guardianship when a child suffers from a mental or physical disability or illness rendering him or her incapable of maintaining himself or herself or managing his own affairs and property without a guardian's assistance.

32 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=NO.%2014%20OF%202013> (accessed 25 May 2014).

33 Section 44(3) of the Basic Education Act.

34 Section 44(4) of the Basic Education Act.

35 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2063> (accessed 25 May 2014).

36 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%207> (accessed 25 May 2014).

37 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20226> (accessed 25 May 2014).

38 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20141> (accessed 25 May 2014).

**4.2 Does Kenya have legislation that indirectly addresses issues relating to disability? If so, list the main legislation and explain how the legislation relates to disability.**

Other acts that mention or indirectly address issues relating to disability include the Trustee Act,<sup>39</sup> Civil Procedure Act and the Civil Procedure Rules, 2010,<sup>40</sup> Kenya Citizenship and Immigration Act,<sup>41</sup> HIV and AIDS Prevention and Control Act,<sup>42</sup> Sale of Goods Act,<sup>43</sup> National Social Security Fund Act,<sup>44</sup> Law of Succession Act,<sup>45</sup> Traffic Act,<sup>46</sup> Evidence Act,<sup>47</sup> Kenya National Commission on Human Rights Act<sup>48</sup> and the National Gender and Equality Commission Act.<sup>49</sup>

## 5 Decisions of courts and tribunals

**5.1 Have the courts (or tribunals) in Kenya ever decided on an issue(s) relating to disability? If so, list the cases and provide a summary for each of the cases with the facts, the decision(s) and the reasoning.**

In *Fredrick Gitau Kimani v The Attorney General*<sup>50</sup> the Petitioner, a public officer, who was diagnosed with diabetes and whose left leg had been amputated, was relieved of his duties on medical grounds. He had been certified by the NCPWD as a person with a disability. According to the Persons with Disabilities Act, the retirement age for persons with disabilities is 60 years of age. However, the petitioner retired at 55. The Petitioner argued that the early retirement amounted to discrimination on the grounds of health, status, age as well as disability which was a direct violation of article 27(4) of the Constitution as read with section 15(6) of the Persons with Disabilities Act. The Court held that the Petitioner was discriminated against and awarded him damages.

*Kenya Society for the Mentally Handicapped (KSMH) v The Attorney General*<sup>51</sup> was brought by KSMH on its own behalf and in the public interest. KSMH accused the state of violating the rights of persons with mental and intellectual disabilities by

- 39 Section 31 Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20167> (accessed 25 May 2014).
- 40 Section 93 and Rule 15, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2021> (accessed 25 May 2014).
- 41 Sections 13 & 27, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20172> (accessed 25 May 2014).
- 42 Section 22, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20246A> (accessed 25 May 2014).
- 43 Section 4, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2031> (accessed 25 May 2014).
- 44 Sections 38 & 44, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2045%20of%202013> (accessed 25 May 2014).
- 45 Section 5, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20160> (accessed 25 May 2014).
- 46 Section 31, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20403> (accessed 25 May 2014).
- 47 Sections 125, 126 & 136, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2080> (accessed 25 May 2014).
- 48 Section 11, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%205B> (accessed 25 May 2014).
- 49 Sections 2, 8 & 11, Kenya Law <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%205C> (accessed 25 May 2014).
- 50 (2012) eKLR <http://kenyalaw.org/caselaw/cases/view/81883> (accessed 28 April 2014).
- 51 (2012) eKLR <http://kenyalaw.org/caselaw/cases/view/86061> (accessed 28 April 2014).

discriminating against them in the provision of support and services contrary to articles 21(3), 28 and 27(1) of the Constitution. One of KSMH claims was that the state was slow to formulate and develop measures and implementing policies designed to achieve equal opportunities for persons with mental and intellectual disabilities to obtain education and employment and access to healthcare. The Court held that the petitioners failed to present facts and evidence to support their legal arguments and dismissed the petition.

In the case of *In the matter of Leah Wachu Waiganjo (a person suffering from a mental disorder) and in the matter of an application by William Kibera Waiganjo to be appointed manager to the estate of and guardian to the said Leah Wachu Waiganjo*<sup>52</sup> an application was made by William Kibera Waiganjo (the applicant) to be appointed guardian *ad litem* and manager of the estate of Leah Wachu Waiganjo (the subject). The basis of the application was that Leah suffers from a mental disorder that rendered her incapable of managing her affairs. Medical evidence was produced to show that she suffered from temporal lobe epilepsy and periodic depression. Based on the Court's observations of Leah and the medical reports, the Court appointed the applicant to be Leah's guardian *ad litem*, to manage her estate, including proper provision for her maintenance, and to take any appropriate legal action for her benefit and for the benefit of her estate.

## 6 Policies and programmes

### 6.1 Does Kenya have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability

- **National Disability Policy of 2006**

The key policy with regard to persons with disabilities is the National Disability Policy of 2006.<sup>53</sup> The Policy recognises disability as a 'human rights and a development phenomenon that cuts across all aspects and spheres of society and which requires support from all sectors'.<sup>54</sup> The Policy echoes some of the rights of persons with disabilities that have been recognised in the CRPD including accessibility, education and employment. The policy aims to abolish all forms of discrimination against persons with disabilities and to provide equal opportunities to persons with disabilities. The Policy takes cognisance of the importance of awareness raising on disability and to this end states that the 'Government shall seek to increase the levels of public awareness on the needs, aspirations and capacities of persons with disabilities so as to enhance their acceptance, participation and integration in society'. The Sessional Paper for the Policy is yet to be presented to Parliament for approval.<sup>55</sup>

The National Human Rights Policy also addresses disability. Other policies that address disability but that are still in draft form include the Draft Mental Health Policy, Draft Special Needs Education Policy and the Draft National Social Protection Policy.<sup>56</sup>

52 (2012) eKLR <http://kenyalaw.org/caselaw/cases/view/80879> (accessed 28 April 2014).

53 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

54 As above.

55 As above.

56 As above.

- **The National Guidelines for HIV Testing and Counseling**

The National Guidelines for HIV Testing and Counseling in Kenya recognise that provisions should be made for persons with disabilities to access HIV Testing and Counselling (HTC) services in a manner that meets their specific needs.<sup>57</sup>

- **Cash Transfer Programme**

Kenya is piloting the 'Persons with Severe Disability Cash Transfer Programme (PWSD-CT)'.<sup>58</sup> Under this Programme, the government defines persons with severe disabilities as referring to:

[T]hose who need permanent care including feeding, toiletry, protection from danger from themselves or other persons, and from the environment. They also need intensive support on a daily basis which therefore keeps their parents and guardians / caregivers at home or close to them throughout.<sup>59</sup>

The overall objective of the Programme is 'to enhance the capacities of the caregivers through cash transfers thereby improving the livelihoods of persons with severe disabilities and mitigating the effect of the disability to the household'. The eligibility criteria are '[a] household with a person with severe disability and extremely poor households'.<sup>60</sup>

## 6.2 Does Kenya have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.

- **The National Land Policy**

Section 3.6.5, clause 194 of the National Land Policy makes provision for land rights of vulnerable groups who include persons with disabilities.

Kenya Vision 2030, the country's development blueprint, also touches on disability in its description of measures to be taken to enhance the lives of vulnerable groups.<sup>61</sup>

## 7 Disability bodies

### 7.1 Other than the ordinary courts and tribunals, does Kenya have any official body that specifically addresses violations of the rights of people with disabilities? If so, describe the body, its functions and its powers.

The National Council for Persons with Disabilities was set up by the Persons with Disabilities Act, 2003 to promote the right of persons with disabilities in Kenya and to mainstream disability issues in all aspects of national development.<sup>62</sup> While the Council does not specifically address violations of rights of individuals, it is charged under Section 7 of the Act to formulate and recommend to the government

57 Kenya National Commission on Human Rights (n 24 above).

58 Ministry of Labour, Social Security and Services <http://www.labour.go.ke/index.php/2013-11-19-06-15-24/department-of-social-services> (accessed 28 April 2014).

59 Ministry of Gender, Children and Social Development *Guidelines for identifying persons with disabilities for cash transfer* (2011).

60 As above.

61 Kenya Vision 2030 <http://www.vision2030.go.ke/> (accessed 5 May 2014).

62 National Council for Persons with Disabilities <http://ncpwd.go.ke/> (accessed 5 May 2014).

measures to promote the rights of persons with disabilities. The bodies that specifically address violations of rights of people with disabilities are courts and the bodies described in question 8 below.

- 7.2 Other than the ordinary courts or tribunals, does Kenya have any official body that though not established to specifically address violations of the rights of persons with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.**

See question 8 below.

## **8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector**

- 8.1 Does Kenya have a Human Rights Commission or an Ombudsman or Public Protector? If so, does its remit include the promotion and protection of the rights of people with disabilities? If your answer is yes, also indicate whether the Human Rights Commission or the Ombudsman or Public Protector of Kenya has ever addressed issues relating to the rights of persons with disabilities.**

Kenya has a National Gender and Equality Commission, Kenya National Commission on Human Rights and a Commission on Administrative Justice (The Office of the Ombudsman) all established pursuant to article 59 of the Constitution, the National Gender and Equality Commission Act, the Kenya National Commission on Human Rights Act and the Commission on Administrative Justice Act respectively.

The Kenya National Commission on Human Rights (KNCHR)<sup>63</sup> monitors compliance with the CRPD, having been designated as the monitoring body under article 33(2) of the Constitution in 2010 by the Attorney General of Kenya. The Commission has a 'Disability Focal Point' that ensures that the rights of persons with disabilities are secured in various legislation and policies.<sup>64</sup>

The National Gender and Equality Commission (NGEC)<sup>65</sup> has a department on 'Disability and Elderly', whose mandate is to 'effectively promote mainstreaming of issues of disabilities and elderly into all aspects of socio-cultural, economic and political development and monitor implementation of the right of persons with disabilities and the elderly'.<sup>66</sup> The NGEC has been conducting county visits to monitor the Cash Transfer Programme for Persons with Severe Disabilities.<sup>67</sup>

63 Kenya National Commission on Human Rights <http://www.knchr.org/Home.aspx> (accessed 29 April 2014).

64 Kenya National Commission on Human Rights <http://www.knchr.org/Departments/ResearchCompliance.aspx> (accessed 29 April 2014).

65 National Gender and Equality Commission <http://www.ngeckkenya.org/> (accessed 29 April 2014).

66 National Gender and Equality Commission 'Disability and elderly' <http://www.ngeckkenya.org/program/22/disability-marginalized-elderly> (accessed 29 April 2014).

67 National Gender and Equality Commission <http://www.ngeckkenya.org/news/1040/ngec-decries-neglect-of-children-with-severe-disabilities-> (accessed 29 April 2014).

The Commission on Administrative Justice (CAJ)<sup>68</sup> has a complementary mandate on human rights, but the core bodies on human rights and equality matters are KNCHR and NGEC.

## 9 Disabled peoples organisations (DPOs) and other civil society organisations

### 9.1 Does Kenya have organisations that represent and advocate for the rights and welfare of persons with disabilities? If so, list each organisation and describe its activities.

Kenya does have organisations that represent and advocate for the rights and welfare of persons with disabilities.<sup>69</sup> These include:

- **Association of the Physically Disabled in Kenya**  
Its focus is the rehabilitation of people with physical disabilities, cerebral palsy and multi-handicapped children.
- **Autism Society of Kenya**  
Set up by parents to cater for children with Autistic Spectrum Disorder in Kenya.
- **Brian Resource Centre**  
Set up to maximize the full potential of the Deaf blind person and their families.
- **Christoffel Blinden Mission**  
Helps people in need in developing countries, specifically those who are blind or otherwise disabled.
- **Ecumenical Disability Advocates Network**  
Set up to support the work of individuals, churches and non-church organisations concerned with the issues affecting persons with disabilities globally.
- **Kenya Albino Association**  
Set up to provide sunscreen lotions to persons with albinism to prevent skin cancer and for economic empowerment.
- **Kenya Association for the Intellectually Handicapped**  
Set up to empower parents of children with intellectual disabilities in order to create opportunities for them to participate more meaningfully in their children's lives.
- **Kenya National Association of the Deaf**  
Set up to represent and advocate for the rights of the Deaf community in Kenya.
- **Kenya Society for the Blind**  
Set up to promote the welfare, education, training and employment of the blind and assist in the prevention and alleviation of blindness.

<sup>68</sup> Commission on Administrative Justice <http://www.ombudsman.go.ke/> (accessed 29 April 2014).

<sup>69</sup> For a more comprehensive list of organisations of and for persons with disabilities in Kenya, see *Kenya disability directory: 2009-2010 edition* <http://www.afri-can.org/directory/Kenya%20Disability%20Directory%20-%202010.pdf> (accessed 30 April 2014) and Kenya Disability Directory [http://www.kenyadisabilitydirectory.com/index.php?option=com\\_content&view=featured&Itemid=101](http://www.kenyadisabilitydirectory.com/index.php?option=com_content&view=featured&Itemid=101) (accessed 30 April 2014).

- **Kenya Paraplegic Organisation**

Formed to undertake initiatives as they pertain to persons with paraplegia and matters affecting them in Kenya.

- **Liverpool VCT Care and Treatment**

Provides high quality VCT, Care and Treatment services to the Deaf community and to inform HIV/AIDS policy formulation in Kenya and beyond.

- **Sense International (East Africa)**

Works in partnership with others in the region to strengthen their capacity to provide services for persons who are deafblind.

- **Users and Survivors of Psychiatry Kenya (USP-Kenya)**

A membership organisation whose major objective is to promote and advocate for the rights of persons with psychosocial disabilities in Kenya (mental health conditions).

- **Women Challenged to Challenge**

Formed to advocate for the rights of women with disabilities.

### 9.2 In the countries in Kenya's region (East Africa) are DPOs organised/coordinated at national and/or regional level?

United Disabled Persons of Kenya (UDPK) is an umbrella organisation, which brings together organisations of Persons with Disabilities with the aim of giving a collective voice on matters touching on disability.

The Disability Caucus on the Implementation of the Constitution (DCIC) is a coalition of organisations of and for persons with disabilities in Kenya formed pursuant to the promulgation of the Constitution in 2010 with the aim of ensuring that the rights of persons with disabilities were taken into account in the implementation of the Constitution. UDPK and DCIC work closely with the KNCHR to promote the interests of persons with disabilities in the new constitutional dispensation.<sup>70</sup>

### 9.3 If Kenya has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?

There are several government bodies that work on the rights of persons with disabilities. The main government department that is responsible for promoting the rights of persons with disabilities and coordinating disability issues within government in line with article 33(1) of the CRPD is the Department of Social Services.<sup>71</sup> This responsibility is shared with the National Council for Persons with Disabilities (NCPWD).<sup>72</sup> KNCHR and NGEK also play a role as identified under question 8 above. Each of these government bodies involves DPOs in the implementation process in different ways. The Ministry of Gender, Children and Social Development wrote Kenya's state report under Article 35 of the CRPD. In the state report, the Ministry makes it clear that the report was the result of a consultative process involving DPOs amongst other actors. The Department of

70 Kenya National Commission on Human Rights 'Submission to Harvard University on development of Guidance Note on National Human Rights Institution and the Convention on Rights of Persons with Disabilities' (4 September 2013).

71 Department of Social Services <http://www.labour.go.ke/index.php/2013-11-19-06-15-24/departments-of-social-services> (accessed 1 May 2014).

72 National Council for Persons with Disabilities <http://ncpwd.go.ke/> (accessed 5 May 2014).

Social Services and the NCPWD are currently involving DPOs in the review of the Persons with Disabilities Act.<sup>73</sup>

With regard to monitoring the Convention, KNCHR's monitoring strategy involves engaging with DPOs. So far, KNCHR has conducted monitoring surveys in 10 counties and involved a representative from DPOs in the monitoring teams conducting the monitoring visits.<sup>74</sup> The selection of the representative from DPOs is done on a rotational basis amongst DPOs who are members of United Disabled Persons of Kenya (UDPK).<sup>75</sup>

#### **9.4 What types of actions have DPOs themselves taken to ensure that they are fully embedded in the process of implementation?**

In Kenya, the constitution making process served to unite DPOs under a common agenda. Once the Constitution was promulgated, there was need to ensure that the hard won gains would not be lost, and hence the Disability Caucus for the Implementation of the Constitution (DCIC) was formed. This unity, as well as having an umbrella body of DPOs (UDPK), enables DPOs to participate in legislative processes.<sup>76</sup>

DPOs under the DCID have been proactive in engaging with government in implementation of the CRPD. Advocacy by DCIC and the Kenya Association of the Intellectually Handicapped prior to the August 2010 constitutional referendum resulted in the government registering and assisting some adults with intellectual disabilities in exercising their right to vote.<sup>77</sup> Prior to the elections of 4 March 2013, the DCIC engaged with the Independent Electoral and Boundaries Commission on political participation by persons with disabilities. DCIC lobbied for dissemination of information in accessible formats, the result of which was that for the first time, sign language interpretation was provided during the announcements of national election results.<sup>78</sup>

#### **9.5 What, if any, are the barriers DPOs have faced in engaging with implementation?**

The following barriers were identified:<sup>79</sup>

- lack of awareness amongst policy makers on the CRPD;
- lack of resources and technical capacity by DPOs to conduct research that can inform the implementation of the CRPD;
- lack of a unified voice by DPOs (DPOs tend to organise by disability type and each DPO lobbies for issues which are more relevant to it); and
- tokenistic involvement in policy processes.

<sup>73</sup> Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

<sup>74</sup> Kenya National Commission on Human Rights (n 70 above).

<sup>75</sup> Email from M Njenga on 24 April 2014. USP Kenya has been involved in monitoring the CRPD with KNCHR, see USP Kenya 'Legislation and policy participation' <http://www.uspkenya.com/index.php/programs/what-we-do/legislation-and-policy-participation> (accessed 30 April 2014).

<sup>76</sup> As above.

<sup>77</sup> Kenya National Commission on Human Rights (n 24 above).

<sup>78</sup> Kenya National Commission on Human Rights (n 70 above).

<sup>79</sup> Email from M Njenga on 24 April 2014 (n 75 above).

**9.6 Are there specific instances that provide ‘best-practice models’ for ensuring proper involvement of DPOs?**

Kenya has a fairly strong disability movement which has made it easier for independent constitutional commissions such as KNCHR to involve DPOs in implementation of the CRPD. A ‘best practice model’ would be the deliberate targeting of DPOs by quasi-government agencies to ensure the engagement of DPOs in policy processes. For example, in its human rights audit on access to sexual and reproductive healthcare, ‘Realising Sexual and Reproductive Health Rights in Kenya: A Myth or Reality?’, KNCHR specifically targeted DPOs to ensure that the disability angle to reproductive health issues was captured.<sup>80</sup>

**9.7 Are there any specific outcomes regarding successful implementation and/or improved recognition of the rights of persons with disabilities that resulted from the engagement of DPOs in the implementation process?**

See questions 9.4 and 9.6 above.

**9.8 Has your research shown areas for capacity building and support (particularly in relation to research) for DPOs with respect to their engagement with the implementation process?**

The research has shown areas for capacity building and support in relation to research – see question 9.5.

**9.9 Are there recommendations that come out of your research as to how DPOs might be more comprehensively empowered to take a leading role in the implementation processes of international or regional instruments?**

Yes:

- proactive targeting of DPOs by state agencies throughout implementation initiatives;
- capacity building of DPOs on the CRPD;
- broad collaboration amongst DPOs and between DPOs and other ‘mainstream’ human rights institutions; and
- resourcing DPOs to conduct research that can provide evidence based information.

**9.10 Are there specific research institutes in the region where Kenya is situated (East Africa) that work on the rights of persons with disabilities and that have facilitated the involvement of DPOs in the process, including in research?**

No.

80 Kenya National Commission on Human Rights [http://www.knchr.org/Portals/0/Reports/Reproductive\\_health\\_report.pdf](http://www.knchr.org/Portals/0/Reports/Reproductive_health_report.pdf) (accessed 1 May 2014).

## 10 Government departments

- 10.1 Does Kenya have a government department or departments that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).**

See question 9.3 above.

## 11 Main human rights concerns of people with disabilities in Kenya

- 11.1 Contemporary challenges of persons with disabilities in Kenya (for example, in some parts of Africa ritual killing of certain classes of PWDs, such as people with albinism, occurs).**

Most Kenyans still hold negative cultural beliefs such as the belief that persons with disabilities are cursed. The belief that psychosocial disability is caused by demons is prevalent and people with psychosocial disabilities are often subjected to attempted faith healing procedures which sometimes include beating people on the head in the name of exorcising demons or placing hot objects on the person's body.<sup>81</sup>

- 11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto, and assess the adequacy of these responses to:**

- **Access and accommodation**

Article 43(1)(b) of the Constitution provides for the right to housing: 'every person has the right to accessible and adequate housing ...' In reality, many people with disabilities are unable to obtain accessible housing.<sup>82</sup> The state identifies disabled people as vulnerable and disadvantaged with regard to housing in its state report to the Economic and Social Council.<sup>83</sup>

- **Access to social security**

Article 43(1)(e) of the Constitution provides that every person has the right to social security. The government has established various funds including the National Development Fund for Persons with Disabilities (established under Part 5 of the Persons with Disabilities Act) as well as the Cash Transfer Programme for Persons with Severe Disabilities (see question 6.1 above). The National Women's

81 'Kenya's traditional healers can help with mental health' *BBC News* 7 July 2013 <http://www.bbc.com/news/health-23189069> (accessed 1 May 2014).

82 E Kamundia 'Independent living for people with disabilities in Kenya: Charting the way forward' in P Kenna (ed) *Contemporary housing issues in a globalized world* (2014).

83 Office of the High Commissioner for Human Rights 'Reporting status for Kenya' (n 9 above)

Enterprise Fund has an allocation of 10 per cent in every constituency for women with disabilities. Despite these measures, most persons with disabilities depend on their families for social and financial support.<sup>84</sup>

- **Access to public buildings**

Section 22(1) of the PWD Act, 2003, provides that 'A proprietor of a public building shall adapt it to suit persons with disabilities'. Section 24 of the PWD Act, 2003 mandates the NCPWD to serve an Adjustment Order upon the owner of a premises or the provider of services, or amenities which the Council considers to be inaccessible to persons with disabilities. This provision became operational on 1 January 2010, which means that proprietors of premises now have five years to comply with the provisions. The NCPWD is undertaking an audit of buildings and institutions that have complied with the requirement on accessibility.<sup>85</sup>

- **Access to public transport**

Section 23 of the Persons with Disabilities Act provides that '[a]n operator of a public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Council'. In its state report to the UN Committee on the rights of Persons with Disabilities, the state admits that with regard to access to transportation for persons with disabilities in Kenya, 'a lot needs to be done in order to make it more disability friendly'.

- **Access to education**

The Constitution, the Children's Act and the Education Act 2013 guarantee the right to education for learners with disabilities. It is noteworthy, however that the Basic Education Act allows segregated education for learners with disabilities (added by the author). Kenya introduced free and compulsory primary education for all children in 2003. However, education is not free for learners with disabilities because learners with disabilities largely access education from primary school level onwards in boarding schools<sup>86</sup> where they are required to pay boarding fees. According to the state report to the CRPD Committee, 75 per cent of persons with disabilities have attained at least primary level education, while only 2 per cent have reached university level.<sup>87</sup>

With regard to reasonable accommodation and affirmative action measures taken to advance the right to education for learners with disabilities, the Kenya National Examination Council allows learners with disabilities slightly more time when sitting for examinations and the Joint Admissions Board has put in place affirmative action programmes on university admission where learners with disabilities secure admission with one point less than that of other candidates.

- **Access to vocational training**

The Government of Kenya has established 12 Vocational Rehabilitation Centres in various parts of the country. These centres offer vocational training in different kinds of trades including courses in welding and fabrication and hairdressing. These courses are not highly marketable anymore partly due to technological advancements, and new curriculum needs to be adopted.<sup>88</sup> Currently, vocational centres also admit learners without disabilities.

84 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

85 As above.

86 Kamundia (n 26 above).

87 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above) [http://tinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=800&Lang=en](http://tinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=800&Lang=en) (accessed 23 April 2014).

88 As above.

- **Access to employment**

The Council for Persons with Disabilities has an obligation under section 13 of the Persons with Disabilities Act to secure 5 per cent of all casual, emergency and contractual positions in employment for persons with disabilities. Persons with disabilities in formal employment who earn less than KES 150000 are exempted from paying tax.<sup>89</sup> However, Kenya has high unemployment rates generally; which rates are significantly higher amongst persons with disabilities.<sup>90</sup>

- **Access to recreation and sport**

The Persons with Disabilities Act provides in section 28(1) that all persons with disabilities shall be entitled, free of charge, to the use of recreational or sport facilities owned or operated by the government during social, sporting or recreational activities. However, some of these places of recreation are not accessible to persons with disabilities which the state attributes to lack of awareness and inadequate resources.<sup>91</sup>

- **Access to justice**

The Constitution guarantees the right to access to justice for all persons, including persons with disabilities under article 48. Article 50 of the Constitution guarantees the right to a fair trial and public hearing for all persons, including persons with disabilities. Article 50(m) guarantees the right to an interpreter without payment. Under Section 38 of the PWD Act, 2003, the Attorney General in consultation with the NCPWD is required to make regulations on free legal services for persons with disabilities in particular cases.<sup>92</sup> Kenya has a National Legal Aid awareness programme that runs pilot projects on legal aid in several courts around the country.<sup>93</sup>

With regard to sexual offences, please see question 4.1 above on the Sexual Offences Act.

United Disabled Persons of Kenya carried out a baseline assessment on access to criminal justice system by persons with disabilities. The report identified that there are ongoing reforms in Kenya's judiciary and that new courts are fairly accessible as compared to the courts that are housed in older buildings. However, police stations and prison facilities are largely inaccessible to persons with disabilities. Further, police and prison staff are not well trained on the rights of persons with disabilities.<sup>94</sup>

### 11.3 Do people with disabilities have a right to participation in political life (political representation and leadership) in Kenya?

With regard to political participation and on a positive note, articles 81(c), 82(2)(c)(i), 97(1)(c), 98(1)(d), 100(b) and 177(1)(c) of the Constitution provide for fair representation of persons with disabilities in politics. With regard to the senate, the Constitution provides that the senate shall have two members representing persons with disabilities. Part IV of the Persons with Disabilities Act accords persons with disabilities civic rights.

89 Approximately 1 650 dollars.

90 Disability Rights Promotion International 'State of disabled peoples rights in Kenya (2007) report' <http://drpi.research.yorku.ca/sites/default/files/files/KenyaReport07.pdf> (accessed 5 May 2014).

91 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

92 As above.

93 The Government of Kenya 'National Legal Awareness Programme' <http://justice.go.ke/index.php/programs-commissions/national-legal-awareness-program-naleap> (accessed 2 May 2014).

94 United Disabled Persons of Kenya & Disability Caucus on the Implementation of the Constitution 'Baseline assessment on access to criminal justice system by persons with disabilities' (2012).

Articles 83(1)(b), 99(2)(e) and 193(2)(d) prohibit persons of 'unsound mind' from political participation. However, in practice, if a person lives in the community (not in a psychiatric facility during voters' registration or Election Day) the person is able to exercise their political rights.<sup>95</sup>

#### **11.4 Are people with disabilities' socio-economic rights, including right to health, education and other social services protected and realised in your country?**

With regard to education and other social services, see question 11.2 above.

On health, the Constitution provides that every person has the right to the highest attainable standard of health under article 43(1)(a). The National Reproductive Health Policy, 2008 identifies the need to improve the sexual and reproductive health of youth with disabilities. The policy also recognises that women with disabilities are also entitled to access reproductive health services. In practice, women with disabilities encounter numerous barriers to accessing quality reproductive health care services.<sup>96</sup>

With regard to mental health care in Kenya, formalised support mainly comes in the form of institutionalisation in psychiatric hospitals. Community-based mental health-care services in Kenya are limited<sup>97</sup> and lack adequate funding to reach a wider proportion of the population affected. Kenya has little provision for mental health; the government has traditionally only spent approximately 0.01 per cent of its health budget on mental healthcare.<sup>98</sup>

#### **11.5 Specific categories experiencing particular issues/ vulnerability:**

##### **• Women with disabilities**

Women in Kenya remain largely marginalised. They have limited access to and control of resources and other socio-economic opportunities; they have lower literacy levels compared to men; they have poor access to quality healthcare; and are more vulnerable to gender-based violence.<sup>99</sup> This situation is worse for women with disabilities. The government has put in place several legislative, policy and programmatic measures to address the challenges that face women (most of which are discussed under questions 3, 4 and 6); but a lot more still needs to be done to address the inequality.

##### **• Children with disabilities**

The Government has put in place several legislative, policy and administrative measures to protect the rights and welfare children of children with disabilities. The Children's Act establishes the National Council for Children's Services (NCCS). However, children with disabilities still remain vulnerable to human rights violations, a situation that the state attributes to inadequate human and financial resources.<sup>100</sup>

95 Medical Disability Advocacy Centre 'The right to legal capacity in Kenya' [http://mdac.info/sites/mdac.info/files/mdac\\_kenya\\_legal\\_capacity\\_2apr2014.pdf](http://mdac.info/sites/mdac.info/files/mdac_kenya_legal_capacity_2apr2014.pdf) (accessed 2 May 2014).

96 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

97 Kamundia (n 82 above).

98 Mind Freedom Kenya 'Report on Mental Health in Kenya' (Nairobi, Kenya, October 2008).

99 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

100 Office of the High Commissioner for Human Rights 'CRPD future sessions' (n 5 above).

- **Other (for example, indigenous peoples)**

Persons with Disabilities are particularly vulnerable to HIV infection, yet HIV and AIDS interventions are not fully responsive to the needs of persons with disabilities.<sup>101</sup>

## 12 Future perspective

### 12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in your country at the moment?

The Kenya National Commission on Human Rights (together with DPOs, especially DPOs of persons with intellectual disabilities and persons with psychosocial disabilities) is leading reform to guarantee the right to legal capacity for persons with disabilities. Initiatives to reform legal capacity laws have brought together a wide cross section of government officials including judges, officials in independent commissions and senior civil servants amongst others.

### 12.2 What legal reforms are being raised? Which legal reforms would you like to see in your country? Why?

See question 12.1 for the legal reforms currently being raised in Kenya. Other than ensuring the right to legal capacity for persons with disabilities, the other legal reform that I would like to see in Kenya is the reform of the Basic Education Act 2013 to bring it more in line with Article 24 of the CRPD and ensure for children with disabilities the right to education.

101 As above. The documentary 'The voice of 650 million times one' also addressed this issue <http://www.thevoiceof650million.com/> (accessed 5 May 2014).