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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE
AND RECONCILIATION COMMISSION ON THURSDAY,
16TH FEBRUARY, 2012 AT TAIFA HALL, KICC NAIROBI**
(Thematic Hearing on People with Disabilities)

PRESENT

Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Ronald Slye	-	Commissioner, USA
Gertrude Chawatama	-	Commissioner, Zambia
Margaret Wambui Shava	-	Commissioner, Kenya
Ms. Nancy Kanyago	-	Director of Special Units

(National Anthem and Prayer)

The Acting Chair (Commissioner Namachanja): Good morning ladies and gentlemen! Welcome to the thematic hearings of people with disabilities. First, on behalf of the Commission, I would like to thank people with disabilities for bearing with us for postponing these hearings until today. The hearings were to take place the other day but due to logistical problems, they did not take place since we felt that we needed representation of people whose issues we were going to discuss. Looking at this hall today, I am glad that we took the right decision because a number of us are represented here today. I would like, therefore, to introduce the panel today.

(The Acting Chair introduced herself and other Commissioners)

Concerning our hearings today, like elsewhere in Kenya or in this world, persons with disabilities continue to face barriers that make them fail to exercise their basic rights. They are often faced with inequalities, discrimination, torture, exclusion and societal neglect. This is largely due to the widespread ignorance and prejudice but also as a result of legislative failure to protect the rights of people with disabilities and to meet the standards and principles of international human rights instruments. During violent conflict, these constraints are even greater. Persons with disabilities are often among the most vulnerable groups and, therefore, become a particular target of human rights violations. The TJRC acknowledges the particular impact that violent conflicts, long standing historical injustices and continuous human rights violations have upon people with disabilities.

In addition, the Commission takes into account people who as victims of these past violations have suffered disabilities. So, today, ladies and gentlemen, we have invited special groups that work with people with disabilities to come and help us more to get an in-depth understanding of issues affecting people with disabilities. This will only be an affirmation of what we have heard from people themselves throughout this country where

we have conducted our hearings. At the end, we have invited people from the Ministry of Gender, Children and Social Development to come and respond to the questions that we have received from the hearings we have heard. So, we hope that they will be here to respond to some of the issues that people living with disabilities have shared. Without wasting more time, I would like to return the programme to our Director of Special Units, Madam Nancy to start the hearings.

Ms. Nancy Kanyago: Thank you, Commissioner. We are ready to begin our presentations. Our first presentation as per the programme shall be from the United Disabled Peoples of Kenya. The presentation is in your folders and although the programme reflects that Hellen Obande should be here, she had travelled and she sent a representative. He will be introducing himself and speaking generally in terms of the presentation that had already been submitted to the Commission.

Mr. Joseph Njenga: Madam Chair, all protocols observed, my name is Joseph Njenga and I am a Programme Officer with the United Disabled Persons of Kenya. I wish to take this opportunity to thank the TJRC for giving us plenty of opportunity as people living with disability to explain and express our views in terms of injustices meted to us. To begin with, as Madam Nancy said, since we have our presentation in a folder, I will take this opportunity to summarize some of the issues that have been affecting us.

Historically, we will all agree as Madam Chair has put it rightly that persons with disabilities have faced socio-economic or political barriers. Our traditional set up has set persons with disabilities as cursed people or even burdens to the society. This, unfortunately, has affected into our legislations to an extent that our legislations do not recognize persons with disabilities as dignified persons and as persons who can participate rightly in developmental issues. We do not want to go back to what the TJRC has heard but we need to recognize that just like any other source was set up, the persons living with disabilities have faced enormous discrimination. A very good example is that our previous Constitution had two things that showed that persons with disabilities were discriminated against. Section 34(c) (d) of the previous Constitution out rightly barred persons with disabilities from standing for any elective positions. Looking at Section 82 of the previous Constitution, all grounds had been laid down that someone cannot be discriminated against but the Constitution went silent on issues of disability thus it created a leeway for the society to discriminate against persons with disabilities.

That said and done, we need to applaud what is in the new Constitution that has brought expansive gains. However, we wish to note with concern that Article 26 of the Constitution of Kenya provides that all treaties and conventions signed and ratified become laws of this country. The Convention was signed by Kenya in 2007 and it was ratified on 19th May, 2008. To date, domestication and implementation of the Rights of Persons with Disabilities remains an uphill task. Whereas we laud the Government's efforts to have done a report on the status of the Convention, we want to note with concern that this forms part of the laws of Kenya, domestication and implementation of this needs to be fast tracked.

In a nutshell, I want to turn to education and as you can see from our presentation, you will realise that this is a sector in which persons with disabilities have suffered a lot of discrimination. One of the issues I note here is that the 8:4:4 System did a lot of injustices to a category of people with disabilities. In 1985, when the first 8:4:4 system class was set up, the developers of this system put very little attention in terms of building careers and opportunities for persons with disabilities. The system being examination oriented and trying to put technical know-how on students totally disregarded the special needs of persons with disabilities. The end result of this would be little career opportunities for people with disabilities and in the long run it created very little opportunity for employment for these people. As a remedy to heal this, we need to recommend that the next coming system looks specifically at the special needs of persons with disabilities who have different abilities which can be tapped to improve the economy of this country in one way or another.

I wish to briefly turn to the Persons with Disabilities Act. The Persons with Disabilities Act of 2003, if looked into, is one of the legislations that can create a lot of opportunities to people living with disabilities. However, this piece of legislation should be implemented in a very cautious manner. Whereas it is supposed to provide rights for persons with disabilities, the duty bearer tried to cover themselves in terms of putting issues like availability of resources. It is the duty of the state to provide rights and rehabilitation for persons with disabilities. To this end, we need to also laud the fact that the Persons with Disabilities Act is going through amendments. It is our view the Persons with Disabilities Act is out to remedy and right the wrong and historical injustices.

In conclusion, I need to look at issues of the Constitution. I wish to say here, openly, that we need to look at the implementation of the Constitution with a lot of caution. I wish to point out that history is an instrument that will judge us. The future generations will also judge us. Whereas the Constitution has given us expansive gains as people with disabilities, we need to see the implementation of the Constitution giving us what is rightfully ours. For instance, there is the question of accessibility in terms of physical accessibility to means of transport, buildings and more so accessibility to information both in sign language and in other accessible formats. If the TJRC does not strongly recommend that accessibility to amenities and information is a basic right, we would have made a dismal mistake. To this end, as persons with disabilities, we need to conclude by saying that all the rights provided to us by the Constitution of Kenya and the Convention of the Rights of Persons with Disabilities and even by the Persons with Disabilities Act should have been given to us like yesterday so that we right all historical injustices. We also want to condemn violence which is a result of disability. We know that the Commission has been told a lot about violence and we know that it also knows that some people with disabilities got their disabilities as a result of violence. To this end, we want to conclude by saying that we thank the Commission for giving us this opportunity to air our concerns mainly in terms of implementation of legislation so as to right what has been historically wrong

With those few remarks, Madam Chair and all protocols observed, I wish to rest my case.

The Acting Chair (Commissioner Namachanja): Thank you, Sir. Please, state your name again, I did not get it.

Mr. Joseph Njenga: My name is Joseph Njenga.

Ms. Nancy Kanyago: Commissioners I have no questions unless the Commissioners have questions.

The Acting Chair (Commissioner Namachanja): Thank you, Mr. Njenga for your presentation. We will now ask you a few questions for clarifications and maybe to get a few comments here and there. I will start with Maj-Gen.

Commissioner Farah: Thank you, Chair. Joseph Njenga, could you tell the Commission about your relationship with the National Council of Persons with Disabilities? Do you get funds from them because when we were going round the country, every county we visited, we heard presentations from people with disabilities and even though they have registered themselves, they were not in contact with the national body in Nairobi? Probably, you could shed some light on that one.

Mr. Joseph Njenga: Thank you. Our relationship with the National Council of Persons with Disabilities, if we were to shed light on it, we would say that we work hand in hand. We need to let the Commission know that the Commission was set up as a requirement of the Persons with Disabilities Act. The United Disabled Persons of Kenya which has existed since 1999 advocated for the formation and existence of the Persons with Disabilities Act. However, many of the sections of the Persons with Disabilities Act did not get into force until 2010. This is to say that when the persons with Disabilities Act came into force in 2004 structures needed to have been put in place to ensure that people at the grassroots are reached. It is also important to note that the Persons with Disabilities (Amendment) Act of 2011 takes into consideration the devolved structures that were brought about by our Constitution. It is also good to say that once the amendment is taken to Parliament and once the devolved structures are in place, it will be my joy to say that persons with disabilities will be reached by the council structures at the county level. I agree with the Commission that people with disabilities may not have been reached because the Government was slow in putting up structures of the council. However, the council is trying very much to reach them and I think I have given a satisfactory answer.

Commissioner Farah: So, since the Act came into being and the Council was formed, I will not say that they went round the whole country but they made substantial progress in reaching the grassroots?

Mr. Joseph Njenga: I think we need to understand that before the Persons with Disabilities Act came into force, persons with disabilities were totally neglected. To bring them at par with others in the society is something that needed sometime and consideration. It is important to say here that that was a grave violation of human rights. As I said earlier, even the Constitution by then did not recognize persons with disabilities as persons with dignity. To this end, it is also important to note that not even a single

legislation had anything positive for persons with disabilities. Therefore, when the council came into place, it had to grapple with many technical issues. Coming up with strategies of going round was something next to impossible because even the council itself was understaffed. But as I have hinted, with the devolution structure coming down, of course the Persons with Disabilities Amendment Bill proposes the structures that the Council can use down to the devolved Government. What we need to do is to be vigilant and ensure that these structures work for the good and benefit of people living with disabilities.

Commissioner Farah: Thank you very much.

Commissioner Slye: Mr. Njenga, I want to thank you for appearing before this Commission. I also want to thank all the people here for coming and attending our thematic session of persons with disabilities.

Mr. Njenga, how would you respond to people who, given the meager resources and the demands in terms of alleviating poverty and other social ills that the Government is trying to address, would say that implementing some of the recommendations that you and your organization may want implemented is very expensive? Why should the Kenyan society make such an investment?

Mr. Joseph Njenga: Thank you, Commissioner. In response to your question, I wish to raise a very pertinent issue of human rights. Rights of persons with disabilities should not be treated as second hand rights. Our organization's stand is to ensure that persons with disabilities are given and accorded their rights. If the Government did not want to be involved in expensive strategies, the option it had was not to sign and ratify the Convention on the Rights of Persons with Disabilities. Once this Convention is signed and ratified by the Government, it meant that the Government is committed to promoting the rights of a given group in that society. This should also apply to persons with disabilities. In hearing what you have said, I want to agree with you that any Government cannot alleviate poverty without addressing the concerns of persons with disabilities because disability goes hand in hand with poverty. Therefore, it should be our pertinent appeal to the duty bearer to look into resources to see that they can accord and provide rights of the disabled within the Constitution and other instruments.

Commissioner Slye: Thank you, Mr. Njenga. That is a very good answer to a cynical question that is posed in such situations. One of the questions for you is that in the statement that was submitted to us by your organization, there is a comment on the way the People with Disabilities Amendment Act of 2011 that has some proposals to address the gender issues under the new Constitution in terms of gender representation. The comments here are that some of the proposals that need to be made to ensure that gender parity is there may override the gains for persons with disabilities. I am just wondering if you could elaborate or explain what your organization sees as a conflict with that regard.

Mr. Joseph Njenga: Thank you, Commissioner. If you look at Article 90 of the Constitution of Kenya, you will see that it provides for elections on party lists. In this

party lists, persons with disabilities, of course, considering most of their agenda is part and parcel of this---. The statement here explains that the Constitutional Amendment Bill is trying to change Article 97 (i) (a), and “c” which provides that there shall be 12 nominative seats which shall be shared among the youth, persons with disabilities and workers. By interfering with this and without providing clear guidelines on this, we might open a leeway for persons with disabilities to fall into cracks of losing. As much as it is good to address issues of gender parity, it is also important to address issues of representation for persons with disabilities which are phenomenal and did not exist in the previous Constitution. Whereas we do not disagree with the Amendment Bill, we just want to raise caution so that when issues of gender parity are looked into, they are not looked into at the detriment of issues of people with disabilities. I hope that I have given a satisfactory answer.

Commissioner Slye: Thank you, Mr. Njenga. That makes the issue clearer to me. I am just wondering that as someone who has identified this issue and the concerns, have you been able to come up with a proposal to address issues under the Constitution in a way that also respects the rights and representation of persons with disabilities.

Mr. Joseph Njenga: What we have done is to make several proposals to the relevant constitutional implementation bodies and one of the recommendations we have made is that despite issues of gender parity, persons with disabilities have suffered very much in terms of representation and that is why their issues have not been in the limelight.

The representation of persons with disabilities needs to be held with high regard. To this end, we have even recommended that when such issues are being addressed, much consultation between the implementation bodies and persons with disabilities should be encouraged so that we come up with amicable solutions to these problems.

Commissioner Slye: Mr. Njenga, I wonder if you would be willing to tell the Commission the submissions you have made on the Constitutional Implementation Committee. It would be helpful for us as we work to craft our recommendations in terms of the human rights violations that we are looking at, including those related to persons with disabilities. So, if you have, you could liaise with our staff and that will be very helpful for us. Again, I want to thank you for your testimony and for your participation in this sitting.

Mr. Joseph Njenga: We can always avail most of the proposals that we have made. I agree with you that it will help the Commission to address the violations that have existed.

Commissioner Chawatama: Joseph, thank you very much for your testimony. My names are Gertrude Chawatama, I am a Judge and my area of interest is justice. As you have heard, we have travelled throughout your beautiful country and we have had an opportunity to hear from persons with disabilities, both men and women and even children. We also had an opportunity to hear from family members of those living with disabilities and the challenges they have faced. You have mentioned provisions in the old

Constitution and now also in the new Constitution, you have also mentioned recommendations and also the Act of 2003 and I believe you also said there was an amendment to that Act. As a judge, I have seen that it is very helpful when people who are affected have an opportunity to interact and bring awareness to an institution such as the Judiciary for them to understand even as they hear cases involving whether it is persons living with disabilities or children. If they have an opportunity to hear from them, the decisions that come out of such courts have a greater impact.

As an organization, I am wondering whether or not you have had an opportunity to interact and to bring awareness to the plight of persons living with disabilities with the Judiciary. If you have, can you give an example of one case or two in which a decision was made by the court; either a decision that you felt that had no impact on the lives of persons living with disabilities or where you felt and you were satisfied that the courts really understood your plight?

Mr. Joseph Njenga: Thank you, Judge, for your question and also for your comments. I need to take you back to the Persons with Disabilities Act; in Section 38, the Chief Justice and the Attorney-General were mandated to come up with rules and regulations to enable persons with disabilities to participate well in court proceedings. Issues like physical guide, provision of sign language and other accessible formats like Braille and probably removal of court fees that would be a stumbling block to persons with disabilities. Although this is a process that has taken quite some time, I know they are at an advanced stage. However, I do not want to say that I have a case in mind that has impacted or not impacted on the lives of persons with disabilities, but I can briefly mention that the Persons with Disabilities Act has created a National Development Fund for persons with disabilities and you might have seen in the papers sometime last year that there was an injunction on this Fund and as a historian, following the injunction case, the judgment made for this injunction on 28th October, 2011 was a historical milestone towards positively impacting on the lives of persons with disabilities. This is the only case which I bring to your attention.

Commissioner Chawatama: Thank you very much. What do you think as a Commission we can do to help hasten some of the things that, in your opinion, have taken long to be implemented?

Mr. Joseph Njenga: One of the immediate things that the Commission needs to do is to come up with a very strong recommendation that there can be no healing unless all the wrongs that have been committed to persons with disabilities are put towards the right direction; towards righting these wrongs. Urgently, we need to see a recommendation compelling the duty bearer to start taking remedial measures so as to put persons with disabilities at par with others. I need to give an example here and say that the first case of HIV/AIDS was reported in Kenya either in 1981 or 1984. It took 20 more years for HIV/AIDS related information to reach the persons with disabilities. This is a vivid example to show that persons with disabilities have lagged behind either advertently or inadvertently. To this end, we need to re-emphasize that we need very quick recommendations to the duty bearer to ensure that quick remedial measures are taken to

put persons with disabilities at an almost equal level or to create a level playing field to ensure that their duly given rights are also accorded.

Commissioner Slye: Mr. Njenga, I want to ask you another question. We are trying to find and have finally been able to find a copy of the previous Constitution and while we understand what the previous Constitution provided for, the new Constitution in fact, has improved the situation particularly with respect to persons with disabilities. Part of our task is to understand historically the violations that have occurred in this country. You had mentioned specifically two different sections in the previous Constitution. Section 34 and Section 82; and Section 82 as you have rightly pointed out, prohibits discrimination on a number of grounds, but it is silent on issue of disability and persons with disabilities. So, I understand the concerns raised by that section. In Section 34(c) and (d), you said that that it bars persons with disabilities from standing for election.

So, I wanted to better understand that and maybe it will be helpful for others in the room for me to just read those two clauses which are relatively brief. Section 34 concerns qualifications for election and (a) requires that the person be a citizen of Kenya and at least 21 years of age. (b) Requires that the individual be registered as a voter in a constituency and (c) says: - “He is able to speak and not incapacitated by blindness or other physical cause to read the Swahili and English languages well enough to take an active part in the proceedings of the National Assembly”. Then (d) says: - “He is nominated by a political party in the manner prescribed by or under an Act of Parliament”. I wonder if you could just briefly address what in your view was the fact of those causes and how they prevent persons with disabilities from qualifying or being nominated or elected to public office.

Mr. Joseph Njenga: It is good that you have a copy of that Constitution. I would like to specifically refer you to (34(c) where you have read that this person should be able to read and is not incapacitated by blindness or any other physical incapacitation to read and write Kiswahili or English. Whereas it is very clear that Braille is a mode of communication but the constitution not considering it to be that, which is an open violation of human rights. So, we need to clearly concentrate on (c) which could be used to bar one from standing for any elective seat. I hope I have made this clear.

Commissioner Slye: Thank you, Mr. Njenga, I have no further question.

Commissioner Dinka: Thank you very much, Mr. Njenga for your very detailed and extremely useful presentation of the challenges facing the members of your organization. The Government has put in place some mechanism to look after the interest of people with disabilities and to enhance their opportunities and welfare. In our tours throughout the country, in some places, we heard that the people living with disabilities are either not satisfied with the effectiveness and the responsiveness of these mechanism or have no idea how to access them.

My question is; what is your view on the effectiveness particularly the responsiveness to demands and requests coming from persons with disabilities? Secondly, what is your

organization doing to inform your members how to access and get the necessary support from these mechanisms? Do you do any kind of civic education out in the countryside?

Mr. Joseph Njenga: Thank you Ambassador for your question. I need to start answering your question from the reverse and I would start with your second question. Our organization being a national organization also has some limitations. However, we have tried to reach our members and it is good to say that our organization is a membership organization so what we do as an organization is sort of raise awareness to our members and we encourage them to share information with their other groups.

In terms of looking at effectiveness of services provided by persons with disabilities, this is a thorny issue and it will vary from one speaker to another. However, what I need to note here is that I need to take all of us back to Article 8 of the Convention on the Rights of People with Disabilities. In this Article, if we looked at it, we would realize that state parties that are signed and ratified to this convention have a responsibility of raising awareness. So maybe what we need to do is liaise with the government and urge the government to step up awareness for persons with disabilities. By so doing, I want to agree that we shall be able to reach as many people as possible. Thank you.

Commissioner Dinka: Thank you very much. My last question is how responsive are Members of Parliament or the executive branch to lobby efforts of your organization in order for you to give them information on your membership and the different challenges faced by your members? How responsive are they to your needs and how effective would you say your lobby has been or is there something that you would ask? For example, you said you need certain bills to be fast tracked. Of course the Commission is going to look at that very carefully but have you been able to access some Members of Parliament and tried to ask them to fast track these Bills and what have their responses been? Were they responsive or were they not that responsive?

Mr. Joseph Njenga: As an organization, we have tried to lobby Members of Parliament but what we need to bring to the attention of the Commission is that in Kenya, unfortunately, our Parliament has gone with agendas. For example, when the ICC issue was on, we lost track of all that was concerned with the implementation of the Constitution. When we are just stretching towards elections, most of the Members of Parliament have been obsessed with the idea of campaigning. To this end, most issues of persons with disabilities though well raised by persons with disabilities, we have found our issues escaping through the window.

What we need to say to the Commission is that we need to make a strong recommendation to ensure that Parliament treats issues of disabilities as issues of human rights. I know issues of disabilities have not been considered much but I want to give a very good example. If you look at our statement one of the issues that is in the Persons with Disabilities Amendment Bill of 2011 is the issue of dealing with the retirement age for employees with disabilities. Speaking to this issue, I wish to draw the attention of the Commission and probably refer the Commission to the HANSARD of 19th October 2011 where the issue of retirement age of persons with disabilities was discussed.

As an organization, we laud the efforts of Members of Parliament on how they discussed the issue. Whereas the Minister concerned felt that there was no need to raise the retirement age for persons with disabilities, the Members of Parliament felt that the concerned Minister was contravening a law that he well understood. At the end of it, if you look at the HANSARD, the honorable speaker of the National Assembly directed that the Attorney-General advises the Minister on how to effect this issue. At least we also hope that when the Amendment Bill is laid on the table of Parliament, they are going to expedite it as issues of human rights. Thank you.

Commissioner Dinka: Mr. Joseph Njenga, I thank you very much for your presentation.

Commissioner Shava: Mr. Njenga, thank you very much for your presentation. My name is Margaret Shava. I have a question and also a comment. First, is your organization an NGO?

Mr. Joseph Njenga: Yes; my organization is a non-governmental organization registered under the Society's Act.

Commissioner Shava: Your document is very comprehensive and very clear and specific. I would like to commend you on your presentation. You have made a lot of proposals as to amendments to the law and government policy. My question is; what do you think is the most effective mechanism to address these concerns to the Government of Kenya because as you have pointed out, there are various organs that are dealing with various aspects related to persons with disabilities? You have the national council, the fund, the quality commission, the Kenya National Human Rights Commission and, of course, the Non Governmental Organization such as yourselves and your document brings out the difficulties in the coordination of all the efforts and the danger that some of the issues will fall through the cracks.

Do you think that it will be important to have a mechanism that is entrenched within the government structure that would oversee implementation policies and laws dealing with persons with disabilities; a mechanism that could monitor progress of the measures taken to see whether in fact they are contributing to amelioration of the situation of persons with disabilities and also to make proposals to government to which government would listen simply because of the stature of such mechanism? Do you think it is important to have a mechanism entrenched within government to effectively coordinate on these issues?

Mr. Joseph Njenga: Allow me to answer your question in a manner that will energize this crowd where sugar levels have gone down. If today I was to go to Parliament as a Member of Parliament, I would look at the Persons with Disabilities Act which creates the National Council for Persons with Disabilities and propose an amendment which would make the National Council for Persons with Disabilities a fully fledged constitutional office. By so doing, I would be proposing mechanisms that would implement the according of rights for persons with disabilities and probably create a

constitutional organ that would advise government on how to implement most of the things that you see in our document. If that cannot be done, then the other option would be create a fully fledged department of disability in a Ministry or altogether create a ministry for disability. Basically what I am saying is that the next government needs to upgrade disability either to a ministerial level or create a fully fledged disability department that would work closely with the National Council for Persons with Disabilities so as to implement the rights given to persons with disabilities and ensure that these rights are not taken away.

Commissioner Shava: Thank you Mr. Njenga for that very good answer. I would just like to share a small story and I think it is something which many of us are guilty of. I have witnessed women who are in the throes of childbirth and then there are nurses speaking about the potential for disaster, perhaps there is something happening to the baby. They speak as if this woman cannot hear because she is in the process of giving birth. I think sometimes many of us approach persons with disabilities as if they have other sort of problems which they do not have, and the example I will give is of me. I was on a bus in a city called Leeds which is in the UK and the situation there for people living with disabilities is much better than it is for such persons in Kenya. When the buses arrive at the bus stop, if they notice that there is a person who needs assistance such as a mother with a push chair and a baby or a person who is using crutches, the bus has a way of descending to the level of the pavement so that the person can easily climb on to the bus. Persons living with disabilities are able to go about their business in a very independent manner.

I think that in Kenya, we sort of have the tendency of viewing such persons as if they are helpless. I was guilty of that offence myself as I tried to assist such a person off the bus and I got a very rude response and he was extremely offended because he did not need my assistance to go about his daily business. I think when I look at the provisions that we have in this country, they all look very palliative.

They are not measures which are there to empower or at least the empowerment is not happening in the way that is envisaged. They are talking about a council that does not seem to have a lot of political clout, power, funding or anything to make a difference. When we have been out there in the provinces all we have heard is how people apply to them for money. It is more of an aid mechanism. The same thing applies to the fund. However, where is the mechanism that makes people understand that a person who has something not fully functional about their leg, arm or eyes is not a person to be pitied or a person who needs aid? They just need an environment that enables them to operate and achieve their full potential just like any other human being.

So I just wanted to share that story and thank you very much for your presentation.

Mr. Joseph Njenga: Thank you Commissioner. In response, I want to say two things; one, we shall have a very good country when we do not have laws that are abundantly cautious. My friend Commissioner, who is a judge, will tell you our country will be a very good country when the laws of our country are not what we call in Latin *abadante*

cautella. This means that the laws are sort of protective. One of the laws that are very abundantly cautious of course without fear of contradictions is the Persons with Disabilities Act. I want to agree with you when we have a law that can bite or cut, we shall be a very good country.

The second and last thing I would like to talk about, you have already talked about it. I personally once have faced what you have said. I want to sort of share with you that three weeks ago, in a bus here in Kenya I was seated next to a lady and when my phone rang I realized this is a person I do not want to speak to at that time. So, I held the phone on my hand and the lady just told me, "Let me pick it for you". In her mind she thought I do not know how to pick my phone. I was quick to tell her, "Unfortunately, my phone is so complicated, you cannot pick it". I want to agree with you but basically, say two or three years ago in this very room sometime in May 2009, I made a very powerful statement. I want to end my presentation with the same words I said.

I told a crowd that the best insurance policy you can take and the best insurance cover you can take is to plan for disability. This is because you do not know when it comes and you do not know where it touches. Some of my friends seated here will tell you that disability is a club and anybody can join it and of course join it at any time.

The Commissioner has talked about public transportation; as a historian I want to take you back to the 1960s. When we were doing away with buses, we never thought about persons with disabilities. The *matatus* you see plying these routes today could be very inconsiderate about persons with disabilities. So in a nutshell I want the Commission to consider this a very serious and gross violation of human rights. If I cannot access transport or a building on account of my disability, it is gross human rights violation. Thank you.

The Acting Chair (Commissioner Namachanja): Mr. Njenga, thank you very much for a very enlightening dialogue we have had with you. This Commission is going to benefit a lot from the recommendations you have given us. I have no question for you.

Ms. Nancy Kanyago: Commissioners and members of the public, we are ready for our second speaker. I would like to welcome Phoebe Nyagudi who is the Director for the National Council for Persons with Disabilities.

I will refer you to your folders and the letter of invitation that we sent to the council which was to provide a guide on the issues the council need to shed light on.

Ms. Phoebe Nyagudi: The Chair of the Commission, Commissioners present here today, distinguished guests and my fellow persons with disabilities who are here, good morning.

I want to say that we are very grateful to be here this morning. I want to acknowledge the good work that is being done by the Commission. We are happy that as persons with disabilities we have also been given this opportunity to come and give our views. In brief, I want to talk about the National Council for Persons with Disabilities.

The National Council for Persons with Disabilities was established in 2004 after the enactment of the Persons with Disabilities Act in 2003. This Act that established the Council has objectives and these are being implemented by the National Council for Persons with Disabilities.

One of the objectives is to promote and protect the rights of persons with disabilities, to provide for the rehabilitation and achievement of equalization of opportunities for persons with disabilities and also to establish the National Council for Persons with Disabilities.

The Council is a State corporation and it is under the Ministry of Gender, Children and Social Development. It is run by a Board of Directors whose members are drawn from various organizations of persons with disabilities, key Government Ministries, the Office of the Attorney-General and the Federation of Kenya Employers (KFE). The Council is headed by a non-executive chairman. The current chair is Mr. John Khalake. The day to day activities are managed by a secretariat.

The Board is charged with the responsibility to formulate policies geared towards the realization of opportunities for persons with disabilities and to ensure that they are able to access education, employment, advocate for non-discrimination. They fight for persons with disabilities to have access to all the services that are being provided for every other person, particularly access to all information, physical environment and technology.

I just want to give briefly some of the few programmes that we have. These programmes help us to implement the Act. One of the things that we do as a council is to create a lot of public awareness on disability. As we do this we also create a lot of awareness on national, regional and international instruments on issues of disability and the Constitution of Kenya.

Secondly, we also build the capacity of disabled persons organizations and persons with disabilities themselves. This we do to help us in monitoring the provision of services to various persons with disabilities. We, as a national council, are a national institution but for us to reach the people outside Nairobi or other cities, we have to build capacities to these disabled persons organizations to help us in monitoring the services that are either reaching our people or are not accessible to them.

We also do registration of persons with disabilities. There are organizations and institutions that provide services to them. We do this because we want to know where they are distributed, the types of disabilities and the challenges they are facing so that when we come up with programmes we are able to address the various challenges that they have.

The other thing that we do at the moment is to advocate and train the public and private sectors on disability mainstreaming. We are talking of disability mainstreaming because we feel that as one organization or one Ministry in charge of disability, we may not be

able to provide all the services that persons with disabilities require. Therefore, we advocate for disability mainstreaming so that every organization, Ministry and institution should be able in their core functions to ensure that the services that they provide to the public are also accessible to persons with disabilities. That is why we went a notch higher to ensure that disability mainstreaming was included in the performance contracting guidelines so that every year, every institution that signs a performance contract must tell what they have done for disability. We have given them what we expect them to do. Some of the various things we have said are that; we want our persons to be employed. For them to be employed it has to be in your performance contract. At the end of the year you will tell us; how many did you employ? We want the working environment to be made accessible to persons with disabilities. We want information to be accessible to persons with disabilities. If you are giving out brochures that you give to the public, how are you addressing and how are you taking care of persons with disabilities?

In the performance contract, the other issue that is raised is that we want members of staff to know how to handle persons with disabilities. What is disability? How can it be eradicated? What can we do about it? Those who have already got the disability, how can we take care of them? Those are being addressed by disability mainstreaming in the performance contract of every institution.

We also do social protection and this is particularly to persons with severe disabilities. The former presenter has just talked about the Disability Act and has also indicated that the Act which established the Council also established the National Development Fund for people living with disabilities. Under this Fund, we get money which we use to reach persons with disabilities in this nation. One of them is to give cash transfer to people living with disabilities. These are people who need care throughout the day, 24 hours because of the nature of their disabilities they are not able to do any other thing. They cannot be trained. They cannot access any employment. Therefore, they must be given allowances to enable them live a dignified life. That is part of what we do at the Council.

We also empower our people economically. We request and advice them to be in groups which are well defined and well organized, registered and we can give them funds to enable them undertake their enterprises. We also provide assistive devices particularly wheelchairs, tricycles, white canes and all these things are provided at the National Council.

We improve the infrastructure particularly in learning institutions and we provide equipment to enable learning to be easier for persons with disabilities. Also for persons with disabilities who are unable to pay their school fees or college fees, we provide scholarships. So, in essence, those are the main programmes that we run at the Council. Actually, as we do this, we try to implement the Persons with Disabilities Act. We also try to implement the Constitution and what it says about people living with disabilities. We give equal opportunity to people who deserve them.

Before I forget, we also provide recommendations to persons with disabilities who are in employment or who are in receipt of any income to be given tax relief. This is given to

persons with disabilities to mitigate the effects of disability. You may wonder why we advocate for tax relief but we are saying that we need services to be given to us. However, for us to be brought at par with everyone else, we should be assisted to be able to take care of the cost of disability. As you saw, when I came in here, I did not come alone. I came with somebody to assist me. Therefore, I need extra finances to help somebody help me to come and do what everybody else is doing.

Apart from what we are doing at the Council, I have mentioned that we have the Persons with Disabilities Act. If you look at this Act, it came into being in 2004 although it was enacted in 2003. Although it came into force in 2004, not all the sections were operationalized particularly those sections that addressed very key issues to persons with disabilities; the issue of accessibility, access to the built environment, public transport and information and communication. Those sections were not gazetted until 2010 although the rest of the Act came into being in 2004. That was a weakness of the Act.

Again, we are saying that gazettelement of the various sections of the Act in phases has denied persons with disabilities opportunity to enjoy their rights as spelt out in the Act and even in the Constitution. Your rights should not be given in phases.

The other weakness that has been noted in the Act is that it gave the Government the leeway to implement the rights subject to the availability of resources. We are saying that there should be absolute commitment whether there are resources or not, people should enjoy their full rights.

There were also some fundamental rights that were not included in the Act. For example, right to life, representation, liberty and security of the person. It had nothing about women and the girl child. All these things were not spelt out in the Act.

To address all these, the Act is being amended to provide for a more comprehensive protection to persons living with disabilities. In doing that, we are also aligning it to the UN convention and also to the Constitution. So in essence, that is what I wanted to say but I want to have some recommendations to make. When we look at the Constitution that we have now, we are talking of two types of governments; national and county governments. We know that when the structure will be in place for people to move to the counties, we recommend that we know that the National Council will share its resources with the county government. It will also play the advisory role that it is playing now and to formulate policies for people with disabilities at the county level. We are also saying that we recommend that the Council will be able to facilitate the implementation of the Act as amended and ensure that any legislation formulated at the county level will be disability responsive. It will also facilitate the transfer of funds to the county level.

We also advice that any devolved funds that we have down there should also be put aside to cater for issues of disability and concerns of disability.

We also expect that at that time when we would be at the counties, the Council will be able to track and audit all the county legislation to ensure that they comply with the

Constitution and that the requirements of persons with disabilities will be well spelt in them. So in essence, that is what I wanted to say.

Ms. Nancy Kanyago: Thank you Phoebe. With the permission of the Chair, I would just like to ask you a number of questions. I will ask them together and then you can respond at once.

We had requested if you could provide information on your annual budget, for example, for the last year and give us a recommendation of whether the request that you made was funded or what proportion was funded.

The second question is that the Council is currently under the Ministry. I do not know as per the amendment of the Act, have you made recommendations that you become an independent parastatal or would that not be useful for the Council?

In terms of capacity, the Council falls under the Ministry of Gender, Children and Social Development. We know under that Ministry there are children officers and gender officers. I am not sure if there are offices which deal specifically with disability. You can answer to the best of your capacity. We have invited the Ministry and so we hope they will also be able to shed light on that.

On the issue of accessibility particularly in terms of physical accessibility, are there guidelines that have been prepared to inform whether it is the construction industry and Government offices on what exactly is the standard for accessibility and who monitors that, is it the Council or the Ministry? If I give an example our original venue for this meeting was at Charter Hall and there was a ramp for vehicles and wheelchair access but it was a very steep ramp. Who monitors those standards? Are there standards or are people supposed to construct based on their own knowledge? Was the Council involved at all or not in the national population census? Do you, as a Council or the Government, have a census on the number of persons with disabilities?

Finally, you mentioned something on the employment and tax relief. The tax relief is for persons with disabilities. What about for families that are supporting persons with disabilities, for example, a mother, father or another caregiver who is earning an income? Is it only for the employed or also for self-employed? Is that something people are only able to access in Nairobi or you can access it even in Kisumu and Mombasa? You have to go to the KRA offices for tax relief. What are your recommendations on that particular issue?

Ms. Phoebe Nyagudi: Thank you for those questions. May I start with the last one, please?

Tax relief is for income that is received by any person with disability whether this income is from self-employment or on your employment. This is given to every person that has income throughout this nation. Formerly, we found this process to be very long and cumbersome for one to be given that certificate. Everybody had to come to Nairobi, get

assessed and be given tax relief. We were able to consult with the KRA and they were able to decentralize some of their services so that our people in the regions were able to access the services through the KRA in their regions.

This is only for persons with disabilities. However, we also know we have our caregivers, parents who are sometimes paying a lot of money to buy drugs for their children. We have been consulting with KRA on the same issue. However, the feeling of KRA is that the Government should look for other ways to compensate parents but not from the taxes. They allege that these taxes are given to a person with disability to mitigate the cost of disability. So giving it to a caretaker who is not a person with disability is a bit distant. Now they are calling upon the Government to look for ways to take care of that. They also understand that these parents are putting in a lot of money to ensure that their children are well taken care of. That is their wish and we have discussed it with them.

The other issue that has been raised is on the census. I want to inform the Commission that the National Council was involved in the 2009 national census at the level of where we came up with the questions that were to be asked when people went to the households. We went to the level of training the enumerators. We trained them on how they should approach the question of disability.

One thing that we must agree on is that people tend to conceal their people with disability or children with disability. It is an offence even in the Disability Act. It is punishable. So, when you start talking about disability, people do not want to give the correct position. So, because we wanted to know the exact number of persons with disabilities in Kenya, we trained people but at the end of the census, the number that came out, to us, it was not accurate.

According to the Census of 2009, persons with disabilities in Kenya were only 1.33 million or about 3.5 per cent of our population, which we think is not the correct position. In most countries now, according to the World Health Organization's estimation, the population of persons with disability should be 10 per cent. According to the report that we got last year from the World Bank, this figure now is going to 15 per cent but in Kenya, what did we get? We got 3.5 per cent.

So, we felt that this exercise may not have been done well. I remember, in my own case, when the enumerators came to my house, nobody asked me whether there was anybody with a disability in the house. When I asked them: "Have you finished?" They answered "Yes". I asked them why they never asked me this question, and I knew what they were going to say. "We did not ask you, Madam, because we can see that you have a disability." I told them: "It is wrong. What if there is somebody else in the house that also has a disability? You must ask because there could be somebody else. Even by looking at me, do you know the type of disability that I have?"

So, we believe that the exercise was not done well. You have asked me whether we go out of our way to also carry out our own census. One thing that we must appreciate is that census is a very expensive venture. That is why we wanted to ride on the national census.

So, we cannot hold our own census, but we depend on the Government. We said that we wanted a repeat of the census of persons with disabilities. What we are doing at our level, as I said, is registration of persons with disabilities. We have moved to every county to carry out registration. By doing that, we have reached out to a very small percentage. We feel that there is still a lot of work to be done for us to be able to establish the real population of persons with disabilities in this nation. As a Council, we are looking for partners to work with us.

The other question that I was asked is on our budget. Last year, we got both Recurrent and Development funds. For Recurrent, we had Kshs32 million and for Development, we had Kshs250 million. This comes to around Kshs285 million. This is against the Kshs1 billion that we had requested for. So, you can see that we did not get the funds that we needed. With the money that we requested, we wanted to do a census in at least a portion of the country. We wanted to do it in piecemeal until we finish. The Kshs250 million that we got was given to us to establish the National Development Fund for Persons with Disabilities. This is a flagship project in the Vision 2030.

So, when we talk about the budget, we are far below what we normally request for.

As I mentioned, we are under the Ministry of Gender, Children and Social Development. We are a State corporation. We employ our own staff. Again, as we mentioned, because of under-funding, we cannot employ all the staff that we require. So, again we do this in piecemeal but we are independent. We are a State corporation. We have our own seal. We can be sued. However, even if you are independent, you cannot be fully independent. You must belong to a home. Even us here, when we are born in our families, there comes a time when you have your own home but still you belong to the family of your parents. So, that one does not really interfere with our independence.

It has been mentioned and it is known that under the Ministry, we have the Gender and Social Development officers throughout the country. We also have the Children's Officers throughout the country. We do not have specific officers who handle disability issues. I want to tell you that we are well placed in that Ministry because we use the services of these other offices up to the ground level to help us reach our persons in the regions. In fact, before the establishment of the Council, it was the Gender and Social Development Officers who were handling issues of disabilities.

Formerly, I was a District Gender and Social Development Officer. Before the Council came into being, the work of the disability was going on and it was under the Ministry. So, we are lucky to be under them because they are helping us to do our work out there.

Presiding Chair, you also mentioned the issue of accessibility. This is a very thorny issue for us, persons with disabilities. As I mentioned in my presentation, when you look at the Persons with Disability Act, there are issues that touch on accessibility. The sections that address accessibility in the Act came into being in January, 2010. So, you can just read in the Act that buildings should be accessible; public transport should be accessible; information and services should be accessible. However, we could not enforce that

because it was not even part of the law until January, 2010. So, it was difficult. We were ready but we could not enforce it but Kenyans of goodwill just started adjusting their buildings and making them friendly to persons with disabilities.

So, when we come to the issue of guidelines on how constructions should be done, how the ramps should be made, how the washrooms should be made accessible and friendly to persons with disabilities and how the ramps at the bus stages should be done; it is now that we are coming up with a policy. We are calling it the “Adjustment Policy”. Under that policy, we are spelling out all the guidelines on how this should be done. So, it is not in place but we are working on it.

People have given us ramps and sometimes we cannot use them. It is dangerous. Some of us have used them and we have fallen on our wheelchairs. So, that is a big gap that we still have to fill.

You also wanted to know who monitors accessibility. If you look at the Persons with Disability Act, it is the National Council that should have inspectors to monitor the accessibility of buildings to persons with disabilities. So, again, this issue is going to be handled in the policy that we are coming up with.

Who provides the standards? As I told you, we are coming up with a policy but we are working very closely with the Kenya Bureau of Standards. In fact, there is a standard they have developed that they are almost disseminating to the public on accessibility. So, we are not doing it alone. We are doing it with other stakeholders.

I believe I have answered your questions, Presiding Chair.

Ms. Nancy Kanyago: Thank you, Phoebe. I will now hand you over to the commissioners, in case, they have issues for clarification.

The Acting Chair (Commissioner Namachanja): Thank you, Madam. Maybe, we can ask all our questions. You can write them down and then you can respond later.

Yes, Commissioner Dinka!

Commissioner Dinka: I would like to thank Phoebe for the representation. It has been very clear and very straightforward. Your answer to the Leader of Evidence is satisfactory. So, I have no further questions.

Thank you very much.

Commissioner Shava: Madam Nyagudi, thank you very much for your presentation. It has helped me personally to see a bit better how the Council operates, the kind of challenges that it has, its mandate and how far it has spread. I have two brief questions. You said that the Council’s Board includes representatives from the Office of the Attorney-General. I was recently in one of the popular hotels in Nairobi for a meeting.

The last time I was in that hotel, when we took a break and went to the rest rooms, I was horrified to see one of my sisters, who was using a wheelchair, had to get off the wheelchair and sort of crawl along the ground, so that she could access the washroom. I remember that really horrified me.

I was at the same place again this week, and they have done a beautiful refurbishment but, again, there is no access for persons with disabilities. So, would the Council, together with the Office of the Attorney-General, contemplate undertaking some sort of public interest litigation to show that this is a serious issue, and that people must make such provisions? That is my first question.

Secondly, you said that you have contributed to the improvement of the infrastructure, particularly in schools, in order to enhance the learning of children who have disabilities. I wonder whether you could speak more about that and say in what way you have enhanced the infrastructure.

Those are my two questions. Thank you.

Commissioner Chawatama: Phoebe, I do not have any questions, but just to commend you for the work that you are doing and, maybe, to just inform you that one of the concerns that we have had is the failure for services and finances to reach the people it is intended to reach. You would have to really look at the system that you have put in place and, from time to time, be able to check just to satisfy yourself as a national body that all that you are doing is reaching the people whom you intend to reach to benefit from the very hard work that you are doing. Thank you very much for coming and speaking to us this morning.

Commissioner Slye: Madam Phoebe, I also want to thank you for your presentation of the work that you have been doing. I have one quick question. You mentioned that you requested a budget for last year of Kshs1 billion and you only received about Kshs280 million. I gather that Kshs250 million of that money went into this Fund. So, you actually got Kshs30 million. You mentioned that you had wanted to do a census, which you could not do; you could not employ all the staff that you need on a regular basis. I am just wondering. Are there things that you can recall that you had put in the budget but then you were not able to do them because of the smaller amount of funds that you received? Were there things that you were unable to do because of the amount of money that you were given?

Commissioner Farah: Thank you, Phoebe, for your good presentation. Again, as my fellow commissioners have said, we have been moving round the country. We have gone to all the 47 counties where we held hearings. In most of them, what we have been told is that they are registering all the persons who are disabled, but they have no communication from the National Council. I cannot blame you so much because the Act was just passed the other day. If you ask for Kshs3 billion and you got Kshs250 million, assuming that you keep half of that sum for yourselves at the national level, you will have almost Kshs100 million to disburse. If Kshs2 million is given to every county, it comes to

Kshs94 million, which is almost Kshs100 million. I want you to confirm whether that actually happens. This is because people down there are really trying to organise themselves in order to help themselves but they have been crying in our hearings that we have conducted that they do not get assistance from the top.

Thank you very much.

Ms. Phoebe Nyagudi: Thank you, commissioners, for those questions. Please, allow me to start with the last one.

It is true that our people always complain that we never reach them. Some of those complaints are justified. As I have told you, we are not even able to access some areas. We do not have strong vehicles to enable us reach some areas of this nation but we are doing our best to find ways of reaching them.

When it comes to the money that we received, the Kshs32 million that we received was for administration and recurrent expenses; Kshs250 million was to go out. It was only meant to go to projects and to help persons with disabilities. However, because this was the first time that the money was provided, we had to put structures in place. We had to find ways of how we were going to do this thing because we must also be very careful on how we give out this money.

Also you know that we are a national institution, without staff in the field, we rely on our Gender and Social Development Officers and the Children Officers. So, the first thing that we did was to train these people and tell them how we intend to reach our people. We had to come up with guidelines. Once we develop guidelines, they have to be validated by the stakeholders. It took a bit of time for us to start dishing out the money. This money went out on first come, first served basis. So, we went to the Press and told people what we were doing and what we expected of them. We sent out forms on how to access the funds. So, people who got the forms wrote back to us and we sat down as a Board and decided whether we could give the money out or not.

Even before we give this money out, we must train these people. We must know what they want to use this money for. We must come up with MoUs that we sign with every person who gets this money, so that we are accountable. We want to see that this money does not just go there and it is utilized without leaving any impact on the lives of persons with disabilities. So, we are still putting structures in place, training our people and doing all that.

Later on, we changed that strategy. We have decided that we now go as per constituency. So, we plan that per constituency, we will need so much money. We request the GSDOs to forward to us projects that should be assisted. Even if they forward the projects, the projects are very few in the constituencies because the money is not much. So, if they have complained that they have not received money, I know that some of them should say that they have received it. There are some who have received the money however; the majority have not received any money.

When it comes to the customs that I talked about, we are giving Kshs2, 000 to every household in every constituency. We started with 10 persons per constituency. We then went to 20 persons per constituency. By the end of this financial year, we have planned and we have money to reach 70 households. At least, we are in every part of this nation. So, that is how we are working. We are trying to improve on our structures. That is how we reach our people out there.

The other question that was asked was on the money that we received. We had requested for Kshs1 billion but we only got Kshs285 million. We wanted to carry out a census in maybe two provinces in a year and move to other provinces. We were not able to do so. We also wanted to buy some strong vehicles to enable us reach every part of the nation but we were not able to do so. We wanted to train people on how to handle issues of disability in every constituency. That is capacity building. We were not able to do all that but we did it per province, and not per constituency. We had to scale down some of our activities.

We wanted to employ staff, so that we have our representative in every area of the country. We wanted to hire offices for them in those areas and get means of transportation for them, so that services could be brought down to where our people are. We were unable to do so. That is why, given the amount of money that we got, we were unable to do all that we had planned to do.

The other question is from Madam Commissioner who wanted me to talk about the infrastructure and what we do. I mentioned that one of the things that we do, as an institution, is to improve on the infrastructure in terms of making the environment where persons with disabilities learn more friendly, and specifically make accessibility friendly to them, give them equipment to enable them to learn well. So, we have been able to support Kenyatta University because they do a lot for persons with disabilities in all categories of disabilities.

We have supported Moi University and Bondo University College. We have gone to these institutions. Our people are there but they are going through hell. So, when we give them money, we tell them “This is what we want you to do to improve the environment for them”, so that if you are on a wheelchair like me, you can access everywhere. If you want to use a washroom, it is accessible to you and it is user-friendly. Those are some of the things that we do in infrastructure development.

Madam Commissioner, the first question you asked was about---

Commissioner Shava: It was about public interest litigation. Is it something that the Council can undertake? Can it take a case to court and say in this particular case, this is what has happened and it is against the law, so that when the judgement comes out, it can serve to help people to be aware that the Government is no longer tolerating failure to observe the standards set? Is there a case like that you can consider taking to court?

Ms. Phoebe Nyagudi: Thank you, Presiding Chair. We have not taken anybody to court but we advocate for the rights of persons with disabilities. We have come up with some regulations that we did together with the Office of the Chief Justice and the Office of the Attorney-General. They were supposed to gazette the regulations that could have helped us in addressing the issues that you are raising. Somehow, those two sets of regulations have not been gazetted. It is not very easy to implement them but we will still fight for our people. We will still approach the Office of the Attorney-General to raise the issues.

Commissioner Shava: I can respond quickly to your statement. A human right is not something one is given. It is there because one is a human being. I have found that where people fail to observe those kinds of rights, sometimes it is necessary to pick up a big stick. I speak from my experience. My background is law, and we have done this a lot at FIDA in the search for global human rights in the political environment of the 1990s, and also on specific issues relating to human rights. That is how then the space opens up. So, I would recommend that you consider that as an avenue since the Chief Justice and the Attorney-General are being slow in helping you to implement the observation of your rights. I would recommend that you consider whether such an avenue might be helpful to your course.

The Acting Chair (Commissioner Namachanja): Madam Phoebe, we also use such a session to inform our audience on very key information. Maybe, you can use this opportunity to inform the public where your offices are situated and how your offices could be reached. I am sure that after these hearings, you are going to have so many people knocking on your door.

Ms. Phoebe Nyagudi: Presiding Chair, I want to take this opportunity to tell all of us who are here, particularly persons with disabilities who are here, that we, the National Council; are here to serve persons with disabilities, to protect and advance their rights. We are based on Waiyaki Way, just opposite ABC Place. We are adjacent to the army barracks. If you are coming from the direction of Nairobi School, you will see our gate. So, it is very easy to access us. The only problem we have is the highway. It is very difficult for persons with disability to cross it. We have been consulting with the people concerned with the highways. We want a tunnel to be erected for us so that despite the disabilities that we have, we do not get more difficulties because of that road when it comes to getting services. We have a website, which is www.ncpwd.go.ke. Kindly, visit it. There is a lot of information you can get from there.

The Acting Chair (Commissioner Namachanja): Thank you, Madam, for the information you have shared with us and the public. We wish you all the best in your work. May God bless you.

Ms. Nancy Kanyago: Presiding Chair, commissioners and members of the public, the next set of speakers are going to speak about their experiences from the caregivers' perspective, especially in working with people with disabilities. You have two of the presentations in your folders – the first one from Mr. Shiroko and the other one from Iva of Econ Tutorials.

So, I will ask the speakers not to repeat things that have been said before. You have 15 minutes at most to make your presentations. You will give your three presentations after which the commissioners will ask you questions.

Mr. James Shiroko: Commissioners, my name is Mr. James Shiroko. I am a Kenyan parent to a 25 year old young adult who is deaf and blind. I represent the constituency of parents and families. Since many issues have already been raised, I will go straight to the main points. My first point revolves around the fact that as we speak right now, we still have many persons with disabilities who have not left home to access any service. Even after trying to receive some semblance of service, they still have to go back home for life-long care which has to come from their family members. My conservative estimate which is backed by a number of United Nations documentation, it is estimated that probably between 1 and 3 per cent only of persons with disability have ever left home to access any meaningful service. My biggest question is; where is the 98 per cent? Most of the information that we have received from my two colleagues who have made earlier presentations show where we would like to go or be, but if you look at it critically, they have just addressed the 2 or 3 per cent only.

If I were to be very radical and if I were to be given all the powers, I would say that we should change all the literature on disability so that everywhere where it is mentions “persons with disabilities”; we should be able to say “persons with disabilities and their families”. If that was sneaked in all the existing legislation, probably most of what I would have liked to say here would not have arisen. One of the recommendations that I wish to immediately make is that families in which persons with disabilities reside need to be recognized as important stakeholders in all initiatives for service delivery. They need to build capacity so that they are able to make a meaningful contribution on the negotiation table so that they are not excluded or discriminated against.

My second point has to do with abuses, human rights violations and injustices. There are a lot of atrocities being perpetrated in families. Most of these families are perpetrating these atrocities without being aware. We have those families where persons with disabilities have undergone sexual abuse. Some persons with disabilities have been tabulated and sterilized against their wishes and against their knowledge. All these are atrocities to persons with disabilities. They would probably not be there if these families build capacity to be able to understand what they are dealing with.

The issue of poverty has been mentioned. There is a lot of literature about poverty alleviation and eradication. We are saying that we do not see specific programmes that target persons with disabilities as an important segment within an already marginalized sector that requires specific attention to address poverty. The relationship between poverty and disability has been explained.

My next point has to do with access to basic education. We have a lot of literature or very good sounding addressing education in this country. One of the common expressions we hear when education is being talked about in this country is how much money has been

pumped there in terms of billions but we are not seeing the trickledown effect to persons with disabilities and their families. We still have policies that are very good on paper but very difficult to convert in practical terms. Under basic primary education, a child needs to go to the nearest primary school to where he resides. As we speak right now, we still have many learners who must go to specialized schools. They need facilitation to access transport and be able to access those schools. While their counterparts are able to go to school for free on foot, our Government requests the families to chip in something to supplement for boarding fees and other school levies. As families, we are left wondering whether these children belong to us as individuals or they are Kenyans.

I have an example. We have a day care centre here in Kilimani School for the deaf and blind and a parent has to spend close to Kshs1, 000 per day to be able to take the child there. How does this parent compare to the counterpart whose children have gone to the next school where they reside? I do not want to say much about the quality of education. I think we do not have enough time. We keep most of the children and take them to school because they are not able to access routinely made education curriculum. They need specialized curricular to address them as individuals. You are likely to find very good papers addressing issue, this but the practicality of it is that you will see very little in terms of transformation of that child.

I will skip the issue of health but I will just mention that in a situation where we have extreme poverty and persons with disabilities have not been left out, some disabilities require constant healthcare. They have suffered a lot of trauma and psychological pain as they attempt to access medical services. As I speak right now, we lost one deaf-blind adult. She is an albino and cannot hear nor see. She just succumbed to her complications at KNH. When people tried to write eulogies about her, it is said that she had challenges like raising bus fare to access a medical facility. She misses clinics because she cannot make it to the hospital.

I have a small case on access to justice. I have a client who got involved in a road accident in 2003. He is deaf and blind. The case was in Kakamega. I have also provided case reference number. The case is still going on and the latest direction from the magistrate is that the perpetrator who knocked him was displaced during the post-election violence and he cannot be traced. The court requested the complainant to look for that person and bring him in court. That case is still on even now. We have also had cases which end up on extensions due to technicalities. The justice system can be a bit complicated. One or two occasions when he goes to court, he needs an interpreter. You can find that the magistrate has not been informed. So, the magistrate adjourns the case because he is not aware that there will be an interpreter. Mind you, time and money has been spent. Family members usually come out to bring that person to the court premises.

My last point will be on tax exemption and taxation in general. The laws that exist are converted into procedures for you to be able to access this. Some of these procedures have made access to the privileges that have been given difficult. I will give some examples: One of the requirements when one is importing a car, one can get tax exemption. The law requires that the person with disability must have a driving licence.

As we stand here right now, people with vision impairment may not be able to get a driving licence. Some with physical impairment might be able to get a driving licence but if you compare with a person with vision impairment, who spends more on the car? The person with physical impairment can drive that car himself or herself but the person with vision impairment might have to hire a driver. So, the operational costs become very high for a visually impaired person.

These are very clear cases of discriminations just within the same segment for an intended benefit. I am not a lawyer but I am asking; what was the spirit of this exemption? I will come nearer home to families. We are handling disabilities that you have not seen here, commissioners. If you want to see the disabilities that we handle, you need to visit us in our homesteads. Those of us who have probably managed to acquire cars, they are not luxuries for us. We use them to support us in providing services to the persons with disabilities in the house. If my child, sister or brother is going to have severe disability that requires constant mobility, a car will be one of the most handy tools to be used to deliver those services. How come then I cannot access this kind of benefit?

We like the regulations that have been provided on accessibility but we would like accessibility to be taken a notch higher. There is a lot of emphasis on public transport and public buildings but in practice, these things are just concentrated in main places and yet persons with disability live everywhere in this country. How do I access my house on a wheelchair when I am not on a highway? The presenters who presented earlier just mentioned the difficulties in accessing public transport but as we are right now, we are talking about discrimination.

If I am on the roadside with my child who has severe disability maybe on a wheelchair or a cerebral palsy specialized seat a public transport vehicle will slow down but when the crew sees us it might zoom off. In some situations, it is dramatized and I am made to pay for extra seats in the public transport vehicle. As a family when you are moving a person with disability you have to move about two or three family members. When a person without disability moves it is just one person. The reason why you have to be three or four people is to continue providing support and care to the person with disability.

Since I have already documented these issues, I will just go back to my first recommendation that in all service delivery efforts and in all legislation, the institution of the family needs to be recognized as an important player. It needs to be well capacitated to be able to make a meaningful contribution to all decisions.

Thank you very much.

Ms. Eva Nyoike: Good morning, Commissioners. My name is Eva Nyoike and I am a specialist in the area of special needs. I am here under the capacity of working with persons with special needs for the last 20 years. As I sit here I represent my students, my parents and the other consultants and specialists that we work with.

One of the things that we wanted to bring up is the issue of health. The most important point is in regard to prevention of disability. From my experience, I have realized that many conditions, if parents were empowered during prenatal care they would have been able to probably change the situation of their children. For example, the medications that could be prescribed for them, exposure to x-rays and chemical substances, a lot of stuff could have been prevented. We are also recommending that the Ministry of Health, through the medical training colleges, should try and train their clinical officers and health workers on early identification of common neurological and genetic conditions. If they are able to identify these conditions at an early stage as soon as they deliver children or through seeing them in the clinics, the parents can then seek early intervention for the children.

As we have heard from our colleague from the National Council for Disabilities, we are also proposing that all children should be registered at county levels. Many issues that have been brought up are government related and not necessarily for an individual body. Based on our experiences, we are proposing that all the medical issues of the child should be catered for by a health provider because it is very heavy for the parents. They should take care of all the health issues without limitation. This includes medication which in most cases is life-long. They should assist in acquiring devices where parents are required to have them, for example, wheelchairs and spectacles or glasses. Medical follow up should be frequent which includes periodic blood tests, examination of the head and splinting to help hold hands or legs.

One of our colleagues talked about how they are supporting and helping persons with disability but we are strongly proposing that that should be handled by the Government. We are also proposing to the Ministry of Education in collaboration with the Ministry of Health and other relevant Ministries that a centre should be set up with specialists in the fields of growth and development, special needs neurologist, therapists and so on. The centre's mandate would be to assess and evaluate persons with disabilities and provide the following services:-

- (i) Early intervention services.
- (ii) The ability to refer clients to appropriate programmes.
- (iii) The centre should have all the therapists that are required so that they can provide services.

We do not have to send persons with disabilities to Kenyatta National Hospital (KNH); we can have the specialists there. They should also receive training and also identify the people who need those devices and provide them and also maintain them. As my colleague said, we should look at persons with disabilities and their families. The parents should be able to get some support.

Regarding training, one colleague mentioned training people in all areas. We are strongly proposing that all teacher training institutions or higher learning institutions should have some training on the component of special needs education. The world over, we are proposing for inclusive education where all children are taught in the same school. This

cannot happen if the teachers are not equipped to deal with our children. The universities that are providing special needs education should do more on practical experiences to enable the teacher to be better equipped on handling the diverse needs of persons with special needs.

As we talk about persons with disabilities or persons with special needs, we are not just looking at the education component; we are also looking at the therapy services that they require. In our country, we have just started a degree programme on occupational therapy but we do not have a programme on physiotherapy because we just offer diploma courses. We do not have any training programme whatsoever in speech and language therapy. All these are components of special needs education. So, the Government needs to set up in the universities degree courses so that our teachers can be well equipped for these children.

Let me talk about the schools that cater for persons with disabilities. We have run a specialized school for the past 22 years. We came to appreciate that we cannot use the curriculum that is given to us because all these children are different. These children have different unique abilities. Therefore, there is need to make sure we have individualized learning programmes. It is very important that the people who are doing the curriculum spend some time in the school so that they can be able to get some information on how to deal with the diverse needs of different children.

We have all spoken here about human rights. It is a child's human right to access school. When we say access to school we mean that the child should have effective and appropriate education. All schools, both Government and private, should make sure that they have qualified personnel who work and understand those children. That will cut down on the abuses that are currently going on in many institutions. I know we do have a quality assurance team from the Ministry of Education but we believe that for us to be more effective, we should have a county office that will look at the quality assurance in institutions. We are also strongly proposing that once the quality assurance team goes around and sees that the standards are not being met, there should be stiff penalties for the offenders.

Currently, there is nothing going on and our children continue to suffer. The Government should also ensure that our students are receiving all the learning materials they require for effective learning. These include interpreters, Braille books, large print books and whatever the child needs in class. If there are children who need therapy in the school, it should be provided. We are not just talking about having access to school but we are talking about having appropriate and effective education for the children.

These children grow up but where do they go? This has been a major concern for many special needs educators because we currently do not have services available. Most of them are at home and it is only those parents who can afford and so they come up with programmes for their children. We are now talking about adolescents and young adults. We are proposing that the Government should come up with facilities that would be able to cater for post-school programmes. When you look at the census you will see a figure

of 3.5 million persons, this is a big number of people who can make a big difference in building our nation.

Also, for some of the persons with disabilities, especially in the area of--- Probably, let me say that the ones who can actually access higher learning institutions, the Government should ensure that they also have all the services that they need; for example, the interpreters. That is because we have many young adolescents and adults who are able to go to college, but they have to get their own interpreters. Those who have visual impairments have to look for their literature. With regard to policies, I will just mention about policies and legislation. I know that we have spoken about the Persons with Disability Act, but I think the bottom line here is that a lot has been said and put in the policies, but it has not been implemented. I think now that it is actually law, we have to find ways to punish the people who are not doing what they are supposed to do. I may sound a little punitive here, but I think it is taking too long to implement. That is because there is nothing to fall back on. There is no punitive measure that is being put in place to ensure that people follow the laws that have been put in place in regard to the Persons with Disability Act.

Thank you.

Ms. FatumaWangari: Good afternoon everyone. The Chair, Commissioners all protocol observed. My name is FatumaWangari from an organization known as Kenya Association of Intellectually Handicapped. I am a parent and have a 24 year old daughter with intellectual disability.

Today, I am here to talk about the struggles that families go through in the duties of caring. When a family gets a child with disability, there are so many questions that we ask ourselves. They ask: "Will my child go to school? Will she get medical services? Will she be able to live independently in the community? Will she be employed? Will she have a family?" This is not the case that we are seeing right now. My daughter is 24 years old. She went through special education and for 20 years she was in school, but she has left with no certification. There is nothing to show that she was in school; not even a school leaving certificate. The other day I took her to get an identity card and we were told to go back to school and, at least, get a school leaving certificate. But I was told that she was not a student in that school. What does that mean for me? It is a concern struggle. I am empowered and can move from one point to another, but what about that family which is down there and does not have any kind of information? We have persons with disabilities who are over 30 years old and do not have a birth certificate or identity card? We are asking ourselves whether they are Kenyans.

The second point that I wanted to make is on poverty. I know that it has been talked about, but I just want to give a very practical example. With the special education system and especially the ones who go to special units, they are supposed to be in school from 8.30 a.m. to 12.30 p.m. That parent cannot hold a paying job. Even for business, it is so shaky. She spends the rest of the morning in *matatus* taking the child to school by 8.30

a.m. and by 12.30 p.m. again, she has to go back and pick that child. Even if she is a vegetable vendor, at around 11.30 a.m. is when you intend to make business. That is the time that you are going to pick your child. Again, when they come back home in the afternoon, we are seeing a lot of sexual abuse cases going on and there is no access to justice. I will give another example of a young adult with intellectual disability who was sexually abused by a police officer. The case was not recorded in the Occurrence Book (OB). The mother of the girl was able to take the case up to court, but it was ruled in favour of the perpetrator. That is because in the Constitution, he or she is termed as a person with unsound mind. Right now, the family is being told to pay damages while the atrocities were done against them. The only piece of land that the family has is what they are planning to sell so that they can cover that.

The other case that I want to give is access to essential drugs. These are drugs for epilepsy. We have a family in Ndumberi in Kiambu. She has to come all the way from Ndumberi to Huruma to get the essential drugs for epilepsy. That family spends Kshs7,000 per month. So, we are seeing a lot of atrocities and discrimination against families. I was just listening this morning when we were talking about tax exemption and just wondering what we are going to do as parents. Are we Kenyans really? Today in the morning, my daughter was unwell and could not go to vocational training. Remember she is 24 years old and so, I cannot leave her at home alone and give her instructions to take medication. The brother who was going to college had to stay home with her. Lack of support and services means that we, as families cannot move into development world; the burden of caring is just too much for us.

As I conclude, my recommendation just like my colleague said is that recognition of families is very key. It should be put in black and white and in the legislation. Building capacities of the families is another very key item. I remember when my daughter was assessed and I was told to place her in a special unit, it took me two good years while I was trying to look for information. This time she was staying at home and everyday in the morning, she used to ask me: "Mum, when am I going to school? My younger siblings are going; what is happening?" As a mother, I did not have any words. It hurt me so much.

With those few insights, I beg to rest my case because most of things have already been said by the previous presenters.

Thank you so much.

(Applause)

The Acting Chair (Commissioner Namachanja): Thank you, James, Eva and Fatuma. You have just affirmed what we have been hearing while going around this country, on how people with disability have been struggling. We have heard from individuals, but now we have had an opportunity to hear from the parents and care givers. This is very helpful for us. We shall now ask a few questions, just for clarifications and so that we get to understand more. I will start with Major-General!

Commissioner Farah: Thank you very much the three of you. I think your presentations were super. So, actually, questions do not arise, but just a comment.

My comment concerns what you said but you did not elaborate. You have talked of practically policies that cannot be implemented. What raises that? Why would a policy be there which cannot be implemented? Surely, even if we should go slowly, we should start with something that can be implemented and then advance on to another one. You did not come clear to me. That is the only little hazy area.

The Acting Chair (Commissioner Namachanja): Maybe, we can all ask questions. Please, write them down and then you can share when it comes to answering.

Commissioner Slye: I, too, want to thank each one of you for your very clear and thorough presentations. Your passion for your families and the people you are giving care is quite evident, both your words and passion with which you spoke to them. I do not have any specific questions for you, but I just want to salute and recognize you for the passion that you bring to this, which is very useful and a reminder to us about how important these issues are. There are people out there like you who are not only providing much needed assistance to those individuals, but also advocating for them and others. So, I just want to add my appreciation to that.

Commissioner Chawatama: Thank you very much for your presentations. Just when I thought that I knew it all, someone else comes along and says something that I had not even thought about. But my thinking as I listened to the three of you is that we shall, definitely, be able to make meaningful recommendations based on your presentations. One of the things that we found as we travelled throughout Kenya was that disabled children are often abandoned by their mothers once a child is born in the home and that child is found to have disability. It is often seen as the woman's fault and in a lot of instances, the women we talked to may have had some education, but they were having a lot of difficulties in fending for themselves. So, we saw situations where the family government so easily breaks down and that the support from family in most instances is not even there. I am also grateful because you have also addressed issues of injustice, which is also my passion and you have given us examples. The examples bring the realities on the ground. I wish you the best. We shall do all that we possibly can to make recommendations that will make a difference. I hope that in a few months or years to come, you will think kindly over us and remember this day as a day where we gave you a platform to speak to us and that you spoke and we heard you.

Thank you very much for the recommendations and just having come.

Commissioner Shava: I am a bit stunned. I would just really like to thank you all for your presentations. I think that this hearing would have been incomplete if we did not have the perspective that you have presented to us here today. This is not a perspective we can gain from books or any Government institution. You have come to talk about things which you have personal experience and are not easy. They are things which you

live with everyday. I think that is what institutions like the Kenya Revenue Authority (KRA), people who are in charge of creating their education syllabus and people from the social services need to understand. What is the impact of the gaps that face you everyday? Like in the case of the last speaker, Ms. Wangari, one child has to look after another child so that she can come here today. Somebody else said earlier that a person with disability does not necessarily travel alone. This has a cost implication. Many of us do not understand that.

So, I would just like to salute you all for coming and sharing that perspective. This is because it will really enrich our report. One thing that I can say that I have really been educated about by listening to all three of you is the term “intellectually handicapped” I have never heard of “Kenya Association of Intellectually Handicapped” before. So, why would you phrase it like that? Then as you speak, I understand that it is because of addressing the issues of structural injustice. For a person with a handicap to suffer sexual violation and then be classified as a person of unsound mind, is just a demonstration that even our justice system has not understood the nature of the challenge that has been faced by that person and family. It is manifestly unjust for that family then to be reduced even further by the circumstances by selling their only asset. I hope that our legal team in the room is listening keenly and that we can get the details of that particular case. This is because to me it is clear injustice. So, just to communicate that what I have understood is the terminology is not just about semantics. It is important to use the correct term to describe the particular situation that you are trying to describe. So, I thank you very much for educating me personally. That will all be captured in our report.

Thank you all very much for sparing the time. You have also pointed out to us how precious your time is. Everybody’s time is precious, but your time is so precious because of the duties that you have in caring, where nobody else is supporting.

Commissioner Dinka: Thank you very much, Joseph, Eva and Fatuma for your very clear and passionate presentation, on behalf of a category of people who cannot represent themselves.

As Commissioner Shava was stunned, I, too, was really stunned and confused to some extent. For example, the three of you were representing three Non-Governmental Organizations (NGOs). As such, you must be members of the United Disabled Persons of Kenya. We listened to the representative of that organization, Mr. Njenga, but what I understood from him, if I did not listen to you, I would not have even insinuated that such a gap existed in the handling of issues of people with disabilities. Why do you think that this is the case?

Also, the National Council for Persons with Disabilities, Phoebe has not mentioned this thing; so, if you did not come, I would have left this place without any idea of what you are going through and yet, you work very closely with them. I am sure they are in the loop of what you are going through. You may not even want to answer this, but why is it that they have left it unmentioned to us that this kind of situation exists for families?

The other is a question to Mr. Joseph about the tax-free imports. I am asking this question from experience. I know of a country that has actually given duty free privileges to people with disabilities to import things that they would use, like cars, wheelchairs and so on, and it was very badly abused. People went to persons with disabilities who usually happened to be in the lower income bracket, offered them some money and got them to sign every kind of paper and imported vehicles. A car that was imported for, say, US\$30,000, they would give the person with disability US\$5,000 and they sign the sale agreement. These people in most cases were businessmen or rich people and they would sell the car for US\$50,000. So, it became really very obvious. I know that that particular country is right now struggling with what to do. Is there something that you can think of that would reduce very radically this abuse of privilege, not by the people with disabilities, but other people?

The Acting Chair (Commissioner Namachanja): Mine is to my sister, Fatuma. Even if one went for a workshop of two or three days, at times you are given a certificate of attendance. Why was it so hard that your daughter went through a whole system of education but came out with no paper showing that she has been there? What explanation were you given? Is this a Government or private institution?

Ms. Fatuma Wangari: Thank you so much, Madam Chair. I would just like to remind you that when we are talking about persons with intellectual disabilities, these are people who have difficulty in literacy and numeracy skills, safety and care and communication skills. But this is not to mean that they are not good in vocational skills. But the system that we are in right now does not issue certificates for vocational skills. You have to go through an exam, like KCPE or KCSE for you to be certificated. But my daughter has skills. She is very good in catering. I was just telling them: “Give me certification on what she is good at, but I was told that the policy says that they are not supposed to be certificated, as simple as that”. I went up to the Ministry level and talked to the officers in Special Needs Education, and was told that there is nothing I can do. That is the way it is. That is the dilemma that we are going through. Have I answered your question?

The Acting Chair (Commissioner Namachanja): Yes, you have. Thank you.

Ms. Eva Nyoike: Madam Chair, please, can I add a little bit on what she said? That is where the issue about implementation of policies comes in. We have had the policies and it is an Act since 2004, and nothing has happened. So, it is up to the individuals. For example, if Fatuma went there and probably said, “do this and I will pay for this” maybe she would have gotten the certificate. That is the reality when it comes to dealing with persons with intellectual impairment. It is her daughter’s right to get the certificate. Her daughter has been in that school, but they have denied her that right and there is a policy behind it. So, that is when we say that it is there, but is it being implemented?

Mr. James Shiroko: Briefly, to add on what Ms. Fatuma has said, our system is used to a certification that is probably routinely given by the Kenya National Examinations Council (KNEC). We have complained about the exams format of the KNEC and the answer we receive is that something is being done. When Fatuma says that her daughter

is 24, my son is 25. Our children are not firstborns in this country. How many children have come behind our 24 year old and 25 year old? How many are being born today who will require those services?

In some situations, even where you are able to talk and they give you a semblance of a document, at best it is just a letterhead. It is not telling anybody much. They might say something like, "English; B, Kiswahili; D, Social Skills; E." What does that tell whoever is reading such? Why can we not get our professionals just to move an extra mile and just say in one sentence: "Brian can do this." We are here as families because we recognize that there are abilities in our children. We are concerned about those residual abilities. We do not care about what our children cannot do. We celebrate the little that they are able to do and that is what we want to move forward with. This is because even all of us here, including you educated Commissioners; there are many things that you cannot do. Why should our society focus on only what our children cannot do? That is the pain that we have to go through. It sounds very casual when we put it here, but the pain that we have gone through over the years--- A simple question like: "Which nursery school does your kid go to?" sounds very casual but it is very hurting for us. When KCPE results are out, you are asked: "How did your son score?" It is very hurting because my son was not doing KCPE. You are told: "I know my son is an agemate to yours. Mine is going to Alliance High School; where is yours going?" These are very hurting expressions.

But just back to the issue of family again, like my colleague put it, you said that you gathered from the community that there are many broken families. The answer resides in what I have told you; walking into a disability is very traumatizing. My friend like Njenga here would laugh at a newly blind person, because he lives with vision impairment and it is normal for him. But if one of us here developed blindness today, he would be a very scared and traumatized person. Now, if in your true senses, with your good career and so on, just a casual loss of sight and you get traumatized, how about Njenga who has lived with it the entire life. We hardly walk into somebody who can tell us in a clear sense, firmly and with a promise that this is this condition, there are going to be challenges but you have this disability, these are the services available, and so on. When you look at the three of us here, I think by Kenyan standards, we are very affluent. But the constituencies we represent and view we are giving--- Like I brought out that a majority of families harbouring disabilities are very destitute. Fatuma says that she went up to Jogoo House. I have had to go to Jogoo House after differing with a classroom teacher. So, you can imagine the route I took from a classroom teacher into Jogoo House. How many Kenyans can do that from the grassroots level? Some of the atrocities that we have received are just because "you will take me nowhere". You cannot even board a bus to the DEO's office. So, it will just end here. That informs most of those atrocities.

Now on the issue of tax exemption, we also need to look at ourselves as a Kenyan culture. Like you rightly put it, my home is not very far from the border with Uganda, but I am aware that these wheelchairs were used over the years to traffic contraband goods across the border. You know the turmoil that was in Uganda after 1971. There was no flour or Kimbo in Uganda and so, people came to Kenya with wheelchairs to collect these things. They would cross with cooking fat and flour. So, we abuse privileges, but if we

mean to do good things, Kenyans can do very good things. I like our former President Moi. If he wanted you, he would come for you. If any Kenyan was suspected to have *Pambana* papers, Moi would have gone for him. I do not think that right now after 25 years of parenting my son and where I have moved, you require a Special Branch to confirm that I am living with a person with disability. Wherever I have gone, I have left traces. If you wanted to corroborate what I am saying, you would not go far to know that, that family has a disability.

Back to the question my brother, Commissioner Farah asked, my colleagues have alluded to that. Indeed, Kenya has very good documents, but wait and see the implementation. My sister has gone from the National Council for Persons with Disability. One of the recommendations that I have given about the council is that it needs to be empowered. Like you have rightfully heard, when you went to the grassroots, very few people know about the council.

There was a little weak link that came out from her presentation. If you go to the Ministry, they have a Gender Department and Children's Department.

There is a weak link that came out from her presentation. If you go to the Ministry, they have a gender department and a children's department. I think they have an older persons department, but there is no department to deal with the disabled people. The saga, like she has brought out is only a small secretariat trying to build its capacity. I know it will take some time before that capacity is well built. What I know, because I am involved, even those staff at the grassroots from the Ministry, they know themselves as either children's officers, gender officers or even older persons' officers. They do not know themselves as people in charge of the disabled. They look at the contribution they are making to the council; they look at it like it is an added responsibility for them; that their job is already cut out for them, but this one is added. So, there is a way you execute a job that you know is yours and there is a way that you execute a job that has been added to you. That is why it is not felt on the ground.

Policies and the Ministry of Education – and we are at the Ministry of Education because that is one of the biggest Government Ministries you walk into when you talk about disability. I do not mind being quoted, but I know that we have quality assurance staffs at Jogoo House who are much less knowledgeable than an officer or a teacher on the ground. How do you supervise somebody you do not know what he or she is doing?

We were in a conference last week when we were addressing some of these things, and one of the guys who spoke to us was a Kenyan professor from Canada. I was asking him: "Do you do some consultancy for our Government?" And he said he does. "Have you told our Government this?" He said we have told them! So, Kenyans know bad things, but I do not know who they are waiting for to correct them. That is the disease we have. We were told that in Canada, the institution of parents and families is very important and key stakeholder in educational service delivery. In Kenya, God forbid, the little that parents are recognized for in an ordinary school --- When we were given Structural Adjustment Programmes (SAPs) in the 1980s, we were told to cost share. That is when

Parents-Teachers Associations (PTAs) were formed as a tool for school heads to collect revenues from parents and not as an organ for sitting around a table to discuss issues that would improve the quality of education that our children are receiving. That thing has not been changed; there is a lot of work to be done.

Thank you very much.

(Applause)

The Acting Chair (Commissioner Namachanja): I think the applause from the crowd says it all; I have nothing to add but to thank you for coming before this Commission and enlightening us of what you are doing. God bless you all! Nancy, please, approach.

Ms. Nancy Kanyago: Commissioners, we have our last presenter for the day. He is a representative from the APDK and he will introduce himself. One of the issues that he was to speak about was in terms of challenges on employment for persons living with disability, and also respond to the issues arising out of our hearing in which APDK was mentioned.

Mr. Fred Owako: Thank you, Madam Acting Chair and the Commissioners. My name is Fred Owako, the Vice Chair of APDK, an acronym for the Association for the Physically Disabled of Kenya. APDK was founded in 1958 to provide rehabilitation services for persons with disabilities, more so the ones who are victims. So, it has grown from that moment and evolved also. We have our head office on Waiyaki Way in the same compound with the Disability Council. So, APDK has several branches countrywide, 34 in all. I will not dwell too much on that because of time. I also know that people are very tired because they have sat without a break. So, I want to address the first issue on Bombolulu.

Madam Acting Chair, this issue is in court. Somebody went to court to accuse APDK and, so, I would request that we should not discuss it because the court had not determined it. In this aspect, may I present the documents related to the same for your perusal?

(Mr. Owako handed over the documents to the secretariat)

The next issue that I want to touch on is on employment. So, I have a problem statement and proposed interventions on the same. Poverty among persons with disability is very prevalent in Kenya. Although we are told that the population of persons with disability is 4.6 per cent, we tend to disagree with that because disability is increasing day by day. We try to reduce disability in children and even prevent it through maternal health care, but we also know that there are issues pertaining to accidents which bring in disabilities every other day. So, this is what needs to be addressed, really, on the use of our roads and other conditions that go with them.

Another issue is exclusion of persons with disabilities from the mainstream economic participation. Most of the persons with disabilities live in rural areas and I am happy to realize that you went round the country, but you might not have reached all of them. So, you have not heard everything. You heard the CEO of the Disability Council and she said that they are not accessible to all persons with disabilities due to the conditions. This is something that must be addressed seriously because it is the duty of the Government to take care of its people. So, the other organizations just come in to assist and supplement the services. So, we need to address the issue of unemployment of the disabled persons because there is stiff competition and persons with disabilities with qualifications do not get employment. Mostly, this is lack of awareness creation and the Disability Act is not fully exhausted.

Let me not dwell on discrimination because it has been talked about too much. On infrastructure especially on buildings; we know and understand that the laws are there. But the problem is that the building codes have not been adjusted to fit in with the new laws. So, let us find a way to ensure that the building codes are adjusted accordingly. We need a change of attitude from the people of Kenya so that they do not sympathize but empathize with persons with disabilities.

So, there are a few recommendations that I have:-

1. There is a need to set up an employment bureau and APDK is working towards that. We want to work in liaison with other Government Ministries in order to achieve this. So, we have already started our offices on Waiyaki Way and we are calling on all persons with disabilities to send in their *curriculum vitae*.
2. We need to create awareness to employers to enlighten them on the Disability Act so that the five per cent is implemented.
3. We also need to create a databank; we work with the NCPWD and other organizations to achieve the same.
4. The economic empowerment of persons with disabilities needs to be realized. APDK has a micro finance programme which deals with that.
5. Finally, I will mention accessibility; that we need to come together with architects, engineers, the Architectural Association of Kenya and the relevant Ministries so that we make this law a success.

Thank you very much.

Ms. Nancy Kanyago: Thank you. I have no questions for the presenter and I will hand you over to the Commissioners, in case they have further clarifications.

Commissioner Farah: Thank you very much for your eloquent presentation; maybe it is because of your voice that you were very clear.

We know that we have those challenges. When you are talking of infrastructure and accessibility of people with disabilities, instead of only meeting the architects in order to change the buildings and what have you, before even we come to the architectural

development, I was thinking very loudly on the accessibility on the roads. You know how our *matatus* truly are; if they are unruly on a person like me with ability, you can imagine how unruly they can become with a person with disability. Because of the attitude of our people – because I believe in starting with the hardest coming to the simplest - I think you need to think that way so that the Minister can come and say: “No more 14-seater *matatus*; there must be 28-seater with a door constructed when they are building the bodies that goes like that and takes care of people with disability.” What do you say?

Commissioner Slye: Thank you, Mr. Owako for your presentation. I just had one question. I do not know whether you may have this information or whether you know anybody in Kenya who might have it, but I am curious about whether anyone has determined the causes of different disabilities or what percentage of individuals become disabled at birth, what percentage becomes disabled because of an accident; what percentage becomes disabled because of violence and in particular, if it can be determined; ethnic violence or something like post election violence. I do not know whether anybody has tried to compile that sort of information or not.

Thank you.

Commissioner Chawatama: I appreciate the fact, being a judge, that once a matter is before court, it is *sub judice* and it cannot be discussed. However, as a Commission, we are also dealing with the issue of access to justice. So, I will ask, maybe a few questions around that issue. My first question is: When was the matter filed in court?

My second question is; depending on your response to the first question, how have the proceedings been? Have the courts delayed in dealing with the matter? If so, what are some of the reasons why the matter is still in court and is not concluded? I would also like to know whether you have lawyers and whether the other side has also got lawyers. I may ask a question maybe after you have responded, but I guess this is the disadvantage of everybody having to ask questions at once.

Thank you.

Commissioner Shava: Thank you very much, Mr. Owako, for your presence and your contribution. I have no questions for you.

Commissioner Dinka: Thank you very much, Mr. Owako, for your presentation. I too have no major questions for you except a very simple one. I am not very sure about your APDK’s relationship with the Government. What is the relationship between the two?

Mr. Fred Owako: Thank you. May I start with the last question? The relation between the APDK and the Government is that the APDK collaborates with Government departments, especially the larger Ministry of Health, the Provincial Administration, the Ministry of Gender and Ministry of Sports. We have cordial relationships between these arms of Government. As an NGO, that is how far we go.

Thank you.

(Loud consultations)

The Acting Chair (Commissioner Namachanja): Excuse me please! Let us listen to the presenter!

Mr. Fred Owako: The APDK receives funds from donors; the Government is also a donor to APDK, but not in terms of funds. The kind of donation we get from the Government is the staff that we have on our services. This staff is trained by the Ministry of Health and is deployed to our services. In terms of funding, we get it from donors. The Disability Council is also one of our donors. We apply to get the funds just like any other state. So, we are given whatever they approve.

In terms of infrastructure, I am aware that it is hectic boarding *matatus* and walking on the roads. Like the highway just in front of our offices, it is very difficult to cross that place. We are doing advocacy. What we have been told here is that, that is a highway and they cannot put bumps. So, the only thing they can do is to look for funds and create a tunnel if possible. I believe that is a long way to go, but we are waiting.

We know that if we have bigger *matatus* or motor vehicles, it will be easier for us to board them. But in Kenya, the Government has no public transport system. The public system belongs to individuals and, so, it is extremely difficult for the Government to force them to do that. But we have made all those recommendations and we are still waiting.

On the causes of disability, we have not had that kind of analysis that the Commissioner has asked about. Maybe at this point, we shall have to initiate this so that we can get it. On access to justice – and it is in reference to Bombolulu – the case was filed last year sometime in September. There is a provision that any disabled person with a case has access to legal representation. So, it will be incumbent upon the person doing that to seek it from the Government.

Thank you.

The Acting Chair (Commissioner Namachanja): The last question was whether you, yourselves, have legal representation.

Mr. Fred Owako: The organization has a lawyer.

The Acting Chair (Commissioner Namachanja): Okay.

Mr. Fred Owako: May I add, at this juncture, there are lawyers who offer free services to persons with disabilities. So, whenever approached, they would always be glad to do that.

The Acting Chair (Commissioner Namachanja): So, do you know whether or not the other side has, in fact, engaged the lawyers?

Mr. Fred Owako: I am not aware, but we have always advised that even in terms of payment of court fees, they do not have to pay because they can apply to be considered as paupers. The lawyers are individuals, not groups, especially those human rights lawyers who usually take up these matters quite easily.

The Acting Chair (Commissioner Namachanja): Thank you very much, Fred, for your proposed interventions; they will really help us in writing our recommendations. Thank you for appearing before this Commission.

Mr. Fred Owako: Thank you.

Ms. Nancy Kanyago: Thank you, Commissioners. That is our last speaker for the day. Unfortunately, we did not have participation from the Ministry, which we anticipated will be our last speaker.

The Acting Chair (Commissioner Namachanja): Thank you, Nancy. On behalf of the Commission, I would like to thank the public for coming to participate in this process. I would also like to thank our presenters namely Mr. Joseph Njenga, Phoebe Nyagudi, James Shiroko, Eva Wanyoike, Fatuma Wangare and Fred Owako. I would also like to thank everybody who has facilitated us to have this dialogue with the witnesses and the public. For the public, as much as we would have wished to hear from each and every one of us because I know that each one of you has an experience to share with us, the time of the Commission does not allow us. That is why we selected a few to come and help us understand issues facing people with disability. I am sure that although you have not presented your case, I hope that listening to the six presenters you have been able to relate to what they have been sharing and that we shall take their recommendations seriously. If you feel that there is anything that was left out, especially those of you coming from Nairobi, we have our hearings specifically for Nairobi region. So, you still have a chance to come and share with us. We have also not closed our statement taking process. So, if you feel that there is really very important information that you feel this Commission will benefit from, get in touch with our director. Or, Director, do we have statement takers from Nairobi here? No. Get in touch with our Director, Nancy who will link you with our statement taker so that you can record your statement.

So, thank you very much for coming. I would also like to thank the Commissioners for sitting this long to listen to the cases. Thank you.

Ms. Nancy Kanyago: Thank you, Commissioners.

(The Commission adjourned at 2.35 p.m. with a word of prayer)