**REPUBLIC OF KENYA**





**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

**STATE DEPARTMENT FOR SOCIAL PROTECTION AND SENIOR CITIZEN AFFAIRS**

**SUBMISSIONS: STATE PARTIES TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) ON PERSONS WITH DISABILITIES IN SITUATIONS OF RISK AND HUMANITARIAN EMERGENCIES**

**TO BE PRESENTED AT THE:**

**28TH CRPD SESSION, IN GENEVA FROM 6TH TO 24TH MARCH, 2023**

**GENERAL COMMENTS ON PERSONS WITH DISABILITIES IN SITUATIONS OF RISK AND HUMANITARIAN EMERGENCIES.**

**INTRODUCTION**

Kenya ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 19th May 2008. Since then, the country has remained committed to the implementation of the provisions of the Convention.

Article 11 of the UNCRPD provides that States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters

Kenya as a Sovereign State is governed by The Constitution of Kenya 2010. Article 21(3) of the Constitution of Kenya states that “all State Organs and all public Officers have the duty to address the needs of vulnerable groups within the Society including women, older members of society, persons with disabilities, children, youth members of minority or marginalized communities and members of particular ethnic, religious or cultural communities.”

Persons with disabilities are disproportionately affected by natural disasters, conflict or emergency situations, in comparison to those without disabilities. They may face additional disability-specific risks for their well-being and survival, including physical, sexual or other forms of violence and abuse, high levels of stigma, difficulties evacuating, separation from families and caregivers, and limited access to food and adequate shelter. They are also at greater risk of injury, death, illness, and socio-economic hardship. In addition, they encounter multiple environmental, institutional and attitudinal barriers in accessing humanitarian relief such as education, livelihoods, healthcare and other services. Pre-existing (pre-crisis) discrimination is compounded by barriers related to the humanitarian situation (increased insecurity, breakdown of health and social support services, public restrictions or displacement) and additional challenges related to access to services, power and resources, meaningful participation and protection against violence and harm.

To address and reduce the above-mentioned risks and support affected populations, the government identifies and removes barriers faced by those most at risk and discriminated against, enhancing their capacities and enabling access and participation. This helps ensure the survival, wellbeing and protection from harm for persons with disabilities. It is also necessary to foster accountability and meaningful participation in decision-making processes and to ensure access to humanitarian assistance on an equal basis with others.

The Kenyan Government is devolved and therefore both the National and County Governments have a duty to respond to the welfare of all vulnerable groups, also referred to as Special Interest groups. Accordingly, all interventions on risks and emergencies are inclusive of all groups including persons with disability.

Kenya is generally a peaceful and stable country and so most of the risks and emergencies are related to the phenomenon of climate change. Climate change hazards include drought, floods, and landslides and these have a significant impact on vulnerable groups. However, during the situations of armed conflicts from the neighbouring Countries Kenya at times experiences influx of refugees which include vulnerable groups. This calls for effective disaster risk management by the two levels of Government of Kenya.

The risks include-

1. Hunger and starvation
2. Disease breakouts
3. Landslides
4. Displacements that affect women, children, the older members of society and persons with disability
5. Loss of economic sources and livelihood e.g. death of animals and crops failure.
6. Disputes over grazing pasture and source of water for the animals resulting in internal peace disruptions.

**INTERVENTIONS**

On 17 November 2021, the Government of the Republic of Kenya officially opened the **8th Africa Regional Platform for Disaster Risk Reduction** as the host country. This key event on disaster risk reduction was convened at a critical time in a context where African Countries Kenya included, are facing increasing challenges from disaster risks aggravated by the COVID-19 pandemic and climate change.

Among the expected outcomes of the Africa Regional Platform was a declaration that will outline disaster risk reduction priorities in the continent and Kenya is committed to its implementation within its boundaries. It also identified concrete actions and commitments that will accelerate the implementation of the Sendai Framework for Disaster Risk Reduction 2015 -2030 as well as the African Union’s Programme of Action to Implement the Sendai Framework in Africa where Kenya is part of.

Persons with disabilities do experience impacts from climate change differently and more severely than others and may suffer the highest mortality and morbidity in an emergency, or when access to healthcare and social protection systems is disrupted. In particular, people with multiple vulnerabilities, such as women and girls with disabilities, are at heightened risk of abuse, violence and sexual exploitation during periods of stress or crisis.

The **National Disaster Management Policy 2017** emphasises preparedness on the part of the Governments, communities and other stakeholders in Disaster Risk Reduction activities.

The policy aims at the establishment and strengthening of Disaster Management institutions, partnerships, networking and mainstreaming Disaster Risk Reduction in the development process so as to strengthen the resilience of vulnerable groups to cope with potential disasters which encompasses preparedness, relief and rehabilitation, mitigation and prevention. The Policy aims to increase and sustain the resilience of vulnerable communities to hazards through the diversification of their livelihoods and coping mechanisms.

The policy entails a shift from short-term relief responses to development for the purposes of preserving life and minimising suffering by providing sufficient and timely early warning information on potential hazards that may result in disasters. The policy also provides for other interventions aimed at alleviating suffering by providing timely and appropriate response mechanisms for disaster victims. These interventions include evacuation to safer places, provision of tents or safer grounds, provision of water, food, essential drugs, and cash transfers in the form of money to vulnerable groups etc.

In Kenya there is also the **National Disability Mainstreaming Strategy 2018-2022** that aims at guiding the implementation of the disability policies, legislations and programmes both the Public and Private sector.

It provides;

“In situations of risks and emergencies resulting from natural disasters, armed conflict and other humanitarian crises, it is important to ensure protection and safety of Persons with disabilities who are among the most disproportionately affected. Such situations often result in an increase in the number of persons acquiring disabilities and worsening the situations of those already having disabilities. For those incurring those injuries, the situations are often exacerbated by delays in obtaining emergency health care and longer-term rehabilitation.”

**Thematic Area Objective**

To enhance the safety of persons with disability in situations of risk and emergency.

Recommended Disability Mainstreaming Measures

1. Sensitize persons with disability on preparedness in risk and emergency situations.
2. Capacity building of humanitarian workers on handling of Persons with disabilities
3. Put in place appropriate facilities and equipment for evacuation of persons with disability
4. Provide information on situations of risk and emergency to Persons with disabilities in in accessible formats
5. Promote Community Based Rehabilitation (CBR) to ensure sustainable management of Persons with Disabilities (PWDs) during a recovery process after an emergency situation”

Kenya has some specific interventions relating to Children who are also in the category of vulnerable groups. **The Children’s Act 2022**, under Section 10(2) provides that there is prohibition of involvement of children in hostilities and armed conflict. Under the same Act, Courts of Law are empowered to make an order requiring the Director of Children Services to take the necessary steps to ensure that a child is provided with care, and where possible is reunited with his family. Children with disabilities are therefore protected. Section 63(1) allows charitable Children’s Institutions to receive children into their custody in emergency situations. It is evident that this legal provision does not segregate children with disabilities.

In times of armed conflict as discussed above, Kenya receives and accommodates refugees. Kenya is a state party to the Convention relating to the status of Refugees and the OAU governing specific aspects of refugees’ problems in Africa which it has domesticated into its **Refugees Act No. 10 of 2021.**

**LEGISLATIVE INTERVENTIONS**

* 1. The National Disaster Operations Centre (NDOC), which was established in 1998 monitors emergencies, hazards, and disasters, mobilises resources to respond to disasters, coordinates response to emergencies and disasters, and carries out Disaster Risk Reduction.
	2. The National Disaster Management Unit (NDMU), is an inter-agency Unit that plays a lead role in the management of emergencies and disasters in Kenya.
	3. The National Drought Management Authority (NDMA), is a public body established by the National Drought Management Authority Act. The Authority exercises overall coordination over all matters relating to drought management including implementation of policies and programmes relating to drought management; The Authority also operates a hunger safety net program that responds to cases of hunger due to drought.
	4. The National Platform for Disaster Risk Management (NPDRM), is an informal team that brings together both State Actors and non-State Actors who have interests in disaster risk management. It has provided and continues to provide an opportunity for State, non-governmental, private and international institutions to participate in decision-making and consultation processes geared toward Disaster Risk Management. The Red Cross and other non-state Actors are very key players in such emergencies.
	5. Climate Change Act provides for a regulatory framework for enhanced response to climate change and provides for mechanisms and measures to achieve low carbon climate development.
	6. The 2012 National Social Protection Policy (NSPP) articulates the direction of social protection in Kenya with the objective of ensuring that all Kenyans live in dignity and also provides for shock-responsive cash transfers through the National Drought Emergency Fund (NDEF).
	7. The current Persons with Disability Act 2003 has no provisions on the protection of persons with disability during risk and humanitarian emergencies. However, the proposed repeal Bill on Persons with Disability by the Government has elaborate proposals on the provision.
	8. The state has also ratified the protocol to the African Charter on Human and peoples’ Rights on the rights of persons with disabilities in Africa which obligates member states to take specific measures to ensure the protection and safety of persons with disabilities in situations of risk. The provision also obligates the state to ensure that persons with disability are consulted and are allowed to participate in the aspects of planning, implementation and monitoring of pre- and post-reconstruction and rehabilitation.
	9. A number of County Governments have also enacted their specific climate change legislation in addition to having complementary measures and mechanisms to tackle issues of risk and humanitarian emergencies.

**PROGRAMMATIC AND ADMINISTRATIVE INTERVENTIONS**

**Inclusion**

Effective and timely inclusive humanitarian action requires collaboration with humanitarian, development and civil society actors. The government strives to enhance inclusion before the onset of a crisis through inclusive preparedness all the way to the response, building on its efforts in inclusive education, basic needs, governance and Disaster and Risk Response (DRR). The intersectional Disability, Gender and Age DGA approach directly responds to the needs of all persons with disabilities without any discrimination. Multiple forms of discrimination are addressed by promoting disability inclusive humanitarian action through an intersectional lens and responding at the individual and community levels, in collaboration with local actors.

**Universal Child Benefit (UCB)**

The Government through the Ministry of Labour and Social Protection (MLSP) began the process of further bolstering the country's lifecycle social security system under the Universal Child Benefit (UCB) program. The UCB is fundamentally a regular financial payment or tax transfer given to all children, regardless of their socioeconomic status or other factors.

1. The COVID-19 crisis has exacerbated low incomes and the need for an economic stimulus, and a UCB would aid faster economic recovery and help build resilience to future shocks.
2. UCB would provide a highly effective basis for a shock response for Kenya, reaching the majority of households via the national single registry and enabling the Government to quickly and efficiently scale up support in response to crises.

**Enhanced Single Registry (ESR)**

The Government also manages the Enhanced Single Registry (ESR) which is a socio-economic database of poor and vulnerable households in Kenya. It serves as a policy tool that integrates and promotes linking of individuals to social protection interventions along the life cycle. The objective is to allow promotion of social protection policies/ programmers that link vulnerable individuals to different protection interventions along the life cycle, enable programmers, roll out specific responses to particular emergency/shock situations in specific counties and geographical locations to boost resilience and to facilitate linkages to pertinent complementary services

**Access to information**

The Government is implementing national, regional and international laws and regulations about the rights of PWD. It's the constitutional right of every Kenyan to access information. Access to Information Act 2016, Part II, Section 4 provides that every citizen has the right of access to information held by—(a) the State; and(b)another person and where that information is required for the exercise or protection of any right or fundamental freedom and in accessible formats.

**Data**

Data is a critical component of decision making. During the GDS 2018 the Government committed to inclusive disaggregated data and has continued to ensure that disability specific data is available and also encouraged counties to have a database of persons with disabilities in order to ensure that decisions about disability issues are evidence based.

In order to improve and promote humanitarian action to persons with disability, data on disability is enhanced for better programming through the use of the Washington Group of questions (Short and Long set) UNICEF Child Function Module. The government also works towards removing barriers in humanitarian policies, coordination and programming by supporting the development or strengthening of humanitarian coordination groups and decision-making platforms on disability inclusion.

**Disability Audit**

The Government in consultation with counties has planned to carry out a disability audit of all public facilities within counties in order to promote the universal design to ensure that persons with disabilities are not left behind because of access barriers. The audit will use a multi- agency approach. Auditing of facilities is also meant to ensure that counties are prepared to handle persons with disabilities in the eventuality of risk and humanitarian crisis. The state department has also ensured that counties have a social risk component in their integrated plans.

The Government in partnership with stakeholders is providing assistance to the most vulnerable people in refugee camps. Through this partnership, the government has taken action to combat sexual violence against children with disabilities, to improve mother and child health services.

The Government has also set up a counselling services centre to support trainees with disabilities with life skills information and their rights as per disability act NO.14 of 2003.

**Cash transfer**

The Government continues to implement various policies and programs that are geared towards the improvement of livelihoods and economically empowering persons with disabilities. In this regard, the Government has continued to support the poor and vulnerable persons with severe disabilities in the community through the Cash Transfer Programs that pays 34,032 PWSD households. These stipends of Ksh. 2,000 per month, paid every two months, has enabled them to meet basic human needs and live a dignified life.

**Emergency Response Support Program**

ADB through the Ministry of Finance supported the vulnerable populations including PWDs in an effort to respond to the COVID-19 pandemic and to mitigate its economic and social impacts by strengthening economic resilience against the pandemic; and enhancing the ability by the poor and the vulnerable to cope with the impact of the pandemic.

**Deinstitutionalization**

Persons with disabilities across the globe enter into institutions as children and continue living there throughout their adult life. Institutionalisation constitutes detention and deprivation of liberty based on impairment. Disability-specific detention typically occurs in institutions that include, but are not limited to, social care institutions, psychiatric institutions, long-stay hospitals, rehabilitation centres and special boarding schools.

Notwithstanding obligations under international law, children and adults with disabilities worldwide continue to be placed in institutions under life-threatening conditions hence the need for a clear policy framework of deinstitutionalization.

This Government recognises the need to deinstitutionalize children and adults with disabilities in order for them to realise the right to live independently and be included in the community as enshrined in Article 19 of the CRPD on an equal basis with others.

Article 63 part 2 of the Children Act 2022, further stipulates that the child shall only be accommodated in a children rescue centre for a period not exceeding six months which is also in line with the deinstitutionalization guidelines.

The objectives of deinstitutionalization is to ensure children and adults with disabilities enjoy all human rights and fundamental freedoms on an equal basis with others and also ensure that they are supported to live with their families, or in other family settings in the community and to establish community-based services.

**Interrelation with other articles**

Article 11 of the convention on the rights of persons with disabilities (CRPD) is a unique provision, which for the first time in a United Nations human rights treaty, explicitly refers to obligations in situations of risk, including humanitarian emergencies and natural disasters. This article is interconnected with others as follows; close consultation with, and the active involvement of, organisations of persons with disabilities in the development and implementation of legislation and policies (article 4 (3),raising awareness of disability inclusiveness (article 8),access to justice (article 13) protection of persons with disabilities from all forms of exploitation, violence and abuse (article 16),right to live independently and be included in the community (article 19),freedom of expression and opinion, and access to information (article 21), habilitation and rehabilitation services (article 26),right to an adequate standard of living and social protection, including the right to food, water and shelter (article 28), collection of appropriate statistics and data to understand the situation of persons with disabilities (article 31), international cooperation (article 32),designating national monitoring and implementation mechanisms, including focal points within government, coordination mechanisms and national human rights institutions (article 33). The entry into force of the CRPD is often referred to as a paradigm shift in the human rights protection of persons with disabilities. Its purpose is “to promote protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The decision of the CRPD Committee during its 27th session (August-September 2022) to develop a General Comment on article 11 will greatly contribute to enhancing a preventative and multi-agency approach to disaster risk and adaptation to climate change, and leverage the combined potential of the Sendai Framework, the Paris Agreement and the CRPD.

**CONCLUSION**

The Government acknowledges disability as a main concern that requires support from all stakeholders. Article 11 provides a useful benchmark to further deepen the inclusion of PWDs and mitigate against harm during risks and emergency situations. The Disability Mainstreaming Policy being finalised entrenches the provisions of Article 11 of UNCRPD and will provide a comprehensive guide that will guarantee an environment where persons with disabilities can enjoy equal opportunities and quality experience while working or visiting the workplace.

In conclusion the Government is working towards having the necessary legislative framework in place and programs and interventions that enable them to respond to the special interest groups collectively during situations of risks and emergencies.