



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities Fourteenth session

Summary record of the 206th meeting*

Held at the Palais Wilson, Geneva, on Tuesday, 18 August 2015, at 3 p.m.

Chairperson: Ms. Cisternas Reyes

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* No summary records were issued for the 204th and 205th meetings.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 35 of the Convention

Initial report of Kenya (CRPD/C/KEN/1; CRPD/C/KEN/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*

2. **Mr. Muigai** (Kenya) said that Kenya had been one of the first States to ratify the Convention on the Rights of Persons with Disabilities and the Government was deeply committed to ensuring that the needs and aspirations of persons with disabilities were recognized. The Constitution of Kenya celebrated the dignity and respect of all citizens, including those with disabilities, and espoused important national values, including non-discrimination, inclusion and participation. Since the submission of its initial report, the Government had worked hard to address the barriers and constraints faced by persons with disabilities and it had introduced legislative, policy and administrative measures including: the Persons with Disabilities (Amendment) Bill 2015; the Law of Succession (Amendment) Bill, which touched on the right to inheritance by persons with disabilities; the Evidence (Amendment) Bill, 2011, which included a provision on the legal capacities of persons with mental disabilities and witnesses with disabilities requiring sign language interpreters; and the Person Deprived of Liberty Act 2015, which provided for the humane treatment of detained persons with disabilities. Parliament was also considering an Equal Opportunities Bill to promote equal opportunities for all persons, including persons with disabilities.

3. An indicator on disability mainstreaming had been introduced in performance contracting in the public sector. All ministries and semi-autonomous Government agencies had developed annual targets in order to mainstream disability, including measures to ensure that 5 per cent of all employment was reserved for persons with disabilities; to ensure accessibility of the built environment; and to raise awareness on issues encountered by persons with disabilities.

4. Economic empowerment of persons with disabilities, inclusion and equality of opportunity were promoted through a public procurement legal framework, which granted 30 per cent of public contracts to persons with disabilities, youth and women, to whom grants and interest-free loans were made available. The National Development Fund for Persons with Disabilities provided assistive devices and services that improved mobility and access, including access to education and scholarships. The Government had established cash transfer programmes for persons with disabilities who were exempted from paying income tax. A fund for persons with albinism had been used to raise awareness and to purchase sun screen lotions to protect them from skin cancer. Judicial buildings were being made accessible for wheelchair users and courts were obliged to provide sign language interpretation.

5. Women, children and persons with disabilities were at greater risk in situations of humanitarian emergencies and a contingency plan recognized the needs of all those requiring special protection during disasters. A manual had been developed on mainstreaming disability in disaster and emergency response. Area Advisory Councils addressed cases of abuse of children, including abuse of children with disabilities, and a free child helpline and rehabilitation centres had been set up in each county.

6. The Prohibition of Female Genital Mutilation Act, 2011 provided a legal framework for the total elimination of female genital mutilation in Kenya and an Anti-Female Genital Mutilation Board worked closely with the Government and civil society to protect girls from female genital mutilation and child and early marriage.

7. All citizens of Kenya were entitled to enjoy the benefits of citizenship, including the right to a passport and to full registration. The decentralization of registration services had reduced the distances that persons with disabilities were required to travel in order to secure the relevant documents. Programmes had been introduced to assist persons with disabilities who wished to live independently; there was close collaboration with organizations representing persons with disabilities to provide rehabilitation services in the community, inclusive education and vocational rehabilitation.

8. The participation of children with disabilities in free and compulsory basic education in Kenya was facilitated through the provision of Kenyan sign language, Braille and other appropriate means of communication. About 67 per cent of persons with disabilities had received primary education and 19 per cent had received secondary education. The Ministry of Health was implementing an integrated approach to disability prevention and rehabilitation with community sensitization on disability and early identification and intervention services. The National Council for Persons with Disabilities had provided sign language training to nurses.

9. The right to work of persons with disabilities was enshrined in laws, policies and programmes and a national social protection policy identified persons with disabilities as a vulnerable group requiring protection. A cash transfer programme had been set up for persons with severe disabilities and over 50 per cent of beneficiaries were those with mental disabilities.

10. Kenya expected to achieve, in the short term, the constitutional requirement that 5 per cent of members of elective bodies must be persons with disabilities. Significant strides had been made in protecting the rights of persons with disabilities and in enhancing their economic empowerment. However, the Government acknowledged that more needed to be done and, to that end, it had reached out to peer jurisdictions that had developed and implemented best practices in areas that had proved challenging. Kenya would continue to work towards full implementation of the Convention.

11. **Ms. Chivusia** (Kenya National Commission for Human Rights) said that she spoke on behalf of the institution which had primary responsibility for promoting and protecting human rights in Kenya. Although the Convention had been ratified by the Government of Kenya in 2008, national laws, including the Persons with Disabilities Act 2003, had yet to be amended. Kenyan laws still contained derogatory and demeaning terms, despite the stipulation in the 2010 Constitution that persons with disabilities should be treated with dignity. The Commission recommended that the Government should commit to specific time frames concerning the review of national legislation in order to bring it into compliance with the Convention and the Constitution; the Government should also ratify the Optional Protocol. The rights of women with disabilities were doubly jeopardized through the denial of their sexual and reproductive health rights: the Commission had recorded recent cases of women who had been sterilized without their knowledge or informed consent. Access to the built environment and public transportation was limited for persons with disabilities although some effort had been made to modify existing facilities. Therefore, the Commission requested that the State party should implement the principle of universal design in order to enable persons with disabilities to exercise the right of accessibility; reasonable accommodation alone would not achieve the desired goal. The collection, especially during the forthcoming national census, of disaggregated data on the number of persons with disabilities and showing the diversity of disabilities would facilitate proper planning to improve services for persons with disabilities. The Commission trusted that respect for and protection of the rights of persons with disabilities would continue to improve in Kenya as levels of awareness were raised in

both public and private spheres. The State's engagement in the review process was a positive step.

12. **Mr. Babu** (Country Rapporteur) said that he joined fellow citizens with disabilities of the East African Community (EAC) in being privy to the information and developments promoted in the region, including a policy on disability adopted at a summit of Heads of State in 2012. He welcomed the ratification of the Convention on the Rights of Persons with Disabilities by the Government of Kenya in 2008 and the enactment of the Persons with Disabilities Act, 2003, which demonstrated the Government's commitment to creating an inclusive society that promoted the rights of all citizens. He noted positive developments in Kenya, including the introduction of a social protection programme for persons with disabilities, the participation of persons with disabilities in governance structures and the mainstreaming of disability in both employment and service provision.

13. Nevertheless, in his meetings with representatives of civil society and organizations of persons with disabilities, a number of critical issues had been raised, including the absence of an independent focal point on matters relating to implementation of the Convention and the failure to view disability as a crosscutting socioeconomic and political issue. Mechanisms for meaningful consultation with persons with disabilities on Government decisions were currently established on a spontaneous and ad hoc basis; institutionalized and streamlined processes would be required in order to promote inclusive and disability-sensitive policies and programmes. In addition, there were no adequate processes for including the participation of persons with disabilities and their representative organizations in the County Governments, which were responsible for policy implementation. County Governments did not consider themselves to be bound by international legislation, which they looked upon as the preserve of central Government; therefore, action must be taken to ensure that local policies and laws were in harmony with the international undertakings of the Government of Kenya.

14. There was no clear government plan to collect data and statistics on persons with disabilities and hence the incidence and prevalence of disability in Kenya was unknown, thus making planning and development of programmes that targeted or included persons with disabilities very difficult. The introduction of universal primary education was commendable but the Government had not taken steps to promote the education of young people with disabilities to university level. Most academic institutions did not use sign language and no effort had been made to consult the Kenya National Association of the Deaf on the promotion and development of sign language in accordance with the Convention. Costs related to the provision of sign language interpretation services needed to be borne by the State and not the beneficiaries of the services in order to ensure access to education, health and vital community-related livelihood programmes. Moreover, the relevant standards had not been met to provide adequate sign language interpretation on national television.

15. Although promotion of access to public spaces was included in legislative and policy frameworks, most development and construction programmes did not take care of the accessibility needs of persons with disabilities. Clear guidelines were needed to ensure that provisions on accessibility to the built and physical environments were enforced through disability-specific legislation.

16. He looked forward to a constructive dialogue with the State party, during which due cognizance would be taken of the issues which he had raised, among others.

Articles 1-10

17. **Ms. Quan-Chang** said that the lack of gender equality in the State party, which was even more starkly felt by women with disabilities, was a serious matter of concern. In that regard, she asked whether public plans to improve gender equality covered women and children with disabilities and how de facto equality would be facilitated and implemented. She also expressed deep concern at the widespread situation of abandonment of children with disabilities, including in special children's homes. In the light of ongoing reports of discrimination and threats against persons with albinism, she asked what protection measures were in place to prevent attacks on those people.

18. **Mr. Tatić** requested examples of legal cases in which persons with disabilities who had been victims of discrimination had been granted effective legal remedies. He asked what measures the Office of the Attorney General took to ensure equality for persons with disabilities, how standards on accessibility were promoted, whether specific training on accessibility was offered to architects, engineers and designers, and what mechanisms were in place to monitor the application of disability legislation. He would like to know what support services were available at the international airport in Nairobi for persons with disabilities. For example, what assistance was provided to help persons with disabilities disembarking from aircraft. Were wheelchair users given access to low-floor vehicles? Could persons with disabilities make their way to a hotel, and how many hotels in the capital were accessible for persons with disabilities? Were all government buildings also accessible for wheelchair users? Lastly, he asked whether public information was accessible and available for persons with disabilities, including in electronic format, Braille, easy-to-read versions and sign language.

19. **Ms. Degener** asked whether the Persons with Disabilities Act of 2003 had been amended as planned to incorporate provisions on protection for women with disabilities. While applauding the establishment of children's cabinets to enable children to make their views known, she asked whether there were plans to formulate guidelines to ensure children's real participation in those cabinets.

20. **Mr. Langvad** asked whether refugees and migrant workers with disabilities were considered on an equal footing with Kenyan citizens with disabilities with respect to access to benefits and opportunities. What support was available to organizations of persons with disabilities to guarantee their participation in decision-making processes that affected them? What plans were there to provide for a structured and systematic dialogue with persons with disabilities on a regular basis? How many sign language interpreters were there in the State party and how many were competent to interpret at high-level meetings? Did the State party envisage improving access to transport and infrastructure for persons with disabilities, in particular for wheelchair users, which was essential to enable those persons to reach schools and workplaces? How many cases of discrimination against persons with disabilities had been brought before the courts since 2007 and how many had resulted in a decision in favour of the victim? Lastly, he asked how persons with disabilities living in refugee camps were included in education and employment, were guaranteed access to health and sanitary facilities, and participated in decision-making activities that had an impact on their daily lives.

21. **Mr. Ruskus** emphasized the urgent need to remove derogatory terms referring to persons with disabilities, such as "unsound mind", from domestic legislation and asked when the legal definition of disability would be brought into line with that contained in the Convention, in order to formulate disability policies on that basis and expand awareness-raising campaigns on the rights of persons with disabilities.

22. **Mr. Basharu**, noting that, due to a lack of awareness, persons with disabilities faced various significant challenges, asked whether the Government intended to increase knowledge of the Convention and ensure that awareness-raising programmes reached the whole population, with a view to eliminating prejudices and superstitions about disabilities.

23. **Mr. Kim** Hyung Shik asked when the National Disability Policy had been adopted and implemented, whether it would serve as an action plan for the application of the Convention, and whether persons with disabilities had been involved in its development. He would appreciate further information on the envisaged reform of the Persons with Disabilities Act to take into account the principles enshrined in the Convention, particularly equality and non-discrimination.

24. **Ms. Kingston** thanked NGOs for their contributions prior to the meeting with the State party. Such contributions were always welcome and were vital to the Committee's work. She asked whether the processes to implement the Convention had included persons with diverse disabilities, such as deaf persons and persons with intellectual and psychosocial disabilities. Further information would also be appreciated on the time frame for the ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Given that many of the laws at county government level were not in line with the Convention, she asked whether there were plans to mainstream disability in the policies and programmes of local authorities. How did the State party intend to address multiple or intersectional disability, especially with regard to women, older persons, pastoralists, persons with intellectual and psychosocial disabilities, and persons living with HIV/AIDS? Lastly, she wondered what plans had been prepared to raise awareness of the Convention and translate it into Swahili.

25. **Mr. Lovász** asked for further information on the provision of training in sign language for nurses and the installation of ramps in health facilities within the framework of the National Action Plan on Accessibility Rights. Given that the mobile technology penetration rate had recently reached 80 per cent in the State party, he asked what steps had been taken to provide access to information and communication technologies for persons with disabilities, and whether measures were taken to promote and improve accessibility to the built environment through assistive devices and to sanction non-compliance with adjustment orders.

26. **Mr. Buntan** asked to what extent public procurement was used to guarantee access to information and communication technologies and assistive technologies, and to promote accessible environments.

27. **Mr. Al-Tarawneh** would like to know how the State party assessed its compliance with the Convention and to what extent the Convention was really implemented in society.

28. **Mr. Pyaneandee** asked how many people with disabilities had vindicated their rights under the Constitution since 2011. What efforts had been made to strengthen the National Human Rights and Equality Commission, such as ensuring representativeness of persons with disabilities and carrying out wide public consultation on the application of the Convention?

29. **The Chairperson**, speaking as a member of the Committee, said that, while she welcomed the adoption of the law to prohibit female genital mutilation in line with recommendations of the Committee on the Elimination of Discrimination against Women, she was concerned that the practice persisted and asked what action was taken to enforce the law and end that flagrant violation of the rights of women and of women with disabilities.

The meeting was suspended at 4.10 p.m. and resumed at 4.35 p.m.

30. **Mr. Muigai** (Kenya) said that the Committee's observations and suggestions would spur the Government to reconsider some of its approaches. Replying to the question raised about the lack of domestic legislation covering all the provisions of the Convention, he said that the Government's priority was to fulfil the obligations under the Convention. Efforts were being made to streamline, harmonize and update the current legal framework. Negotiations were under way regarding the individual communications mechanism under the Optional Protocol. Pointing out that the constitutional provision on non-discrimination was broader than many United Nations conventions, he said that there had been no intention of denigrating any segment of the population and that any terms considered offensive might be the result of translation. Nevertheless, when consensus was reached regarding what amendments could or could not be made without jeopardizing the stability and continuity of the Constitution, the issue of language might be tackled. While the delegation took note of the Committee's concerns, it was important to distinguish between the Government's direct sphere of action and the areas over which it merely had advisory authority. For example, it could only encourage political parties to include candidates with disabilities.

31. **Mr. Ndubai** (Kenya) said that article 10 of the Constitution addressed inclusiveness, including in the private sector, and that 2 per cent of jobs were reserved for workers with disabilities. The Government was contemplating additional affirmative action measures, such as a 5 per cent quota of women with disabilities in elected office. Currently, both the National Assembly and the Senate were required to have two members with disabilities, one man and one woman. While there was a problem with the representation of persons with disabilities in the county assemblies, the Government had taken legal measures in order to have affirmative action enforced. According to regulations, if the chairperson of the National Council for Persons with Disabilities was a man, the vice-chairperson had to be a woman. Disabled women's organizations were represented in a consultative forum that sat quarterly. A bill had been submitted to the parliament regarding the translation of the Convention into Swahili and other national languages and, eventually, its publication in Braille. The Persons with Disabilities Act was being implemented and, while there were issues surrounding the right of women with disabilities to have a family, they were ensured access to sexual and reproductive services.

32. **Mr. Sankok** (Kenya) pointed out that the composition of the delegation bore witness to the country's commitment to the rights of persons with disabilities. The National Action Plan on Accessibility Rights included 13 strategic objectives to increase the accessibility not only of the built environment but also of information and should be launched in three months. The Government had allocated a budget of over 100 million shillings to the National Council for Persons with Disabilities for the provision of assistive devices, including wheelchairs, crutches, hearing aids and white canes. The National Council worked with the mainstream media to ensure that information was accessible to all, including hearing-impaired persons. Sign language interpretation was mandatory for all news broadcasts on two of the media outlets. The National Council also promoted measures for the representation of persons with disabilities in top public policymaking. On 30 April 2015, it had published a notice in the Official Gazette regarding the issuance of appropriate adjustment orders to building owners and service providers. The response had been positive and the National Council was prepared to take legal action under the Persons with Disabilities Act in the event of non-compliance with such orders. The owners of private entities could also be fined for non-compliance. The National Council had even blocked plans to refurbish a national referral and teaching hospital for failing to take account of accessibility, and a new referral hospital was being built instead, at a cost of 28 billion

shillings. The Ministry of Health had unlocked substantial funds for the modification of toilets and the construction of ramps. Lastly, more than 130 nurses and rehabilitation personnel had completed sign language training.

33. **Mr. Ismail** (Kenya) said that the participation of all children, including those with disabilities, in decision-making regarding issues of relevance to them was covered in the Constitution, the Children's Act and the National Children's Policy. The Government had set up 47 county children's assemblies, which met at least twice a year at the county level and once a year nationally. Fifteen per cent of the child representatives had disabilities and the sergeant-at-arms of the National Children Assembly also had a disability. In 2014, a child with disabilities had represented the children of Kenya at a forum on the post-2015 development agenda in London. All children had a right to the highest standard of health care and all children under 5 received care in public facilities free of charge. The Government provided assistive devices to children with disabilities in urban and rural areas alike. Public servants received training in the particular needs of children with disabilities and in how to communicate with them.

34. **Ms. Chweya** (Kenya) said that the policy was to prioritize and fast-track court cases on human rights and that anyone could file a complaint for human rights violations. The courts took account of non-discrimination provisions in their decisions.

35. **Mr. Muigai** (Kenya) said that, by regional standards, the State party was quite advanced in its use of information and communications technology, which was something that could be exploited. Replying to Mr. Al-Tarawneh's question, he said that the State party would give itself a rating of 7.5/10, as the level of commitment to disability issues at the highest level of Government could not be denied, and even critics had to admit that it had the best intentions. The State party wished to be seen as a pioneer in that area but was prepared to acknowledge that there was still room for improvement. Forced sterilization was most definitely not a State policy, and although some cases might have occurred, the Government certainly did not condone the practice, and would take the necessary legal action if cases came to its attention. The Government was committed to the protection of all persons with any form of disability because it took seriously both its treaty obligations and its duty towards all of its citizens. The State's record on albinism spoke for itself. The Government had reaffirmed and promoted protection measures far beyond what was seen in other parts of the world.

Articles 11-20

36. **Ms. Quan-Chang** said that she would welcome further information concerning the abandonment of children with disabilities. Many everyday practices constituted violations of the rights of persons with disabilities, and even if they were not supported by the State, the Government had a responsibility to prevent such abuses and to prosecute the perpetrators. She asked about the number of persons with disabilities institutionalized against their will. The Committee had heard reports of acts of torture and cruel, inhuman and degrading treatment in institutions, including psychiatric hospitals; she asked what mechanisms were in place to monitor the situation of institutionalized persons and to prevent such abuses from taking place. Expressing concern at the limited access to justice for persons with disabilities, particularly women and girls with disabilities who had been the victims of violence, and to the lack of credibility given to their testimony, she asked what the State party was doing to improve protection and access to justice for those persons.

37. **Mr. Tatić** asked whether training on accessibility standards was provided systematically. He would be interested to hear about any efforts to publicize and

promote the Committee's general comment No. 2 on accessibility. Noting that Kenya had sadly suffered terrorist attacks in recent years, he wondered whether training provided to the security forces included specific guidance on how to give emergency information to civilians who were deaf or had intellectual disabilities. He also requested information on training provided to members of the judiciary and civil servants concerning national anti-discrimination legislation and the Convention.

38. **Mr. Buntan** said that he would welcome information on the availability of assistive technology and accessible ICT for persons with disabilities. With regard to access to justice, he wondered whether any efforts were made to promote the participation of persons with disabilities in the legal professions, and how the State party supported persons with disabilities working as lawyers or judges, for example in terms of reasonable accommodation.

39. **Ms. Kingston** said that she would be grateful for a reply to her question on intersectional discrimination against older persons and persons living with HIV, among others. She asked what role organizations of persons with disabilities had played in developing the draft National Disaster Management Policy and what support policies were in place for displaced persons in the event of humanitarian emergencies. She requested clarification of whether the term "mental disabilities" was used to refer to psychosocial or intellectual disabilities. She asked whether the State party had any plans to review the new Mental Health Act, which was not in line with the Convention. Expressing concern that some persons with disabilities were subjected to severe physical harm in the false belief that they were possessed by evil spirits and that some women with disabilities were subjected to involuntary sterilization, she asked what steps the State party intended to take to incorporate the principle of free and informed consent into the law and to stop forced sterilization. She would be interested to know about plans to move towards supported decision-making for persons with disabilities. She would welcome information on accessible shelters and helplines for women with disabilities who were the victims of violence, birth registration of persons with intellectual disabilities, and personal mobility for deaf-blind persons.

40. **Ms. Degener** asked whether the State party had considered revising the provisions of the Children's Act and the Mental Health Act, which allowed the deprivation of legal capacity. Referring to the case of *Wilson Morara Siringi v. Republic of Kenya* mentioned in the replies to the list of issues, which the State party said showed a progressive understanding of article 12 in the courts, she said that the man's conviction for the rape of a woman with an intellectual disability had been overturned on the valid grounds that the fact that she had an intellectual disability did not mean that she was unable to give sexual consent. However, it was striking that, although there had been a thorough examination of whether there was evidence of intercourse and whether the woman was intelligent enough to give consent, the alleged victim had never actually been asked if she had wanted to have intercourse with the man in question, which to her pointed to an issue under article 13.

41. **Mr. Langvad** asked what initiatives were being undertaken to ensure that all children born with disabilities, including those born in refugee camps, were registered as citizens at birth. He would also be interested to know the consequences of not being registered.

42. **Mr. You Liang**, expressing concern that many persons with disabilities continued to live in institutions and were thus isolated from society, asked about the number of such institutions in the State party and what measures were being taken to promote deinstitutionalization and support persons with disabilities to enable them to live independently in the community. He also wished to know what efforts were being

made to provide persons with disabilities with affordable, high-quality assistive devices.

43. **Mr. Kim Hyung Shik** said that it was important to distinguish between traditional forms of communal living in the State party and the institutionalization of persons with disabilities. He would be interested to know how many persons with disabilities were living in institutions and what measures were taken to encourage independent living.

44. **Mr. Lovászy**, noting the high level of mobile phone penetration in the State party, asked what steps were being considered to ensure equal access for deaf and blind persons to relevant news and alarms in the context of disaster and emergency management.

45. **Mr. Pyaneandee** asked the delegation to indicate the number of cases brought before the courts by persons with disabilities since 2010. He wondered whether the State party had any plans to strengthen the National Human Rights and Equality Commission in order to increase disability representation. He asked what policies were in place to improve access to justice for persons with disabilities, including reasonable accommodation and legal aid.

46. **The Chairperson**, speaking as a member of the Committee, said that she would be interested to know why, in practice, the testimony provided by persons with disabilities in criminal proceedings was considered to lack credibility. She also asked how the State party guaranteed due process for persons with disabilities, regardless of their role in the proceedings and the type of proceedings. A response to the questions concerning the scope of protection for refugees and migrants with disabilities remained outstanding.

The meeting rose at 5.45 p.m.