
Assessing the Barriers to **Accessing ICT by People with Disability in Kenya**

January 2021



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Acknowledgements

CIPESA acknowledges the contribution of Riva Jalipa and Judy Okite in the writing of this report. The report was produced in the context of CIPESA's digital accessibility efforts under the ICT4Democracy in East Africa initiative

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Introduction

In Kenya, persons with disabilities continue to face numerous obstacles in gaining access to information, education, employment as well as other services despite the existence of laws and policies that promote and protect their rights. Data on the population of persons with disabilities in Kenya is varied. Previous estimates indicated that 10% of Kenya's population (4.44 million people) lived with some form of disability. Mobility is the most common form of disability at 26%, followed by visual (19%) and auditory (12%); and most of the persons with disabilities (66%) live in rural areas.¹ However, the 2019 census data indicated that 2.2% (0.9 million people) aged five years and above lived with some form of disability, compared to the 3.8% found in the 2009 census.²

Under Article 54(e) of the Constitution of Kenya, 2010, persons with disabilities are entitled “to access materials and devices to overcome constraints arising from the person's disability.” Kenya has also signed and ratified a number of international instruments that advance the rights of persons with disabilities, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its optional protocol, the UN Convention on the Rights of the Child, the African Charter on Human and People's Rights, and the Convention on the Elimination of All Forms of Discrimination against Women – all of which protect the rights of persons with disabilities and require their fair treatment, appropriate care, inclusion and full participation in society.³

In 2003, the government passed the Persons with Disabilities Act No. 14 of 2003,⁴ which established the National Council for Persons with Disabilities, a state corporation under the Ministry of Labour and Social Protection, with a mission to “mainstream disability issues in all aspects of socio-cultural, economic and political development.”⁵

In 2018, the government, through the Communications Authority of Kenya (CA), initiated a project aimed at providing Information and Communication Technologies (ICT) solutions for persons with disabilities.

¹ Global Disability Rights Now, <https://www.globaldisabilityrightsnow.org/infographics/disability-kenya>

² Disability Inclusive Development Kenya Situational Analysis June 2020 update, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15508/DID%20Kenya%20SITAN_June%202020.pdf?sequence=1&isAllowed=y

³ Sida; Disability Rights in Kenya 2014, <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/disability/rights-of-persons-with-disabilities-kenya.pdf>

⁴ Persons with Disabilities Act No. 14 of 2003, <http://ncpwd.go.ke/index.php/downloads/persons-with-disabilities-act?download=3:persons-with-disabilities-act>

⁵ National Council for Persons with Disabilities, <http://www.ncpwd.go.ke/>

The programme entailed setting up school-based ICT centres within post-primary school institutions for persons with disabilities; creation of an accessibility web portal to provide information for and on persons with disabilities in the country; and, conducting an awareness campaign on ICT and persons with disabilities with a view to developing guidelines on ICT and persons with disabilities.⁶

However, despite these and other on-going efforts and projects by state and non-state actors, there are significant challenges and gaps in improving access to ICT and the realisation of the right of access to information for persons with disabilities.

Some of the challenges that persons with disabilities face can be mitigated through policy shifts and practices that promote equitable access to modern ICT, including the internet. The internet and related technologies have the potential to make significant improvements in the lives of persons with disabilities, through empowerment,⁷ access to information,⁸ allowing them to enhance their social and economic integration in communities by enlarging the scope of activities available to them⁹ and capacity building of duty bearers to offer accessible online public services.¹⁰

1.1 Purpose of the Study

The main purpose of the study was to provide a general understanding of the state of accessibility to ICT among persons with disabilities in Kenya. This report therefore presents an analysis of the legal and policy framework relevant to ICT, access to information and disability in Kenya. It highlights the challenges in access and usability of ICT by persons with disabilities. The study presents recommendations on how access to information and ICT adoption for persons with disabilities can be enhanced in Kenya.

1.2 Research Methodology

The research used a combination of data collection and analysis methodologies including legal and policy analysis of the existing policy frameworks including provisions on persons with disabilities in the Constitution, The Kenya National ICT Master Plan (2014-2017), the 2013 Kenya Access to Information Act, the Kenya Information and Communications Act 2013 (as amended), and the 2003 Persons with Disabilities Act.

The legal and policy analysis was supplemented with a comprehensive review of relevant documents, including research and media reports on the status of access to information and ICT for persons with disabilities in Kenya.

⁶ CAK, *ICT for People with Disabilities (Persons with Disabilities)* 28 March, 2018, <https://ca.go.ke/ict-for-people-with-disabilities-Persons-with-Disabilities>

⁷ *Empowering persons with disabilities through ICTs: UNESCO's pavilion at ITU Telecom World 2009*, 5-9 October 2009, Geneva, Switzerland, <http://unesdoc.unesco.org/images/0018/001847/184704e.pdf>

⁸ *Consultative Meeting on Mainstreaming ICTs for Persons with Disability to Access Information and Knowledge*, <http://unesdoc.unesco.org/images/0018/001892/189237e.pdf>

⁹ *Access for People with Disabilities*, <https://unesco.go.ke/programme/access-to-information-2/>

¹⁰ *Uganda Government Officials Trained on Web Accessibility for Persons with Disabilities*, http://www.unesco.org/new/en/media-services/single-view/news/uganda_government_officials_trained_on_web_accessibility_for/

2. Legal and Regulatory Environment

2.1 International Instruments Relating to Disability, ICT and Access to Information

Kenya has signed and ratified several international human rights instruments that advance the rights of persons with disabilities. All international human rights instruments protect the human rights of persons with disabilities, as they apply to all persons. This principle of universality is reinforced by the principles of equality and non-discrimination, which are included in human rights instruments such as the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

In 2008, Kenya ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD)¹¹ and its Optional Protocol.¹² This instrument places significant obligations on state parties for equal opportunities and inclusion of persons with disabilities. Countries that join the Convention commit themselves to develop policies, laws and administrative measures for securing the rights recognised in the Convention and to abolish laws, regulations, customs and practices that constitute discrimination. The CRPD is the first international human rights treaty requiring that ICT tools and systems should be accessible as a necessary condition for persons with disabilities to fully enjoy their fundamental rights without discrimination. The Convention recognises the role of ICT in promoting the independence and full participation of persons with disabilities across life domains and requires States Parties to make concerted efforts and investments to advance access to ICT.

Article 9 of the Convention recognises ICT as an important enabler of access to systems and services and calls on state parties to take appropriate measures to ensure persons with disability have “access on an equal basis with others, “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. “ Further, that the measures shall include “the identification and elimination of obstacles and barriers to accessibility.” Further, Article 21 provides for access to information and the freedoms of expression and opinion.

¹¹ Convention on the Rights of Persons with Disabilities,

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

¹² Optional Protocol to the Convention on the Rights of Persons with Disabilities, <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

The Convention also provides for other rights, such as access to justice, rights to political participation, education, health, and employment and the need for affordable and accessible technology to realise the rights of persons with disabilities.

The International Labour Organisation (ILO) Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983, which Kenya ratified on March 27, 1990,¹³ promotes the vocational rehabilitation of persons with disabilities to enable them to secure, retain and advance in suitable employment and thereby to further such persons' integration or reintegration into society.¹⁴ Also, the ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958, which Kenya ratified in May 2001,¹⁵ promotes equality of opportunity and treatment in respect of employment and occupation.¹⁶

At the regional level, Article 18(4) of the African Charter on Human and Peoples' Rights provides that the aged and the disabled “shall also have the right to special measures of protection in keeping with their physical or moral needs.”¹⁷ Likewise, the African Charter on the Rights and Welfare of the Child under Article 13, grants children who are mentally or physically disabled the right to special measures of protection in keeping with their physical and moral needs and under conditions which ensure their dignity, promote their self-reliance and active participation in the community.¹⁸ It also calls upon state parties to ensure that disabled children have “effective access to training, preparation for employment and recreation opportunities”.

Article 120(c) of the East African Community (EAC) Treaty calls upon EAC Partner States to co-operate amongst themselves in the field of social welfare with respect to, among others, the development and adoption of a common approach towards disadvantaged and marginalised groups, including children, the youth, the elderly and persons with disabilities through rehabilitation and provision of, among others, foster homes, healthcare, education and training.¹⁹ The EAC Policy on Persons with Disabilities adopted in March 2012, calls for the consideration of accessibility as a cross-cutting concern, which “should remain an underlying consideration in the built environment, public transport, communication and information services.”²⁰ In 2015, the East African Legislative Assembly published the The EAC Persons with Disability Bill, 2015²¹ whose goal was to provide a comprehensive legal framework for the protection of the rights of persons with disabilities in the community. However, it is yet to be enacted into law.

¹³ C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C159

¹⁴ Article 1 of (ILO) Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983, (No. 159)

¹⁵ C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111

¹⁶ Article 2, ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958

¹⁷ African Charter on Human and Peoples' Rights, <https://www.achpr.org/legalinstruments/detail?id=49>

¹⁸ African Charter on the Rights and Welfare of the Child, <http://hrlibrary.umn.edu/africa/afchild.htm>

¹⁹ EAC Treaty https://www.eacj.org/?page_id=33

²⁰ EAC Policy on Persons with Disabilities, http://meac.go.ke/wp-content/uploads/2017/03/adopted_eac_disability_policy_march_2012.pdf

²¹ The EAC Persons with Disability Bill, 2015, <https://www.eala.org/index.php/documents/view/the-eac-persons-with-disability-bill2015>

2.2 National Laws and Policies Relating to Disability, ICT and Access to Information

2.2.1 The Constitution of Kenya, 2010

The Constitution of Kenya, in various provisions, recognises and protects the rights of persons with disabilities from all forms of discrimination. It defines the term “disability” in Article 260 to include “any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities”.

In terms of the obligations of the state, Article 21(1) provides that it is “a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.” Secondly, it provides under Article 21(3) that all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including, persons with disabilities. Thirdly, Article 7(3)(a) provides that the State shall promote “the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.”

Further, under Article 27(4) it provides that the State shall not discriminate directly or indirectly against any person on any ground, including disability. With respect to the rights of persons with disabilities, Article 54 provides generally for their specific rights. More specifically, Article 54(e) provides that persons with disabilities are entitled “to access materials and devices to overcome constraints arising from the person’s disability.”

2.2.2 The Persons with Disabilities Act, 2003

The Persons with Disabilities Act, 2003²² provides for the rights, rehabilitation, and equal opportunities for persons with disabilities. It establishes the National Council of Persons with Disabilities to oversee the welfare of persons with disabilities. The Council is mandated under section 7 to provide, 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 organisations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the Government.

With respect to access to ICT and access to information, the law provides under section 18(3) for the establishment of special schools and institutions, especially for those with hearing and visual impairment and those with intellectual disability. It also provides, under section 19, for integrated systems for persons with all forms of disabilities and the establishment, where possible, of Braille and recorded libraries for persons with visual disabilities.

²² *Persons with Disabilities Act, 2003*, <http://ncpwd.go.ke/index.php/downloads/persons-with-disabilities-act?download=3:persons-with-disabilities-act>

Sections 21 and 22 provide for access and mobility to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility including to public buildings and public service vehicles. Part IV of the Act provides for civic rights, specifically enabling persons with disabilities to be able to vote (section 29), to access polling stations (section 30), and to assemble and associate with or for persons with disabilities (section 31).

It also provides for access to television programmes (section 39), and requires television stations to provide sign language insets or subtitles in all newscasts and educational programmes and in all programmes covering events of national significance. Further, under section 40, it requires persons providing public telephone service to 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 41 of the law exempts persons with disabilities from postal charges for all printed and recorded literature, articles, equipment and other devices for the use of persons with disabilities which are sent by mail within and outside Kenya.

Under section 35 of the law, persons with disabilities who are in receipt of an income may apply for exemption from income tax and any other levies on such income. In addition, materials, articles and equipment, including motor vehicles, modified or designed for the use of persons with disabilities are exempt from taxes and other levies. Similarly, all goods, items, implements or equipment donated to institutions and organisations of or for persons with disabilities shall be exempt from taxes and other levies.

2.2.3 The Kenya Information and Communications Act 2013

The Kenya Information and Communications Act (KICA)²³ established the Communications Authority of Kenya), to facilitate the development of the information and communications sector including broadcasting, multimedia, telecommunications and postal services and electronic commerce. The law does not make specific references to persons with disabilities although several provisions may be interpreted as being in the interest of persons with disabilities. For instance, Part VIB establishes the Universal Service Fund (USF) and under section 84J, the object of the Fund is to “support widespread access to, support capacity building and promote innovation in information and communications technology services”. The sources of income of the Fund include levies on licensees, appropriations from Government as well as grants and donations. The Fund is expected to finance national projects that have a significant impact on the availability and accessibility of ICT in rural, remote, and poor urban areas.²⁴

²³ Kenya Information and Communications Act, 1998

²⁴ Communications Authority of Kenya, Purpose of the Fund, <https://ca.go.ke/industry/universal-access/purpose-of-the-fund/>

2.2.4 The Access to Information Act, 2016

The Access to Information Act, 2016²⁵ gives effect to Article 35 of the Constitution which provides for the right of access to information. Section 5 of the law requires public entities to disseminate information taking into consideration the need to reach persons with disabilities. Section 8 of the law requires information officers to facilitate the writing of access to information requests for persons unable to make because of illiteracy or disability.

Section 28(3)(a) makes it an offence to refuse to assist a requester who is unable to reduce an oral request to writing, while Section 28(3)(d) sanctions those who fail to provide information in a form that is capable of being read, viewed or heard by a requester with a disability. The penalty for these offences is a fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding three months, or both.

2.2.5 The National Disability Policy, 2006

The National Disability Policy provides guidelines for the implementation of the Persons with Disabilities Act, 2003. It also seeks to address disparities in service provision and to ensure that services that are available to all citizens are equally available to persons with disabilities. In relation to accessibility, all public institutions are required under the Persons with Disabilities Act to develop an internal Disability Policy and to implement the National Action Plan on Disability and Accessibility. As part of this, they are required to carry out an institutional usability and accessibility audit; prepare a domesticated implementation action plan; and implement the accessibility action plan and documenting for local and national reporting.

2.2.6 The Special Needs Education Policy 2010

The Special Needs Education Policy, 2010²⁶ provides the framework for the planning and implementation of Special Needs Education (SNE) devoid of all barriers that inhibit access to quality and relevant education. One of its objectives is to support learners with special needs and disabilities to access affordable assistive devices and advanced technological systems.

In the context of SNE, ICT refers to communication systems and techniques which are specific to various learners with special needs and disabilities. These include both augmentative and alternative modes of communication such as spoken language and sign language, Braille, tactile communication, readers for the blind, print, audio and visual tapes, and ICT skills. The Policy recognises that the provision of SNE services has not adequately integrated the use of ICT in teaching and learning processes; and that existing information and communication services remain largely inaccessible and unaffordable to persons with special needs and disabilities.

²⁵ Access to Information Act, <https://www.cuk.ac.ke/wp-content/uploads/2018/04/Access-to-Information-ActNo31.pdf>

²⁶ Ministry of Education, (July, 2009), *The National Special Needs Education Policy Framework*, <http://www.unesco.org/education/edurights/media/docs/446808882707702aafc616d3a2cec918bfc186fc.pdf>

In relation to ICT, the SNE Policy aims, within its objectives, to enhance access to public information and communication technology for persons and learners with special needs and disabilities; and, to enhance effective communication and learning for learners with special needs and disabilities in all learning institutions. Further, the policy commits the government through the Ministry of Education to continue to work with ICT partners to increase ICT services to educational institutions particularly for persons with special needs and disabilities, and to establish mechanisms to ensure persons with special needs and disabilities venture into technical training in ICT.

2.2.7 National ICT Policy, 2019

The National ICT Policy, 2019,²⁷ commits the government to provide equal treatment to people with disabilities with respect to the use and benefit of ICT services, programs, goods and facilities in a manner that respects their dignity and that is equitable in relation to the broader public. The key measures proposed in the policy include ensuring that ICT services and emergency communications made available to the public are provided in alternative accessible formats; review of existing legislation and regulations to promote ICT accessibility; promoting the design, production and distribution of accessible ICT; and ensuring that persons with disabilities can exercise the right to access to information, freedom of expression and opinion.

The policy also requires both public and private entities to provide information and services in accessible and usable formats; content producers to produce such content in accessible format; and for government websites to comply with international web accessibility standards. Further, it commits government to provide incentives to providers of accessible technology solutions including software, hardware and applications; to lessen the burden of acquisition of accessible technologies and associated devices; ensure that existing works in print format are adapted into accessible format transformative forms; and to promote research and development for ICT access for persons with disabilities. The policy requires licensed telecommunications services providers to make available services and supporting technologies for persons with disabilities including emergency services, accessible public phones and relay services to enable persons with speech, hearing and seeing disabilities to communicate with the rest of society.

²⁷ National ICT Policy, 2019, <https://www.ict.go.ke/wp-content/uploads/2019/12/NATIONAL-ICT-POLICY-2019.pdf>

2.2.8 Kenya National ICT Master Plan 2014-2017

Kenya's National ICT Master Plan²⁸ is intended to realise the potential of ICT to achieve the national development agenda to make Kenya a regional ICT hub and to transition the country into a knowledge economy. The Master Plan, which is aligned to Vision 2030, the Jubilee Manifesto and other policy documents, provides a framework for the development of a dynamic and robust ICT sector. However, the Plan has minimal specific reference to persons with disabilities, save for paragraph 3.3 on Guiding Principles, which includes equity and non-discrimination. It calls for "Equitable and non-discriminate availability of and access to ICT across county governments, urban and rural areas, gender, women, youth and disadvantaged communities."

2.2.9 Third Medium Term Plan 2018-2022

This policy is the third five-year plan for the implementation of Kenya's long term development blueprint, Vision 2030, which aims to transform Kenya into an industrialised middle income country offering a high quality of life to all citizens.²⁹ The Plan is aligned with the Jubilee Manifesto 2017, with particular focus on implementing policies, programmes and projects designed to achieve the "Big Four" initiatives: industrialisation, manufacturing and agro-processing; affordable housing; food and nutrition security; and universal health coverage.

Under the plan, the government has committed to implement special needs interventions for education and training which include rehabilitation and equipping of Technical and Vocational Education and Training (TVET) SNE Institutions; rehabilitation and equipping of County and Sub-County Education, Assessment and Resource Centres (EARCs); capacity building SNE stakeholders; production of assistive devices, technologies and learning materials; rehabilitation and equipping of special needs schools; and establishment of a national academy for gifted and talented learners. Other commitments include provision of specialised equipment to trainees with special needs and disabilities in vocational training centres; establishment of TVET-SNE institutions in each County; provision of specialized equipment to SNE students in universities; training of examiners of special needs education candidates; ensuring special needs education inclusivity in TVET; and establishment of model inclusive education institutions.

Further, the government has committed to mainstream disability in its operations, programmes and projects. The planned interventions include scaling up of the National Development Fund for Persons with Disabilities; provision of assistive devices; provision of educational bursaries; advocacy and provision of grants for economic empowerment; and the implementation of the Procurement Guarantee Fund for PWDs under the Access to Government Procurement Opportunities (AGPO) affirmative action initiative.

²⁸ Ministry of Information and Communications Technology, *The Kenya National ICT Masterplan, 2014-2017*,

<http://icta.go.ke/pdf/THE%20NATIONAL%20ICT%20MASTERPLAN%202017.pdf>

²⁹ *The Third Medium Term Plan (MTP III) 2018-2022*, <http://vision2030.go.ke/wp-content/uploads/2019/01/THIRD-MEDIUM-TERM-PLAN-2018-2022.pdf>

3. Institutional Framework

There are several ministries and other government departments that are responsible for mainstreaming and promoting the rights of persons with disabilities in Kenya.

3.1 Ministry of Labour and Social Protection

The Ministry of Labour and Social Protection is the focal point for disability issues in Kenya.³⁰ Its stated mission is to promote decent work and empower vulnerable groups, and one of its key objectives is to coordinate the development, implementation and review of policies on vulnerable persons. Within its Disability Mainstreaming Department, it aims to establish structures and systems that ensure persons with disabilities access information and services, such as training staff on sign language, availing materials in Braille, ramps, signage, guides, accessible toilets, lifts with visual, audio and ductile features, non-slippery floor surfaces, disability friendly vehicles and walkways, and accessible parking.³¹ As part of its work on education, it provides financial assistance to persons with disabilities from primary, secondary and vocational training schools, as well as colleges and universities.³²

3.2 Ministry of Education

The Ministry of Education is responsible for implementing the government's obligations to ensure children's right to free and compulsory basic education, and to make education institutions and facilities accessible to persons with disabilities. This responsibility includes the placement of children with physical and mental disabilities in mainstream schools; and provision for the use of sign language, braille or other appropriate means of communication, and access to materials and devices to overcome constraints arising from learners' disability.³³

³⁰ Ministry of Labour and Social Protection, State Department of Labour, Executive Order No. 1 of 2018, <http://labour.go.ke/vision-mission-mandate/>

³¹ National Council for Persons with Disabilities, Mainstreaming, <http://ncpwd.go.ke/index.php/mainstreaming>

³² National Council for Persons with Disabilities, Education, <http://ncpwd.go.ke/index.php/ndfpwd/37-education>

³³ Ministry of Education, <http://www.education.go.ke/index.php/about-us/mission>

The Ministry runs the Digital Learning Programme which aims to promote ICT Integration in Primary Education (Digital Literacy project). Specifically, the programme aims to align the integration of ICT into teaching and learning for standard one pupils in primary schools. The components of this project include improvement of ICT infrastructure, development of digital content, capacity building of the teachers and procurement of ICT devices.³⁴ Under the project, the government has partnered with UNICEF Kenya, UNICEF Innovation Fund, the Finnish National Committee for UNICEF and Nokia to develop and pilot accessible digital learning materials for children with disabilities.³⁵ The “accessible digital textbook” is a digitised textbook designed following “Universal Design for learning principles” and with multi-media overlays to support children with and without disabilities in their learning process.

3.3 National Council for Persons With Disabilities (NCPWD)

The National Council for Persons with Disabilities is a state corporation established by the Persons with Disabilities Act No. 14 of 2003 and set up in November 2004.³⁶ The mission of the Council is to promote and protect equalisation of opportunities and realisation of human rights for persons with disabilities to live decent livelihoods.

The core functions of the Council include formulating and developing measures and policies designed to achieve equal opportunities for persons with disabilities; cooperating with the government during the National Census to ensure that accurate figures of persons with disabilities are obtained; and issuing orders requiring the adjustment of buildings that are unfriendly for use by persons with disabilities. The Council is also mandated to with recommending measures to prevent discrimination against persons with disabilities; encouraging and securing the rehabilitation of members of the community; registering persons with disabilities and institutions and organisations giving services to persons with disabilities; and raising public awareness on disability.

³⁴ Ministry of Education, Digital Learning Programme, <http://www.education.go.ke/index.php/programmes/digital-learning-programme>

³⁵ Making digital learning accessible for all children in Kenya, <https://www.unicef.org/innovation/stories/digitaltextbookkenya>

³⁶ National Council for Persons With Disabilities (NCPWD), <http://ncpwd.go.ke/index.php/about-ncpwd>

3.4 Kenya Institute of Special Education (KISE)

The Kenya Institute of Special Education (KISE) is a semi-autonomous government agency of the Ministry of Education, established through a Legal Notice No. 17 of 14th February 1986. The agency aims to meet the educational needs of children, youth and adults with special needs and disabilities through human capital development, research, functional assessment, rehabilitation, technology and production of educational resources.³⁷ Its core functions include the conduct of teacher training courses for teachers of children with special needs and disabilities; conduct of in-service courses for personnel working in all fields of special needs education; and conduct of correspondence courses for personnel in the field of special needs education.

It also runs an educational and psychological assessment centre for the training of teachers of children with special needs and disabilities, an orientation and mobility centre for training and demonstration purposes, a model training unit for integration and inclusion of children with special needs and disabilities into the regular school schools, and a pre-school department for training and the stimulation of young children with special needs and disabilities. It also functions as a resource centre for production and dissemination of information to the general public on special needs and disabilities; runs a documentation and resource centre on special needs and disabilities; conducts research in special needs education; and prepares special materials and equipment for persons with special needs and disabilities.

3.5 Communications Authority of Kenya (CA)

The Communications Authority of Kenya (CA) is the regulatory authority for the communications sector in Kenya. It was established in 1999 by the Kenya Information and Communications Act, 1998.³⁸ It is responsible for facilitating the development of the information and communications sectors including broadcasting, cybersecurity, multimedia, telecommunications, electronic commerce, postal and courier services.

The Authority promotes ICT for persons with disabilities through a project aimed at providing ICT solutions to persons with disabilities. The project entails setting up school-based ICT Centres within post-primary school institutions for persons with disabilities; creation of an accessibility web portal to provide information for and on persons with disabilities in the country; conducting an awareness campaign on ICT and persons persons with disabilities with a view to developing guidelines on ICT and persons with disabilities; and, supporting the supply, delivery, and installation of computers, requisite hardware, software, and furniture for eight institutions for people with physical, hearing and visual impairments and supporting internet connectivity in these institutions for a period of two years.³⁹

³⁷ Kenya Institute of Special Education, <https://www.kise.ac.ke/>

³⁸ Communications Authority of Kenya, <https://ca.go.ke/about-us/who-we-are/what-we-do/>

³⁹ Communications Authority of Kenya, (28 March, 2018), *ICT for People with Disabilities*, <https://ca.go.ke/ict-for-people-with-disabilities-pwds>

3.6 The Kenya National Commission on Human Rights (KNCHR)

The Kenya National Commission on Human Rights (KNCHR) is established by Article 59 of the Constitution of Kenya, 2010 and the Kenya National Commission on Human Rights Act, 2011 as an independent National Human Rights Institution.⁴⁰ It is Kenya's lead agency in the promotion, protection and monitoring of human rights.

In particular, the Commission is the designated monitoring agency of the Convention on the Rights of Persons with Disabilities (CRPD).⁴¹ As part of its monitoring role it is required to organise awareness raising activities about the Convention; review legislation, policies, and programs and judicial decisions to ensure compliance with the Convention and make recommendations towards harmonisation with the CRPD; undertake research, formal investigations and general inquiries on lived experiences of persons with disabilities and make recommendations for remedial action and preventive measures. Further, the KNCHR is required to provide training and information to policy makers on preparation of initial and periodic reports to the Committee on the Rights of Persons with Disabilities; follow up on implementation of the Concluding Observations of the Committee on the Rights of persons with Disabilities; and ensure the involvement and participation of persons with disabilities or their representative organisations in the monitoring.

3.7 National Gender and Equality Commission (NGEC)

The National Gender and Equality Commission (NGEC) was established by the National Gender and Equality Commission Act, 2011 pursuant to Article 59 (4) of the Constitution of Kenya.⁴² Its mandate is to promote gender equality and freedom from all forms of discrimination in Kenya, especially for special interest groups (which include women, youth, persons with disabilities), children, the older members of society, minorities and marginalised groups) through ensuring compliance with policies, laws and practice.

The NGEC monitors, promotes and mainstreams issues of disability and elderly in governance structures in order to achieve substantive equality and inclusion at all levels. It also addresses discrimination and human rights issues such as participation and marginalisation affecting persons with disability and older members of the society in accordance with Articles 27, 54 and 57 of the constitution and international commitments signed by Kenya.⁴³

⁴⁰ Kenya National Commission on Human Rights, <https://www.knchr.org/About-Us/Establishment>

⁴¹ Kenya National Commission on Human Rights, (2013-2019), Designation of KNCHR as Monitoring Agency, <https://www.knchr.org/Our-Work/Research-and-Compliance/Disability>

⁴² National Gender and Equality Commission (NGEC), <https://www.ngeckenya.org/home/about>

⁴³ People Living with Disability and the Elderly, <https://www.ngeckenya.org/SpecialInterestGroups/PersonsLivingWithDisabilities>

More specifically, the Commission's roles include to coordinate state and non-state actors on disability to ensure participation and inclusion for substantive equality and inclusion; monitor the compliance in issues of disability and ageing in accordance with the laws of the country; conduct audits on the status of disability and advises the government on emerging issues; facilitate public education programmes and engagements in promoting inclusion and participation of vulnerable groups in their own programmes; and review of proposed legislation to ensure conformity and compliance to human rights principles and standards on disability and ageing as prescribed by the Constitution.

3.8 Commission on Administrative Justice (CAJ)

The Commission, also known as the Office of the Ombudsman, is a constitutional commission established under Article 59(4) of the Constitution of Kenya, 2010, and the Commission on Administrative Justice Act, 2011.⁴⁴ The Commission has the mandate of tackling maladministration in the public sector

The CAJ's functions with respect to the Access to Information Act, 2016, include investigating on its initiative or upon complaint made regarding violation of the Act; to request for and receive reports from public entities with respect to the implementation of the Act and to assess and act on those reports with a view to assessing and evaluating the use and disclosure of information and the protection of personal data; to develop and facilitate public education awareness and develop programmes on right to access to information and right to protection of personal data.

It is also empowered to work with public entities to promote the right to access to information and work with other regulatory bodies on promotion and compliance with data protection measures in terms of legislation; to monitor state compliance with international treaty obligations relating to freedom of and right of access to information and protection of personal data; to hear and determine complaints and review decisions arising from violations of the right to access to information; and to perform such other functions as the Commission may consider necessary for the promotion of access to information and promotion of data protection.

⁴⁴ Commission on Administrative Justice (CAJ), <https://www.ombudsman.go.ke/index.php/who-we-are/about-us>

3.9 National Fund for the Disabled of Kenya (NFDK)

The National Fund for the Disabled of Kenya was established in 1981 as a Trust to aid persons with disabilities.⁴⁵ The mission of the Fund is to offer the best support services to persons with disabilities in Kenya through effective and efficient provision of resources, promotion of awareness and advocacy of appropriate policies.

The organisation received seed funding from the government of KES 100 million in 2009 and has funded 24 flagship projects per year in 24 counties and seeks to support over 150 institutions catering for persons with disabilities, while empowering over 3,000 individual persons with disabilities every year.⁴⁶ A total of 118 projects have been initiated countrywide, with 103 already commissioned while others are either completed and awaiting handover or in various stages of implementation. However, only one of the 118 projects has been ICT related, and this was for the construction of an ICT Block.⁴⁷ Nonetheless, the Fund partnered with the Safaricom Foundation in equipping select projects across the country for the purchase of ICT equipment, beddings, furniture and workshop tools in various facilities constructed by the Fund.⁴⁸

3.10 National Development Fund for Persons with Disabilities (NDFPWD)

The National Development Fund for Persons with Disabilities (NDFPWD) was established in 2003 under Section 32 of the Persons with Disabilities Act, 2003. The Fund supports persons with disabilities through the provision of assistive devices and services; educational assistance; economic empowerment; infrastructure and equipment for institutions; cash transfers; legal assistance; job placements; disability mainstreaming; and support for persons with albinism.⁴⁹

The fund is managed by the National Council for Persons with Disabilities. The Fund supports the provision of assistive devices and services such as wheelchairs, crutches, hearing aids, callipers, surgical boots and prosthetic arms or legs. Further, the Fund does not usually support the acquisition of ICT equipment such as laptops or computer software such as JAWS.⁵⁰ However, they may be purchased if the request is made by an institution. For instance, in the 2019-2020 financial year, the Fund only supported the purchase of computer software for one individual, and purchase of laptops with JAWS for three others, as against a total of 3,544 beneficiaries who were supported with the purchase of assistive devices.⁵¹

⁴⁵ National Fund for the Disabled of Kenya, <https://nfdk.or.ke/background/>

⁴⁶ NFDK Big Grant Programme, <https://nfdk.or.ke/big-grant-programme/>

⁴⁷ NFDK Flagship Projects, <https://nfdk.or.ke/wp-content/uploads/2020/07/nfdk-flagship-projects.pdf>

⁴⁸ NFDK Flagship Projects, <https://nfdk.or.ke/pwds-act/programs/flagship-projects/>

⁴⁹ The National Development Fund for Persons with Disabilities (NDFPWD), <http://ncpwd.go.ke/index.php/ndfpwd#:~:text=The%20National%20Development%20Fund%20for,individuals%20to%20function%20in%20society.>

⁵⁰ Assistive Devices, <http://ncpwd.go.ke/index.php/ndfpwd/36-assistive-device>

⁵¹ Assistive Device Beneficiaries 2019-2020, http://ncpwd.go.ke/images/Our_Programs/ASSTIVE-DEVICES-BENEFICIARIES-FY-2019.2020-compressed.pdf

4. Challenges Faced by Persons with Disabilities

4.1 Limited Access to ICT and Assistive Technologies

Assistive technology enables and promotes the inclusion, participation, and engagement of persons with disabilities. The most used ICT by persons with disabilities include mobile phones, television, and radio. Unfortunately, the majority of people that need these technologies do not have access to affordable and user-friendly assistive devices, and many are not even aware of the existence or exposed to such technologies and their functionalities. In many cases, the devices, including smartphones, accessibility features are often expensive, and difficult to repair once broken down. Most of the time, they must be imported.⁵²

Further, the current funding programmes by the government do not prioritise the purchase of ICT assistive devices such as laptops and computer software such as JAWS, owing to their high costs. Greater public awareness of the various affirmative action and waivers on taxes to enable persons with disabilities to acquire and access these devices could be a significant intervention to promote access to ICT.⁵³

4.2 Lack of Appropriate ICT Knowledge and Skills by Persons with Disabilities

Besides the lack of access to assistive devices, many persons with disabilities do not possess the requisite knowledge and skills to use the specialist devices they need. A 2017 study on civic participation for persons with disabilities in the country found that due to lack of access to information, persons with disabilities were not able to effectively participate in decision-making and policy development processes at national and county levels.⁵⁴

⁵² How might we reduce stigma and increase opportunities for people with disabilities?

<https://challenges.openideo.com/challenge/disability-inclusion/ideas/disability-innovation-hub-nairobi>

⁵³ Njuguna, R., (November 2016), Accessibility to Information and Communication Technology (ICT) Among Persons with Disabilities in Nairobi County,

<http://erepository.uonbi.ac.ke/bitstream/handle/11295/99022/MA%20Project%20Report%20Rose%20Njuguna.pdf?sequence=1&isAllowed=y>

⁵⁴ ARTICLE 19 Eastern Africa, Closing the gap in civic participation for persons with disabilities in Kenya: A national level analysis concerning the implementation of Article 21 of the Convention on the Rights of Persons with Disabilities,

4.3 Lack of Accessible Government Websites and e-Services

In Kenya, there has been an increase in the adoption of ICT in government service delivery. Applications for most government-issued documents are now being conducted online, including marriage certificates, driving licenses, passports, land rent clearance certificates, and tax returns, among others. However, this has left out many persons with disabilities, especially those with visual impairments.

Visually impaired persons face challenges in accessing content on government websites as it is not optimised with accessibility features. As a result, the websites' content is not compatible with screen readers, which are software applications that provide computer-synthesised speech of text or what appears on the screen. At times, the information is provided as scanned images, which are also not compatible. Whereas the Communication Authority of Kenya developed guidelines⁵⁵ for the management of government websites that set out requirements for accessibility for audio, visual and speech impaired users, as well as compatibility with assistive technologies and devices, these guidelines have largely remained unimplemented and unenforced.

4.4 Lack of a Specific Policy and ICT and Disability

In attempting to determine the barriers to persons with disabilities' access and use of ICT, a study by the KNCHR confirmed that there is no ICT policy with regard to persons with disabilities and the lack of this policy has hampered efforts or has led to duplication of efforts to address challenges to ICT use among persons with disabilities.⁵⁶ This had hampered efforts to address the issue of access and usability of ICT among persons with disabilities. Nonetheless, the National ICT Policy 2019 makes several proposals to enhance access to ICT by persons with disabilities, to ease access to government information, to promote access of ICT infrastructure and encourage telecommunication companies to develop services with special attention to persons with disabilities and special needs.

4.5 Challenges in Accessing Information

Further, practical challenges persist for persons with disabilities in accessing information and using ICT tools and service in Kenya. The National ICT Survey conducted by Kenya National Bureau of Statistics in 2011⁵⁷ revealed that radio is an indispensable tool for delivering development information, with about 80% of the households having access to radio as a means of communication. Although this may enable people living with visual impairment to access information, it leaves out people living with hearing impairments.

⁵⁵ GoK (2004) Kenya E-Government Strategy <https://bit.ly/2OikyMJ>

⁵⁶ From Norm to Practice: A Status Report on the Implementation of the Rights of Persons With Disabilities in Kenya. <http://www.knchr.org/Portals/0/Reports/Disability%20Report.pdf>

⁵⁷ National ICT Survey Report.
https://www.researchcictafrica.net/countries/kenya/Report_of_the_National_ICT_Survey_2010.pdf

A 2017 study on civic participation for persons with disabilities in Kenya⁵⁸ found that due to lack of access to information, persons with disabilities were not able to effectively participate in decision making and policy development processes at both the national and county levels. Some broadcast media remains inaccessible for persons with disabilities, with only 13 out of 18 free to air television channels providing sign language interpretation during newscasts. Meanwhile, print media remains unavailable in Braille, while online media is only accessible to those with access to computers with assistive technology.

Persons with disabilities face challenges in accessing information in the public domain in areas such as schools, hospitals, courts, and government offices. Likewise, there is limited facilitation of their communication needs when they attend meetings. This could be as a result of the limited awareness of the public on ways to facilitate the communication needs for persons with disability.

Public information is usually disseminated through traditional media including newspapers, television, radio, community barazas (meetings) and new media through the internet. This poses great challenges for persons with disabilities, especially those who live in areas where they do not have access to electricity, cannot afford to buy newspapers and those who cannot read due to low levels of education. Though signage is provided for in parliamentary proceedings and sub-titles for some newscasts, the portion of the screen allocated is relatively small and people with hearing impairments must move close to the screens to be able interpret the signs. Other programmes do not provide sign language or subtitles. The lack of brailled materials for the visually impaired and sign interpreters in the media and other institutions to cater for the hearing impaired creates a problem in accessing information and communicating effectively and prevents the full integration of persons with disabilities into society.⁵⁹

In one school for the deaf, for instance, the students were excited about Kenya Broadcasting Service (KBC's) parliamentary broadcast which has sign language interpretation. But they then had to crowd near the television set because the interpretation was restricted to a tiny space of the TV screen. Persons with hearing impairment are unable to get all the information and are left to watch pictorials despite section 39 of Disability Act, 2003.

⁵⁸ Closing the gap in civic participation for persons with disabilities in Kenya: A national level analysis concerning the implementation of Article 21 of the Convention on the Rights of Persons with Disabilities (2017), ARTICLE 19 Eastern Africa

⁵⁹ KNCHR, (July, 2014), From Norm to Practice, A Status Report on the Implementation of the Rights of Persons with Disabilities in Kenya, Retrieved from: <https://www.knchr.org/Portals/0/Disability%20Publications/Status%20Report%20on%20the%20Implementation%20of%20the%20Rights%20of%20Persons%20with%20Disabilities%20in%20Kenya.pdf?ver=2018-06-03-175344-433>

with

5. Conclusion and Recommendations

Conclusion

This study has presented an analysis of the current legal and policy framework in relation to ICT, access to information and disability in Kenya. It has also presented the realities of access to and use of ICT for persons with disabilities including the use of mobile phones and the challenges of interfaces and e-government services.

While there are robust policies and institutions set up for the promotion of the rights of persons with disabilities, in reality, these have many shortcomings. While ICT can promote access to information by providing and transforming information into different formats, such as from visual to audio and vice versa, if the needs of persons with disabilities are not considered when developing content, they may not be able to access the content.

Access to ICT including smartphones generally correlates with access to education. Persons with disabilities could benefit from the use of internet-enabled devices. Access to education and such devices could enable persons with disabilities to gain ICT skills and empower them to compete in the job market.

In seeking to establish what strategies could be adopted to enhance sustainability of ICT access and use by persons with disabilities, the study found that affirmative action and policies on persons with disabilities' access and use of ICT is a useful way to achieve ICT access and usability among persons with disabilities. Further, implementing policies that provide opportunities for persons with disabilities to access ICT including tax waivers on ICT would be a progressive move. The study also confirmed that there is the need for service providers to be versed with the Kenya Sign Language (KSL) to help realise the constitutional recognition of KSL as an official language (Article 120(1)) in which the business of parliament may be conducted.

Recommendations

This study recommends the following:

Government should:

- Consult with disability rights organisations and with persons with disabilities on national development issues including how to promote design, production and distribution of accessible ICT.
- Allocate more funding towards the education needs of persons with disabilities including for the establishment of special schools, integration, and subsidising school fees to promote access to education.
- Promote more access to affordable assistive devices and technologies beyond tax exemptions and relying on donations including providing incentives to providers of accessible technology solutions including software, hardware and applications through subsidisation and funding acquisitions⁶⁰ and research and development.
- Stimulate the introduction of ICT-enabled solutions for persons with disabilities by addressing market failure in assistive technology through public interventions and mandatory incorporation of accessibility requirements into public procurement policies.
- Implement programmes to enhance access to ICT by persons with disabilities, to ease access to government information, to promote access of ICT Infrastructure and encourage telecommunication companies to develop services with special attention to persons with disabilities.
- Ensure as many alternative methods of interacting online to provide accessibility to different types of disability starting with enhancing the policy framework to provide for guidelines, monitoring compliance, promoting innovation, and enforcement powers to ensure compliance including disability-specific recommendations for communications providers such as subtitles for television programmes or sign-voice features for mobile service providers.
- Ensure that all e-government and emergency services comply with international web accessibility standards and are accessible for persons with disabilities including developing accessible interfaces and content in line with the web content accessibility guidelines (available, affordable, adaptable and accessible).
- Ensure that Huduma Centres provide assistance for persons with disabilities to access e-government and government services in general.
- Require producers of content for distribution and public consumption produce such content in accessible format such as audio description, audio subtitles, captions and signing for access to persons with disabilities. Where sign language interpretation is used in broadcasting, ensure that it takes up more than the current space allocated on the screen for easier viewing for persons with hearing impairment.
- Require both public and private entities that render services to the public to provide information and services in accessible and usable formats for persons with disabilities.

⁶⁰ Accessibility of Information and Communication Technology (ICT) Among Persons with Disabilities (PWDs) in Nairobi County

<http://erepository.uonbi.ac.ke/bitstream/handle/11295/99022/MA%20Project%20Report%20Rose%20Njuguna.pdf?sequence=1&isAllowed=y>

- Require that licensed ICT service providers offer special tariff plans or discounted rates for persons with disabilities.
- Undertake a review of the National Fund for Persons with Disabilities to assess its processes to make recommendations for how to improve the process of applications and granting of funds.
- Increase the number of training centres for teaching persons with disabilities with ICT skills that enable them to work and contribute to national development.
- The Commission on the Administration of Justice should undertake monitoring and evaluation of access to information and ICT for persons with disabilities.

Private sector actors should:

- Design, manufacture, develop and distribute into the market key ICT-enabled solutions for persons with disabilities.

Civil society actors should:

- Create awareness of persons with disabilities and their parents of what ICT can do to bring about their economic and social integration including extensive training of persons with disabilities on the use of these ICT tools.
- Undertake advocacy for the mainstreaming of the use of the universal design principles in all development efforts.



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