

## Persons with Disability Act

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### Introduction

Disability is an impairment that may be cognitive, developmental, intellectual, mental, physical, sensory or some combination of these; it substantially affects a person's life activities and may be present from birth or occur during a person's lifetime. Persons with disabilities find themselves on the periphery of institutional leadership, unrepresented in positions of power and authority because of discriminations and abuse against them. These barriers seem to cause glass ceiling that they can barely break. The marginalization of the Kenyan persons with disabilities in decision making process in the post-independence period is largely blamed on authoritarian and segregating systems of governance that has been practiced by various regimes in Kenya's post-colonial period.

In the field of education, perceptions towards children and adults with disabilities have changed significantly. The greatest challenge in education today, according to Birch and Johnston (1975), is ensuring that all schools are readily and fully accessible to persons with disabilities as to the non-disabled. From every standpoint, whether that of human rights, economically prepared, fitting in the social life, opinions remain different from different communities. The main interest nationally, the key thing is to serve the children with disabilities equally without discrimination.

All humans need to put this concept into consideration by ignoring the traditional way of segregating persons with disabilities. Many literatures have been reviewed and indicate the importance of changes in attitudes, behavior and embarrassing them into education systems. Mainstreaming has been key in our schools and efforts are being made to make children with disabilities comfortable.

This should not be to specific individuals but in the social and cultural atmosphere that promotes those who are helpless and those with disabilities. The society has labeled these people "handicapped" and are treated differently by different communities of individuals instead of the ability that they have (Birch, 1974 pg 12-13).

The legislation that was done recently internationally that has an increasing light on the philosophy of inclusion and inclusive schooling. All these are put together in the UNESCO' education policy, this was adopted in the Salamanca Conference 1994 (UNESCO, 1994), inclusive education is slowly being embraced in our institutions of learning across the globe

as a means of eradicating the biased attitudes towards learners with disabilities. (Pearl Subban and Umesh Sharma, 2006). The Salamanca Statement and Framework for Action put in practice that education for every individual is a basic right for all humans, despite the fact that individuals have differences, (UNESCO, 1994). Further, International focus through the “Education for All”, a 1989 United Nation Convention on the Rights of Children; the 1990 Jomtien Declaration; and the World Summit on children, required countries to commit themselves in providing education to all children including the marginalized ones (United Nations Organization, 1989). These international developments have brought a lot of impact on the national policy and education and practice.

The right to education has been globally acknowledged as an overarching right. In Kenya, the right to education is explicitly provided for in Article 53(b) of the Kenya Constitution 2010 which guarantees the right to free and compulsory basic education for every child. Article 54 of the Constitution Particularly targets persons with disabilities and provides that persons with disabilities have a right to access educational institutions and facilitates that are into to the extent compatible with their interests and needs (GOK, 2010).

Global Statistics indicates that approximately one billion people have some form of disability with over four in every five persons living in developing countries, out of these; 93 million are children under the age of 14 living with moderate or severe disability (UNESCO, 2015). The Global Monitoring Report 2010 stated that an estimated 77 million children were excluded from education, a third were children with disabilities (UNESCO, 2010).

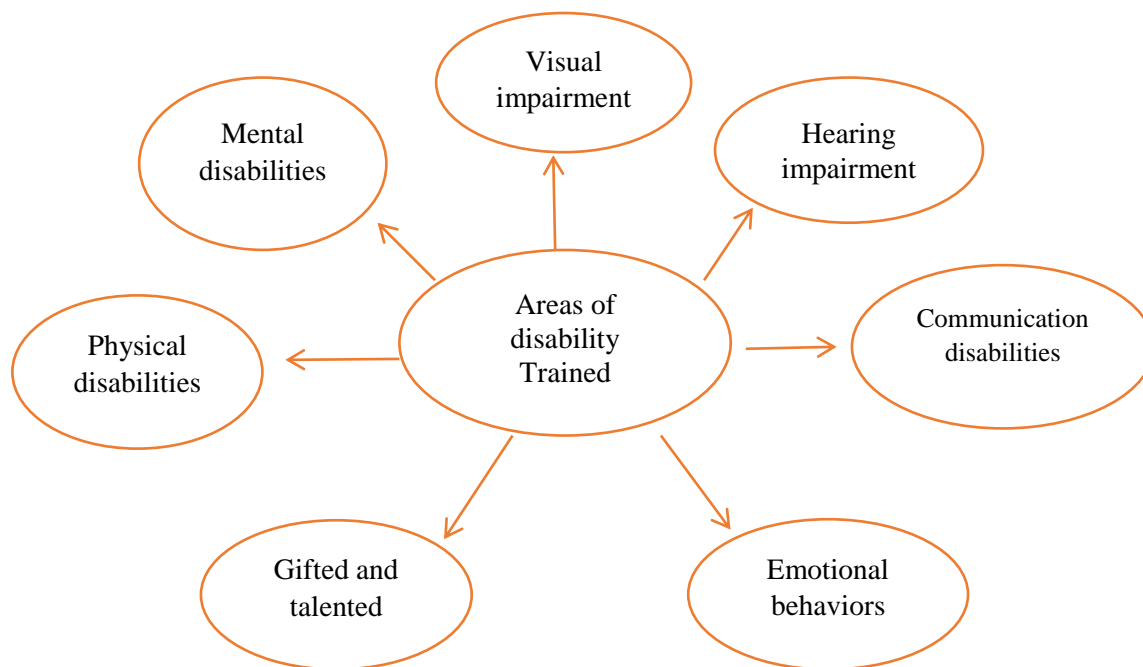
### **Community support for education of children with disabilities**

Many countries across the globe it is clear that very little or no support is given to children with disabilities to receive an education. This could be due to a number of factors including Socio-cultural factors, Poverty, lack of awareness, stigmatization and negative attitudes. These children face discrimination from both their families and the community.

In Kenya, Isiolo for example, a child born with disabilities is kept away from the family house and is tethered in the goats’ pen since such a child is an abomination; In Kisii, it is a taboo for a woman to give birth to a child with disabilities and if this happens, the woman is chased from her matrimonial home. Negative attitudes on disability are also cited as another reason for children with disabilities not attending schools. Some parents hide their children with disabilities due to fear and shame while others do not see the need to invest in their education since they perceive them as persons who can never excel in education or even in life. Poverty recurred has also been cited as another factor that causes families to keep children with disabilities a way from schools. Some children with disability require assistive devices, specialized transport to school, extra expenses to attend special schools and consistent medical attention. There seem to be general lack of knowledge about disability leading to negligence of children by parents and community. Other researchers have also quoted lack of appropriate infrastructure in both regular and special schools; low transition rates and lack of completion of a level; schools charging high levies and inadequate needs education.

### **Challenges in training teachers of children with disabilities**

The Kenya Institute of Special Education (KISE) is a semi–autonomous government agency under the Ministry of Education Science and Technology. Its core mandate is to train teachers on special needs education. They train teachers in various areas of disability.



### Types of disability trained for at KISE

From the report by the state of World's Children Report (2013) a society cannot be equitable unless all children are included, and children with disabilities cannot be included unless sound data collection and analysis render them visible (UNICEF, 2013, p. 63).

Lack of accurate data on the number of children in educational with disabilities in educational institutions is a sure indicator that there are gaps in planning for children with disabilities. According to Caroline Bii and Larissa Taylor (2013), accurate data on the population of children with disabilities is critical to inform planning for their needs within educational institutions.

According to the 1993 U.N Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993). "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for youth and adults with disabilities in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system". This was a specific support for inclusive education.

In Kenya, the Constitution supports inclusive education. The Persons with Disabilities Act, 2003-part 3 article 18 states that:

- No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course;
- Learning institutions shall consider the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, explanations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations;
- Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established for formal education, skill development and self-reliance"

At the same time the Ministry of Education adopted a national policy on special needs education in the 2010 Kenyan Constitution. The government of Kenya is also part of these deal as a signatory to the International Conventions and declarations such as UN declaration of the rights children (1948), World Conference on Education for All (EFA (1990). World Conference on Special Needs Education (1994). Dakar Forum for Action (2002) and the UN Convention on the rights of Persons with Disabilities (2006). This is also provided in the Children's Act (2001).

Despite the efforts and achievements of Education for All (EFA) and the Sustainable Development Goals (SDGs), children with disabilities remain one of the main groups that continue to be excluded from education around the world. An Act of parliament was enacted to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the National Council for persons with Disabilities and for connection purposes. (Persons with Disability Act, 2003). In the Kenyan new constitution, people with disability must be catered for depending on the needs of specific people being provided for. From various researchers, it has been documented that approximately 1.7 million people in Kenya live with disabilities (2008) contend that only 39% of this population has attended a mainstream primary school and a mere 9% had attended high school. National Council for Population and Development and Sustainable Development Goals. Such exclusion from education further perpetuates the cycle of poverty and disability.

In Kenya, Special needs education is provided in special s schools integrated units and inclusive settings in regular schools. However, majority of those children with disabilities are not in school. Ministry of Education (MoE) (2009) reported that by 1999 only 22000 learners with special needs enrolled in schools with the number increasing to 26885 in2003 and 45000 in 2008. Njoka *et al.*, (2011) also noted that despite the introduction of FPE in 2003, about 1 million children of school going age were still out of school. These children, as a matter of fact are inclusive of the marginalized and vulnerable children (MVC) such as those with special needs of those affected by HIV/AIDS as well as those in urban slums. It is in the light of such statistics, that the relation ale of this assessment and participating in education. This certainly being an attempt to contribution to the global rating goal of a more educated and inclusive society.

The Basic Education Act 14 of 2013 ensures the right of children with disabilities to free and compulsory education. The Act continues to perpetuate discrimination against Kenyan children with disabilities. The Law provides reasonable accommodation, which amount to disability discrimination, the Basic Education Act creates a system in which all children with disabilities are required to attend separate schools, solely based on their disability. Although an inclusive education system may not be possible to achieve in Kenya overnight, the law does not do enough to promote equal educational opportunities for children with disabilities.

At the very least, children with disabilities should be guarantee red the right to an education in the least restrictive environment, this will help ensure that children with disabilities are provided for with the opportunity to learn with their non- disabled peers. Children with disabilities have been subjected to discrimination in education for the longest time in Kenya.

According to the National Survey for Persons with Disabilities have some primary education. Some of whom attend public schools with non- disabled children. Instead some of them have been forced not to attend schools at all and others are forced to attend special schools which

are only meant for special learners for specific disabilities. These special schools have been developed based on the assumption that learners without disabilities would not want to attend and vice versa. This means that learners with disabilities have been denied their basic rights to education on an equal basis with their non-disabled peers.

Kenyan constitution of August, 2010, was adopted and it prohibits discrimination against learners with disabilities in education. In article 54 of the constitution, it specifies and guarantees every child in Kenya the right to free and basic education. The Basic Education Act 14 of 2013. This Act ensures free and compulsory education for all children in Kenya irrespective of their status.

Not only does the act recognize the importance of the right to a free basic education for all children with disabilities but it is specifically prohibiting schools especially public institutions from denying admissions to learners with disabilities and at the same time, the act also the creation of special public education system for students with disabilities.

### **The rights of learners with disabilities to education under Basic Education Act 14, 2013**

This Act came to being on 25th January 2013. It addresses the working relationship between the county and the National Government in providing education even though education was not devolved.

The Act established free and compulsory education and also creating special schools for learners with disabilities.

It also requires the government to implement the right of every child as an obligation in the international law and also mandates the government to establish different schools in order to achieve these fundamental rights to education for every child in Kenya. The act also provides that no public school may charge a fee for admission to school. It also ensures that a criminal offence is put in place for parents who fail to take their children to school and this goes with a penalty of two years imprisonment. This mandates the government to ensure that no child is discriminated against in their access to education.

### **The right of children with disabilities in Kenya to equality and non-discrimination**

This Idea of discrimination can be understood in a different way as treating the same situation differently without any reasonable justification. From the constitution, the act states that there should not be any kind of discrimination on the basis of disability. The law at the same time allows affirmative action as a way of handling people with special needs. This is done by establishing special schools to accommodate learners with disabilities.

Different groups still feel that this is another form of discrimination though in a very special way. This has been to some extent resisted by some countries and even the European court of Human Rights who have held that the creation of special schools amounts to prohibited discrimination and feel that the remedy would be integrating these learners with disabilities into regular schools and to provide them with any assistance that they may need and let them feel as part of the larger society. These children need and deserve better provision in the act so that they also feel comfortable. This kind of discrimination should not be referred to as a flip of the other side of the coin. They need equal treatment as all human beings are not the same. To attain formal equality, these persons with special needs need to be treated with dignity and not as a comparative of people of two groups. With or without disabilities, children need same kind of treatment to ensure equal results (UNICEF, 2003).

The government of Kenya is committed to the provision of equal access to quality and relevant education and training opportunities to all Kenyans. Although this policy has been documented, very little has been done to ensure that children with disabilities enjoy the rights to education. Ministry of Education (2009) the National Special Needs Policy Framework). Even with very strict legislation in place, children with disabilities still suffer and very severe impact of discrimination and challenges regarding the attitude of the surrounding including people believed to be very close to them. Despite the Laws, policies and framework put in place, the Government of Kenya is still committed to protect the human rights which include education. Persons with disabilities are still powerless, defenseless and they look at their limited access to education, economic resources, exclusion from social participation.

These children look upon their cultural image of childhood as being a state of their weakness, dependency and incompetence (Educating Children with Disabilities in Africa (2004): Towards a Policy of Inclusion).

According to UNESCO, in many communities/ societies, children with disabilities are likely to more vulnerable their counterparts. Disability is one of the least visible but most potent factors in educational marginalization.

It is believed that through education many attitudes are likely to change towards persons with disabilities; this remains still a dream than reality. Most of the disabled children have not received the best treatment from their counterparts as a result of mainstreaming. The negative thoughts are reportedly to be alive.

The framework for action on special need education 1999, The Sustainable Development Goals, Education for All (EFA) by 2015, the children Act 2001, the persons with Disability Act of 2003 (amended 2012), it has been noted with a lot of concern that there is a significant gap between policy and practice. It is also reported that the education officials even lack the capacity (and in some cases the will) to provide the rights of boys and girls with disabilities to education. Education is believed to be a powerful instrument of social change, often initiates upward trend in social structure, is a fundamental human right for every one and yet considerable numbers of children with disabilities are still out of school due to social exclusion, ignorance prejudice discrimination and poverty (UNICEF, 2013).

Inclusive education supposes a real change at both policy and practice levels regarding education learners are placed at the Centre of a system that needs to be able to recognize, accept and respond to learner diversity. Inclusive education aims to respond to the principles of efficiency, equality where diversity is perceived as an asset. Learners also need to be prepared to engage in society to access meaningful citizenship and acknowledge the values of human rights, freedom, tolerance and non-discrimination. Those who do attend school are more likely to be excluded in the classroom and finally drop out (UNESCO, 2015).

The global initiative on out of school children (2015) reports that even if children with disabilities are able to gain access to school, they are particularly disadvantaged by non-inclusive teaching methods, inflexible curricular and examination system.

### **Perception of children with disability by community**

A study conducted by the ministry of Education in collaboration with voluntary services overseas (VSO) jitolee, indicates that more than 16 percent of children with disabilities are

out of school while 18.4 percent of children and youth with disabilities were either total or partial orphans.

The study adds that from the 386 education institutions survey, there was a total enrollment of 13,389 pupils with disabilities, with 1,135 teachers having special needs training in at least one of the 15 categories of disabilities and special of 58 percent than male at 42 percent. One in every 10 Kenyans below the age of 21 is disabled a survey has revealed. This is a comparison with the global estimates of about two of 10 persons.

However, the study still revealed that very high teacher pupil ratios were observed among the less silent special needs categories such as specific learning disabilities (105:1) emotional and behavioral disorders (33:1), speech and language disorders (48:1) multiple disabilities and deaf blind. The study also revealed that the physical infrastructure and resources in many schools were not adequate and relevant for learners with disabilities. For instance, even though most schools had infrastructure facilities such as toilets and classrooms, some of the facilities were inaccessible to learners with disabilities due to the absence of ramps and adapted desks, toilets and doors, "it reports.

For many years, perceptions of different individuals towards disability have varied significantly from one community to the other. Though there are limited literatures in disability history; however, it continues to pose great challenges to learners of disability in their process to trace the development and formation of perceptions toward persons with disabilities.

From time immemorial, people's perception on disabilities has varied from community to community. In Ghana, people with feeble- mind were treated with awe. They believed that the retarded were the reincarnated of a deity. They were treated with great kindness. (Field, 1937) It has been observed by Franzen (1990) that in some communities in Kenya and Zimbabwe, a child with disability is a symbol of a curse befalling the whole family. Such a child is a shame to the whole family, hence their rejection by the family or the community. The Society need to change their attitude since these learners are abled differently and there is so much that they can do to benefit the society.

This far, efforts to eliminate all forms of prejudices and discrimination against persons with disabilities will soon be realized with the UN agencies, governments and national and international disability organizations. An example is the UN Convention on the Rights of Persons with Disabilities (2006) that was signed and ratified by majority of UN member countries.

### Conclusion

Notwithstanding, the Kenya Government has portrayed commitment in terms of ratification of international treaties and conventions. However, the implementation has been hampered by lack of documentation. Sessional Paper no. 14 of 2012 cites that one of the challenges related to access and equity in the provision of education and training to children with special needs is the slow implementation of guidelines on Special Needs Education (SNE) Policy and inclusive education (GOK, 2012).

There are several opportunities that could be tapped by various stakeholders to improve access but there still remain challenges that need to be addressed to enable all children with disabilities benefit fully from free education offered by the government.

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**References**

1. Birch, J.A.C.K. and Johnstone, B.K. 1975. Mainstreaming a new public policy in Education. Presented at the Annual Convention of the American Association of School Administrators, Dallas, Texas.
2. Birch, J.W. 1974. Mainstreaming: Educable mentally retarded children in regular classes. Reston, Va, Council for exceptional children.
3. Bureau of statistics (KNBS). 2008. Quotes Daniel Mort (World Bank, 2007), Government printer, Nairobi.
4. Caroline Bii and Larissa Taylor. 2013. Inclusive Education in Kenya Assessment Report Kenya/ Somalia program April 2013.
5. Franzel, B. 1990. Attitudes towards people with disabilities in Kenya and Zimbabwe.
6. GOK, 2010. The Constitution of Kenya, 2010. Nairobi: Government printers.
7. Government of Kenya, 2009. The national special needs education policy framework.
8. MoE, 2009. The National Special Needs Education Policy Framework: Republic of Kenya.
9. Nairobi: Ministry of Education (MOE).
10. Njoka, E., Riechi, A., Obero, C., Kemunto, W. and Muraya, D. 2011. Towards Inclusive and Equitable Basic Education System: Kenya's experience. ADEA Working Document.
11. Pearl Subban and Umesh Sharma. 2006. Primary school teachers' perceptions of inclusive education in Victoria. International Journal on Special Education, 11(1): 42-52.
12. The persons with Disability Act, 2003, Government printer Nairobi.
13. UNESCO, 2010. Reaching the marginalized: Education for All Global Monitoring Report: UNESCO.
14. UNESCO, 2015. The Right to Education for Persons with Disabilities.
15. UNESCO. 1994. The Salamanca Statement and Framework for Action on Special Needs Education. Salamanca, Spain: World Conference on Special Needs Education: Access and Quality.
16. UNICEF, 2013. The state of the world's children: children with disabilities: United Nations Children's Fund.