

SUBMISSION FOR LIST OF ISSUES FOR KENYA BY KENYAN NETWORK ADVOCATING FOR THE RIGHTS OF WOMEN AND GIRLS WITH DISABILITIES

Organizations: Women Challenged to Challenge, This Ability Consulting, Users and Survivors of Psychiatry in Kenya, Kenya Association for the Intellectually Handicapped, Positive Exposure Kenya, Action Network for the Disabled, Kenya Deaf Women Peace Network, Women and Realities of Disability, Association for the Physically Disabled of Kenya, Short Stature Society of Kenya, Echami Aito, Handicapp International, Kilo Disabled Advocacy group.

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I. Introduction

The Kenyan Network advocating for the rights of women and girls with disabilities (hereinafter the Network) brings together organizations and experts working in Kenya on the rights of women and girls with disabilities.

The Network was started as a result of women and girls with disabilities in Kenya falling within the cracks of women's rights and disability rights making the rights of women and girls with disabilities left out in many discussions on human rights.

According to the 2009 Kenyan Census, there are 682,623 women with disabilities in Kenya. In Kenya, women and girls with disabilities are subjected to multiple layers of discrimination. Based on their gender and disability they often face "double discrimination". Leaving out the voice of women and girls with disabilities in many important national, regional and international discussions, laws, policies the Kenyan Government and women's rights organizations fail to understand and therefore address the human rights violations and challenges faced by women and girls with disabilities.

The Network therefore seeks to amplify the voices of women and girls with disabilities from Kenya at the national, regional and international level to ensure that women and girls with disabilities are included and participate in all spaces and discussions on women's rights and disability rights to ensure issues affecting women and girls with disabilities in Kenya are addressed.

The Network is preparing a shadow report with more detailed content to be submitted later in the year for the Concluding Observations 68th session of the CEDAW Committee to be held on 23rd October -17th November 2017.

II. The Network takes note of the State's Report mention of disability that include:

27. *"Non-discrimination in the field of work: This is addressed in article 27 of the Constitution, including (section 5). Anti-union discrimination is also prohibited under section 5 of the Labour Relations Act. 31. Non-discrimination against women with disabilities provisions are entrenched in the Persons with Disability Act (2003)."*

45. *"The 30% procurement affirmative action: The Government has introduced the 30%*

*affirmative action policy for women, youth and persons with disabilities in public procurement. Under this provision, women, youth and **persons with disability** are given preference for 30% of public procurement tenders. According to the Public Procurement and Disposal Preference and Reservations Amendment Regulations, 2013, a procuring entity shall allocate at least 30 per cent of its procurement budget for the purpose of procuring goods, works and services for micro and small enterprises owned by women, youth and PWDs. This translates to a minimum of USD 2.4 billion per year worth of business from the government to women, youth and people with disability. The Government monitors the implementation of this policy through the various Ministries and agencies' Performance Contracts. In addition, the government has introduced a Bill (Access to Government Procurement Opportunities (AGPO)) to entrench the practice into law for women youth and persons with disability. Once it is enacted into law it will be implemented at the national and devolved level. The development of the Bill is anchored on Article 227 of the Constitution."*

192. *"**The positive measures have been put in by the government through the National Council for persons with disabilities established by the Disability Act of 2003.**The main objective of the council, is to mainstream **disability issues** in all aspects of social cultural, economic and political development, including health. The new health policy 2012-2030 adopted a rights based approach to health and seeks to make the right to health for all Kenyans a reality. The constitution of Kenya in Article 54 emphasizes on the rights and freedoms of persons with disabilities. In 54(b) they are entitled to access educational facilities and institutions that are integrated into society to the extent compatible with the interests of the person."*

Article 13- measure for elimination of discrimination against women in other areas of social and economic life

169. *"Both the Government and Development Partners have increased the commitment to social protection interventions. Such measures include cash transfer programs for orphans and vulnerable children (OVC), older persons, **persons with disability**, unemployed youth, and the chronically food insecure in the arid lands (the Hunger Safety Net Program, HSNP)."*

III. Suggestions for disability-related questions to be included in the list of issues during the 68th CEDAW Pre Sessional Working Group 68 (6 March – 10 March 2017) for Kenya's 8th Country Report:

The Network highlights the following priority issues for the CEDAW Committee. These issues have been discussed and prioritized in a consultation meeting that was held in Nairobi, Kenya at the Pan Afric Hotel on 17th and 18th November 2016 with the participation of 22 civil society participants and experts from all over country working on the rights of women and girls with disabilities.

1. Eliminating discrimination against women and girls with disabilities in law and in practice.

Women with disabilities are discriminated both as women and as persons with disabilities. This

acts as a double curtain of invisibility and puts women and girls with disability in an especially vulnerable position in various areas of their lives including in family, employment and even living in the community. Very little action has been taken over the past decades to provide affirmative action, mainstream the right and needs of women with disabilities into programme work of various State agencies and repeal laws and policies discriminatory to women. Many of these laws also violate the right to legal capacity of women with disabilities, as enshrined in human rights law, notably Article 12 of the CRPD, which is a pre-condition for the exercise of other rights. In particular, these laws include-

- Section 146 Penal Code which refers to persons with intellectual disabilities as “imbeciles or idiots”. While other sections which used derogatory language were repealed when the Sexual Offences Act came into place, this section is still in the Penal Code.
- Section 43(4)(e) of the Sexual Offences Act presumes people with ‘mental impairment’ cannot give consent for intimate sexual relationships. This section denies the right of women with disabilities to exercise legal capacity with regard to making decisions on intimate sexual relationships. While the section applies to both men and women, women are disproportionately affected because culturally, women with disabilities are seen as asexual. There are cases (for example Republic v Joseph Ngunjiri Nderitu¹) where families of women with intellectual disabilities have attempted to prosecute the woman’s partner under this provision (under the guise that a woman with an intellectual disability cannot give consent for a sexual relationship).
- Section 11(2)(c) of the Marriage Act presumes that persons with any ‘mental disorder or mental disability whether temporary or permanent’ cannot give consent to marriage; this section denies the right of persons with psychosocial disabilities and persons with intellectual disabilities to marry and found a family. Section 73(1) (g), allows annulment of marriage on grounds that a person ‘suffers recurrent bouts of insanity’, while section 66(6)(g) makes ‘insanity’ a ground of divorce. All these sections deny the right to exercise legal capacity in making the decision to marry and found a family in a manner that is discriminatory on grounds of disability. In Kenya, women are already in a position of less power in marriage financially and culturally. Therefore, a woman with ‘mental disability’ is more vulnerable because the husband can divorce her on the ground of ‘insanity’ with catastrophic consequences to her with regard to property and custody of children.
- Section 44 of the Basic Education Act entrenches in law special education as opposed to inclusive education as the main approach towards providing education to children with disabilities which is not in line with global human rights trends on education.

¹ SO. NO.21 of 2015

Questions to the Government

1.1 What policies and programs does the government have to offer specific measures favoring women with disabilities to redress the so called double discrimination of women with disabilities?

1.2 Please provide information on specific measures taken to mainstream the rights of women and girls with disabilities in the work of the National Gender and Equality Commission and the National Council for Persons with Disabilities.

1.3 What measures is the state taking to amend and repeal legislations that are discriminatory for women and girls with disabilities which includes:

- Section 146 Penal Code
- Section 43(4)(e) Sexual Offenses Act
- Section 73(1)(g), Section 66 (6) (g) and Section 11(2)(c) Marriage Act 2014
- Section 44 Basic Education Act
- Section 2 Land Registration Act

1.4 What measures is the government taking to repeal provisions in the law that allows for substitute decision-makers to make medical and financial decisions for women with disabilities? What measures is the state taking to ensure that women and girls with disabilities are not placed in an institutional setting on the consent of substitute decision-makers?

2.Improving the Sexual and Reproductive Health and Rights of women and girls with disabilities.

A study conducted by the Kenya Association for the Intellectually Handicap (KAIH), Shows that women girls with disabilities face disproportionately higher rates of gender-based violence, sexual abuse, neglect, maltreatment and exploitation. It further shows that women and girls with disabilities are twice as likely to experience gender-based violence compared to women and girls without disabilities. For women and girls with intellectual disabilities, they also face numerous challenges in accessing justice² where police and health service providers do not take such cases seriously and do not know how to handle them to ensure they communicate effectively and offer the required services and support. They do not see them as competent witnesses.

² Kenya Association for the Intellectually Handicapped, 'Access to the criminal justice system by persons with intellectual disabilities as victims of crime: barriers and opportunities' 2016 (on file with author)

Women with disabilities are often denied reproductive healthcare information and services and at times are even subjected to forced sterilization. In fact, there are a number of reported cases in Kenya of forced sterilization,³ and with regards to women and girls with disabilities, it is the guardians who are consenting to sterilization on behalf of the women and girls with disabilities without their consent.⁴ In cases where healthcare services are available, they may not be physically accessible for women with varying types of disabilities, and healthcare providers do not know how to accommodate them.

Questions to the Government:

2.1 What measures has the government put in place to ensure that women and girls with disabilities receive appropriate services and accessible information about sexual and reproductive healthcare without discrimination?

2.2 What measures are being taken to address the vulnerability of women and girls with disabilities with regards to sexual violence?

2.3 Is data on sexual violence collected by the government segregated on the basis of disability?

2.4 What measures has the Government taken to prohibit forced sterilization of women and girls with disabilities? Please report on measures taken to provide reparation to survivors of forced sterilization.

3. Providing access to education for women and girls with disabilities

Women and girls with disabilities in Kenya are discriminated in the area of education as State sponsored schools do not have the facilities to ensure inclusive education and children with disabilities with high support needs are denied admission.

While the overall literacy rate for persons with disabilities is 3 percent, UNESCO estimates that it is just 1 percent for women and girls with disabilities.

Research shows that very few girls with disabilities complete primary school; this is especially the case with regard to girls and women with hearing impairments and those with mental disabilities.⁵ Reasons for this include the fact that girls and women with disabilities are vulnerable to sexual abuse; research reveals that many girls and women with disabilities get

³ Mental Disability Advocacy Center, *The Right to Legal Capacity in Kenya*, March 2014 pg. 5

⁴ Mental Disability Advocacy Center, *The Right to Legal Capacity in Kenya*, March 2014 pg. 46 and 71

⁵ Kenya National Commission on Human Rights, *from norm to practice*, A status Report on Implementation of the Rights of Persons with Disabilities in Kenya, July 2014 pg. 10

pregnant and drop out of school before finishing primary education.⁶ As a result, most parents prefer that girls and women with disabilities stay at home than risk going to school because of the fear that they might be molested in schools.⁷

Research carried out by Voluntary Service Overseas (VSO) reveals that many girls with disabilities are made caregivers to their siblings rather than being afforded an equal opportunity to attend school. As a result, they miss out on opportunities to access education compared to their male counterparts.⁸

From the VSO report, only 41.7% of female students with disabilities completed primary school while 52.9% of those without disability did⁹. It is clear that girls with disabilities experience higher dropout rates and therefore there is need for special measures targeted at girls and women with disabilities in order to ensure that they access education on an equal basis with others.

Questions to the Government:

3.1 To what extent are women and girls with disabilities included in mainstream Technical Vocational Education and Training (TIVET)? With regard to TIVET institutions specific to persons with disabilities to what extent are they channeling out competitive skills that are matched to the job market?

3.2 What steps has the government taken to ensure non discriminatory access to education by girls and women with disabilities, especially those who have high level of support needs such as those who are deaf-blind or those with intellectual disabilities?

3.3 What measures has the government taken to ensure enrollment and retention in the mainstream schools for women and girls with disabilities and that teachers receive the education and training in order to be competent to make teaching more inclusive?

4. Equal access to employment and elimination of discrimination in relation to work

Article 27 Kenyan Constitution provides for non discrimination in the area of work including the Persons with Disabilities Act, 2003 but unemployment rates are highest among women with disabilities. The United Nations estimates that 75 percent of women with disabilities are unemployed and women with disabilities who are employed often earn less than their male counterparts and women without disabilities.

⁶Kenya National Commission on Human Rights, *from norm to practice*, A status Report on Implementation of the Rights of Persons with Disabilities in Kenya, July 2014 pg. 10

⁷Ministry of Education, Science and Technology and VSO, *Kenya National Special Needs Education Survey Report*, 2014 pg. 58

⁸ Ministry of Education, Science and Technology and VSO, *Kenya National Special Needs Education Survey Report*, 2014 pg. 13

⁹ Ministry of Education, Science and Technology and VSO, *Kenya National Special Needs Education Survey Report*, 2014 pg. 13

“For many women with disabilities there exists what we term a disability wall. This disability wall is made up of discrete but interconnected systemic and attitudinal barriers that remain entrenched to delay, discourage or prevent women with disabilities from participating in the labour market to their full potential” (Breaching the Disability Wall, September 2006).

Questions to the Government:

4.1 How many women with disabilities have benefitted from the various funds set up by the government that is: UWEZO fund, Youth Enterprise Development Fund, Women Enterprise Fund and Access to Government Procurement Opportunities (AGPO)?

4.2 How many women with disabilities have benefitted from the Constitutional requirement to ensure that at least 5% of the members of the public in elective and appointive bodies are persons with disabilities? [Article 54(2) Kenyan Constitution]

5. Representation and Participation

“The exclusion and violence against women and girls with disabilities in any country carries heavy financial and social consequences. Discrimination against persons with disabilities hinders economic development, limits democracy, and erodes societies. Perhaps because of the challenges they face, women and girls with disabilities are poised to be leaders within their communities and can greatly contribute to the economic development of their countries.” USAID.

Questions to the Government:

5.1 What measures is the government taking to ensure that women with disabilities participate in the formulation of government policies and implementation thereof and to hold public office and perform all public functions at all levels of Government?

5.2 Please provide information on any steps taken to repeal restrictions to be elected and to vote in the Constitution, in particular Art 83(1)(b) and 99(2)(e) in which it is stated that a person can be disqualified from voting and being elected as a member of Parliament if the person is of unsound mind.