Policy brief: An analysis of provisions on persons with disabilities in education, health, social protection and labour policies in Kenya

Key policy messages

1. The rights education, health, social protection and labour are clearly outlined in policy but lack of enforcement mechanisms hinders access by persons with disabilities.
2. The education and social protection domains have comparatively complex systems for addressing disability issues, but must be backed by clear monitoring, evaluation and learning frameworks.
3. Necessary budgetary allocation appears to be a key gap yet it is an important aspect of policy-making that must be put in place if implementation is to be effective.
4. Multi-sectoral and multi-disciplinary policy-making is critical for ensuring coherence and fostering implementation both vertically and horizontally thus engagement across sectors and stakeholders should be sought.

Overview

A policy analysis of the four domains: education, health, labour and social protection for persons with disabilities in Kenya was conducted under the Bridging the Gap project. The analysis was conducted to assess how current national policies, programmes and strategies in education, health, labour and social protection address poverty, inequality and access to services for disabled adults and children in Kenya. Over 35 policies were identified. All three policies on persons with disabilities were analysed, while in the education domain 4 were fully analysed and 6 subjected to minor content analysis; in health 3 were analysed and 5 subjected to minor content analysis; in labour, 3 were analysed and 3 subjected to minor content analysis; and under social protection 3 were analysed and the remaining 3 subjected to minor content analysis. This policy brief highlights some key findings arising from the analysis.

It was found that there has been significant effort by the Kenyan Government towards the inclusion of people with disabilities and mainstreaming disability across different sectors. Kenya is party to international conventions such as the United Nations (UN) Convention on the Rights of the Child, (1990) and the UN Convention on the Rights of Persons with Disabilities (2008). Under Kenyan law, (Article 2(6), Constitution of Kenya), once ratified, international treaties become law. Kenya’s
Constitution (2010) also provides for non-discrimination directly or indirectly on any basis including disability (Article 27(4) and provides for equality before the law for all persons (Article 27(1-2). In Article 21 (3), state organs and public officers are obligated (as a duty) to address the needs of vulnerable groups including persons with disabilities. The draft Disability Policy and the Persons with Disabilities Act (2003) as well as the education policies including the Policy Framework for Education and Training, Kenya (2012) highlight these aspects of the international conventions as well as the Kenya Constitution.

**Results**

These results and policy recommendations are drawn from analysis of national policies and re-analysis of national data sets. The analysis involved identification of relevant policies for each domain after which each identified policy was rated by carrying out content analysis to determine if Persons with disabilities are mentioned and where mentioned, together with the level of detail provided. The review also sought to identify if specific issues are mentioned (for example, the right to accessibility to services under each domain, inclusivity, presence of implementation plans, enforcement and budgetary allocation). The reviewed policies were then rated according to a predetermined rating scheme with a scale of 1 to 4, with 4 as the highest score. These are summarised in *Figure 1* below.

Rights and accessibility in the draft Disability Policy (2016) and under the four domains of health, education, labour and social protection rank highly, due to the fact that the Kenya Constitution (2010) and specific policies largely provide for rights and non-discrimination for all citizens, regardless of disability, race, gender and other barriers and prejudices. These fundamental rights provide a mechanism for persons with disabilities’ protection as well as providing a strong basis on which specific policies relate to persons with disabilities as equal citizens of Kenya. This means that persons with disabilities are protected under Kenyan law and have *locus standi* for legal action in case of any infringement.

*Figure 1: Ranking for education, health, labour and social protection policies*
Budgetary allocation, information systems and enforcement have been identified as areas of weakness under most of the domains, except under the Persons with Disabilities Act, where a persons with disabilities fund has been created. In policies where budgetary allocation is mentioned, there is little clarity on exactly what the funds are to be used for, which could result in them being used for other activities and not necessarily specifically allocated to persons with disabilities interventions or even not being used at all. For the monitoring of these policies, while there is repeated reference to information systems, there is a deficiency in terms of responsible agencies, clear indicators and funding for maintaining these systems. Enforcement is also weak given that clear compliance and enforcement mechanisms are not clearly defined.

**Policy Messages**

1. *The rights to education, health, social protection and labour are clearly outlined in policy, but lack of enforcement mechanisms hinders access by persons with disabilities.*

The Kenyan Constitution guarantees the right to education under Article 43 (1f), the right to health in Article 43(1a), the right to social protection under Article 43(1e) and the right to fair labour practices in Article 41. This is also outlined in the Persons with Disabilities Act and Disability Policy, the Policy Framework for Education and Training (2012), Basic Education Act (2013), the Kenya Health Policy (2014 – 2030), the Employment Act (2007) and the Kenya Social Assistance Act (2013).
This is critical in safeguarding the rights of persons with disabilities and ensuring their protection and access to services. The Constitution and the Persons with Disabilities Act also provide for inclusivity, including affirmative action with an employment quota of 5% in elective and appointive bodies for persons with disabilities. Additionally, the National Council for Persons with Disabilities (NCPWD) has county officers who are mandated to ensure mainstreaming of disability and inclusivity at county level.

Inadequacy lies in the fact that the policies do not set out punitive measures for those who do not adhere to set laws and in cases where they do, for example, in the case of non-compliance with the persons with disabilities policy on a 5% employment quota for persons with disabilities in the public and private institutions the NCPWD has the power to fine any institution that does not meet this requirement but this fine does not apply to government institutions. It is also not clear how this is implemented.

2. The education and social protection domains have fairly complex systems for addressing disability issues but must be reinforced by clear monitoring, evaluation and learning frameworks.

The Policy Framework for Education and Training (2012) and the Basic Education Act (2013), outline measures for access to education with a commitment to ensure inclusive education for learners with special needs and disabilities, integration of special education programmes in all learning and training institutions and ensuring that the institutions are responsive to the education of learners with special needs and disability. Persons with disabilities in all sectors are eligible for tax relief if earnings are below 150,000 Kshs (PWD Act) and once registered with the NCPWD and are able to access the cash transfer programme after assessments are made. There is, however, little evidence to show the level of awareness and participation by persons with disabilities on these programmes. Besides access to this can be hindered by requirements such as medical assessments which may be expensive for persons with disabilities.

Whereas there is provision for monitoring progress, it still remains to be seen how such results are used to make improvements at implementation and/or adjust policies. For persons with disabilities who are employed in different sectors an assessment of the quarterly reports which are meant to be submitted to the NCPWD by MCDAs (on the disability indicator) would have to be assessed to determine progress. The Kenya Health Sector Strategic and Investment Plan (KHSSPI) provides for a common data architecture to provide data sources for already identified monitoring and evaluation indicators as does the education policy. Under the education and health domains, where information management systems are provided for, disability-disaggregated data is not mandatory and most of it is neither centralized nor accessible. Furthermore, the Government recognizes the need to establish a participatory management information system (MIS) for social protection in Kenya to harmonize and consolidate the current range of fragmented schemes and increase the ability of social protection initiatives to scale-up their operations quickly in response to crises. However, the intervals at which this information should be collected are not specified. From the analysis it is unclear to what extent, if any, such data and information has been used to influence policy or implementation.
3. **Budgetary allocation is an important aspect of policy-making that must be put in place if implementation is to be effective.**

Inadequate budgetary allocation has been identified as an area of weakness under most of the domains, except under the Persons with Disabilities Act, where a persons with disabilities fund is created. In policies where budgetary allocation is mentioned, there is little clarity on exactly what the funds are to be used for, which could result in them being used for other activities and not necessarily allocated to interventions or even not being used at all. For the monitoring of these policies, while there is repeated reference to information systems, there is a deficiency in terms of who are the responsible agencies, clear indicators and funding for maintaining systems. For the Health Policy which provides for targeted training to better address needs of persons with disabilities, early assessment and identification as well as action to prevent disability it is not clear where funds for such programs are derived from leaving the decision on this to this to the budget office which may or may not allocate funds for such.

4. **Participatory and coordinated policy-making is critical for ensuring coherence and fostering implementation both vertically and horizontally.**

In a context analysis conducted on major policies in the four domains there is a lack of clarity on the participation of Disabled People’s Organizations (DPOs) or persons with disabilities in the formulation processes, especially in the health and labour domains. In terms of coordination, the policy analysis points to little interaction between the different policies. For instance, the social protection policies do not even have a clear definition of persons with disabilities and have little mention of education, health or labour issues. However, the disability policy has aspects of all four domains and is largely in compliance with the CRPD. The education and health policy share linkages with the Kenya National School Health Strategy Implementation Plan, indicating relative progress, but this is lacking in the other domains.

**Recommendations**

1. Enforcement and compliance mechanisms need to be strengthened to enable greater protection and access by persons with disabilities. This aspect can be incorporated in the Disability Policy and the Special Needs Policy which are yet to be gazetted.

2. Clear monitoring, evaluation and learning frameworks need to be put in place to ensure that progress is tracked and changes made for better results. Specifically the Health and Education Information Management Systems should mandatorily capture disability-disaggregated data for use in decision-making and at implementation to better meet persons with disabilities’ needs.

3. Budgetary allocation including sources of funding should be made explicit in the disability policy and the other policies in the four domains examined under this research to ensure effective implementation.

4. Greater effort must be made to ensure multi-sectoral and multi-disciplinary engagement and consultation especially with persons with disabilities and Disabled People’s Organizations (DPOs) to ensure inclusivity and policy coherence.
The disability policy needs to be revised to align with all the CRPD Articles and the rest of the policies in education, health, social protection and labour reviewed to reflect these provisions.

**Bibliography**


**Research Team**

Winnie Khaemba, Dr. Ann King’iri (ACTS); Prof Joyce Olenja, Dr Sam Wangila, Emily Nyariki (UoN); Anderson Kiraithe & Washington Oloo (UDPK)

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