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## **KENYA COUNTRY PROFILE**

**March 2004**

### **Employment of People with Disabilities: The Impact of Legislation (East Africa)**

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## Contents

	<i>Page</i>
1. Introduction.....	1
2. Context.....	3
2.1 People with disabilities .....	3
3. Legislative framework .....	5
3.1 The Persons with Disabilities Act, 2003 .....	5
3.2 The Draft Constitution .....	6
3.3 Draft Equity Bill 2000.....	7
3.4 Draft Affirmative Action Bill 2000 .....	7
3.5 Labour Laws .....	7
3.6 International commitment .....	8
4. Implementation .....	9
4.1 Institutional framework.....	9
4.2 Policy .....	9
4.3 Associations/institutions of/for persons with disabilities.....	13
5. Concluding comment .....	15



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## 1. Introduction

Many countries throughout the world have, in recent years, adopted policies aiming to promote the rights of people with disabilities to full and equal participation in society. This has often been in response to the ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons (1983). Policy on employment opportunities for people with disabilities is frequently supported by legislation and implementation strategies as essential tools to promote integration and social inclusion.

Some countries in Africa have made progress in introducing disability-related legislation, but many of these laws have not yet been implemented. In other African countries, existing national laws need to be reviewed in order to achieve equalization of opportunities for persons with disabilities. Improving legislation and implementation strategies has been identified as one of the main issues to be tackled in the African Decade of Disabled Persons 1999-2009.

The effectiveness of laws in improving employment opportunities for disabled persons – whether they are vocational rehabilitation laws, quota legislation or anti-discrimination legislation – is central, not only in terms of the economic rights of disabled people, but also their broader social and political rights, which are closely linked to economic empowerment.

The country study for Kenya is part of the ILO project '*Employment of People with Disabilities – the Impact of Legislation*', funded by the Government of Ireland, which aims to enhance the capacity of national governments in selected countries East Africa and of Asia to implement effective legislation concerning the employment of people with disabilities. Starting with a systematic examination of laws in place to promote employment and training opportunities for people with disabilities in the selected countries of each region<sup>1</sup>, the project sets out to examine the operation of such legislation, identify the implementation mechanisms in place and suggest improvements. Technical assistance is provided to selected national governments in implementing necessary improvements.

This country study outlines the main provisions of the laws in place in Kenya concerning the employment of people with disabilities. An initial review of the implementation of the legislation is also provided, based on a survey of documentary sources and feed-back from Kenyan delegates to a Technical Consultation held in Addis Ababa, 20-22 May 2002. It may be read in conjunction with the regional overview for this Consultation *Employment of People with Disabilities - The Impact of Legislation (East Africa), Technical Consultation Report, Addis Ababa, 20-22 May 2002, ILO 2002.*

<sup>1</sup> East Africa: Ethiopia, Kenya, Mauritius, Seychelles, Sudan, Uganda and United Republic of Tanzania; and Asia and the Pacific: Australia, Cambodia, China, Fiji, Japan, India, Mongolia, Sri Lanka, and Thailand.



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## 2. Context

Kenya lies across the equator in the eastern Africa, on the coast of the Indian Ocean. In the 700s, Arab sailors established settlements along the Kenyan coast, and in the early 1500s, the Portuguese took control of the area. More than 40 ethnic groups live on Kenyan territory. Its largest group, the Kikuyu, migrated to the region at the beginning of the eighteenth century. Following over 60 years as a British Protectorate, Kenya gained independence in 1963, and became a republic in 1964. In the mid-70s, the world oil crisis coupled with periodic droughts and an increasing population had a negative impact on Kenya's economic growth. Currently, (2004), poor rainfalls and the extremely high population growth rate further challenge economic health of the country.

With an estimated population of 30,765,916 in 2001, Kenya is ranked 123 out of 162 on the 2001 UNDP Human Development Index (HDI). The four key indicators used to calculate the HDI, longevity, educational attainment, standard of living and adult literacy rate show the following:

- Longevity, measured as life expectancy at birth, was 50.4 years for men and 52.2 for women;
- Educational attainment, measured as the gross enrolment ratio, was 52 per cent among boys and 51 per cent among girls;
- The standard of living, measured as per capita GDP, was US\$1,022 in 1999; and
- The adult literacy rate was 81.5 per cent, with a higher rate recorded for men (88.3 per cent) than women (74.8 per cent).

In 1998, the labour force participation rate was 74 per cent for women and 89 per cent for men<sup>2</sup>. The service sector yielded half of GDP (57.7 per cent), followed by the agricultural sector (26.1 per cent), with the industrial sector contributing 16.2 per cent<sup>3</sup>. In 1996, the great majority of the labour force was employed in agriculture (75 per cent), and the remaining quarter was employed in services (16 per cent) or industry (9 per cent)<sup>4</sup>.

### 2.1 People with disabilities

In Kenya, there are no recent data on the situation of persons with disabilities. Some statistics are available, although it is generally agreed that these do not give an accurate picture of the actual prevalence of disability. According to the Kenya Population Census of 1989<sup>5</sup>, an estimated 0.7 per cent of the total population (estimated at 21.4 million in 1989) was disabled. This would appear to be an underestimate.

<sup>2</sup> The World's Women 2000: Trends and Statistics

<sup>3</sup> UNDP, Human Development Report, 2001

<sup>4</sup> African Development Report 2000, African Development Bank

<sup>5</sup> United Nations Statistics Division, Disability Statistics: [esa.un.org/unsd/disability](http://esa.un.org/unsd/disability)





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### 3. Legislative framework

The Persons with Disabilities Act, 2003 sets out the rights of persons with disabilities. Introduced in December 2003, it is the main legal instrument concerned with disabled persons in Kenya. Other legislation to promote opportunities for people with disabilities has been drafted - a Draft Equity Bill and a Draft Affirmative Action Bill. In the revision of the Constitution, which is now in its final stages, disabled persons organizations have requested that people with disabilities be specifically mentioned. As a result, the Draft Constitution includes specific provisions related to persons with disabilities.

#### 3.1 The Persons with Disabilities Act, 2003

A Taskforce, including Kenyan Disabled Persons' Organizations, was established by the Government in 1997, following a lobbying campaign by disabled people in Kenya. After five years, the Taskforce presented its recommendations and a Draft Bill based on information it had collected from people with disabilities all over Kenya. In April 2003, the Bill was brought before Parliament for discussion and was finally enacted as the 'Persons with Disabilities Act 2003' on 31 December 2003.

The Act defines disability as '*a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts on social, economic or environmental participation*'.

It provides for the establishment of the National Council for Persons with Disabilities (NCPD) to be the focal point for all issues relating to persons with disabilities; to implement and ensure the implementation of the rights of persons with disabilities covered in the Act; and to formulate and develop measures and policies designed to ensure that persons with disabilities are educated, employed and participate fully in sporting recreational and cultural activities. The Act states that the Council will implement projects that will promote sheltered employment, regular or self-employment opportunities for persons with disabilities.

According to the Act, the NCDP will have up to 27 members, comprising representatives of disabled persons' organizations (8), Government (9), organizations providing services to persons with disabilities (3), employers' and workers' organizations (2).

Discrimination in employment is specifically prohibited by the Act. It is stated that:

*'... no employer shall discriminate against a person with a disability in relation to the advertisement of employment; the recruitment for employment; the creation, classification or abolition of posts; the determination or allocation of wages, salaries, pension, accommodation, leave or other such benefits; the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; the provision of facilities related to or connected with employment, or; any other matter related to employment'*.

Exception can be made if:

- *'The act or omission alleged to constitute the discrimination is not wholly or mainly attributable to the disability of the said person;*
- *The disability in question is a relevant consideration in relation to the particular requirements of the type of employment concerned; or*

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- *Special facilities or modifications are required at the workplace to accommodate the person with disability, which the employer cannot reasonably be expected to provide*.

The Persons with Disabilities Act, 2003 provides for wide-ranging benefits and incentives for persons with disabilities, including exclusion from paying tax on income from jobs. Materials, articles and equipment that are modified or designed for their use, are exempted from import duty and value added tax. The law also ensures that both public and private sectors reserve 5 per cent of jobs - casual, emergency and contractual - for disabled persons. A private employer who engages a person with disabilities with required skills or qualifications will be entitled to apply for a deduction from his taxable income equivalent to 25 per cent of the total amount paid as salary and wages to such an employee. The Act ensures that an employer who improves or modifies physical facilities for the benefit of employees with disabilities will be entitled to an additional deduction from his net taxable income. This deduction will be equivalent to 50 per cent of the direct costs of improvements, modifications or special services.

### 3.2 The Draft Constitution

In 2000, a people-driven constitutional review process was initiated in Kenya, taking into account the rights and interests of all groups. This review process, extending to 30 June 2004, provided an opportunity to include provisions concerning people with disabilities, as the Constitution of 1969 of Kenya neither recognizes nor makes any reference to persons with disabilities.

Disability, as defined in the Draft Constitution, Article 39, *'includes any physical, sensory, mental or other impairment, condition, or illness that – (a) has, or is perceived, by significant sectors of the community to have a substantial or long term adverse effect on a person's ability to carry out normal day-to-day activities; or (b) forms the basis of unfair discrimination*'.

Article 34 (1) of the Draft prohibits discrimination against disabled persons, *'the state shall not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, sex, pregnancy, marital status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language or birth*'. Article 34 (3) calls for affirmative action to compensate for the disadvantages faced *'... the state may take legislative and other measures designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination...'*

Article 11 of the Draft states that *'the Republic shall ensure the fullest participation of women, the disabled, and the marginalized communities and sectors of society in the political, social and economic life of the country'*, while article 39 (2) (g) specifically addresses the involvement of persons with disabilities in the decision-making process: *'The state shall, by legislation and policy measures provide for the participation of disabled persons in decision-making at all levels'*. In addition, the Draft Constitution proposes proportional representation measures to ensure that parties will include people with disabilities on their party lists: *'a political party shall ensure the remaining fifty per cent of its candidates are distributed among persons with disabilities, the youth, ethnic minorities and other interest groups'*. Article 288, states that the Commission on Human Rights and Administrative Justice should consist of six commissioners, including at least *'a person with disability who has knowledge and experience in matters relating to disability...'*

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Article 39 requires the State to take legislative and policy measures to ensure recognition of the rights of people with disabilities to respect and human dignity, education and access to all places, public transport and to information. Those legislative and policies measures should also seek to ‘...educate communities and society on the causes of disability; encourage the development and use of sign language, Braille and other appropriate means of communication; remove from official usage in any language words that are demeaning when applied to persons with disabilities; and facilitate the acquisition of materials and devices to enable the disabled to overcome constraints due to the disability’. It states that legislation and policy measures shall make special provision for women with disabilities. This Article does not specifically address employment rights.

Article 37 (7) states that ‘children with special needs, including girls, orphans, children with disabilities, refugee children, and homeless children, are entitled to the special protection of the state and society’.

### **3.3 Draft Equity Bill 2000**

The Draft Equity Bill, 2000 deals with discrimination that occurs in the context of employment, education, health services, health care benefits, accommodation, property, associations, professions, appointments to public office, and the provisions of goods, services and facilities. The Bill aims to combat the discrimination faced by various marginalized groups, including disabled persons. To this end, the Bill prohibits discrimination on the grounds of disability. For example, an employer may not discriminate against persons in the terms and conditions of employment on which the employment is offered. The Bill also prohibits employers from paying employees differently for work of equal value. There is a general prohibition of discrimination in the appointment of persons to public office. Moreover, the Bill promotes choice in education rather than automatic allocation of learners with special needs to special schools or programmes based on disability or educational capability<sup>6</sup>.

### **3.4 Draft Affirmative Action Bill 2000**

The draft Bill guarantees minority groups, including disabled people, a minimum of 33 per cent of representation in Parliament and on local authorities<sup>7</sup>.

### **3.5 Labour Laws**

A Labour Law reform process is currently underway in Kenya. The major regulations covering employment policies in Kenya are encompassed in the following Acts:

- The Employment Act Cap 226
- The Wages and Regulations of Employment Act Cap 229
- The Trade Disputes Act Cap 234
- The Workmen’s Compensation Act Cap 236
- The Trade Unions Act Cap 233
- The Factories Act Cap 514

<sup>6</sup> At the time of going to print, the status of this Bill was unclear.

<sup>7</sup> At the time of going to print, the status of this Bill was unclear.

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- The National Security Act Cap 258
  - The Industrial Training Act Cap 237

None of these regulations make reference to employment opportunities of disabled persons. **The National Security Act Cap, (C. 258)** mentions invalidity benefits for worker incapacitated before normal retirement age. **The Workmen's Compensation Act Cap, (C. 236)** recognizes disability but again, only where it has been acquired during and in the course of work. It also operates under limited wage earnings and sets payment ceilings, including compensations for fatalities (payments may be made in part or in full, with final payment being made after full recovery). No provision is made for the vocational rehabilitation of the disabled worker.

Section 18 of the **Regulation of Wages and Conditions of Employment Act Cap, (C. 229)** allows for permits to be issued by an authorized officer to employers, permitting payment to disabled employees of wages below the statutory minimum.

This review process would provide an excellent opportunity to identify any provisions which place disabled people at a disadvantage and make the required adjustments. Additional provisions concerning persons with disabilities could be formulated, where appropriate.

### **3.6 International commitment**

Kenya has not yet ratified the ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) No. 159 (1983). In a report to the ILO, submitted as part of the general survey on Convention No. 159, 1995-1998<sup>8</sup>, the Government of Kenya expressed the view that national legislation should be brought into conformity with the provisions of Convention No. 159 before ratification can be envisaged.

<sup>8</sup> Vocational Rehabilitation and Employment of Disabled Persons, ILO, 1998

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## **4. Implementation**

### **4.1 Institutional framework**

#### **4.1.1 *Ministry of Gender, Sports, Culture and Social Services***

The Ministry of Gender, Sports, Culture and Social Services is responsible for formulating policies concerning persons with disabilities and for disseminating and monitoring the implementation of the Disability Act 2003, as well as the National Action Plan for the African Decade of Persons with Disabilities (1999-2000). The Department of Social Services of the Ministry coordinates vocational rehabilitation services.

#### **4.1.2 *The Kenya Institute of Special Education***

The Kenya Institute of Special Education (KISE), a government institution, was established in 1986 through Legal Notice No. 7, with a view to meeting the educational needs of disabled children, youth and adults. Its main functions include the training of teachers and other personnel to work in the field of special education; the conducting of research on special education; the provision, production, and repair of special education materials and equipment; the production and dissemination of information on disabilities to personnel involved in special education and the general public; and the provision of educational and psychological assessment for children with disabilities.

### **4.2 Policy**

#### **4.2.1 *Employment policy***

In January 2004, the Ministry of Gender, Sports, Culture and Social Services organized a National Conference on the African Decade of Persons with Disabilities, 1999-2009, at which Government and civil society representatives met to translate the Decade objectives into a proposed National Plan of Action. This Plan, adopted at the end of the Conference, aims at improving and promoting participation, equality and empowerment of people with disabilities in Kenya. During that Conference, it was suggested that the Government should establish a secretariat with necessary resources and appoint a national standing committee to monitor, coordinate and follow up the implementation of the Action Plan. As a part of this National Plan, it is proposed to draft a disability policy aiming at achieving overall integration of persons with disabilities into the national development process without any discrimination. The Plan also envisages the dissemination of a simplified version of the Persons with Disabilities Act and the development of a strategy to monitor it; the dissemination of the National Plan of Action at national and grassroots levels and the formulation of district action plans.

A Draft Session Paper 2001 on national employment policy and strategy was approved by the Cabinet and, in March 2004, was awaiting Parliament approval and the President's assent to become operational. This proposed policy includes a clause concerning the promotion of training and employment opportunities for people with disabilities. The draft proposes that the Government should promote equal opportunities for disabled persons through schemes to enable them to compete for jobs, and also provide special tools and equipment for national training courses, to facilitate entry into appropriate jobs, either as workers or as self-employed persons. To the extent possible, specialized programmes should be re-oriented to support the integration of persons with disabilities into regular employment and training programmes. Emphasis should be placed on

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community rehabilitation programmes and promoting employment of persons with disabilities.

According to reports of delegates to the ILO Technical Consultation, Addis Ababa, May 2002, the Government of Kenya has improved access to rehabilitation, education, training and employment for disabled persons through:

- the establishment of policies to ensure that girls and boys with disabilities have access to relevant education in integrated settings at all levels, paying particular attention to the requirements of children in rural areas;
- the training of youth, women and men with disabilities in relevant marketable skills, where possible in mainstreaming settings;
- the promotion of vocational rehabilitation, and where possible retaining opportunities for people who acquire disability in the course of their working lives;
- the promotion of paraprofessional and vocational education and training programmes;
- the development of strategies to promote employment of people with disabilities, including tax rebates and incentives.

During the period of national development plan 2002-2008, concerted action is proposed to focus on issues relating to the Mentally and Physically Challenged Persons (MPCP). Suggested interventions will include the operationalization of the National Disability Policy and enforcement of the Persons with Disabilities Act, 2003, ensuring proper co-ordination of all programmes for MPCP; capacity-building of vulnerable groups through imparting leadership and management skills; the strengthening of vocational rehabilitation centres that cater to MCPCs; affirmative action for MCPCs in the areas of employment, vocational training and education; and the establishment of integrated counselling units at district level to cater for the increasing social issues of MCPCs.

#### **4.2.2 Vocational Rehabilitation Programme**

The Vocational Rehabilitation Division of the Department of Social Services (DSS) is responsible for 12 rural vocational rehabilitation centres throughout the country and Nairobi's Industrial Rehabilitation Centre (ICR), which trains persons with disabilities for jobs. In those centres, skills training courses are offered in the following areas: carpentry, metal work, leather work, tailoring, traditional crafts, printing, jewellery, textile manufacture, agriculture, commercial studies, telephone operations and computer courses.

The DDS carries out economic projects aimed at local market. The National Rehabilitation Committee of the DSS also provides for vocational rehabilitation services. It was decentralized into 41 Districts Rehabilitation Centres.

These activities are part of the National Rehabilitation Programme which was established to provide disabled persons with the opportunity to acquire employable skills. Programme activities are conducted by the National Rehabilitation Committee, appointed in compliance with Paper No. 5 (1968) with following objectives:

- to advise the Government on policy for people with disabilities;

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- to ensure that more weight is given to prevention of disability;
  - to co-ordinate the work of government and voluntary organizations in the care and rehabilitation of people with disabilities;
  - to formulate rules for the establishment of new organizations of/for people with disabilities;
  - to provide vocational rehabilitation and skill training programmes including assessment, training allowances, vocational guidance, follow-up and social services;
  - to provide selective placement/resettlement.

### **4.2.3 Education**

The Ministry of Education has adopted an integration policy which provides that children with physical and mental disabilities be placed in normal schools.

In Kenya, special education provides appropriate facilities, specialized materials and teachers with adequate training to teach children with disabilities. Before Independence, special schools were primarily managed by religious groups and other non-governmental organizations. Since Independence in 1963, the government has played a leading role in the education of persons with disabilities.

Currently, the government runs 57 primary schools for children with disabilities, with a total enrolment of over 8,000 children. There are also 103 integrated units in regular primary schools, three high schools for persons with physical disabilities, two high schools for persons with hearing disabilities and one high school for persons with visual disability. There are also vocational training schools, integrated units in secondary schools and agricultural technical trade schools.

The Government has taken other measures to enhance the effectiveness of special education in the country. In 1984, 41 education assessment and resource centres with many sub-centres were established. These centres provide early intervention services with assessment and appropriate placement. In 1997, 30,000 children had been assessed and the majority had been placed according to their disabilities.

The status of special education in the country is further enhanced by the implementation of degree courses in special education at Kenyatta University.

### **4.2.4 Consultation of representative organizations**

The Government has stated its intention to consult with organizations of disabled persons in developing a policy to implement the Disabilities Persons Act, 2003 (National Conference on the African Decade, January 2004).





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### **4.3 Associations/institutions of/for persons with disabilities**

United Disabled Persons of Kenya is an umbrella body which addresses issues related to all types of disability. It focuses on advocacy and is currently working on Constitutional reforms (March 2004). Various Non-Governmental Organizations (NGOs) facilitate the training and employment of disabled persons

#### **4.3.1 People with visual disability**

##### *Kenya Society for the Blind*

The Society has established a pilot resource centre to cater for the needs of people with visual disability in Kenya. The overall aim of the project include the provision of computer related information technology training; the collection and dissemination of information about rights, benefits and services available in Braille and large print; the design and implementation of a multi-disciplinary assessment programme to identify the needs of newly blinded people before the rehabilitation training; the supply of special equipment for visually impaired persons; the improvement of the talking book library services of the Society; the support to research and development in matters relating to education, rehabilitation, training and employment.

##### *Machakos Blind Trade Training Centre*

The Machakos Blind Trade Training Centre is a vocational training centre for persons with visual disability. It works with other organizations involved in the training and rehabilitation of visually-impaired persons and provides training in areas such as orientation and mobility, Braille and daily living skills.

##### *Kenya Institute for the Blind*

The Kenya Institute for the Blind is a non-profit making national institution whose main purpose is to provide educational and rehabilitation services to visually impaired persons. The overall aim of the Institute is to produce Braille and low-vision books and materials for use in the education of visually impaired people. The Institute operates the only existing National Braille Library. It hopes to offer actual support to blind children integrated in regular schools. The Institute works in collaboration with government ministries, international and national organizations, in the service of the visually impaired.

#### **4.3.2 People with hearing disability**

The organizations providing training to hearing impaired persons in Kenya include the Kenya National Deaf Association and the Deaf Christian Foundation. Further information about these organizations was not available in the sources consulted for this report.

#### **4.3.3 People with physical disability**

##### *Association for the Physically Disabled of Kenya*

The Association runs the Bombolulu Workshops Project which was founded in 1969. This Workshop trains and employs persons with physical disability in handicraft production and related business skills. It employs 150 disabled persons who produce

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jewellery, handprinted textiles, woodcarvings and leather crafts. The products are sold and exported to 20 countries. Other initiatives include a micro-finance scheme for entrepreneurs with disabilities, and a factory producing high-quality furniture.

#### *Handicapped Mobility Appliances Centre (HAMAC)*

HAMAC was founded in 1996 to build wheelchairs and train women users in maintaining and repairing them. HAMAC is running a rural project to establish local wheelchair repair workshops. It aims to create income generating activities for disabled persons; provide employment and training in wheelchair building; promote the integration and participation of persons with disabilities in Kenyan society; promote mobility through the use of local materials and new technology; overcome the negative attitude of the community towards disabled persons; and provide information on prevention.

#### **4.3.4 People with intellectual disability**

Organizations providing training to people with intellectual disability in Kenya include the Kenya Association for the Intellectually Handicapped, the Parents Association for the Mentally Handicapped and the Kenya Society for the Mentally Handicapped. No further information was found in the sources consulted for this overview.

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## 5. Concluding comment

Kenya enacted a Person with Disabilities Act in December 2003 and in March 2004, was preparing to develop a policy to give effect to this Act. The Persons with Disabilities Act, 2003 provides for the rights and rehabilitation of persons with disabilities, promotes equal opportunities for disabled persons and establishes the National Council for Persons with Disabilities. It makes provisions for a range of services and sectors concerning people with disabilities such as medical care, rehabilitation, employment and education. In March 2004, the country was at the final stages of drafting a new Constitution including specific references and provisions related to persons with disabilities.

Kenya is also revising its Labour Code. This could be an opportunity for the Government to include provisions concerning the rights of persons with disabilities, as well as equality of opportunity and treatment in training and employment for disabled persons, not only in its disability specific law, but also in general legislation. It would also provide the opportunity to revise provisions in existing laws which place disabled persons at a disadvantage. In addition, Kenya is considering the enactment of an Affirmative Action Bill, as well as a civil anti-discrimination law for persons with disabilities under the Equity Bill, all of which would, if adopted, further the equal rights, equality of opportunity and the full participation of people with disabilities in Kenyan society.

A National Conference on Disability took place in Kenya in January 2004, at which a National Disability Action Plan was developed, in the framework of the Continental Plan of Action for the African Decade of Persons with Disabilities 1999-2009. This National Disability Action Plan provides a further impetus to the development of opportunities for disabled persons. The challenge now facing the Government is to introduce effective measures for the implementation of the Persons with Disabilities Act and the Action Plan so that the prospects of people with disabilities can be improved and their full participation in Kenyan Society promoted.