

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**INFORMATION ON SUPPORT SYSTEMS FOR PERSONS WITH DISABILITIES IN KENYA**

**PRESENTED TO**

**THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS**

**1st September 2022**

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1. **INTRODUCTION**
2. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution of Kenya, 2010 with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles and is accredited as an ‘A’ status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples’ Rights.
3. The Commission submits this information pursuant to its constitutional mandate and special mandate to monitor implementation of the UN Convention on the Rights of Persons with Disabilities under Article 33(2).
4. **RELEVANT INFORMATION**
5. Does your country have laws, policies, plans, strategies or programmes at any level of government relating to individualized support for persons with disabilities? In particular initiatives related to:
6. *Communication:* The initiatives supporting communication for persons with disabilities include the following:

**Constitution of Kenya, 2010[[1]](#footnote-1)**

* Article 7 (3b) of the Constitution mandates the State to promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.
* Articles 54 (1d) and (1e) of the Constitution recognize the right of persons with disabilities to, among others, use sign language, braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from their disability.
* Article 10 (2b) of the Constitution outlines the national values and principles of governance key among them being human dignity, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. This infers that persons with disabilities should not be discriminated on whatever basis, but should instead be provided with reasonable accommodation in all spheres of life.
* Article 27 (4) of the Constitution prohibits discrimination on all grounds including disability.

**Persons with Disabilities Act, 2003[[2]](#footnote-2)**

* The Act establishes the National Council for Persons with Disabilities, one of whose functions under Section 7 (d (i) and (ii)) include providing to the maximum extent possible assistive devices, appliances and other equipment to persons with disabilities; and access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the Government.
* Section 40 of the Act mandates all persons providing public telephone services to, as far as possible, install and maintain telephone devices or units for persons with hearing disabilities and tactile marks on telephone sets to enable persons with visual disabilities to communicate through the telephone system.
* Section 33 (2d) of the Act establishes the National Development Fund for Persons with Disabilities which may be used to provide or contribute to the cost of assistive devices and services.
* Section 2 of the Act defines “assistive devices and services” as “implements, tools and specialized services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities”.
* The Concluding observations on Kenya by the CRPD Committee in 2015 recommended that the government finalize and adopt the draft consolidated national action plan on accessibility and disability rights for the implementation of the Persons with Disabilities Act No. 14 of 2003 and related provisions of the 2010 Constitution.[[3]](#footnote-3)

**Persons with Disabilities (Access to Employment, Services and Facilities) Regulations. 2009[[4]](#footnote-4)**:

* Section 7 (1) (e) of the Regulations provides that “subject to applicable Regulations relating to tax exemptions a person with disability may apply for and obtain support and relief for escorts and interpreters for people with impaired sight and hearing.
* Section 18 of the Regulations mandates telephone service providers to ensure that telephone facilities and services, where necessary, incorporate assistive aids for persons with hearing, speech and visual disabilities.

**Basic Education Act, 2013[[5]](#footnote-5)**

* Section 44 of the Act mandates the State to provide special education, training facilities, learning materials and equipment for talented, gifted and pupils with disabilities.

**Sector Policy for Learners and Trainees with Disabilities, 2018[[6]](#footnote-6)**

* Section 5 of the Policy directs the Ministry of Education to provide and maintain quality specialized learning resources and assistive devices, and adopt new technologies to improve learning and training in the targeted disability categories.

**National Information, Communications and Technology (ICT) Policy, 2019[[7]](#footnote-7)**

* Section 6.4.1 directs the State to provide an ICT environment that is fully accessible to persons with disabilities. It further hinges on the provisions of the Convention on the Rights of Persons with Disabilities in as far as provision of accessible information and technologies go. It directs the State to take measures to, among others, ensure that ICT services and emergency communications are accessible to persons with disabilities; ensure that persons with disabilities can exercise the right to access to information, and freedom of expression and opinion; and ensure existing works in print format are adapted into accessible format transformative forms which can be used by the blind without any liability.

1. *Decision-making*: Initiatives supporting decision-making for persons with disabilities include:

**The Constitution of Kenya, 2010[[8]](#footnote-8)**

* Article 27 (1) of the Constitution recognizes that everyone is equal before the law and has the right to equal protection and benefit of the law. Further, it prohibits discrimination on several grounds including disability. This means that persons with disabilities have the right to equal protection and benefit of the law like any other member in the society.
* Article 38 of the Constitution recognizes the right of every person to make their own political decisions including the right to be registered as a voter and the right to vote without unreasonable restrictions. However, the Constitution is silent on what constitutes ‘unreasonable restrictions’.

**Mental Health (Amendment) Act, 2022**

* Section 2 of the Act defines a supporter as a person appointed by a person with mental illness to make decisions on their behalf according to the will and preference of the person with mental illness. Furthermore, section 3 I recognizes the right of a person with a mental illness to appoint a supporter with whom they shall enter a supportive decision making agreement. The agreement shall be in writing and valid only if at the time of drafting, the person with the mental illness was aware of his actions. Further, the agreement must be signed off by the person with mental illness and two witnesses; one of whom must be the doctor of the person with the mental illness. In the event that the person with mental illness is unable to appoint a supporter, a representative may assist the person with mental illness. The representative may then appoint a supporter on behalf of the person with mental illness.
* Section 3K of the Act recognizes the right of a person with mental illness to recognition before the law and to enjoy legal rights on an equal basis with other persons in all aspects of life.

**Age of Majority Act[[9]](#footnote-9)**

* As per the Act, Kenyans attain the age the age of majority once they attain eighteen (18) years and are thus deemed to be able to make decisions on their own and also face the consequences of those decisions. This implies that the rights of parents or guardians to make decisions on behalf of a minor ceases when the latter attains the age pf majority. This should be applicable to persons with disabilities, who, are often infantilised.

Notably, the **Election (General) Regulations 2012** under Kenya’s Elections Act, 2011 provide that a person with disability shall be deemed to be an assisted voter who will be permitted by the presiding officer to have a support person of his or her choice to support in voting. Regulation 72(1) provides, “On the application of a voter who is, by reason of a disability or being unable to read or write, and therefore unable to vote in the manner prescribed in these Regulations, the presiding officer shall permit the voter to be assisted or supported by a person of the voter’s own free choice, and who shall not be a candidate or an agent”.

1. *Mobility:* Initiatives supporting mobility for persons with disabilities include the following:

**Constitution of Kenya, 2010**

* Article 54 (1) (e) of the Constitution recognizes the right of persons with disabilities to access materials and devices to overcome constraints arising from their disability.

**Persons with Disabilities Act, 2003[[10]](#footnote-10)**

* The Act establishes the National Council for Persons with Disabilities, one of whose functions under Section 7 (d (i) and (ii)) include providing to the maximum extent possible assistive devices, appliances and other equipment to persons with disabilities.
* Section 21 of the Act enshrines the right of persons with disabilities to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.
* Section 22 (1) of the Act obligates proprietors of public buildings to adopt them to suit persons with disabilities in such manner as may be specified by the Council.
* Section 30 of the Act mandates polling stations to be made accessible to persons with disabilities during elections and for such persons to be provided with the necessary devices and assistive devices and services to facilitate their exercise of this right.

**Persons with Disabilities (Access to Employment, Services and Facilities) Regulations.,2009:[[11]](#footnote-11)**

* Section 7 (1) (a), (b) and (c) of the Regulations provide that “subject to applicable Regulations relating to tax exemptions a person with disability may apply for and obtain support and relief for: purchase and repair of personal technical auxiliary devices; purchase and adaptation of personal vehicle and adaptation of a parking place; and tax relief for import or local purchase of a personal vehicle.
* Section 8 of the Regulations recognizes the right of a person who sells materials, articles and equipment designed for use by persons with disabilities to be eligible to apply for such tax reliefs as may be determined by the National Council and approved by the Minister.

**Provision of assistive devices and services to persons with disabilities:** The National Council for Persons with Disabilities (the Council) through the National Development Fund for Persons with Disabilities supports the provision of assistive devices and services to persons with disabilities in Kenya.[[12]](#footnote-12) The Association for the Physically Disabled of Kenya in partnership with the Council provides mobility devices for persons with disability and promotes access to affordable rehabilitation services through provision of assistive technologies and fabrication of appropriate wheelchairs. The assistive devices provided include wheelchairs, crutches, hearing aids, surgical boots, calipers and prosthetic arms/legs. The requirements necessary to apply for these assistive devices and services include:

* Duly filled Assistive Devices application form
* Copy of Disability Identification Card
* Copy of national ID (or parent’s or guardian’s if applicant is under 18 years)
* Original professional Disability Assessment report
* Pro-forma invoice (Where the device is not provided by prequalified suppliers)

The Association for the Physically Disabled in Kenya also promotes access to affordable rehabilitation services through provision of Quality Physiotherapy services, Occupational Therapy and Provision of pre-operative and post-operative care services.

1. *Assistance with daily living activities*: Initiatives supporting assistance to persons with disabilities in daily activities include:

**Social Assistance Act, 2013[[13]](#footnote-13):** Section 23 of the Act enshrines the eligibility to social assistance of persons suffering from severe mental or physical disability, if their disability renders them incapable of catering for their basic needs and they have no known source of income or support.

**National Social Security Fund Act, 2013[[14]](#footnote-14):** The Act recognizes the right to invalidity benefits of members who are permanently incapable of engaging in the labor market due to physical and mental disability. Members who are 50 years old or older and have partial but permanent incapacitation can also receive benefits.

**Inua Jamii National Safety Net Programme- Cash Transfer for Persons with Severe Disabilities:** The Cash Transfer Programme for Persons with Severe Disabilities was launched in June 2011 for adults and children with severe disabilities who require the full time support of a care giver. It targets households in all 47 counties and includes payment of Kshs. 2000 per household, disbursed every two months through appointed payment agencies. In 2015/2016 Financial Year, the Programme covered 45,505 households.[[15]](#footnote-15) Eligible households must:

* Have persons with severe disabilities who require permanent care such as feeding and protection from danger from themselves and from other persons.
* Be poor.
* Not be beneficiaries of any other cash transfer programme.
* Not have a member who receives any pension and/or regular income.

**The Uwezo Fund**: This was established under the Public Finance Management (Uwezo Fund) Regulations, 2014.[[16]](#footnote-16)  It is a revolving fund housed at the Ministry of Public Service, Gender, Senior Citizen Affairs and Special Programmes aimed at addressing the socio-economic empowerment of women, youth and persons with disabilities through expansion of access to finance to facilitate initiation and expansion of their enterprises.[[17]](#footnote-17) As at 30th June, 2019, a total of Kshs 6,2999,400,004 had been disbursed to the 290 constituencies as Loan Fund.[[18]](#footnote-18)

Some county governments have established a fund within their disability laws to cater for the vulnerable groups including persons ith disabilities. For example, The Kisumu County Women, Youth and People Living with Disabilities Fund Act No 7/ 2015 establishes a Fund known as the Kisumu County Women, Youth and People with Disabilities Fund. The Fund is to be used for granting loans to assist women, youth and persons with disabilities living in Kisumu County to promote their enterprises at such a cost which is affordable within the County.[[19]](#footnote-19)

Other initiatives include: Community health volunteers who move from house to house to check on the sick, including those with disabilities; workers, including trainers, physiotherapists in children homes, rehabilitation centers and learning institutions for persons with disabilities; Health professionals i.e. nurses, doctors and others in health facilities; Parents, relatives and caregivers (domestic workers) of persons with disabilities who help them do the usual day-to-day activities; and other ordinary people of goodwill on the streets, in buildings including shopping centers, public transport and other public facilities.

1. Housing and accommodation: Initiatives supporting housing and accommodation for persons with disabilities include the following:

**Constitution of Kenya, 2010[[20]](#footnote-20)**

* Article 21 (3) of the Constitution enshrines the duty of all State organs and public officers to address the needs of vulnerable groups in society including persons with disabilities. This includes provision of housing and accommodation for persons with disabilities. Furthermore, Article 54 (1) (c) enshrines the right of persons with disabilities to all places, public transport and information. Article 43(1)(b) of the Constitution secures the right of every person “to accessible and adequate housing”.

**Persons with Disabilities Act, 2003[[21]](#footnote-21)**

* The Act establishes the National Council for Persons with Disabilities, one of whose functions under Section 7 (1 (d)(h)) is to consult with the Government in the provision of suitable and affordable housing for persons with disabilities. The Minister responsible for housing is also a member of the Council.

**Persons with Disabilities (Access to Employment, Services and Facilities) Regulations. 2009[[22]](#footnote-22)**

* Section 7 (1) (d) of the Regulations provides that, “subject to applicable Regulations relating to tax exemptions a person with disability may apply for and obtain support and relief for restructuring of their home”.

**Persons with Disabilities (Cost, care, support and maintenance) Regulations, 2009[[23]](#footnote-23)**

* Section 9 of the Regulations mandates the National Council for Persons with Disabilities to facilitate access to residences for persons with severe disabilities, using the Fund established under the Persons with Disabilities Act, 2003.

**Landlord and Tenants Act, 1965**

* The Act makes a provision with respect to certain premises for protection of tenants of such premises including Persons with Disabilities from eviction or exploitation.

**National Housing Policy, 2016**

* State must facilitate greater access to housing, housing finance to vulnerable groups and take steps to assist economically vulnerable groups in housing improvement or construction. The Policy outlines several objectives including; providing support to sustainable mixed-income housing developments that meet the needs of all socioeconomic groups and also take cognizance of the needs of vulnerable groups to this extent persons with disabilities. With respect to Social Housing, the National Housing Policy issues a policy statement that the National Government should in collaboration with county governments develop criteria for identifying the target groups and other special groups for consideration for social housing as identified by income levels, need for housing, vulnerability among others. The National Policy equally provides that public housing and transport systems will be required to put in place measures that ensure access by elderly and persons with disabilities which are equally encouraged during renovation of existing buildings whenever feasible.

**National Disability Mainstreaming Strategy, (2018-2022)**

* The Strategy recognizes that the right to adequate housing remains a comparatively major challenge for persons with disability due to high costs involved and societal prejudice regarding their ownership and inheritance of land and property. The National Disability Mainstreaming Strategy 2018 recommends several measures including; Sensitizing persons with disability on their rights and existing opportunities to own land, housing and property; Eliminate barriers which hinder Persons with disabilities from acquiring and owning land, housing and property; Enforce the law that reserves at least five percent (5%) of accessible houses to Persons with disabilities in all-housing schemes; Provide inclusive financial and credit services targeting Persons with disabilities to enable them acquire property. It also recommends provision to persons with disabilities who have no means of income regular cash transfers to meet their basic needs.

**Kenya Slum Upgrading Programme**

* Launched in October 2004, the Programme is a collaborative initiative between the Government of Kenya and United Nations Human Settlement Programme whose aim is to improve the livelihoods of people living and working in slums and informal settlements in Kenya’s urban areas. Persons with disabilities were accommodated during the development of the Programme in the following ways: 142 units on the ground floor were set aside for allocation to applicants with disabilities. Ramps and walkways were also included to enable accessibility for persons with disabilities.[[24]](#footnote-24)

**National Development Fund for Persons with Disabilities:**

* The National Council for Persons with Disabilities administers the National Development Fund for Persons with Disabilities established under Section 32 of the Persons with Disabilities Act, 2003 which is used to offer complementary services and interventions in terms of educational support, economic empowerment, assistive devices and infrastructural and equipment support for institutions. The Fund also caters for allowances to persons with severe disabilities, aged persons with disabilities and single parents with children with disabilities.

1. *Family and household support:* Initiatives supporting families and households of persons with disabilities include:

**Persons with Disabilities (Access to Employment, Services and Facilities) Regulations. 2009:[[25]](#footnote-25)** Section 7 (3) of the Regulations recognizes the right to support of persons with severe disabilities who cannot, alone or by the help of their relatives or other persons, meet their basic vital needs.

**Persons with Disabilities (Cost, care, support and maintenance) Regulations, 2009[[26]](#footnote-26)** : Section 11 (1) of the Regulations enshrines the right of parents or guardians of a person with disability who is under eighteen years of age and with severe disabilities which require specialized care, to a monthly allowance of such amount as may be determined by the National Council for Persons with Disabilities and approved by the Minister.

**Lay Volunteer Counsellors**

These counsellors are identified and trained by the Department for Social Development to offer psychosocial support to families of Persons with Disabilities; to raise awareness about disability in their communities; to mobilize persons with disabilities towards formation of self-help groups for economic development; to provide guidance and counselling services to children, persons with disabilities and family members in need of care and protection; and to provide referral and linkage services to distressed families with the relevant service providers and stakeholders.[[27]](#footnote-27)

**National Disability Mainstreaming Strategy (2018-2022)**

The National Disability Mainstreaming Strategy recognizes that the right to social protection is important to Persons with disabilities since they face particular economic and social vulnerabilities which are exacerbated by disability. In light of this the Disability Mainstreaming Strategy recommends for Provision of personal support services and respite care to Persons with disabilities as well as necessary/requisite support to Persons with disabilities to initiate and sustain peer support and counseling.

1. *Disability-related extra costs*:

Although laws, policies and programmes do not expressly provide for compensation of extra costs incurred in acquisition of goods and services or personalized budget financing, the following are specific interventions in place that cushions persons with disabilities on cost of goods and services:

**Persons with Disabilities Act, 2003[[28]](#footnote-28)**

* Section 36 of the Persons with Disabilities Act, 2003 exempts materials, articles and equipment, including motor vehicles, that are modified or designed for the use of Persons with Disabilities from import duty, value added tax and other government levy. The Section also exempts all goods donated to institutions and organizations of or for persons with disabilities from any type of taxes, import duties and other government levies.

**National Development Fund for Persons with Disabilities:**

* The National Council for Persons with Disabilities administers the National Development Fund for Persons with Disabilities established under Section 32 of the Persons with Disabilities Act, 2003 which is used to offer complementary services and interventions in terms of educational support, economic empowerment, assistive devices and infrastructural and equipment support for institutions. The Fund also caters for allowances to persons with severe disabilities, aged persons with disabilities and single parents with children with disabilities.

**Persons with Severe Disability Cash Transfer Programme:**

* Implemented by the Ministry of Public Service, Gender, Senior Citizen Affairs and Special Programmes, the Programme aims at supporting households experiencing poverty with a member with severe disability by providing regular cash transfers to meet basic needs of the households.

2. What are the government institutions, departments and ministries in charge of budgeting, financing and implementing the above?

**The National Treasury:** The National Treasury derives its mandate from Article 225 (1) of the Constitution of Kenya, 2010[[29]](#footnote-29), which states that an Act of Parliament shall provide for the establishment, functions and responsibilities of the National Treasury whose provision is actualized in the Public Finance Management Act (PFM) Act 2012. As such, the National Treasury and Planning Ministry allocates funds to government institutions including the National Council for Persons with Disabilities to effectively discharge its mandate under the Persons with Disabilities Act, 2003 relating to individualized support for persons with disabilities.

**Parliament of Kenya**

Parliament of Kenya is bicameral comprising the National Assembly and the Senate. The National Assembly: determines the allocation of national revenue between the national Government and county Governments; appropriates funds for expenditure by the national

Government and other national State organs; and exercises oversight over national revenue and its expenditure.[[30]](#footnote-30) The Senate determines the allocation of national revenue among counties and exercises oversight over national revenue allocated to the county Governments.[[31]](#footnote-31) The revenue allocated supports the implementation of support programmes for persons with disabilities.

Article 218 of the Constitution provides for the role of Parliament in debating and passing the Division of Revenue Bill and the County Allocation of Revenue Bills that determine allocations between the national and county governments on the one hand and amongst the 47 county governments on the other, respectively. Subsequent constitutional provisions further provide the role of the National Assembly in budgetary oversights including annual appropriation Acts submitted by the executive and oversight over public finance.[[32]](#footnote-32)

**National Council for Persons with Disabilities**

The National Council for Persons with Disabilities (the Council) is a State corporation established by Section 3 of the Persons with Disabilities Act, 2003[[33]](#footnote-33) to promote and protect equalization of opportunities and realization of the rights and access to support services for persons with disabilities. The Kenyan Government’s disability services, benefits, and grants are provided through the Council. The Council manages the National Development Fund for Persons with Disabilities which was established under Section 32 of the Persons with Disabilities Act, 2003 as a permanent Fund. The Fund draws its funding mainly from annual disbursements from the national government and provides support to persons with disabilities in all counties in Kenya.

**State Department for Social Protection, Senior Citizens Affairs and Special Programmes** The mandate of the State Department includes, among others, the formulation, review and implementation of social security, employment, programmes and protection and advocacy of the needs of persons with disabilities.[[34]](#footnote-34) During the 2016/2017 financial year, the State Department earmarked KSH. 9 Billion for programmes that promote inclusion and empowerment of persons with disabilities. These funds were channeled to the National Development Fund for Persons with Disabilities, Cash Transfer for Persons with Severe Disabilities (PWSD-CT) scheme, vocational rehabilitation and social development services.

**State Department of Social Development**

The mandate of the State Department as derived from Executive Order No. 1 of 2018 includes coordinating the formulation of policies and legislations on disability and overseeing the implementation of various disability development programs and rehabilitative services among other social development programs.

**State Department for Housing and Urban Development**

The functions of the State Department for Housing and Urban Development in the Ministry of Transport, Infrastructure, Housing and Urban Development are derived from the Executive Order No.1/2016. These include: development of the Housing Policy; development and management of affordable housing; management of building and construction standards and codes; shelter and slum upgrading; registration of contractors and materials suppliers building research services; urban planning and development.[[35]](#footnote-35)

**Office of the President**

Budget allocations to the National Development Fund for Persons with Disabilities increased from KSH.100 million during the 2016/2017 financial year to KSH.550 million in the first FY2019/20 supplementary budget. The allocations were later reduced in the second supplementary budget of the 2019/2020 financial year by 72% at the onset of COVID-19 pandemic. Allocations to the National Development Fund were later increased to KSH.200 million in the 2020/2021 financial year.

3. How is the social and solidarity economy (third sector, non-profit sector), particularly the disability sector, involved in budgeting, financing and implementing the above (1)?

The participation of the disability sector in the budgeting, financing and implementation of initiatives relating to individualized support for persons with disabilities is enabled through the legal and policy framework. The framework includes:

Article 10 (2) (a) of the Constitution which outlines the national values and principles of governance, key among them being participation of the people in governance issues. Parliament is also mandated by Article 118 of the Constitution to conduct its business in an open manner, and its sittings and those of its committees are required be open to the public; it is also required to ensure public participation and involvement in the legislative and other business of Parliament. Further, the principles of public finance as outlined in Article 201 (a) of the Constitution include openness and accountability, including public participation. In addition, Article 221 (5) mandates a Committee of the National Assembly, while discussing budget estimates, to take in comments or views from representatives of the public.[[36]](#footnote-36)

Additionally, sections 36 (5) and 125 (2) of the Public Finance Management Act, 2012[[37]](#footnote-37) and section 87 of the County Government Act, 2012[[38]](#footnote-38) guarantee public participation in all decision making processes.

The disability sector and any other person who would not have participated in budget making process could still take part implementation within the framework of access to information as stipulated in Article 35 of the Constitution.

The National Treasury publishes budgetary provisions for the disability sector and Planning under **Social Protection, Culture and Recreation Thematic Sector[[39]](#footnote-39)**, where programmes to be implemented and financed are laid out as presented by the ministry responsible and the National Council for Persons with Disabilities after consultations with various umbrella organizations.

The State Department of Housing is now working with disability sector to ensure clear understanding of the relevant polices and legislations to improve on provision for universally designed houses for persons with disabilities.

4. How are persons with disabilities and their representative organizations involved in the design and monitoring of the above (1)?

Article 10 (2) (a) of the Constitution outlines the national values and principles of governance, key among them being participation of the people in governance issues. Parliament is also mandated by Article 118 to conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; it shall also ensure public participation and involvement in the legislative and other business of Parliament. Further, the principles of public finance as outlined in Article 201 (a) are that there shall be openness and accountability, including public participation. In addition, Article 221 (5) mandates a Committee of the National Assembly, while discussing budget estimates, to take in comments or views from representatives of the public.[[40]](#footnote-40)

**Participation in activities of the Kenya National Commission on Human Rights**

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights institution created by Article 59 of the Constitution of Kenya 2010 and established through the Kenya National Commission on Human Rights Act, 2011. It is the State’s lead agency in the promotion and protection of human rights. It is also the monitoring agency with regard to the implementation of the Convention on the Rights of Persons with Disabilities in the country. The monitoring covers all aspects of State’s obligation under national, regional and international human rights norms and standards on disability legislation, policies and programmes.[[41]](#footnote-41) The KNCHR supports the convening of organizations of and for persons with disabilities in activities relating to the promotion and monitoring of the rights of persons with disabilities.

**Participation in activities of the National Gender and Equality Commission**

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by Article 59 of the Constitution and operationalized through the National Gender and Equality Commission Act, 2011. The Commission focuses on special interest groups, which include women, youth, persons with disabilities, children, older members of society, minorities and marginalized groups. The NGEC supports the convening of organizations of and for persons with disabilities in activities relating to the promotion and monitoring of the rights of persons with disabilities.

Involvement of persons with disabilities and their organizations, at any stage of decision-making, is guided by the Constitution and a raft of other legislative frameworks as highlighted above. Furthermore, the Constitution of Kenya at Article 2(6) provides that the treaties ratified by Kenya form part of the body of domestic law. This includes the Convention on the Rights of Persons with Disabilities which Kenya ratified in the year 2008. Devolution for instance has enhanced their participation in the design of county Governments integrated development and sectoral plans.

Where their involvement is not taken into consideration, persons with disabilities and their representative organizations have reinforced this through litigation and courts have not only granted them audience but also reliefs sought. For instance, the High Court of Kenya in Migori in the case of Benard Ochuodho (Chairman) & 3 others v County Government of Migori [2017] eKLR directed the respondent (County Government of Migori) **to avail to the petitioners (Ochuodho and 3 others) all the information on policies and programs it has in place that protect and promote the best interests of persons with disabilities in the County. This included how a sum of Kshs. 20 Millions set-aside for the benefit of the persons with disabilities in the Financial Year 2015/2016 was expended, if at all and further avail the budget estimates for the Financial Year 2016/2017.[[42]](#footnote-42)**

Organizations of and for persons with disabilities have often undertaken their own social audits to track and monitor government interventions. For instance, United Disabled Persons of Kenya (UDPK) and the Western Disability Network contributed to the audit of investments on disability in five counties of Bungoma, Trans Nzoia, Kakamega, Vihiga and Busia between the financial years (FY) 2016–2017 and 2020–2021.[[43]](#footnote-43) ‘

Not less that fifteen (15) organizations of Persons with disabilities were consulted through stakeholder workshops during the development of the housing programme and its associated infrastructure.

5. Does your country have legislation or policies, at any level of government, regulating and coordinating a care and support system that considers the areas mentioned in (1) above? Please provide references to the documentation.

**Mental Health (Amendment) Act, 2022**

* Section 2 of the Act defines a supporter as a person appointed by a person with mental illness to make decisions on behalf of the person with mental illness according to the will and preference of the person with mental illness.
* Under section 3 I, a person with a mental illness has the right to appoint a supporter with whom they shall enter into a supportive decision- making agreement. The agreement shall be in writing and valid only if at the time of drafting, the person with the mental illness was aware of his actions. Further, the agreement must be signed off by the person with mental illness and two witnesses; one of whom must be the doctor of the person with the mental illness. In the event that the person with mental illness is unable to appoint a supporter, a representative may assist the person with mental illness. The representative may then appoint a supporter on behalf of the person with mental illness.
* Section 3K of the Act provides for legal capacity in that a person with a mental illness has the right to recognition before the law and shall enjoy legal rights on an equal basis with other persons in all aspects of life.

**National Development Fund for Persons with Disabilities**

The National Fund for the Disabled of Kenya (NFDK) an endowment fund established under the Trustees Act Cap 164 of the laws of Kenya seeks a mandate to enhance social, economic empowerment of Persons with Disability in Kenya by coordinating care and support systems impacting the lives of PWDs through the NFDK programs on; Provision of mobility aids, Assistive and tools of trade, Disability Advocacy, small grants to Organization of Persons with Disabilities and implementation of Flagship projects to institutions serving PWDs.

**National Disability Mainstreaming Strategy (2018-2022)**

The National Disability Mainstreaming Strategy recognizes that the right to social protection is important to Persons with disabilities since they face particular economic and social vulnerabilities which are exacerbated by disability. In light of this the Disability Mainstreaming Strategy recommends for Provision of personal support services and respite care to Persons with disabilities as well as necessary/requisite support to Persons with disabilities to initiate and sustain peer support and counseling.

**Social Assistance Act, 2013[[44]](#footnote-44):** Section 23 of the Act enshrines the eligibility to social assistance of persons suffering from severe mental or physical disability, if their disability renders them incapable of catering for their basic needs and they have no known source of income or support.

Other legislations and policies include:

* The Constitution of Kenya, Article 43[[45]](#footnote-45)
* The Persons with Disabilities Act, 2003[[46]](#footnote-46)
* The Sessional Paper No. 2 of 2014 on the National Social Protection Policy (under review)
* Specific county government Persons with Disabilities Acts[[47]](#footnote-47)

**6. If yes, please describe how the care and support system is financed and what the percentage of the eligible population covered is.**

The Government through the exchequer finances social protection interventions and their implementation is coordinated primarily through the Ministry of Public Service, Gender, Senior Citizen Affairs and Special Programmes that disburses cash to Persons with Severe Disabilities. The amount allocated for the Cash Transfer for Persons with Severe Disabilities programme remained the same at Kshs. 1.2 billion from 2017/2018 to 2021/2022 while the amount disbursed increased by 46.0 per cent from Kshs. 814.8 million in 2020/2021 to Kshs. 1.2 billion in 2021/2022. The total number of caregivers projected to marginally increase by 346 to 34,294 in 2021/2022.[[48]](#footnote-48)

The National Development Fund for Persons with Disabilities (NDFPWD) administered through the National Council for Persons with Disabilities had its budget cut by 72.7%, from KSh 550 million to Kshs. 150 million in the second supplementary budget during 2019/2020 financial year but increased to Kshs. 200 million in 2021/2022 financial year.[[49]](#footnote-49)

**In the year 2020/2021 the Kenya National Commission on Human Rights undertook an assessment of the county laws on disability to ascertain their level of compliance or non-compliance with human rights standards. The study (from Chapter 4 of the report) established that out of the 47 county governments, only nine counties had enacted specific laws on persons with disabilities; 20 had bills while the remaining 18 did not have either a law in place or ongoing legislative process. The study established that most of the county laws while making reference to accessibility, these were limited and did not provide a clear responsibility on the county government. Furthermore, the laws adopted** a narrow focus on accessibility as compared to Article 9(1) of the CRPD, which addresses accessibility to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. Many of the laws focus on the physical accessibility and do not make provisions on legal capacity for persons with mental illness. **The report, title, *‘Review of County Legislation on the Rights of Persons with Disabilities ‘*is accessible** [here](https://www.knchr.org/Publications/Thematic-Reports/Group-Rights/Rights-of-Persons-with-Disability-PWD)**.**

7. Does your country have a strategy to develop legislation, policies and programmes to enable the development of support systems as described in 1(a) above which includes targets, indicators and an accountability mechanism? Please provide references to the documentation.

**Kenya Mental Health Action Plan (2021-2025)**

The mental health policy gives a roadmap for securing reforms and building strong mental health systems with the ultimate goal of attaining the highest standard of mental health in Kenya. This Action plan will operationalize the mental health policy’s four main objectives: to strengthen effective leadership and governance for mental health; ensure access to comprehensive, integrated and high-quality mental health care services at all levels of healthcare; to implement promotive and preventive mental health strategies and strengthen mental health systems.

According to the Plan, both the National and County governments as well as stakeholders will be engaged in the promotion of mental health in the country based on 4 primary focus areas i.e mental health leadership and governance; preventive and promotive mental health; access to quality mental health services; and strengthening of mental health services.[[50]](#footnote-50)

**Kenya Mental Health Investment Case, 2021**

The Kenya Mental Health Investment Case provides quantification of the costs of mental health conditions to the health sector and to the national economy at large. It also points to the benefits of scaled up action. Besides, the Mental Health Investment Case includes an assessment of the current national mental health system, making it possible to identify the most appropriate, feasible mechanisms for scaling-up mental health promotion, prevention and care in the country.[[51]](#footnote-51)

In terms of financing, the Investment case recommended that the State should prioritize mental health action and improve mental health financing by increasing budgetary allocation to mental health at national level in the subsequent financial years and Counties allocating budgets to mental health and developing costed work plans in the subsequent financial years.[[52]](#footnote-52)

National Plan of Action on Implementation of Recommendations made by the Committee on the Rights of Persons with Disabilities 2015-2022.[[53]](#footnote-53)

Status Report on Disability Inclusion in Kenya 2021 that elaborates implementation of the Global Disability Summit Commitments of 2018. The report includes an implementation matrix for the 2019-2022 period.[[54]](#footnote-54)

The Kenya Social Protection Monitoring and Evaluation Framework (SPM&EF) 2018-2022,[[55]](#footnote-55) which highlights the outcomes and intended impact of the Kenya Social Protection (SP) Sector policy and programmes with data disaggregated in terms of age, gender, disability among others.

8. Please provide data on persons with disabilities and families and households accessing care and support systems as described above in (1) and (2).

During the FY 2019-2020, the National Council for Persons with Disabilities provided 3,544 persons with disabilities from across the country with assistive devices. These included hearing aids, crutches, wheelchairs, tricycles, white canes, walking frames among others. This was against a target of 4,000. The variance is attributed to COVID-19 pandemic restrictions that limited capacity to conduct assessments of clients.[[56]](#footnote-56) In the 2020/ 2021, the National Council for Persons with Disabilities provided 2,940 assistive and supportive devices against an annual target of 4,000. The Council got budgetary cuts thus affecting support of devices to persons with disabilities.[[57]](#footnote-57)

The number of caregivers under persons with severe disabilities cash transfer (PWCD-CT) programme administered through the Ministry of Public Service, Gender, Senior Citizen Affairs and Special Programmes stood at 34,294 in 2021/2022.[[58]](#footnote-58) In 2015/2016 Financial Year, the Programme covered 45,505 households.[[59]](#footnote-59)

The National Development Fund for Persons with Disabilities (NDFPWD) administered through the National Council for Persons with Disabilities has cumulatively reached 25,414 beneficiaries from 2017/2018 to 2020/2021 through complementary services on educational support, economic empowerment, assistive devices, tools of trade, infrastructural and equipment support for institutions.[[60]](#footnote-60)

9**.** Please provide data on the impact of the COVID19 pandemic on persons with disabilities and families and households with members with disabilities (death rates disaggregated by disability status, death rates in institutions compared to those living in the community, impact on income as a consequence of disruption in support or increased support and care demands, disruption in support services, among other).When more cases of COVID19 were reported in Kenya, the Government announced and continued to review infection prevention control and containment measures such as handwashing, social distancing, imposition of curfews and restriction of movement. These measures were applicable to all persons including persons with disabilities.

Although there is no official government statistics on the impact of COVID-19 on persons with disabilities, KNCHR conducted a nationwide survey on human rights for vulnerable groups during the pandemic targeting children, women, youth, the elderly, persons with disabilities, detainees, Orphans & Vulnerable Children (OVCs), the displaced, refugees, the urban and rural poor, intersex persons amongst other marginalized populations. Among other concerns, 15% of the surveyed persons with disabilities reported that COVID-19 brought about unemployment, 11% cited high cost of living and 12% reported difficulties in accessing healthcare. The right to health, water and sanitation, housing, food and social security, access to justice and education were among the most affected during the pandemic.[[61]](#footnote-61)

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