



CREAD

STAKEHOLDER SUBMISSION

UNIVERSAL PERIODIC REVIEW
of
KENYA

May, 2010

Submitted by:

Partners in the D.R.P.I.-Kenya Project:

African Union of the Blind (A.F.U.B.)

Disability Rights Promotion International (D.R.P.I.)

Kenya Union of the Blind (K.U.B.)

Centre for Disability Rights Education & Advocacy (CREAD)

EXECUTIVE SUMMARY

1. This submission is based on the monitoring findings of the D.R.P.I.-Kenya project.
2. In Kenya, a large percentage of adults with disabilities reported experiencing unequal and unfair treatment on the grounds of their disability. Of those reporting to have experienced discrimination, a large number of individuals reported the denial of their right to self determination and the ability to make decisions on issues affecting their own lives.
3. Gender norms and roles contribute to placing the rights of women with disabilities at greater risk than men's. Indeed, traditional views that portray women in the family as dependent and submissive increase the vulnerability of women with disabilities to discrimination.
4. Despite being party to major international human rights instruments including the U.N. *Convention on the Rights of Persons with Disabilities* and having a national constitution that prohibits discrimination, Kenya's anti-discrimination laws have not been adequately enforced in the context of disability.
5. The full country report from the D.R.P.I.-Kenya project – *State of Disabled Peoples' Rights in Kenya (2007)* – is attached to this submission. That report discusses these and other key findings in detail.

METHODOLOGY

6. This is a joint submission of the partners in the D.R.P.I.-Kenya project. Three of the partners - Africa Union of the Blind (A.F.U.B.), Kenya Union of the Blind (K.U.B.) and Centre for Disability Rights Education & Advocacy (CREAD) - are organizations of persons with disabilities working in Kenya. The fourth partner - Disability Rights Promotion International (D.R.P.I.) - is an international project working to build capacity and systems to monitor the rights of persons with disabilities around the world¹. As with all D.R.P.I. projects, persons with disabilities and their representative organizations led the project, acting as managers, coordinators, monitors, and data analysts.
7. Project activities spanned from February, 2006 to May, 2007. Monitors collected and analyzed national legislation, programs, policy and case law on disability. Monitors also conducted and analyzed 95 face-to-face interviews with persons with a range of impairments in three regions of the country: Rift Valley, Nairobi and Nyanza. Interviewees were asked to share their own lived experiences.

¹Further project information can be access at: Disability Rights Promotion International www.yorku.ca/drpi and Africa Union of the Blind [www. http://www.afub-uafa.org](http://www.afub-uafa.org).

8. Monitoring activities investigated how the barriers and obstacles faced by people with disabilities affect their rights through the examination of four key human rights principles: dignity (perceptions of self-worth), autonomy (ability to make choices and decisions on issues that affect one's own life), equality (having disability differences respected and disadvantages addressed and being able to participate fully on equal terms), and inclusion (being recognized and valued as equal participants and having needs understood as integral to the social and economic order and not identified as special needs).

CHALLENGES AND CONSTRAINTS

9. The systemic (laws, policies, programs and case law) and individual experiences (interviews) data collected indicated the following major challenges and constraints to the full realization of rights by people with disabilities in Kenya:

Constitutional and Legislative Measures

10. Kenya is party to most international human rights instruments including the (C.R.P.D.). The *Constitution of Kenya*, the fundamental law of the country, *has* provisions guaranteeing the human rights and liberties of all citizens and prohibits discrimination on several grounds. Discrimination on the basis of disability however, is not explicitly prohibited.² Moreover, the *Constitution* contains provisions that could be discriminatory to persons with disabilities by placing undue obstacles to their participation in political life and access to public office.

11. Kenya has developed comprehensive legislation protecting the rights of people with disabilities – the *Persons with Disabilities Act*, (P.D.A.), 2003. The P.D.A. prohibits all forms of discrimination against persons with disabilities in various sectors including education, employment, health, and the provision of services in both the public and private sector, among others. It also creates the National Council of Persons with Disabilities as a statutory organ to oversee the welfare of people with disabilities. However, the fact that the P.D.A. does not have adequate enforcement mechanisms severely hampers its impact on the ground. In addition, despite preparation by the Kenyan National Council for Persons with Disabilities of a strategic plan to carry out the mandate of the P.D.A., a lack of resources has impeded its implementation.

² Note that the Draft Constitution, which was rejected in November 2005, did specifically prohibit discrimination on the basis of disability in Article 37 (1).

Discrimination on the basis of disability

12. More than 86% of the people with disabilities who were interviewed reported being treated unfairly and unequally on the basis of their disability. Treatment included exploitation by family members; being given different food than other members of the family and not being bought clothes when other members of the family were. In other cases, the person with a disability was forced to sleep in an unsuitable environment while other family members were not. Employees with disabilities were discriminated against and sometimes paid a much lower salary than their counterparts without disabilities. In many cases, both boys and girls with disabilities were not sent to school.

Income and Social Supports

13. Kenya does not have a welfare system to support sectors of the population who are less advantaged such as those who are unemployed, aged or have disabilities. A National Development Fund provides only limited financial support to people with disabilities and their families on a means-tested basis. Our investigations found that the limited government supports and services available have reached only a small percentage of persons with disabilities and are unequally distributed between and among various disabilities.

Inclusion

14. People living with disabilities face barriers to participation including discriminatory attitudes, abuse, violence and inaccessible environments. These barriers lead to segregation and exclusion in the family context, at work, at school and in society. Disability is often considered to be a burden and shameful. The Preamble of the P.D.A. cites equalization of opportunities for persons with disabilities as one of its aims. The Draft National Policy on Persons with Disabilities envisions a Kenyan society that is fully inclusive and that provides equal opportunities for persons with disabilities³. However, our investigations revealed a significant gap between these positive policy aspirations and the reality on the ground for people with disabilities in Kenya.

Women facing Multiple Discrimination

15. Access to fundamental human rights principles was found to be different for women and men with disabilities. For both men and women, experiences of inequality, exclusion, disrespect and lack of autonomy outnumbered positive experiences; however, women were more likely to be denied autonomy and to be treated with disrespect than men. Incidences of abuse and violence were not only more common for women with disabilities, as they are generally for women; they were also reported to occur most often in the domestic sphere, at the hands of parents, partners and siblings. Men with disabilities, in contrast, were more likely to experience discriminatory attitudes and access barriers in the public sphere – in their workplaces, communities and while interacting with peers without disabilities in multiple social settings. These gender

³ Draft National Policy on Persons with Disabilities at p. 3.

differences in patterns of discrimination and exclusion should be taken seriously for they have important implications in the design and implementation of policies aimed at advancing the human rights of women and men with disabilities in Kenya.

Accessible Media & Education

16. Section 39 of the P.D.A. provides that all television stations shall provide a sign language inset or subtitles in all newscasts and educational programmes and in all programmes covering events of national significance. Despite the mandatory language of the section, there is no penalty for non-compliance or any incentives to encourage media actors to comply⁴.

Autonomy

17. The right to autonomy is a fundamental human right protected under the C.R.P.D.. However, approximately 74% of people with disabilities interviewed reported that they were denied the right to make decisions on issues affecting their own lives and described how they had been forced into situations against their will because they had been judged incapable of deciding on their own due to their disability.

Poverty

18. Poverty is widespread among people with disabilities in Kenya. Because many people with disabilities lack access to education and work they are forced to sell or beg on the streets. Those who try to obtain government supports that would enable them, for example, to set up a small business, face many obstacles including inefficient, bureaucratic services and high levels of corruption that seem to cut across the Kenyan government. Lacking adequate financial resources, people with disabilities remain socially isolated and unable to access the necessary conditions to live a life with dignity.

RECOMMENDATIONS

19. After analyzing the systemic (laws, policies, programs and case law) and individual experiences (interviews) data collected, the partners in the D.R.P.I.-Kenya project came up with the following recommendations:

- (a) Strengthen the capacity of organizations of people with disabilities to address human rights.
- (b) Mainstream respect and promotion of disability rights in the public service.

⁴It is worth noting that in Kenya most information by media owners e.g. radio, television or newspapers are not provided in any form which would make it accessible for person with disability example in the form of Braille, sign language interpreters etc. despite the provision under Section 39.

- (c) Improve legislation by entrenching anti-discrimination clauses in the Kenyan *Constitution* and by amending the *Persons with Disability Act 2003*.
- (d) Develop disability legal support and arbitration services to improve advocacy efforts and ensure participation by organizations of persons with disabilities in all levels of decision-making.
- (e) Undertake regular monitoring of the rights of people with disabilities, ensuring the active involvement of people with disabilities in Kenya and their organizations.

CONCLUSION

20. Experiences of oppression, discrimination and violation of basic human rights pervade the lives of many people with disabilities in Kenya. Most people with disabilities, regardless of their age, gender, where they live or disability type, are prevented from making decisions on issues that affect their lives. They are treated unequally and with disrespect by their families, communities, and even public authorities. They face prejudice and negative stereotypes, and are excluded in a multitude of ways from their communities and mainstream society. Viewed as a burden and a curse to their families, they are regarded as second class citizens. Their dignity, as members of the human family, is seriously affected. Also, women and girls with disabilities face multiple forms of discrimination.

21. Further information about the rights situation of people with disabilities in Kenya can be found in the attached country report from the D.R.P.I.-Kenya project entitled *State of Disabled Peoples' Rights in Kenya (2007)*.