

FROM NORM TO PRACTICE

A STATUS REPORT ON IMPLEMENTATION OF THE RIGHTS OF PERSONS WITH DISABILITIES IN KENYA



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RIGHTS OF PERSONS WITH DISABILITIES IN KENYA

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

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ACRONYMS AND ABBREVIATIONS

ADL	- Activities of Daily Living
APDK	- Association for the Physically Disabled of Kenya
CoK	- Constitution of Kenya
CRPD	- Convention on the Rights of Persons with disabilities
CWD	- Children with Disabilities
DGSDO	- District Gender and Social Development Office
DPO	- Disabled People Organization
EARC	- Education Assessment and Resource Centres
FPE	- Free Primary Education
GoK	- Government of Kenya
HI	- Hearing Impaired
ICESCR	- International Covenant on Economic and Social Cultural Rights
KBC	- Kenya Broadcasting Cooperation
KICD	- Kenya Institute of Curriculum Development
KNCHR -	Kenya National Commission on Human Rights
LWD	- Learners with disabilities
MH	- Mentally Handicapped
MOE	- Ministry of Education
NCPWD	- National Council for Persons with disabilities
NGEC	- National Gender and Equality Commission
NHRI	- National Human Rights Institution
PDA	- Persons with Disability Act
PWSD-CT	- Persons with Severe Disabilities Cash Transfer
SAGA	- Semi-Autonomous Government Agency
SNE	- Special Needs Education
TSC	- Teachers Service Commission
VCT	- Voluntary Counseling and Testing
VI	- Visual Impairment

FOREWORD

Disability rights are human rights that states must strive to protect, promote and fulfill. These rights are guaranteed in various international, regional and domestic laws. The Constitution of Kenya 2010 under the Bill of Rights recognizes in Article 54 that persons with disabilities are entitled to be treated with dignity and respect and not to be referred to in a manner that is demeaning, to access educational institutions and facilities for persons with disabilities, to reasonable access to all places, public transport and information, to use sign language, Braille or other appropriate means of communication and to access materials and devices to overcome constraints arising from the person's disability. These rights are also provided for in the Convention on Rights of Persons with Disabilities, which Kenya ratified and signed in 2007 and 2008 respectively. The Convention on Rights of Persons with Disabilities introduces a unique mechanism for national implementation and monitoring where State Parties are obligated to designate bodies to implement and monitor the CRPD. Article 33 (2) of the CRPD provides for a mechanism to monitor implementation at domestic level. In accordance with this, in 2011, the Kenya National Commission on Human Rights was designated by the Office of Attorney General as the independent monitoring body on implementation of the CRPD.

"From Norm to Practice" is a report that evaluates the extent to which the State has fulfilled its obligations to protect, promote and fulfill the rights of persons with disabilities. It presents findings from 12 counties, which were monitored during the period 2011-2013, and other topical research conducted during the same period including the Briefing on Legal Capacity for Persons with Disabilities in Kenya. The monitoring establishes that there are positive steps towards realization of human rights of persons with disabilities; however a number of challenges continue facing persons with disabilities. Significant gaps in access to infrastructure, health services, education, work and employment and public participation are stark realities that persons with disabilities continue to live with. The gaps point to either slow, poor or in some cases, failure in the implementation of national policies and laws, stereotyping and harmful cultural practices.

KNCHR thus makes a number of fundamental recommendations that the state should consider in working towards the realization of human rights of persons with disabilities. It is our hope that the experiences and observations recorded in this report will act as a trigger for change from norm to practice and persons with disabilities will enjoy their human rights on an equal basis with others.

Kagwiria Mbogori



Chairperson

Kenya National Commission on Human Rights

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EXECUTIVE SUMMARY

The Kenya National Commission on Human Rights as an independent monitoring body on the implementation of the Convention on Rights of Persons with disabilities (2011-2013) embarked on a counties monitoring exercise to assess the status of rights of persons with disabilities in Kenya. This report details the findings of the monitoring surveys conducted between November 2011 and December 2013. The survey targeted learning institutions, hospitals, law courts, local authorities, Disabled Persons Organizations (DPO's), homesteads of persons with disabilities and offices where public services are offered.

This monitoring report captures the progress of the implementation of the Convention on Rights of Persons with disabilities (CRPD) in Kenya with findings drawn from 12 Counties. The Counties include: Bungoma, Busia, Kilifi, Makueni, Mombasa, Nyeri, Machakos, Kisii, Kiambu, Migori, Uasin Gishu, and Elgeyo Marakwet. The report has been analyzed thematically and provides key findings on access to education, health, work and employment, accessibility to services and social amenities, social protection, access to justice and political participation by persons with disabilities.

Comparative results of the exercise indicate that there are strides that have been made towards realization of the rights of Persons with disabilities albeit at a slow pace owing to a number of challenges. It is indeed commendable that there is a fairly strong legislative framework on protection and promotion of the rights of Persons with disabilities as embedded in our Constitution (2010) and the Persons with disabilities Act, (PDA) 2003, Convention on Rights of Persons with disabilities among others; the push is for commitment to their full implementation.

Key Findings

1. On access to education, the findings indicate that the policy environment of education is theoretically supportive of education for Learners with disabilities (Learners with disabilities) but faces resounding bottlenecks in implementation. For instance, the inclusion policy in education though advocated for and recognized from human rights based approach; it is yet to be implemented. To date, the implementation framework of the National Policy on Special Needs Education Policy of 2009 has not been developed.

The educational outcomes for children and adults with disabilities are still low. Illiteracy rates for Persons with disabilities and for school-age disabled children are much higher than the general population. The poor school attendance by children

with disabilities is attributed to lack of proper facilities that enhance access, resources that encourage transition and completion, coupled with poverty and stigmatization.

Also, sexual abuse among Learners with disabilities was also reported and girls with intellectual disability were reported to be at higher risk compared to their counterparts, thus resulting in high dropout rate of girls.

2. With regard to accessibility, the monitoring revealed a myriad of challenges faced by persons with disabilities when seeking services or participating in public life. On physical access for example, most of buildings sampled were inaccessible with steep staircases and no ramps, some with very narrow doors that cannot accommodate a person on a wheelchair. Some institutions mainly hospitals and special schools had however made efforts to improve physical access; washrooms though, remain inaccessible for many.

On transportation, it was noted that public transport is completely inaccessible to persons with disabilities. This means that most of persons with disabilities must be assisted, usually by being carried, to board and alight from the vehicles. In other cases, persons with disabilities were asked to pay for the wheelchair posing questions on reasonable accommodation. The existence of this challenges have negatively impacted on day to day activities by persons with disabilities as many would prefer staying at home and not engage in activities that are far from their homesteads.

On access to information, the monitoring revealed that information is disseminated through traditional media of newspapers, television, radio, county barazas¹ and new media through the internet. This posed great challenge to persons with disabilities especially those who live in areas where they do not have access to electricity, cannot afford to buy dailies and those who cannot read due low levels of education. The lack of brailled materials for the visually impaired and sign interpreters in media and other institutions to cater for the hearing impaired created a dilemma in accessing information and communicating effectively. This was in effect a setback in fully integrating persons with disabilities into the society.

4. With regard to work and employment, the monitoring revealed that very few persons with disabilities had joined formal employment with many reporting that the set qualifications for certain positions were too high not considering the challenges

¹ Meetings organized by local leadership mainly provincial administration.

they face in accessing education especially in transiting to institutions of higher learning. Other challenges included dissemination of employment information such as vacancy announcements in inaccessible formats mainly through newspapers and internet which many of them could not access. Also, a number mentioned stigmatization and assumption by employers on capacity of Persons with disabilities to deliver within workplace.

5. On social protection, the government commendably instituted mechanisms to ensure social security for persons with disabilities through legislations like the Social Assistance Act 2013 and policies on cash transfer system which targets persons with severe disabilities. However the coverage is still low at 94 persons with severe disabilities per constituency and the allocation of Kshs 2000 per month is meager compared to number of needs and inflation rate.

6. With regard to access to justice, persons with disabilities continue to face a lot challenges when seeking justice with key obstacles being inaccessibility and exercise of legal capacity especially for persons with intellectual disability.

In conclusion, the report notes that while there are positive milestones made, the country still lags behind with implementation of CRPD. There is a major disconnect between the human rights rhetoric and the realities that exist in the country. Significant gaps in access to infrastructure, health services, education, work and employment and political participation are stark realities that persons with disabilities continue to experience.

CHAPTER ONE:

INTRODUCTION AND BACKGROUND INFORMATION

1.1 KNCHR's Monitoring Role on Implementation of the Convention on Rights of Persons with disabilities

The Kenya National Commission on Human Rights is a Constitutional Body established under Article 59 of the Constitution of Kenya 2010 and Section 3 of the Kenya National Commission on Human Rights Act No. 14 of 2011. KNCHR main role is to promote and protect human rights in Kenya.

Kenya ratified the UN Convention on Rights of Persons with disabilities (CRPD) on 19 May, 2008 and subsequently became part of the law by virtue of Article 2(6) of the Constitution of Kenya 2010². The effect of this ratification was that the State undertook to ensure and promote the full realization of all human rights and fundamental freedoms for persons with disabilities, without discrimination of any kind on the basis of disability³.

Article 33 (2) of the CRPD on national implementation and monitoring obligates the state to "*maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention.*" In doing so, the state is required to take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

In light of this and in recognition of KNCHR's role in ensuring compliance with obligations under international and regional treaties, the Attorney General designated the Commission as the monitoring agency on 1st February 2011. Further to its designation, KNCHR convened a stakeholders meeting to discuss the essence of monitoring under the CRPD and developed a monitoring tool to be used countrywide. The same was subjected to stakeholder consultations and their input incorporated. Subsequently, KNCHR drew a plan for visiting different counties to monitor the implementation of rights of PWDs which commenced in October 2011.

² Article 2 (6) of the Constitution of Kenya 2010 provides that any treaty or Convention ratified by Kenya shall form part of the law of Kenya under the Constitution

³ The General obligations of the state are laid down in Art. 4 of the CRPD

Monitoring Objectives

The objectives of the surveys were as follows:

- a. To assess the extent to which the State had implemented the Convention on Rights of Persons with disabilities
- b. To assess the level of rights awareness by Persons with disabilities

1.2 Persons with disabilities (Persons with disabilities) in Kenya

The World Disability Report 2011 puts persons with disability to constitute 15% of the general population. According to the Kenya National Survey for Persons with disabilities conducted in 2007 by the National Coordinating Agency for Population and Development (NCAPD) in collaboration with Kenya National Bureau of Statistics (KNBS), the overall disability rate in Kenya is 4.6% which translates to 1.7 million Persons with disabilities. Out of the 1.7 million persons with disabilities, 65% regard the environment as a major problem in their daily lives.⁴ Persons with disabilities in Kenya represent a critical segment of the population and have for a long time experienced marginalization. In addition, a greater majority of persons with disabilities have either limited or no access to education, health, employment, rehabilitation or other basic public socio-economic services.

1.2.1 Strides in the Realization of the Rights of Persons with Disability

Article 4 of the CRPD provides that states undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all Persons with disabilities without discrimination of any kind on the basis of disability. In undertaking this responsibility, the Government of Kenya (GoK) has made strides towards securing the protection of these rights by the following commitments:

a) Legislative Framework

Foremost, Kenya enacted the Persons with Disability Act of 2003 which came into force in June 2004. The Act provides a legislative framework for access to services and inclusion of Persons with disabilities in all facets of life. It provides for the achievement of equalization to opportunities by prohibiting discrimination in employment, education and health among others.

It promotes accessibility of physical structures and to information as well as establishes structures for the provision of services to Persons with disabilities. The Act is currently under review through the Persons with disabilities Amendment Bill 2014 to ensure conformity with the Constitution of Kenya, 2010 and CRPD.

⁴ National Coordinating Agency for Population and Development (NCAPD), Kenya National Survey for persons with disabilities-preliminary report (2008), Nairobi, Kenya

The CRPD which was signed and ratified by Kenya in 2007 and 2008 respectively is a human rights instrument with an explicit, social development dimension. It provides a paradigm shift from the medical and charity model of disability to social model where disability is viewed as socially constructed. Disability therefore results from the interaction between persons with impairment and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. It adopts a broad categorization of rights and reaffirms that all persons with disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

With the promulgation of the Constitution of Kenya in August 2010, Kenya made a progressive step by recognizing the Convention as part of the laws of Kenya under Article 2 (6) ⁵. The Constitution enhances the protection framework for the rights of persons with disability and secures significant gains for them as is summarized below;

- i. Article 7* recognizes sign language, braille and other communication accessible to persons with disabilities as part of the official languages.
- ii. Article 20 (5) (b)* obliges the court, in applying any rights under Article 43 to be guided by the principle that “in the allocation of resources the state shall give priority to the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances including the vulnerability of particular groups or individuals”.
- iii. Article 21* of the Constitution confers a fundamental duty on the state and every state organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights and address the needs of vulnerable groups within society including persons with disabilities
- iv. Article 27(4)* on non- discrimination prohibits direct or on indirect discrimination against any person on any ground including disability.
- v. Article 28* promotes respect and protection for human dignity of every person
- vi. Article 43* recognizes economic and social rights including; highest attainable standard of health, housing, Sanitation, freedom from hunger, clean and safe water, social security, education and emergency treatment.

⁵ Article 2 (6) of the Constitution of Kenya 2010 provides that any treaty or Convention ratified by Kenya shall form part of the law of Kenya under the Constitution

- vii. *In article 54 the Constitution recognizes and specifically details rights of persons with disabilities with specific emphasis on the right to be treated with dignity, equal access to educational facilities, reasonable access to all places, and use of sign language, braille or other communication. Furthermore Article 54 entrenches the affirmative action principle to facilitate the progressive realization of at least 5 per cent of Persons with disabilities in elective and appointive posts.*
- viii. *Articles 97(1) (c) requires the 12 nominees to the national Assembly to include Persons with disabilities.*
- ix. *Article 98 (1) (d) requires 2 nominees to the Senate to be Persons with disabilities.*
- x. *Article 177 (1) (c) specifically provides for nomination of Persons with disabilities to County Assemblies.*

Other laws in which rights of Persons with disabilities are explicitly mentioned include the Election Act 2011, Social Assistance Act No.24 of 2013, Sexual Offence Act, and Basic Education Act 2014.

b) Policy Framework

The State through the Department of Gender and Social Services compiled the National Disability Policy 2006 which still remains to be a draft. Other policies include: The National Special Needs Education Policy Framework (2009) which provides guideline on quality and services to be provided to learners with disabilities, the Social Assistance Policy 2011 and the Public Service National Disability mainstreaming code.

c) Institutional Framework

i) The National Gender and Equality Commission

The National Gender Equality Commission (NGEC) is a constitutional Commission established by an Act of Parliament in August 2011. NGEC is sister Commission to the Kenya National Commission on Human Rights and the Commission on Administrative Justice (CAJ), all entrenched in the Constitution of Kenya under Article 59 under the umbrella the Kenya National Human Rights and Equality Commission. The key objective of the NGEC is to promote gender equality and freedom from discrimination in accordance with Article 27 of the CoK. In so doing, the Commission acts as the principal organ of the State in ensuring compliance with all treaties and Conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children. The Commission therefore plays a vital role in monitoring implementation of rights of persons with disabilities.

ii) Ministry of Labour, Social Security and Services

The government established the Ministry of Labour, Social Security and Services in 2013. Under the current Ministry, the Department of Social Services is charged with the mandate to protect, advocate for needs of persons with disabilities, facilitate and coordinate disability mainstreaming in national development planning and budgetary processes. The department, together with National Council for Persons with disabilities (NCPWD) runs the Cash Transfer Programme for persons with severe disabilities.

iii) The National Council for Persons with disabilities

The National Council for Persons with disabilities (NCPWD) is a Semi-Autonomous Government Agency (SAGA) set up in December 2004 following the enactment of the Persons with disabilities Act No. 14 of 2003. Working closely with the Ministry of Labour, Social Security and Services, the council is mandated to enforce and oversee implementation of rights of persons with disabilities.

CHAPTER TWO

METHODOLOGY

With the aim of understanding and evaluating the extent to which state had fulfilled its obligations on implementation of rights of persons with disabilities, the monitoring team chose the triangulation approach by employing both quantitative and qualitative approaches of data collection. Principally the qualitative design was intensely used to allow the respondents, in this case, persons with disabilities, caregivers, government officials and general public to interpret their experiences and construct their own realities. The team used methodologies such as interviews, focus group discussions, open-ended questionnaires and observation.

2.1 Methods of Data Collection:

i) Questionnaires

An unstructured questionnaire was administered in individual, group and key informant interviews. The questionnaires were designed to collect specific information from different stakeholders including persons with disabilities, care givers, schools, hospitals, provincial administration offices, district gender officers and law courts.

ii) Observation

In addition to the interviews and questionnaires, the monitoring team made observations particularly with respect to physical accessibility.

iii) Focus Group Discussions /Public Forums

As a culmination of the monitoring exercise, the team held public forums and focused group discussions comprising of persons with various disabilities, the County DPOs, government officials from the department of Social Services and other organizations championing for the rights of Persons with disabilities. The forums provided an avenue for deliberations on human rights issues, gains and challenges faced by persons with disabilities in the Counties.

Target Group and Sample Size

The study targeted both individuals and institutions. The targeted individuals included persons with disabilities and the caregivers while institutions comprised of learning institutions, hospitals, law courts, government offices, police stations, private premises including banks, prisons, hotels among others. The table below is a summary of the sampled respondents and institutions:

Table 2.0: Sample Size

County	Respondents	Institutions
Migori	87	15
Machakos	65	25
Mombasa	51	15
Makueni	43	16
Kilifi	26	17
Kiambu	45	15
Busia	30	12
Bungoma	65	10
Elgeyo Marakwet	35	12
Kisii	89	7
Nyeri	76	25
Total	612	162

CHAPTER THREE

PRESENTATION OF FINDINGS

3.0 Introduction

This chapter presents in-depth analysis of the findings from the 12 Counties that were surveyed by the KNCHR monitoring team. The chapter focuses on themes of Education, Health, Work and Employment, Accessibility to Services and Social Amenities, social protection, access to justice and political participation by persons with disabilities. The chapter further provides recommendation(s) of every theme or sub theme that has been discussed.

3.1 Access to Education

Education is a fundamental human right and an essential ingredient for the successful integration of man into the social, economic and political frameworks of society. To ensure homogeneity, equality and sufficiency of the educational system and curriculum, the State through various institutions of learning is the primary provider and governor of public education in Kenya. The right to education is recognized in both national and international law notably in the Constitution of Kenya 2010, Basic Education Act 2014 and Disability Act 2003 as well as CRPD, the International Covenant on Economic and Social Cultural Rights (ICESCR) to which Kenya is a party to.

The Constitution of Kenya under various Articles affirms the right to education for all.⁶ Further Article 24 (2) of the CRPD provides that in realizing the right to education, State Parties shall ensure that:

- a) *persons with disabilities are not excluded from the general education system on the basis of disability , and that children with disabilities are not excluded from free and compulsory primary education , or from secondary education , on the basis of disability*
- b) *persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;*
- c) *reasonable accommodation of the individual's requirements is provided;*
- d) *persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*

⁶ See Article 43(1), 53,54 (1),55, 56 (b)

- e) *effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.*

The Sessional Paper No. 1 of 2005 underscores the importance of inclusive education as human capital development that empowers learners with disabilities who are likely to be marginalized to participate in mainstream education sector. The government's policy statement on education reads that the *"Ministry of Education (MOE) shall recognize and reinforce inclusive education as one of the means for children with special needs to access education"*.⁷ A lot of emphasis has been placed on inclusive education, based on the principle that all children should learn together, wherever possible, regardless of the existing difference. Inclusive education seeks to combat discriminatory attitudes by acknowledging that every child has unique characteristics, interests, abilities and learning needs and that those learners with disabilities must have access to and be accommodated in the general education system.⁸ In practice however, inclusive education remains elusive.

While all these legislations spell out clearly the right to education, education still remains to be a dream to many Learners with disabilities. The educational outcomes for children and adults with disabilities remain very poor.

3.1.1 Transition and Completion

Access to education remains a big challenge to Learners with disabilities. According to the school mapping data set, there are 3,464 special needs institutions in the country of which 2,713 are integrated institutions and 751 are special schools. Among these, there are 10 public secondary schools for learners with hearing impairments, 3 for learners with physical disabilities and 4 for learners with visual impairments making a total of 17 special secondary schools in the country. These figures show that access and participation of Learners with disabilities is relatively low across the country⁹ and explains why transition (from primary to secondary to tertiary levels) is a great challenge as most Learners with disabilities cannot afford private schools and regular schools are not accommodative. In Busia County for example, Learners with Visual Impairment who wish to join special secondary school for VI have to travel all the way to Kisumu County to join Kibos Secondary School for the Visually Impaired.

A respondent from Busia County illustrated the challenge he faces in accessing school:

⁷ *The national special needs education policy framework*

⁸ *The right to education of Persons with disabilities; Report of the Special Rapporteur on the right to education, A/HRC/4/29, Geneva, 19 February 2007*

⁹ *According to the Kenya National Survey for Persons with disabilities published in May 2008 by the National Coordinating Agency for Population and Development; 67% of persons with disabilities had primary education and 19 % attained secondary education. But only 2% had reached university level*

“ I have to cycle all the way to the nearest secondary school because there is no school around here where I can go. As you have seen when you were coming, the terrain is very bad and my wheel chair cannot survive in such. It is very challenging and sometimes this is very discouraging but I need education ”

Poverty and subsequent lack of school fees and other subsistence costs were cited by all the Counties as impediments for Learners with disabilities to access education. Most persons with disabilities and caregivers have no formal or informal employment and therefore unable to afford the high costs in school. For instance, a primary school for the hearing impaired in Kisii charges about Kshs. 16,000 per year. This fee is way above the capability of most parents and the extra Kshs. 2,000 quota allocation by the government for every learner with disability is inadequate to address the needs of the pupils and the schools. In an interview with a mother of three children with physical and intellectual disabilities, she observed:

“ I have a strong desire to send all of my children to school, but due to limited recourses, considering am unemployed and a widow, I cant send my first born child to a special boarding school because it is expensive...I want to take her to some skills training but I don't know which place is ok... ”

The question of where learners with mental disabilities go after completion of school was not answered in the survey. It was noted that there were no guidelines that govern transition for learners with mental disabilities. For example, it was not clear at which stage they should graduate from school and even after graduation, they still faced challenges of being oriented in the society. It was indicated that the society was not willing to support them to practice the skills gained in schools and therefore not able to engage in gainful activities. However, for some schools like Nangina Special School in Busia, they have established a project through which they support their graduates by either absorbing them to assist in daily routine chores or by opening small enterprises for them. The challenge is that some families take over the control of these enterprises deeming the graduates as unable to make decisions and once the businesses have collapsed, the children are sent back to school.

It was further noted that the rate of completion of primary education for the girl child was found to be low and worrying. Participants intimated that most girls, especially girls with hearing impairment and those with mental disabilities were prone to sexual abuse and got pregnant which made them drop out of school long before they completed standard 8.

3.1.2 Education Assessment and Resource Centres (EARCs)

Education Assessment and Resource Centres play a vital role in education of Learners with disabilities. Through EARCs, early identification, assessment, intervention and placement of learners with disabilities is done. The National Special Needs Education Policy of May 2009 states clearly the important role played by EARCs and outlines the proposals¹⁰ to ensure their efficiency in service provision. Sadly, this remains more of reference than implementation. The functioning of these centres has been halted by lack of funds. For instance, several centres have not received funds since 2008 therefore limiting officers' tasks on assessment, sensitization and mobilization.

Secondly, the EARCs lack enough and proper equipment and trained personnel for assessment. In Busia County for example, while commendably centres had been instituted in Samia, Teso North and South and Butula, they had one trained person therefore risking chances of misidentification and wrong placement in schools. This is contrary to the set standards that each centre should have at least assessment professionals trained on Visually Impaired (VI), Mentally Handicapped (MH), Hearing Impaired (HI) and physical disabilities and other professionals from Ministry of Health like a physiotherapist. Basic instruments for assessment mainly audiometers for the hearing impaired are either lacking or acutely inadequate.

Recommendation

1. The Ministry of Education should partner with other relevant stakeholders to strengthen EARCs through increased budgetary allocation, human resource improvement and equipment.

3.1.3 Implementation of Inclusive Policy

While both the CRPD and the CoK 2010 advocate for inclusive education, it was evident during the assessment of all the 12 counties that the implementation of the inclusive policy is still a challenge and many actors on the ground are not at all clear on what inclusive education entails. In essence, it was established that most learners

¹⁰ The National Special Needs Education Policy Framework states that : the Ministry of Education , in collaboration with other ministries and government bodies shall:

1. Develop and continually review the curriculum in assessment in line with the requirements of children with special need and disabilities
2. Conduct in-service and professional development courses for assessment teachers
3. Establish formal linkages with relevant ministries, partners and professionals in assessment, referral and intervention of learners with special needs and disabilities
4. Have a formalized multi-disciplinary team appointed by the Minister of education
5. Develop new, and continually review existing assessment and referral tools
6. Ensure all EARCs established fall under the jurisdiction of the District Education Board

with disabilities were catered for in either special or integrated schools. It became clear to the monitoring team that the Ministry of Education should have in place an Inclusive Education Framework, and an accompanying plan for moving towards inclusive education.

According to the EARC officers, it was hard for them to recommend children with disabilities for placement in regular schools as they were not accommodative. The schools lack appropriate facilities for example accessible mode of communication such as sign language interpreters, Braille and trained staff on special education. In addition, the emphasis on academic performance and examinations in regular schools creates an unfavorable learning environment and especially for children with intellectual disabilities making integration and inclusion of children with disabilities difficult. The only option left then is special schools, which according to many people's perception, are the best as children would not feel discriminated. During a public forum, one participant reported that;

“ Inclusive programs face hurdles because a disabled child is hardly accepted. They say that disabled children should be taken to special schools. Even teachers discriminate against children with disabilities in mainstream schools. ”

Lack of knowledge on various provisions in different legal frameworks posed another challenge. A few of the respondents interviewed had some knowledge on Disability Act, 2003 especially in special schools, while most of them did not have knowledge about the CRPD, and the Special Needs Education Policy. The implication of this as witnessed was the lack of implementation of the various provisions in the legal framework. Taking an example of the Special Need Education Policy, 2009 only about 40% of the respondents interviewed demonstrated they had knowledge of the policy.

Recommendations

1. The implementation of the Special Needs Education Policy should be up-scaled and more finances directed to implementing the policy. The ministry of education should urgently develop an implementation framework of the SNE policy, with more focus on inclusive education, and have it disseminated to schools and education offices for capacity building.

3.1.4 Understaffing

Inadequate number of special needs education teachers and support staff remains a major challenge. The assessment showed that all counties surveyed were understaffed and were lacking teachers trained in special education. For instance, a secondary school for the hearing impaired, did not have teachers trained in special needs and

lacked sign language interpreters. In another case in Kisii County, a school had 52 learners with mental disabilities but with only one teacher and no teacher aide while a school with an Autism Unit had only 4 teachers to cater for 18 children with autism. Due to understaffing, the implementation of Individualized Education Programme was problematic. Under the circumstances most special education teachers had concentrated on teaching pupils Activities of Daily Living (ADL) such as toilet use, self-feeding and motor skills. Below is a table of teacher pupil ratio in a few sampled schools from Kisii County.

Table 3.0: Teacher / Student Ratio in Kisii County

Name of School	No of special needs education teachers	No of students with disability	Teacher: student ratio
1. Kisii Primary School	4	18	1: 5
2. Gianchere Special School for the Deaf (Primary)	15	150	1: 10
3. Nyaronge .D.E.B Primary School	1	52	1: 52
4. Gianchere Special School for the Deaf (Secondary)	3	78	1:26
5. Nyansakia Primary School	2	23	1: 13

With regard to support staff respondents indicated that the grants by the government to cater for the support staff not employed by the Teachers Service Commission (TSC) and for feeding programme was not enough. This was compounded by the fact that some parents did not pay school fees to cater for non teaching staff in boarding schools as they expect the government to do so.

Placement of teachers was cited as a contributing factor to understaffing in special schools. Most of the times, trained teachers were posted to regular schools or remained unemployed. On the other hand, teachers who were not trained in special needs education were posted to the schools providing education for the children with such needs.

Further, fears were raised on the quality of education and commitment by special education teachers in undertaking their roles adequately with claims that some teachers were only in the field to benefit financially.

Recommendations

1. Ministry of Education and Teacher Service Commission (TSC) should make it compulsory for all teachers to be trained in the basics of special needs education through trainings.
2. Sign language proficiency interviews should be carried out to determine the level of communication proficiency skills of the teachers in the schools for the deaf. When posting teachers to these schools, the TSC should set minimum level proficiency required for an entry-level educator to perform efficiently.

3.1.5 Curriculum Implementation and other Related Issues

In view of the interpretation adopted by the UN Committee on Economic, Social and Cultural rights in their General Comment No. 13, the form and substance of education including curricula and teaching methods, have to be acceptable to students and in appropriate cases, parents. Acceptable in this regard refers to relevant, culturally appropriate and of good quality. Similarly, the Committee explained the feature of adaptability to mean flexible education that can adapt to the changing needs of societies and communities and respond to the needs of students within their diverse social and cultural settings.

As evidenced during the assessment, curriculum content poses a challenge to school administrators especially in inclusive schools. They reported difficulties adhering to curriculum demands especially where students with disabilities require individualized support. Teachers in secondary schools who were interviewed feared that learners with disabilities will underperform for not covering the syllabus in time.

The special schools decried lack of an adaptable examinations and learning/teaching materials. Only two subjects (English and Chemistry) had been adapted while the rest usually had long statements making it hard to interpret. Learning materials needed by learners with disabilities, such as brailled books, large prints and sign language books were either unavailable or inadequate in most schools. Teachers in a school for hearing impaired in Uasin Gishu County lamented on the lack of or the use outdated sign language books. This adversely affected the learners' vocabulary as well as their ability to get the necessary instruction from the books. Lack of harmonization of sign language also posed a challenge to

curriculum implementation as various regions had different signs, and therefore, hard to communicate to students with hearing impairment.

The education system for learners with intellectual disabilities and deafblind was reported to be inconsistent as there was no proper curriculum to guide teachers on what should be taught and when. Most children with intellectual disability enrolled for school very late and teachers grappled with incorporation of elderly learners with intellectual disability in classes.

Recommendations

1. Ministry of Education needs to review the school curriculum putting into consideration needs of children with multiple disabilities.
2. Kenya Institute of Curriculum Development (KICD) should involve stakeholders (classroom teachers) more in the process of formulating and adapting curriculum and learning materials to suit learners with disabilities.
3. The Kenya National Examination Council and Ministry of Education should ensure that reasonable accommodation is provided for all learners with disabilities taking exams. This should be done with consideration of the specific needs of learners with different types of disabilities.

3.1.6 Funds Allocation

Education for learners with disabilities continues to face financial challenges due to inadequate allocation by the government. Despite the introduction of free primary education in 2003, and the capitation grant of Kshs 2000 to every learner with disabilities, running of special schools, integrated units, and mainstream schools has been of great challenge to principals as school basics like learning materials, food and boarding facilities are difficult to cater for. In boarding schools for example, parents are supposed to pay certain amount of fee to enable purchase of materials but this has been a great challenge as most parents are unable to afford the costs leaving schools with huge outstanding balances¹¹. The result is schools are only able to purchase few learning equipment forcing students to learn in turns and hence the big question of the quality of education for learners with disability. Schools also experience difficulties in accessing FPE funds through delay of disbursements and variance in allocation.

On allocation of funds, the assessment revealed that integrated primary schools were not funded in the same way as fully fledged special schools. These schools were only given money for FPE and did not get any additional funds for the maintenance of

¹¹ One of the schools sampled had an outstanding balance of Kshs 2.5 million

facilities and support care of the learners with disabilities. This has led to more children staying at home as these schools cannot afford to take care of them.

Recommendations

1. The government should prioritize increment of funding for education for learners with disabilities. These include funding for inclusive, integrated and special education.
2. The government's FPE fund should be made efficient and easy to access particularly by the schools offering education for learners with disability.

3.1.7 Cultural Beliefs and Discrimination against Persons with disabilities

One of the biggest challenges reported by all the schools monitored was the negative attitude of parents towards children with disabilities. Societal stigma against persons with disabilities as being incapable of learning was rife. Most parents did not deem it as economically viable to take their children with disabilities to school with many opting to hide them away at home in favour of educating their able bodied children. One head teacher of a primary school observed;

“ People overlook the potential of children with disabilities, see them as helpless beings and referring to them as ‘Cionje’¹², some cannot believe when they excel academically. They think that children with disabilities cannot do anything. They are shocked to see them take regular exams just like those without disabilities ”

Incidents of children with disabilities being abandoned at the schools by parents were also reported as many thought it was the responsibility of the teachers to take care of them.

The findings also indicated that parents of learners with disabilities did not attend regular meetings on the performance monitoring of their children or even the sensitization forums organized by various schools. “ A child with disability belongs to the teacher not the parent. That is what these parents think ”¹³. This stigma has also had an overall negative impact on the interaction between learners with disabilities and learners without disability whereby the former do not freely socialize with the latter in school. This was also extended within the community where children with disabilities were viewed as a curse and therefore isolated. In addition, some teachers were also said to be discriminatory when admitting children with disabilities. Views collected

¹² Local name in kikuyu used to refer to persons with disabilities

¹³ Interview with a respondent in Busia County on 4th December 2013



Caregivers carry placards with messages to counter the misconceptions by society on disability

during the focus group discussion held in Nyeri County indicated that teachers were reluctant to admit children with intellectual disabilities as many thought they would lower the mean score. An education officer observed:

“ We have received complaints that children with intellectual disabilities are not being admitted in schools because head teachers always think that their slow learning pace will result to poor grades hence lowering the mean score ”

This discrimination does not only affect students but also teachers with disabilities. For instance, correspondence and other communication from the Teachers' Service Commission (TSC) are rarely reader friendly for teachers with visual impairment. These teachers are forced to get readers hence compromise their confidentiality.

Recommendations

1. The Ministry of Education should design awareness raising programmes on rights of persons with disability targeting parents and staffs.

3.1.8 Learning Facilities

The study found that learning facilities were inadequate in integrated, mainstream and special schools. From the findings, most schools had tried to make schools disability friendly though several gaps still existed. For example, desks and tables would either be too low or too high for learners with different types of disabilities. For schools that had learners with visual impairment, it was reported that students were forced to learn in turns as facilities like braille machine were inadequate.

Boarding facilities were also reported to be inadequate and those that were available were worn out therefore forcing some pupils to commute from their homes which were distant from schools. In addition, supply of assistive devices like wheelchairs was limited. In Busia County for example, an integrated school reported that only one wheelchair was available to serve approximately 105 students with physical disabilities. This meant that students would be picked in turns to classes limiting their mobility therefore not able to participate in day to day activities.

For those who chose to attend mainstream schools, the biggest challenge was infrastructure and isolation by the able-bodied as reported by one of the respondents.

“ The school has only one other person with disability and the classrooms are very inaccessible therefore making it difficult for me to cycle in my wheelchair. I am also not able to participate in sports like I used to do in my former primary school. ”

3.1.9 Girl Child Safety

The girl child with disability continues to be more susceptible to sexual abuse. Feedback received from respondents from the 12 counties sampled indicated that a girl with disability was more at risk as compared to her male counterpart. Generally girls with disabilities were at a risk of being sexually abused but girls with mental disabilities were at a higher risk. The perpetrators were mainly people known to the victim who could either be a family member or even the teachers. Of great concern is that instead of reporting the perpetrators, some parents would negotiate for compensation in exchange of their silence. A teacher from one of the special schools reported *“when a mentally handicapped is raped, the guardian/parent agree on compensation with the rapist and the child is ‘bribed’ with foodstuffs and forget both the health and education of the child are at a risk”* The results of this were children dropping out of school because of unwanted pregnancies or heightened chances of contracting sexually transmitted diseases including HIV/AIDS.

Recommendation

1. Government should design curriculum that will build capacity of learners with disabilities on sexual education and especially for persons with intellectual disabilities.
2. Teachers Service Commission should take stern measures against teachers who sexually abuse their pupils

3.1.10 Physical Access

Inclusive education remains to be a mirage as most regular schools are physically inaccessible. Most of the regular schools sampled lacked ramps, doors were narrow and stair cases existed in key offices therefore limiting access by persons with physical disabilities. Following interviews with teachers from various schools, it was reported that when children with disabilities sought admission in regular schools, most of them were referred to special schools since facilities could not allow them to comfortably study in regular schools. Further, not all could manage to get admission in public special schools since the capacity was limited and the option would be private schools which are very expensive and unaffordable.

Despite all these challenges, some recognizable efforts were identified in a few schools which had gone beyond the government facilitation to ensure an inclusive environment. For example, a school in Machakos County had excellently mainstreamed forty five (45) children with VI. All the facilities were inclusive including

dormitories and playground a situation that strengthens the bond between the children with disabilities and those without. This helped in reducing stigmatization and children without disabilities were assisting those with disabilities. Nangina Special School in Busia County was an exemplary example with regard to physical access.



Image showing classrooms constructed at Nangina Special School



Image showing classrooms constructed at Nangina Special School

Recommendation

1. The Ministry of Education and department of Public Works should work together to ensure that universal designs are used during constructions including school facilities to ensure schools are barrier free.

3.1.11 Vocational Education for Persons with disabilities

Vocational training is of great relevance to the livelihoods of children with disabilities and especially learners with mental disabilities whose programme includes pre-vocational and vocational training. The CRPD under Article 24 (5) reaffirms that State Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational, adult education and lifelong learning without discrimination and on an equal basis with others. The monitoring noted that while a few vocational training institutions for persons with disabilities are available, many of the institutions are not accessible to persons with disabilities who are either not aware of their existence, cannot afford the cost of training or they are located very far from the area of residence. In addition, the options availed for trainings were limited (mainly dressmaking, leatherworks, poultry, agriculture, carpentry and hairdressing) which were not highly marketable in an evolving technological world. Teachers from the special schools for learners with mental disabilities reported that market for the products from their vocational skills was very low.

Recommendations

1. The government should establish and ensure full facilitation of vocational and rehabilitation centres in every county to ensure that there is a proper transition for learners with disabilities

3.2 Awareness on Rights of Persons with disabilities

Article 8 of the CRPD provides that:

1. State parties undertake to adopt immediate, effective and appropriate measures:
 - a. *To raise awareness throughout society, including at the family level, regarding Persons with disabilities, and to foster respect for the rights and dignity of Persons with disabilities.*
 - b. *To combat stereotypes, prejudices and harmful practices relating to Persons with disabilities, including those based on sex and age, in all areas of life.*
 - c. *To promote awareness of the capabilities and contributions of persons with disabilities.*

Persons with disabilities continue to face stigmatization in the society mostly due to lack of awareness of their rights despite the government policy of mainstreaming disability in all government ministries. While noting that some persons with disabilities

have not been aggressive to participate in public life, opportunities to promote positive perception and awareness of their contribution to the society has also been limited.

The findings of the surveys indicated that many persons with disabilities were not aware of their rights including the various legislations put in place to protect and promote their rights.

Teachers interviewed for example, reported to have some knowledge on disability rights but not the full concepts as stipulated in several legal frameworks. Likewise, various actors were not aware of these legislations though they had a slight idea of rights of persons with disabilities.

Copies of materials on disability rights were missing in most public offices and schools.



KNCHR staff sensitize caregivers on rights of persons with disabilities and disseminate easy to read materials of the same during one of the monitoring surveys in Busia County



KNCHR staff shares copies of easy to read materials on rights of persons with disabilities and briefs the Permanent Secretary, Ministry of Labour, Social Security and Services, and the County Governor Busia County during the International Disability Day celebrations in Busia County in 2013

Recommendations

1. Awareness training programmes through the media, workshops and Information, Education and Communication materials highlighting the skills, merit, abilities and contribution of Persons with disabilities in society should be promoted.
2. Public awareness on the rights of persons with disabilities should be mainstreamed and undertaken at all levels of education system.

3.3 Access to Health Care

Health is a basic need and every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.¹⁴ Article 25 of the CRPD emphasizes that State Parties should take all appropriate measures to ensure access for persons with disabilities to health services that are gender sensitive, including health related rehabilitation. In Particular, State Parties are obliged to:

- a. *Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*
- b. *Provide those health services needed by Persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;*
- c. *Provide these health services as close as possible to people's own communities, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of Persons with disabilities through training and the promulgation of ethical standards for public and private health care;*
- d. *Prohibit discrimination against Persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;*
- e. *Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability*

The State is further obliged to provide those health services needed by Persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities for children and older persons.¹⁵ In addition to these, the State is required to provide health care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent and to prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

¹⁴ Article 43(1) (a) of the Constitution of Kenya 2010

¹⁵ Article 25 (a) and (b) Convention on the Rights of Persons with disabilities

However, evidence from this monitoring process indicated that this has been more less a reference as persons with disabilities continue to experience difficulties when accessing health care services. A report by KNCHR in 2012¹⁶ revealed that persons with disabilities experience discrimination, stigma, lack of informed consent regarding the medical procedures to be performed on them, unfriendly infrastructure and high cost of sexual reproductive health services as key obstacles to persons with disabilities enjoying health care services. The same issues were noted during the monitoring process as follows:

3.3.1 Access to Health Information

The provision of information in accessible formats still remains a huge problem. Medical information is transmitted through print (fliers, posters and leaflets) but not in accessible formats like sign language interpretation, braille or even large print or plain language. Respondents from the 12 Counties assessed reported that hospitals had few sign language interpreters or none at all. In most cases, persons with hearing impairment were forced to be accompanied to hospital by hired interpreters compromising doctor-patient privacy and also bringing on an extra cost. As a result of inaccessibility of information, most persons with disabilities shunned away from seeking services from health facilities with most of them, especially those with visual disabilities, scared of staying in the hospitals without being attended to. Patients with hearing impairment were afraid of maintenance of confidential information by the interpreters and others were scared of getting wrong interpretation of drug prescription. For instance in a focus group discussion in Nyeri County, one of the participants reported that a woman with hearing impairment was given some tablets for insertion but instead swallowed them because the nurse did not give clear instructions owing to the communication barrier (the nurse did not understand sign language).

In VCT health care facilities, the survey noted that few persons with disabilities sought these services compared to those without disabilities. For example, in Rongo District Hospital in one month, 440 non disabled persons sought VCT services compared to 3 persons with physical disabilities. According to the VCT counselor, rarely did persons with other types of disability visit the center or participate in sensitization forums. Feedback from respondents especially persons with hearing impairment attributed these to failure to have accessible communication modes in place while others reported that there were no deliberate efforts to invite persons with disabilities for sensitization forums.

¹⁶ *Realizing Sexual and Reproductive Health Rights in Kenya 'A myth or a reality? Available on http://www.knchr.org/Portals/0/EcosocReports/Reproductive_health_report.pdf*

Recommendations

1. Communication in hospitals should be significantly improved. The government should ensure that information is disseminated in accessible formats (sign language interpretation, large print, Braille, audio records among others).

3.3.2 Access to Reproductive Health Services

On reproductive health, women with disabilities complained that their visits to hospital seeking services especially on prenatal and antenatal care were a nightmare. The nurses were reported to be using demeaning language which implied that getting pregnant or giving birth by women and girls with disabilities was like a tragedy. The nurses asked derogatory questions like how they (persons with disabilities) got pregnant despite their 'condition'; who was responsible for their pregnancies and whether they will be able to take care of their babies. Others doubted their capability to deliver through the normal procedures and instead suggested they undergo caesarean process without their consent. Further, persons with disabilities were not being allowed to make choices on the mode of family planning with nurses dictating which methods to use ¹⁷.



KNCHR staffs collect views from persons with disabilities and care givers through focused group discussions in Kuria West-Migori County

¹⁷ Views collected during focused group discussions organized by KNCHR on 22nd June 2012 in Nyeri town

In the report, *Realizing sexual and reproductive rights in Kenya*¹⁸, the inquiry attests that pregnant women with disabilities suffered abuses from the health providers who stigmatized them and showed sympathy with their 'double tragedy' of being disabled and pregnant. Due to this derogative language most women with disabilities chose to give birth from their homes increasing the risks of maternal death in cases of emergencies or contracting infections.

A respondent from Mombasa County observed:

“We are looked at as objects of pity when we go to hospitals seeking maternal health care. Some nurses start asking who is responsible for our pregnancy and whether we will be able to bring up the child with our situation (disability). Don't we have sexual desires¹⁹?”

Besides, information on reproductive health was lacking as documents were not availed in accessible formats and rarely would women and girls with disabilities be included in the sensitization programmes and therefore restricting persons with disabilities from making informed choices.

Further findings indicated that lack of proper facilities in hospitals also posed a great challenge and especially to women with physical disabilities. In a focused group discussion held in Nyeri County, it was reported that pregnant women were forced to lie on beds which are too high and yet one would either be in a wheel chair or using crutches.

Recommendations

1. The NCPWD should work with Ministry of health and other stakeholders to ensure full implementation of the Persons with disabilities Act, CRPD especially Article 25 and Article 54 of the CoK and ensure materials on reproductive health are disseminated in accessible formats (Braille, large print, use of sign interpreters, plain language)
2. Capacity building on disability rights for medical staff is of priority and should be mainstreamed in their curriculum.

¹⁸ Report published by Kenya National Commission on Human Rights in April 2012

¹⁹ Views collected from women and girls interviewed during the study between 24th and 28th June 2012 in Mombasa County

3.3.3 Affordability of Health Services

Hospital fees were cited as another obstacle that hinders many persons with disabilities from accessing medical services. To many of them the charges were too high as most were unemployed and lived in rural areas pronged by poverty, struggling to even get transport to the hospital. Many would therefore opt for over the counter drugs. On a positive note though, some hospitals reported a waiver on some of the medical costs though the process was described as long and tedious. For instance, in Busia and Bungoma Counties, officers from APDK confirmed that they sometimes waive the costs of assistive devices after assessment to 1/3 of the costs of the equipment ²⁰ and use that money to transport the assistive devices. Noting that persons with disabilities have to be assessed in public hospitals before being registered by NCPWD, all hospitals reported that charges range between Kshs 1500 and Kshs 500. For most persons with disabilities, these charges need to be reviewed as many would not afford it and could possibly be one of the reasons why there is still no comprehensive statistics on total number of persons with disabilities in Kenya.

In addition, the process of registration by NCPWD was reported to be taking too long, approximately one year bearing in mind that registration was only carried out in Nairobi. This is despite NCPWD establishing regional offices whose main purpose is to collect forms and send to Nairobi. A mother of a deafblind child in Bungoma was emotional when she narrated how it has taken her 8 years to register her daughter with the Council:

“ I started the process of registering my daughter with the Council when she was 10 years and up to now, 8 years down the line, am still struggling with it. ...I completed the registration form sent it to the Gender and Social services offices in Bungoma and nothing was ever communicated to me. I waited for long and when I went back, the forms could not be traced. I had to start afresh... Getting a medical report requires a panel of three doctors to certify the child's disability. This is a real hurdle because finding these doctors at the same time to sit on a panel is very rare...once this form is sent to Nairobi, there is only one person who is supposed to give the final approval and this can take months...most of us parents give up in the process...it's too tiring yet you desperately need the money for your child...I don't know how parents from very remote places who are poor and illiterate deal with this issue. ”

²⁰ Standard costs for wheelchair is Kshs 2000, Kshs 800 for wooden crutches and Kshs 1000 for elbow crutches

Recommendations

1. Government should increase budgetary allocation to health care so as to ensure adequate service provision. Budgetary lines for provision of health care for Persons with disabilities should be earmarked and tracked so that they are not diverted for other purposes. Medical services including the assessment should be provided at affordable fee and consideration for a waiver should be made when a patient is unable to meet such costs.
2. Registration feedback from the NCPWD should be sent to all applicants in time.

3.3.4 Health Facilities and Personnel

Hospitals face a lot challenges with regard to facilities and personnel as is evident from the findings. This results from lack of resources to ensure that proper facilities are in place and inadequate deployment of personnel. Some challenges reported by officers in various capacities in hospitals sampled was lack of provisions for hiring sign interpreters, adjustments of buildings to be disability friendly and also policies giving guidelines on service delivery to persons with disabilities especially on the examination charges.

Other challenges included understaffing and low levels of awareness on disability rights. For example in Nyeri County, one of the hospitals reported that there was only 1 physiotherapist who was expected to attend to an average of 30 patients daily. The same was the case at Port Victoria hospital in Busia County where the physiotherapist who is situated at Busia Referral hospital would visit the hospital once in a month. This was also experienced by persons seeking mental health care services. For example, in Machakos County, people travel to Machakos level five hospital.

Inadequate training of medical personnel on disability rights posed another challenge though some hospitals reported to have sessions on disability mainstreaming. APDK for example, which works closely with hospitals, reported that it supports and conducts community awareness forums to address health issues and it has been instrumental in trying to de-stigmatize disability. This is mainly conducted through health talks where parents and guardians are requested to take children with disabilities for assessment and treatment. However, there remains a lot to be done with the communities so that they work in partnership with the hospitals to enhance access to healthcare for persons with disabilities in a manner that is sustainable and beneficial to both the persons with disabilities and to the hospitals.

Recommendations

1. The mental health policy should be finalized and adopted, and the government should make effort to integrate mental health within the community and primary care services for enhanced access.
2. The Ministry of Health and Ministry of Education should partner and develop an inclusive disability curriculum and roll it out in all institutions of higher learning for medical trainees.
3. The Ministry of Health should deploy enough staff within hospitals especially physiotherapists and mental health specialists.

3.3.5 Physical Access to Health Facilities

Commendably, most of the hospitals have invested in physical access though there is room for improvement. Ramps, wider doors, lowered door locks and parking space for persons with disabilities have been constructed in hospitals to enable easy access to services by patients. However, areas like washrooms and cashiers' counters are yet to be accommodative. During the monitoring, it was noted that most of the cashiers' counters were too high for a person on a wheelchair to reach them while for washrooms, the doors were too narrow and no rails for support.

In terms of hospital proximity, the study noted that most hospitals are located in town centres making it cumbersome for persons with disabilities in interior parts of rural areas to access. Mothers of children with disabilities faced transport challenges to the hospitals since they were forced to piggyback their children to the medical facilities. Some resorted to buying medicines over the counter for their children with disabilities without appropriate diagnosis which posed possible dangers or further complications.

Recommendations

1. Ministry of Health and Ministry of Public works should ensure that universal designs are used during constructions of health facilities to ensure physical access by persons with disabilities.
2. Government should ensure that the clinical facilities within the rural areas are well equipped and facilitated to provide the services sought from the referral hospitals

3.4 Accessibility

Article 9 of the CRPD obliges the State to facilitate persons with disabilities to live independently and participate fully in all aspects of life. The State is expected to take suitable measures to ensure that persons with disabilities have access to the physical environment; to transportation, information and communications, including information and communications technologies and systems, and other facilities and services open to the public on an equal basis with others. This provision is echoed domestically in section 21 of the Persons with disabilities Act, 2003 (PDA) which entitles persons with disabilities to a barrier-free and disability-friendly environment. Section 22 of the PDA requires any proprietor of a public building to adapt it to suit persons with disabilities in such manner as may be specified by the NCPWD.

It was expected that all proprietors of public buildings should have complied with the requirement within five (5) years after the section came into operation. Similarly, the PDA under section 23 obliges an operator of a public service vehicle to adapt it to suit persons with disabilities in such a manner as may be specified by the Council within two years after the coming into operation of the section. According to the Act, sections 22 on accessibility of public buildings and 23 on public service vehicles became operational from the 1st of January, 2010. This therefore means that the timeline for compliance with section 22 is the 31st of December, 2015, while that for section 23 was the 31st of December, 2012.

3.4.1 Access to the Physical Environment and Assistive Devices

The assessment of both private and public buildings across the 12 counties showed that physical accessibility for persons with disabilities remains a far-off target in most cases save for a few noted health facilities which had made relevant improvements and adjustments on their buildings. Several buildings that house national and county government offices, courts, hotels, public toilets, police stations among others do not comply with current accessibility standards. Of key concern was that even houses of persons with disabilities were also inaccessible.

Inaccessibility was mainly in the form of staircases (often very steep), steep ramps, objects in the way; very narrow doors and non-accommodative lifts especially for the visually impaired. Even where there is a ramp at the entrance of a building, there are no ramps or lifts in the interior which makes it difficult, if not impossible, to access other floors. Physical access to educational facilities also presented major challenges to students and teachers alike. It was evident that clear guidelines had not been given to architects or were being ignored by responsible officers. New buildings were



Lack of physical access is not only at public buildings but also within homesteads. One of the homesteads sampled during the monitoring

not complying with provision of ramps, lifts and wide doors (32 inch) yet they were approved by respective government departments and authorities.

From these findings there is urgent need for new buildings to be designed using the universal designs which provides for accessibility for persons with disabilities. Many of the old buildings also require modification to enable Persons with disabilities access them. The NCPWD is mandated under Section 24 of the Persons with Disability Act to issue adjustment orders. This should be pursued with zeal and the department of public works and other authorizing bodies should be held to account to ensure that all buildings, both new and old are accessible to persons with disabilities. As an initial step, a survey of all public buildings should be undertaken to 'name and shame' those which are not accessible and renovate them accordingly.

On access to assistive devices such as wheelchairs, eye glasses, sunscreen, hearing aids, both persons with disabilities and institutions for persons with disabilities reported to be facing a lot of challenges when acquiring them. They are expensive to acquire, maintain and repair. Some of the persons with hearing impairment complained that they could not afford to purchase hearing aids because they were very expensive. Other respondents reported that even the repair and spare-parts for wheelchairs are mostly found in Nairobi and therefore forced to travel all the way to have the wheelchairs fixed. Further, respondents expressed their displeasure in the delays

encountered in the acquisition of these devices and suggested that there ought to be a way to expedite and make affordable the acquisition of assistive devices as the current process is too tedious, time consuming and expensive. They further observed that prosthesis should be replaced free of charge. Moreover, some went as far as recommending that assistive devices for persons with disabilities be included in the health essential package. On a positive remark, APDK has been instrumental in providing low cost appliances and mobility aids to persons with disabilities in collaboration with the hospital, though they also face challenges as most facilities are not tax exempted. The NCPWD was also reported to provide assistive devices to various beneficiaries.

Recommendations

1. Department of Public Works and other relevant authorities should enforce guidelines that shall be followed by contractors putting up new public buildings and offices that are user friendly to persons with disabilities
2. The NCPWD should be enabled both financially and administratively to implement section 24 of the PDA on adjustment orders.
3. Continuous public awareness programs to encourage structural and infrastructural design that takes into account needs of persons with disabilities should be increased.
4. Persons with disabilities should be supported in acquiring, maintaining and repairing of assistive devices. The NCPWD should negotiate for the waiver on the equipment and assistive devices used by the Persons with disabilities as provided for in PDA.

3.4.2 Access to Transport Services

Transport remains inaccessible countrywide to most persons with disabilities with many complaining of discrimination by public service operators. A large number of those who participated in the focus group discussions complained about not being treated with dignity and being discriminated against. For example, persons with disabilities are sometimes not given enough time to board vehicles and when they board they have to pay for the wheelchairs. One participant interviewee quipped:

“ Why should I pay for the wheelchair and they are my legs; should my legs (wheelchair) be cut off so that I don't pay for them?²¹ ”

²¹ Comments by one of the participants during focused group discussions held at Maranatha in Migori on 7th December 2012

It was also reported that even when vehicles stopped to pick them, they were usually harassed and subjected to insensitive mockery for not boarding as fast as other passengers. 'Matatu' operators seemed to lack patience with persons with disabilities especially during peak hours and in most cases, persons with disabilities were usually abandoned at the bus stops.

In other cases due to the inaccessibility, most of persons with disabilities must be assisted, usually by being carried, to board and alight from the vehicles. This can be especially uncomfortable for women who have to be handled by male conductors.

Finally, the study noted that most buildings did not have designated parking spaces for persons with disabilities and where such provisions had been made, for example in hospitals, the likelihood of these parking spaces being taken by persons without disabilities were very high. With Section 23²² of the Disability Act 2003 becoming operational as from January 2010, the grace period of two years is almost over yet little has been done.

Recommendations

- 1) Ministry of Transport in collaboration with other relevant stakeholders like Matatu Owners Association and Insurance companies should embark on an aggressive awareness raising and sensitization campaign on transport access.
- 2) Ministry of Transport should get models of accessible vehicles and engage with stakeholders on duplicating the same. In such instances, incentives like tax deductions should be encouraged.

3.4.3 Access to Information

Article 2 of the CRPD defines communication as that which includes languages, display of text, braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

Article 35 of the CoK, 2010 and Article 21 of the CRPD reinforces the right to information. For persons with disabilities to enjoy their freedom of expression and opinion, access to information is crucial. Article 21 of the CRPD requires State Parties to take all appropriate measures to ensure that persons with disabilities can exercise the right

²²Section 23 on public service vehicle states:

1. An operator of a public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the council

2. All operators of public service vehicles shall comply with subsection (1) within two years after this section comes into operation

to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. In particular, state parties are required to do this by, among other things:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions...

The monitoring established that communication remains a challenge to persons with disabilities and as a result they are locked out in participating in civic life. Out of the sampled institutions, only special schools, few hospitals and Courts had accessible formats of communication though not all. The courts for example, reported that they had sign language interpretations during court proceedings but on request from judiciary headquarters in Nairobi.

In an interview with participants during focus group discussion, it was reported that persons with physical disabilities attended meetings more often than persons with visual and hearing disabilities mainly because they were least affected by poor modes of communication.

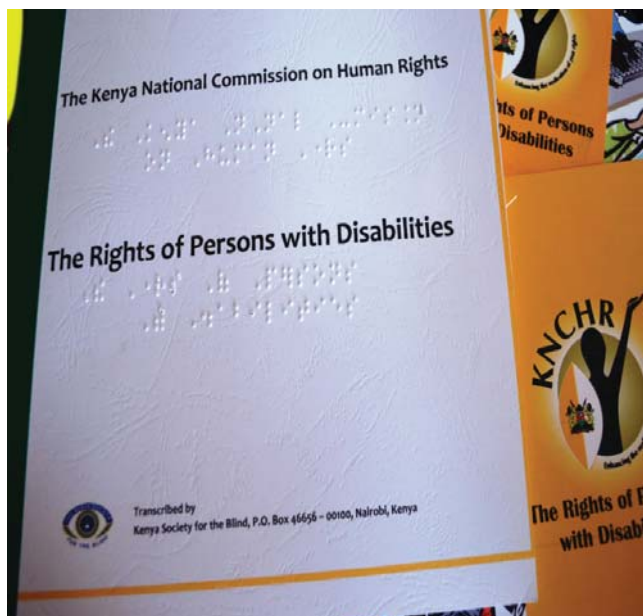
With regard to availability of information, the monitoring noted that key documents like the CRPD, and the Disability Act, 2003 were not available in many public institutions. This contributed to low knowledge by both the public and persons with disabilities on disability rights and mechanisms that have been put up by the government to run disability programmes. The response was that since most institutions do not produce IEC materials, they do not bear the duty of having the material in formats accessible to persons with disabilities. As a result most persons with disabilities have to rely on their care givers for information and have to communicate to the institutions through intermediaries.

Dissemination of information through mass media was also reported to be limiting. Persons with disabilities have for a long time experienced injustice in accessing information through the mass media. Though signage is provided for in parliamentary proceedings and sub-titles for newscasts, the rest of the programmes do not have. The signage is allocated a small portion of the screen and deaf persons have to move closer to interpret the signs. In one school for the deaf for instance, the students were very excited about KBC's parliamentary broadcast which has sign language interpretation. But they then had to crowd next to the TV because the interpretation

was restricted to a tiny space of the TV. Persons with hearing impairment are therefore, unable to get all the information and are left to watch pictorials despite section 39 of Disability Act, 2003²³ becoming operational in January 2010²⁴.



A sign language interpreter during International Disability Day celebrations organized by KNCHR in Kisii County in 2012



KNCHR easy to read IEC materials in braille and print

The monitoring also established that persons with disabilities are unable to participate effectively in voting processes due to lack of necessary information. During the public forums one participant claimed that;

“Some of us did not vote in the previous voting exercise because of lack of information. Though there was someone to help the disabled to vote without a problem, signing was a major challenge for us”

Recommendations

Access to information is a fundamental human right enshrined in the Constitution (Art 35) I. It is important that information be provided to persons with disabilities in accessible formats and ways as appropriate. Copyright laws should be reviewed to allow printing of documents in various formats. This should be enforced by the NCPWD and relevant government ministries.

²³ Section 39 of the Disability Act, 2003 states: all television stations shall provide a sign language inset or sub-titles in all newscasts and educational programmes and all programmes covering events of national significance.

²⁴ Legal Notice No. 182 available on <http://www.kenyalaw.org> accessed on 20th July 2012

3.5 Access to Justice

The CRPD calls for State Parties to ensure effective access to justice for persons with disability on an equal basis with others. Persons with disabilities continue to face a lot challenges when seeking justice with key obstacles being inaccessibility and exercise of legal capacity. An interview with a respondent from one of the police stations revealed that police officers had not received training on equality and diversity including disability awareness thus having limited skills to respond more effectively to persons with disability especially those with mental health conditions and intellectual disabilities. It was noted that there are no appropriate services to help communication between the police and disabled adults with intellectual disability, hearing impaired and mental health conditions during police investigations and interviews..

In the research conducted by KNCHR in 2013²⁵, findings indicate that absence of supported decision making has adversely affected access to justice by persons with disabilities and especially in evidence collecting. Laws and policies were identified as other obstacles. The Penal Code still uses derogatory words like “imbecile and idiots and the Constitution which uses ‘unsound mind’ . This can negatively impact on persons with intellectual disability who at one time may seek justice.

In a nutshell, key barriers to effective access to justice by people with disability include: unavailability of community support, inaccessibility to information, social risk factors, negative attitudes and assumptions that persons with disability cannot make their decisions

Recommendation

1. Government should take initiatives to implement Article 12 of the CRPD on legal capacity for persons with disabilities.
2. Awareness programmes should be designed for police officers, legal practitioners, court registry staff, judicial officers and corrections officers on access to justice and persons with disabilities
3. Disability mainstreaming needs to be integrated in the current reforms in the criminal justice system so as to ensure that Persons with disabilities can effectively access justice at all stages of the legal process; can exercise their legal rights as defendants and victims and can fulfil their responsibilities as witnesses. It is also paramount for the Government to recognise how important it is for persons with disability to be able to access effective assistance at the initial stages of any legal process.

²⁵ Briefing paper on how to implement Article 12 of the Convention on Rights of Persons with disabilities regarding legal capacity in Kenya available on <http://www.knchr.org/Portals/0/GroupRightsReports/Briefing%20on%20Legal%20Capacity-Disability%20Rights.pdf>

3.6 Work and Employment

Persons with disabilities continue to experience discrimination in accessing employment opportunities yet the Constitution provides a framework to address this injustice. Discrimination, among other factors has led to high levels of unemployment or little engagement in economically viable activities among persons with disabilities. Article 27 of the CRPD outlines different measures that State should put in place to ensure persons with disabilities work in a freely chosen or accepted opportunities in a labour market that are open, inclusive and accessible. The Persons with disabilities Act of 2003, provides in section 12 that *“no person shall deny a person with a disability access to opportunities for suitable employment.”*

Even with an existent international and national legal framework for the protection of the rights of persons with disabilities, the findings in the 12 Counties reveal that access to employment and work is still a distant goal for persons with disabilities. Some of the barriers identified during monitoring include low levels of education, poor attitudes by the persons with disabilities, poverty, lack of workplace support, and weak implementation of tax exemptions and more importantly stigma and economic prejudice.

In addition, the mode of dissemination of information on new job opportunities has been limiting as many advertisements are done in print media i.e. newspapers and via internet which many of the persons with disabilities may not have access to. As a result many fail to apply for certain job opportunities not because they do not qualify but because they lack the necessary information. One of the respondents from Busia County narrated how she almost missed applying for a certain job simply because it was advertised through the newspaper which she could not read and when a friend passed the information to her it was barely two days to the deadline.

Reasonable accommodation has also been lacking at various work places and many persons with disabilities do not get the required basics to enable them communicate with fellow colleagues and facilitate their working. Such basics include; computer software like jaws, braille machines for persons with visual impairment, sign language interpretation for persons with hearing impairment, flexible working hours, and an aide among others. As a result, persons with disabilities feel isolated and opt to leave work. In Kisii County for instance, a respondent with hearing impairment expressed her frustration at the workplace to be that could not easily communicate with her employer and fellow employees. Other persons with disabilities complained they could not access both formal and non formal employment because of the perceptions of

being a source of burden by some employers while some felt that they were unable to deliver like their able-bodied counterparts.

Women expressed their pain both as persons with disabilities or as mothers of children with disability. Mothers of Persons with disabilities doubled as sole providers for their families yet even access to casual jobs was a challenge. This was mainly because some members of the society could not allow them to bring along their children with disability due to cultural beliefs therefore choosing to stay at home with the child. This adversely affected their enjoyment of socio-economic rights like health, food and education. As reported by one of the interviewee:

“It is very hard for us especially when schools are closed. My husband and I depend on casual jobs that are inconsistent and when available we only manage to get Kshs 150 a day which is not enough to cater for our son’s medical expenses, school fees for children in secondary and food for our family. It is more difficult because during holidays I have to stay at home and take care of him therefore no work. Sometimes we miss food completely.”

Another challenge cited by persons with disabilities during the survey that hinders their participation in economic activities included inability to access capital to start businesses. It was reported that accessing grants and loans from NCPWD is extremely difficult due to stringent regulations, complex application procedures and the excessive requirements. In addition, persons with disabilities reported that accessing credit facilities in other financial institutions such as banks was very difficult. Yusuf not his real name narrated his story:

“they said I was sick and I could not manage the money. They had approved the loan but when I went for the money they refused it. The manager was actually told about my condition by someone, that’s why he changed his position about the loan...I had to apply for another branch of the same bank, where they did not know me. I started by applying for the loan afresh after which they gave me the money...[Had they known about my condition] I strongly believe they would have behaved like the other branch ... I thought they were not doing the right thing because I was supposed to access the loan just like any person. The loan was secured against my salary and I had worked with the TSC for more than 10 years... If they were not asking security from other people, why were they saying that my condition was not good? This was not explained to me as a pre-condition in the loan agreement.”²⁶

²⁶ The Right to legal Capacity in Kenya report by Mental Disability Advocacy Centre (page 95)

Some are unable to operate bank accounts such as the intellectually challenged while others were denied ATM cards.

The monitoring team, in an attempt to understand the inclusion of persons with disabilities in formal employment looked at the profile of employees in various institutions sampled. In Kisii General Hospital for example, there were a total of 550 employees and only three were persons with disabilities, one person with albinism (casual employee) and two were persons with physical disabilities. Out of the 8 schools surveyed in Kisii County only one school, that is Nyaronge D.E.B School in Nyamache District, had employed a teacher with disability.

In Kiambu County, out of the 10 regular primary schools with special units that were visited, it was noted that there was no person with disability who was employed in the schools. Kiambu district hospital had employed 1 person with physical disability in the occupational therapy department and there was a representative for persons with disabilities in the committee established in the hospital. In a forum held in the same County, out of 30 persons with disability attending, only 7% had formal employment and the rest were unemployed. Most of them reported *“we have the education and the necessary qualification but we are not accorded the opportunity to work due to our disability”*²⁷ In Migori County, out of the 15 institutions sampled, only County Council of Migori had 4 members of staff with physical disabilities.

On taxation, Section 12 (3) of the Persons with disabilities Act, 2003 entitles an employee with a disability to exemption from tax on all income accruing from his employment. While it can positively be reported that persons with disabilities are benefiting from tax exemption, persons with disabilities in rural areas seem to have little knowledge of this and have not applied for exemption. The process was also reported to be very tedious and discriminatory especially for persons with psychosocial disability. For example, one of the SNE teachers with mental disability reported that he was not a beneficiary of the tax exemption despite being recognized by the NCPWD as being a person with disability. On the other hand, persons with disabilities in informal employment and owners of small business were not informed on how the tax exemption works as some of them complained that the County governments’ inspectorate officers consistently harassed them to pay license fees despite the said regulations. They further noted that even if there was a framework on tax exemption for persons with disabilities with businesses, it was not known to them. For this reason, there was a general feeling that only persons with disabilities who are in formal employment benefit from tax exemption

²⁷ Comment from person with disability in the forum

as compared to their counterparts in informal sector.

This notwithstanding, it was regrettably observed that some of the persons with disabilities who participated in the survey constantly expressed how they deserved to get free goodies from the government irrespective of their abilities to generate income. Some still opted to beg for money in the streets instead of engaging in gainful activities. In addition to this observation, some of the persons with disabilities and caregivers observed that poor perceptions by persons with disabilities about their abilities and self worth and difficulty in socialization as a person with disability remains the greatest hindrance to their development and subsequent realization of their rights.

Recommendations

1. The NCPWD should adopt a public participatory process in the formulation of measures designed to achieve equal opportunities for persons with disabilities by ensuring they obtain education and employment. In doing so, the NCPWD will promote public awareness on its mandate and functions, and decentralize its structures to ensure accessibility of its services to Persons with disabilities.
2. For purposes of ensuring ease of access to grants and loans for personal development by Persons with disabilities, the Council and the Ministry of Labour, Social Security and Services should review application procedures and other requirements to ease and fast track the accessibility of loans and grants by Persons with disabilities.
3. The NCPWD should also work with the County Governments to secure a clear tax exemption framework in informal employment or businesses. Similarly, the Council in collaboration with the KNCHR, NGEC should push for universal tax exemption, through policy advisories and other means, by the Kenya Revenue Authority regardless of one's type of disability.
4. The NCPWD should develop a database for persons with disability, providing details of their educational skills, professional experience and other qualifications; these should be shared with potential employers. In addition, NGEC and NCPWD should ensure compliance of the 5% threshold of employment of persons with disabilities in public offices and implementation of Public service Disability Mainstreaming code

3.7 Adequate Standard of Living and Social Protection

Every person has a right to social security²⁸. Article 28 of the CRPD further elaborates on adequate standards of living and social protection for persons with disabilities by affirming that State Parties shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

²⁸ Article 43 (e) of the Constitution of Kenya 2010

3.7.1 The Cash Transfer programme in Kenya

The government commendably has established a social protection system for persons with disabilities through the Cash Transfer Programme. The beneficiaries of the scheme have gradually increased in the past financial years to the current number being 94 persons with severe disabilities per constituency. The government also enacted the Social Assistance Act No, 24 of 2013²⁹ which provides that a person with disability is entitled to social assistance.

Though this is commendable, most persons with disabilities continue to experience a lot challenges as they are unable to afford basic needs like housing, food, clean water and education. The cash transfer program only provides Kshs 4000 bi-monthly which is very little to cater for daily needs. Further, the programme is not consistent and sometimes persons with disabilities have to wait for a period of six months before the next disbursement.

Other challenges in the programme include lack of proper monitoring mechanisms to ensure that the monies disbursed benefit the beneficiary. Some families are reported to use the monies on the needs of other members of family neglecting the person to whom they were intended.

In addition to the cash Transfer, the government has established two funds: National Development Fund for the Disabled and National Fund for the Disabled, which are aimed at improving livelihood of persons with disabilities. However, this has not been the case for many persons with disabilities in the rural areas who know little about the administration of the funds and most of those who have submitted their proposals for funding have not been successful. Persons with disabilities expressed their dissatisfaction in how the NCPWD was enforcing the provisions in these legal frameworks and said little was known of the national body. Awareness-raising was lacking and the need to have the offices devolved to the community level was favored expressively by different persons with disabilities.

Recommendation

1. Cash transfer funds should be increased as well as the number of beneficiaries in a constituency and National Fund for the Disabled should be properly utilised and more awareness created about it to meet its intended objectives.
2. The NCPWD should also decentralize most of its operation from Nairobi to the Counties in line with the devolved structure of governance. Currently NCPWD has regional officers but most functions remain at the Head Office.

²⁹ Article 23 (1) of Social Assistance Act No. 24 of 2013

3.8 Participation in Political and Public Life

Article 29 of the CRPD provides that every person with disability has political rights and also the right to effectively and fully participate in conduct of public affairs without discrimination and on an equal basis with others. From the monitoring findings, persons with disabilities are yet to fully enjoy their public life which include but not limited to: visiting social places like churches, theatres, recreational places among others. Feedback from respondents indicated that physical and communication barriers, and societal attitudes posed great challenges to their participation. For example, most persons with disabilities reported that they do not attend church services because of the interpretation attached to disability by preachers and also the general congregation whenever they attended such forums. During one of the focused group discussions, various comments regarding the matter were shared:

“ Disability is not a sickness therefore we should not be subjected to prayers so that we can be healed. Some preachers tell us that we need to be prayed for when we don't get healed, they tell us that we do not have faith. ”

Participants also reported that some religious leaders were sexually abusing girls with disabilities and especially those with mental disabilities whenever they sought spiritual support. A case was reported of a pastor who defiled a young girl after tying her with chains and the matter was currently in court.

These perceptions were not only experienced in places of worship but also within other units of the society; at home, at school and in places of work. According to one participant;

“ We face exclusion at home and in school. Disabled people do not properly belong anywhere; for some, school is home. In addition, people think if you for instance you cannot see, then you are a beggar..... ”

Another participant indicated that;

“There is no assistance forthcoming for a person with disability from extended family members. If born out of wedlock, such child is not even wanted by biological parents. Everyone leaves school for home and you are left there... I did not complete school because there was no one interested to pick and drop me to school”

Article 30 (b) of the CRPD provides that state parties should ensure persons with disabilities have opportunity to organize and participate in disability-specific sporting and recreational activities.³⁰ In involvement with sports, inaccessibility to facilities was the greatest barrier. Most of the playgrounds were located far from their habitation. Others were inaccessible due to monetary charges that they had to meet yet it is a public utility.

*“Our basketball team was denied access to Municipal stadium because we could not afford the Kshs 10,000 charges. We wrote a letter to District Gender and social Service Development Officer (DGSDO) and District Commissioner and we have not received any feedback. We were labeled as beggars.”*³¹

With regard to political participation, the study commendably notes the gains of the Constitution of Kenya, 2010 in which persons with disabilities have been given opportunity for representation both at County and National level.³² Part of the study was conducted prior and after the 2013 election, the latter indicating that persons with disabilities, despite the opportunities for participation in elections, feared unfairness. While noting the successes of the March 2013 elections³³ and increased participation by persons with disabilities unlike in past elections, post election survey noted that physical access to polling centres and poor communication remain a hindrance to full effective participation. In addition, proper civic education targeting persons with disabilities was not conducted by Independent Electoral Boundaries Commission (IEBC) and most of the sensitization forums were held by Disabled People Organizations especially the Disability Caucus on Implementation of the Constitution (DCIC).³⁴

³⁰ Article 30 (b)- state parties shall take appropriate measures to ensure that persons with disabilities have an opportunity to organize, develop and participate in disability- specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources

³¹ Views collected during public forum with persons with disabilities on 29th March 2012

³² See the following Articles of CoK 2010 :97 (1) (c), 98 (d)

³³ According to United Disabled Persons of Kenya report “ Towards the 2017 General Elections “ The national Assembly has nine MPs with disabilities, six elected and three nominated, the Senate has four Senators with disabilities while the county assemblies has 74 Members of County Assemblies

³⁴ Disability Caucus on the implementation of the Constitution (DCIC) is a coalition of organizations of and for persons with disabilities who main objective is to ensure the implementation of the provisions of the Constitution and to promote the interests of persons with disabilities in the new constitutional dispensation

Recommendations

- 1) Persons with disabilities should be encouraged and supported to engage in politics and elections. Independent Electoral and Boundaries Commission (IEBC) together with other stakeholders should provide adequate civic education to persons with disabilities.
- 2) IEBC should also ensure persons with disabilities are registered as voters; civic education carried out in accessible communication mode and ensures accessible voting station.
- 3) IEBC should also propose review of Article 83 (2) on unsound mind.

4.0 CONCLUSION

In conclusion, though some positive milestones have notably been made among them the ratification of the CRPD and inclusion of rights of persons with disabilities in the CoK 2010, there is need for the government to address some of the glaring challenges facing persons with disabilities. Significant gaps in access to infrastructure, health services, education, work and employment and public participation are stark realities that persons with disabilities continue to live with. The gaps point to either slow, poor or in some cases, failure in the implementation of national policies and laws. Parental neglect, inhumane and differential treatment by the family and community continues to impact negatively on their development. Kenya needs to utilize the recent growing international recognition of the need for equal enjoyment of all human rights by people with disabilities.

It is anticipated that KNCHR monitoring work will contribute to and complement the ongoing efforts of disability rights advocates, as well as generate new ideas and opportunities for advancing the equal enjoyment of all human rights by people with disabilities.

Appendix 1

1) The monitoring tool

These include sample questions to guide our discussions with the various actors who we'll encounter during monitoring, as well as a list of things to look out for during physical monitoring. Before every discussion, it may be necessary to address the issue of confidentiality of information received.

SECTION 1

a. Data on person administering the questions

Full names:

Phone:

Email:

Organization/agency:

Address:

Date:

b. Profile of the Interviewee

Fullnames:

Sex:

Age group: 18-30 30-40 40-60 60+

Marital status: Single Married Divorced Widowed

Level of education: Primary Secondary College University Other

Type of disability:

Contact details:

a) Organization: _____

b) Phone: _____

c) Email: _____

d) Address: _____

SECTION 2

List of questions to be answered by Persons with disabilities

1. Are you aware that you are protected from discrimination?

By what means?

In which spheres of life?

2. Have you or anyone you know experienced discrimination on the basis of disability (this can be from any actor – individuals, government, private enterprises)? Describe.

3. Do public bodies communicate to you in accessible formats?

Specify in relation to your disability

4. Is there: sign language interpretation, Braille, large print, plain language, electronic formats in the following places where public services are offered:

a. Schools

b. Libraries

c. Hospitals

d. Government offices

e. Courts

- f. Police stations
 - g. Polling stations
 - h. Other?
5. Have you sought services from any of the public offices listed in 4? Which ones? What was the attitude of the public officers towards you as a PWD?
6. Is there: sign language interpretation, Braille, large print, plain language, electronic formats in social settings such as:
- a. Places of worship
 - b. Hotels and restaurants
 - c. Supermarkets and other shops
 - d. Places of entertainment
 - e. Other?
7. Has the state undertaken awareness raising to inform you about your rights?
8. Did you vote during the last election? Did you vote during the referendum?
If not, why?
9. Do you have a national identity document? If not (and over 18), why?
10. How do you earn a living? Explain.

Do you have any experience with sheltered workshops or supported employment?
11. Do you live:
- a. On your own
 - b. With your family
 - c. In an institution

- d. Other
12. Do you have access to adequate:
- a. Food
 - b. Clothing
 - c. Housing; and
 - d. Water?
13. What assistive technologies and devices do you need?
- Do you have access to the assistive technologies and devices that you need?
14. Have you been subjected to medical or scientific experimentation without your consent?
15. Do you have specific disability-related medical needs?
- Do you have access to the required healthcare services?
16. Do you have a copy of the CRPD?
17. What positive measures, if any, would you say the state has taken to fulfill your rights as a person with disabilities?

List of questions to be answered by caregivers of persons with disabilities

1. What is your relationship with the PWD under your care?
2. Has the PWD under your care undergone assessment? Where? At whose cost?
3. Has the PWD under your care experienced discrimination on the basis of disability (this can be from any actor – individuals, government, private enterprises)? Describe.
4. Do you receive any support from the Government? If yes, explain.
5. Have you received any information and / or training from the Government on the disability of the family member with disability?

List of questions to be answered by organizations of and for persons with disabilities

1. Has the state provided support to you in your capacity as a DPO to undertake awareness raising campaigns amongst your members and the general public?
2. Has the state worked with you/involved you as a DPO in any intervention on the rights of persons with disabilities?
3. Do you participate in the development of laws and policies that affect persons with disabilities?
4. Are there sheltered workshops or supported employment opportunities in the area?
5. Are you aware of any cases of forced sterilization of persons with disabilities?
6. What are the most common forms of exploitation, violence and abuse suffered by persons with disabilities in the area?
7. What are the cultural beliefs and practices with regard to Persons with disabilities?

List of questions to be answered by Schools:

1. Do you admit learners with disabilities? How many learners with disability are currently enrolled in the school? What types of disabilities do they have?
2. Do Learners with disabilities study separately or together with other learners?
3. Is the school accessible to learners with disabilities?
4. Is the curriculum accessible to Learners with disabilities? Explain.
5. Have you had any interaction with Educational Assessment and Resource Centres?
6. Do you have teachers trained in educating learners with disabilities? How many teachers? How long did the teachers train to qualify? In which institutions?
7. Does your school have any teachers with disabilities?

8. Do you currently provide individualized education programmes?
9. How is education for learners with disabilities funded?
10. Do girls with disabilities access education at par with their male peers?
11. How do Learners with disabilities express their views on matters concerning themselves?

Are those views given serious consideration, on an equal basis with other children?
12. What are your key needs as far as promoting the education for learners with disabilities is concerned?

List of Questions to be answered by Hospitals

1. Do persons with disabilities receive medical treatment based on their free and informed consent?
2. Is information on curative and preventive health services given to patients with disabilities in accessible formats?

Expound.
3. Do persons with disabilities have access to health related rehabilitation which is affordable?
4. Are public health campaigns designed in a way that they are accessible to persons with disabilities?
5. Are doctors and other medical professionals provided with training on the rights of persons with disabilities?
6. What are the key needs as far as promoting the health of persons with disabilities is concerned?
7. In situations where you use intermediaries and interpreters, how do you ensure the confidentiality of information on the PWD?

List of questions to be answered by ministries/provincial administration/courts/police stations and other government officers

1. Are your premises accessible to persons with disabilities?
Do you provide information (forms, etc) in accessible formats? Expound.
2. How many PWD are employed by the State in this office?
3. How do you implement the laws on persons with disabilities?
4. What gaps in our laws and policies exist as far as the rights of persons with disabilities are concerned?
5. What administrative challenges exist in implementing laws and policies?

For courts

6. Have you had a case involving a person with disabilities since May 2008? If so, what was it about? In the event of a criminal case, was the PWD a victim of the crime or the perpetrator? What was the outcome?
7. Do you have measures for Persons with disabilities to use intermediaries where necessary?

For District Gender and Social Development Officer

8. What is your mandate?
9. What are the core problems faced by persons with disabilities in this area?
10. What redress mechanisms is your office able to offer?
11. What constraints do you face in exercising your mandate?

Appendix 2

List of institutions sampled

- 1) District Gender and social services (Machakos, Kangundo, Migori, Busia, Bungoma, Kisii, Makueni, Nyeri, Kiambu, Mombasa, Kilifi, Elgeyo Marakwet, Uasin Gishu)
- 2) District Education Office (Machakos, Kangundo, Migori, Busia, Bungoma, Kisii, Makueni, Nyeri, Kiambu, Mombasa, Kilifi, Elgeyo Marakwet, Uasin Gishu)
- 3) Ministry of Agriculture - Machakos
- 4) Education assessment resource Center (Machakos, Kangundo, Migori, Busia, Bungoma, Kisii, Makueni, Nyeri, Kiambu, Mombasa, Kilifi, Elgeyo Marakwet, Uasin Gishu)
- 5) Machakos District Hospital
- 6) Masaku School for the Physically Handicapped
- 7) Bishop Kioko Hospital
- 8) Machakos Technical Institute for the Blind
- 9) Machakos Teachers College
- 10) Machakos Township Muslim primary school
- 11) Machakos School
- 12) Machakos Municipal Council
- 13) Machakos Girls school
- 14) Katangi healthcare Centre
- 15) District Gender and Social Services
- 16) Katangi Special school
- 17) Makutano D.E.B Primary School
- 18) Makutano Secondary school
- 19) Kangundo Law Courts
- 20) District Education Office –Kangundo
- 21) Education Assessment Centre –Kangundo
- 22) Kangundo Police Station
- 23) Kangundo D.E.B Primary School
- 24) Kangundo Municipal Council
- 25) Provincial Headquarters –Nyeri
- 26) District and Gender Office Nyeri
- 27) Nyeri Law Courts
- 28) Muthua-ini Primary School
- 29) St.James Gathima primary school
- 30) Allamano Special School
- 31) Karatina Special School for the Mentally Handicapped

- 32) Gikiambii Boys High School
- 33) Gikiambii Catholic dispensary
- 34) Karatina District hospital
- 35) Jamii Nursing Hospital
- 36) Rev. Muhuro secondary school for the deaf
- 37) Mukurweini Law Courts
- 38) Mukurweini District hospital
- 39) District Commissioner's office-Mukurweini
- 40) Naromoru Disabled Children's home
- 41) Mweiga Police station
- 42) Municipal Council of Nyeri
- 43) Irigithathi Primary School
- 44) Mombasa secondary school for the physically Disabled
- 45) Khadija Primary School
- 46) Shikaadabu Primary School
- 47) Likoni police station
- 48) Likoni school for the blind
- 49) Likoni district hospital
- 50) Tom Mboya School for the cerebral Palsy
- 51) Tudor Primary school
- 52) Provincial Offices-Mombasa
- 53) District Children Office-Mombasa
- 54) Coast provincial General Hospital
- 55) The Chagamwe School
- 56) Ministry of Public works-Mombasa office
- 57) Migori level 4 Hospital
- 58) Assar Johanson Primary school
- 59) Migori Primary School
- 60) Rongo District hospital
- 61) Kuja School for the Deaf (Primary and Secondary)
- 62) Prisons (Machakos, Migori)
- 63) Migori County Council
- 64) Busia county offices
- 65) Busia County Education offices
- 66) Busia County commissioner offices
- 67) Busia Referral Hospital
- 68) Busembe Integrated School
- 69) Nangina Special School

- 70) Port Victoria hospital
- 71) Busia Law Courts
- 72) St. Catherine school for the Mentally Handicapped
- 73) Iten District Hospital
- 74) Kobil School
- 75) Mindililwo School
- 76) Iten School for the Deaf
- 77) Chepsigot School for the blind
- 78) Tambach Hospital
- 79) Tambach Prison
- 80) Ministry of Agriculture (Elgeyo Marakwet)
- 81) Town Council and County Council (Elgeyo Marakwet)
- 82) Uasin Gishu District Hospital
- 83) Moi Referral and Teaching Hospital
- 84) Eldoret School for Special Needs
- 85) Eldoret School for the Deaf
- 86) Eldoret High Court
- 87) Kathonzweni Secondary School
- 88) Makongo Primary School for the Deaf
- 89) Unoa Primary School
- 90) Mtito Andei Memorial Medical Centre
- 91) Mtito Andei Health Centre
- 92) Makueni Prison
- 93) Makueni Disabled Persons Organization
- 94) Municipal and county council- Makueni
- 95) Kilifi Township
- 96) Kibarani School
- 97) Masongani Primary School
- 98) Sahajanand Special School
- 99) Bahari Girls
- 100) Motto Mwendani
- 101) Pwani University
- 102) Kilifi Primary School
- 103) Kilifi District Hospital
- 104) Kiambu District hospital
- 105) Kiambu law court
- 106) Kiringiti girls rehabilitation center
- 107) Kambui school for the deaf

- 108) Kirenga boys high school
- 109) Cheshire home
- 110) Marianne center,
- 111) Maria Magnaline
- 112) Joy town special school
- 113) Thika high school for the blind
- 114) Kiriko special school
- 115) St Francis girls high school
- 116) Loreto special unit
- 117) Muthurwa girls secondary school
- 118) Tigoni special school
- 119) Kiambu primary school
- 120) Kisii Primary School
- 121) Gianchere Special School for the Deaf (Primary)
- 122) Nyaronge .D.E.B Primary School
- 123) Nyansakia Primary School
- 124) Kisii Municipal Council
- 125) The Postal Corporation of Kenya-Kisii
- 126) Public Works-Kisii County
- 127) Masisi D.E B. Primary School
- 128) Gucha District Hospital
- 129) Kisii Level 5 Hospital
- 130) RAM Hospital
- 131) Nalondo CBM Primary School
- 132) Sirisia District Hospital
- 133) Sirisia MAL School

Appendix 3

Monitoring Plan (2011-2015)

Monitoring and Awareness Raising County Visits	Time Period Round 1	Time Period Round 2	Time Period Round 3
Eastern 1. Kitui, Makueni, Machakos 2. Meru, Tharaka Nithi, Embu 3. Marsabit, Isiolo	September 2011	August 2013	August 2015
Rift valley 1. Elgeyo Marakwet, Uasin Gishu, Baringo 2. Narok, Bomet, Kericho 3. West Pokot, Turkana, Samburu	November- December 2011	November 2013	November 2015
North Eastern 1. Wajir, Mandera 2. Garissa, Tana River	February 2012	February 2014	

Coast 1. Kilifi, Mombasa, Lamu 2. Kwale, Taita Taveta	May 2012	May 2014	
Central 1. Nyandarua, Laikipia, Nakuru 2. Murang'a, Kirinyaga, Nyeri, Kiambu	August 2012	August 2014	
Nyanza 1. Migori, Nyamira, Kisii 2. Siaya, Kisumu, Homa Bay	November 2012	November 2014	
Western 1. Bungoma, Busia, Trans Nzoia 2. Vihiga, Kakamega, Nandi	February 2013	February 2015	
Nairobi Kajiado	May 2013	May 2015	

Appendix 4

Kenya National Commission on Human Rights
P.O. Box 30472-00101
Nairobi, Kenya



ATTORNEY GENERAL
P.O. Box 30472-00101
NAIROBI, KENYA

AG/CONF/19/63 VOL. VII

01 February 2011

Florence Jaaoko-Simbiri
Chairperson
Kenya National Commission on Human Rights
CVS Pkaza, Lenana Road
NAIROBI

**ADVICE ON ARTICLE 33 OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH
DISABILITIES IN RELATION TO DESIGNATION OF AN INDEPENDENT MONITORING
AGENCY**

The above matter refers.

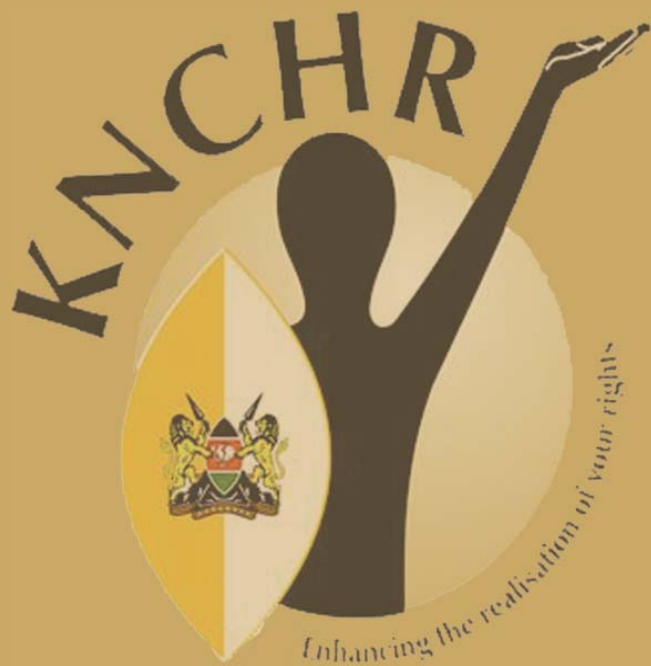
We are in receipt of your letter dated 22nd June 2010, reminder 26th January 2011 on the above captioned matter. We apologise for the inadvertent lack of communication on the matter. After consultation, the Attorney General advised that since the KNCHR is granted autonomy under Section 13 of the KNCHR Act, and Section 16 (1) provides as one of its functions ensuring compliance by Government with its obligations under international human rights treaties, having the KNCHR designated as the monitoring body would not be repugnant.

Thus, the KNCHR would be charged with setting up a transparent and effective framework for monitoring matters pertaining to persons with disabilities, since these are human rights. It would be expedient to set up a consultative forum comprising the National Council for Persons with Disabilities, the KNCHR and their respective parent ministries to work on the way forward.

Once again, we regret the inordinate delay.

Thanking you

J. Patrick Okoth
FOR: ATTORNEY GENERAL



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