

SPECIAL ISSUE

Kenya Gazette Supplement No. 13 (Nyamira County Bills No. 8)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NYAMIRA COUNTY BILLS, 2019

NAIROBI, 5th November, 2019

CONTENT

Act—	PAGE
The Nyamira County Persons With Disabilities Bill, 2019.....	1

MEMORANDUM OF OBJECTS AND REASONS

The principle objective and reason for this Bill is to provide for a legal framework for the effective and proper implementation of Articles 27 and 54 of the Constitution of Kenya within Nyamira County. In the wake up of international resolve to protect, promote and safeguard the rights of People with Disabilities, there is need for the County Assembly and indeed the County Government of Nyamira in general to enact a law that will act as a homemade tailored framework for supplementing and entrenching the aforementioned articles as considered together with the People with Disabilities Act of Kenya, 2003.

Part I—(Clauses 1-3) contains preliminary provisions.

Part II—(Clauses 4-10) deals with the establishment of the institutional framework for that will be charged with the responsibility of ensuring that there is efficient, effective and proper protection, promotion and safeguarding of the rights and privileges of the people with disabilities.

Part III—(Clauses 11-14) establishes the County Development Fund for Persons with Disabilities and entails the financial structure and sources of the Fund that is at the epicenter of the Bill. The Fund will be managed through the institutional framework established in Part II above.

Part IV—(Clauses 15-31) provides for the specific and substantive rights and privileges that this Bill seeks to safeguard. These rights are inalienable and must be considered together with other national, regional and international legal instruments within the purview of the protection, promotion and safeguarding the rights and privileges of the people with disabilities

Part V—(Clauses 32-34) contains miscellaneous provisions that are meant to ensure harmonious running of the affairs of the Board, and proper channels that seek to administer justice within the purview of this Act.

Statement on the Delegation of Legislative Power and Limitation of Fundamental Rights and Freedoms

The Bill does not limit fundamental rights and freedoms; on the contrary it entrenches the respect and realization of fundamental rights and freedoms.

Dated the 30th July, 2019.

ONYINKWA RICHARD,
Magombo Ward.

THE NYAMIRA COUNTY PERSONS WITH DISABILITIES BILL, 2019

ARRANGEMENT OF SECTIONS

Section

1—Short title

PART I—PRELIMINARY

2—Interpretation

3—Objects and purpose of the Section

PART II—ADMINISTRATION

4—Establishment of the Board

5—Membership of the Board

6—Tenure of office

7—Chief executive officer

8—Functions of the Board

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Rights of Persons with Disabilities

9—Realization of rights of persons with disabilities

10—Right not to be discriminated in employment

11—Discrimination by employers prohibited

12—Incentives to employers

13—Records for job placement

14—Right not to be discriminated in an educational institution

15—Special and non-formal education

16—Health of persons with disabilities

17—Right to accessibility and mobility

18—Adjustment orders

19—Denial of admission into premises

20—Prohibition of adjustment orders against government institutions

21—Right to sports and recreation

22—Right to vote

23—Registration of organizations

24—Non-derogation

Privileges of persons with Disabilities

25—Income tax exemptions

26—Donations, bequests, subsidies or financial aid

27—Promotion of access to credit

PART IV—FINANCIAL PROVISIONS

28— Fund

29— Source of the Fund

30— Application of the Fund

31— Accounts

PART V—MISCELLANEOUS

32— Failure to obey an adjustment order and discrimination

33— Concealment of persons with disabilities

34— Negligence by doctor

35— Giving false information to get registered

36— General penalty

37— Enforcement

38— Regulations

7. The quorum of a meeting of the County Board shall be seven members.

8. (1) The chairperson, or in his absence, the vice-chairperson, shall preside at every meeting of the County Board.

(2) In the absence of both the chairperson and vice-chairperson, the members present may choose one of their member to preside at the meeting.

9. A decision of the majority of members of the County Board present at any meeting of the County Board shall be deemed to be the decision of the County Board and if upon any question the voting shall be equal, the chairperson, vice- chairperson or other person presiding shall have a second and casting vote.

10. No Section, decision or proceedings of the County Board shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the County Board being defective.

SCHEDULE:**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNTYBOARD**

1. A member of the County Board may —
 - (a) resign his office by notice in writing to the County Executive Committee Member; or
 - (b) be removed by the County Executive Committee Member by notice in writing if he —
 - (i) is subject to a vote calling for his removal by a two thirds majority of all members of the County Board;
 - (ii) has been absent for three consecutive meetings of the County Board without permission of the chairperson;
 - (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
 - (iv) is an un discharged bankrupt;
 - (v) is convicted by a Court of an offence punishable by a term of imprisonment; or
 - (vi) is otherwise unable or un fit to discharge his functions.
2. Where the office of a member becomes vacant the vacancy may with the approval of the County Executive Committee Member be filled through the majority vote of the members for the remainder of the term.
3. The County Board shall pay to its members such remuneration as the County Executive Committee Member may approve.
4. The County Board shall meet not less than twice in every quarter of the year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.
5. A meeting of the County Board shall be held on such date and at such time as the County Board shall decide, or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson.
6. Unless otherwise decided by a two-thirds majority of the members of the County Board, at least fourteen days' written notice of every meeting of the County Board shall be given to every member of the County Board.

THE NYAMIRA COUNTY PERSONS WITH DISABILITIES BILL, 2019**A Bill for**

AN ACT of the County Assembly of Nyamira to effect Article 27 and 54 of the Constitution; to provide for the Rights, Privileges and Rehabilitation of Persons with Disabilities; to achieve Equalization of Opportunities for Persons with Disabilities; to establish the County Board for Persons with Disabilities; and for connected purposes

ENACTED by the County Assembly of Nyamira as follows—

PART I—PRELIMINARY**Short title**

1. This Act may be cited as Nyamira County Persons with Disabilities Act, 2019.

Interpretation

2. In this Section unless the context otherwise requires—

“aged person” includes a person with a disability who has been forced into retirement from employment due to his disability;

“assistive devices and services” means implements, tools and specialized services (including the services of qualified interpreters for the deaf and qualified teachers for special needs) provided to persons with disabilities to assist them in education, employment or other activities;

“Board” means the County Board for Persons with Disabilities established under section 4;

“County Executive Committee Member” means the Nyamira County Executive Member for the time being responsible for Devolution, public service and Disaster Management;

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has , or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities;

“discriminate” means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a person with a disability;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Board;

“organizations for persons with disabilities” means associations or societies formed for the purposes of rendering services to persons with disabilities; “organizations of persons with disabilities” means associations or societies formed by persons with disabilities for their welfare and protection;

“usual day-to-day activities” means the activities of daily which an ordinary person would reasonably be expected to carry out.

Objects and purpose of the Section

3. The object and purpose of this Section is to ensure the realization of the rights of persons with disabilities in the Nyamira County through—

- (a) the establishment of a County Board for persons with disabilities;
- (b) setting out of the rights and privileges of persons with disabilities; and
- (c) generally protect persons with disabilities from any form of discrimination and promote their welfare.
- (d) to effect provisions of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which was ratified by Kenya in 2008.

PART II—ADMINISTRATION

Establishment of the Board

4. (1) There is established Nyamira County Board for Persons with Disabilities.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of suing and being sued, and acquiring, holding and disposing of movable and immovable property.

Membership of the Board

5. (1) The Board shall consist of the following members appointed by the County Executive Committee Member—

- (a) two persons nominated by organizations representing persons with various categories of disabilities within the County;

exceeding one hundred thousand shillings or imprisonment for a term not exceeding two year, or both such fine and imprisonment.

Enforcement

37. (1) The Board may cause to be taken appropriate legal action if the Board believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Section; and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest.

Regulations

38. The County Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Section and, without limiting the generality of the foregoing, may make regulations—

- (a) prescribing the procedures, forms and fees applicable under this Section;
- (b) specifying and describing the nature of Sections of discrimination against persons with disabilities; and
- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Section.

- (c) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person injured by the offence such sums of money in compensation as the court may deem appropriate.

Concealment of persons with disabilities

33. (1) No parent, guardian, next of kin or any other person shall conceal or harm (kill) any person with a disability in such a manner as to deny such a person the rights set out under this Section or any other law.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Negligence by Doctor

34. (1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(2) The court shall order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate.

Giving false information to get registered

35. A person is guilty of an offence if the person knowingly gives false information to the Board for the purpose of being registered or for the purpose of acquiring any privilege or right due to persons so registered.

General penalty

36. A person found guilty of an offence under this Section for which no penalty is expressly provided shall be liable to a fine not

- (b) two members appointed from a panel of names submitted to the County Executive Committee Member by organizations for persons with disabilities;

- (c) four members representing the Departments responsible for the following—

- (i) culture and social services;
- (ii) education;
- (iii) labour; and
- (iv) health

- (d) such other members as may be co-opted by the Board with the approval of the County Executive Committee Member.

(2) Provided that the membership of the Board shall not exceed eleven persons out of whom at least half of the members shall be persons with disabilities;

(3) The County Executive Committee Member shall appoint one of the members appointed under subsection (1) (a) as the chairperson.

(4) The County Executive Committee Member shall appoint one of the members appointed under subsection (1) (b) as the vice-chairperson.

(5) The chairperson and the vice-chairperson shall be of the opposite gender.

(6) In nominating or appointing persons as chairperson and members of the Board, the County Executive Committee Member shall ensure that the process is carried out in an open and transparent manner and that—

- (a) the membership of the Board shall equitably represent the types of disabilities occurring in the county;
- (b) not more than two-thirds of the members are of the same gender;
- (c) and
- (d) the composition of the Board shall reflect the regional and ethnic diversity of the people of Nyamira County.

Tenure of office

6. The chairperson, vice-chairperson and members shall hold office for a period not exceeding three (3) years and shall be eligible for re-appointment for a further term not exceeding three (3) years.

Chief Executive Officer

7. (1) There shall be a chief executive officer of the Board.

(2) The chief executive officer shall be appointed by the Board through a competitive process.

(3) To qualify for appointment as a chief executive officer, a person shall—

- (a) possess a degree in a relevant field from a recognized university;
- (b) have had experience in management for a period of not less than three years.

(4) The chief executive officer shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine and shall be eligible for re-appointment for a further and final term of three years.

(5) The chief executive officer shall be an ex - official member of the Board but shall have no right to vote at any meeting of the Board.

(6) The chief executive officer shall—

- (a) be the secretary to the Board
- (b) subject to the direction of the Board, be responsible for day to day management of the affairs of the Board;
- (c) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties and the general administration of the Board;
- (d) carry out any other function as may from time to time be assigned by the Board.

Functions of the Board

8. (1) The functions of the Board shall be—

- (a) to issue adjustment orders under the provisions of this Section;
- (b) to formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they

- (b) issue grants to associations of persons with disabilities;
- (c) capacity building;
- (d) support education programs including the grant of bursary to persons with disabilities;
- (e) basic administration expenses;
- (f) establishment of rehabilitation center for persons with disability;
- (g) create awareness;
- (h) manage and run the revolving fund;
- (i) support research of disability; and
- (j) do any other things in furtherance of the objectives of this Act.
- (k) support County employees (including persons with disabilities) to attend basic sign language training

Accounts

31. (1) The financial year of the board shall be from the 1st July of one year to the 30th June of the following year.

(2) The Board shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Board and ensure that, within three months of the end of each financial year of the Board, a statement of accounts of the Board is prepared and audited by an external auditor appointed by the Board and approved by the County Executive Committee Member.

(3) The Board shall prepare an annual report of its activities which shall be presented to the County Executive Committee Member and all other Government agencies involved in the work of the Board.

PART VI—MISCELLANEOUS**Failure to obey an adjustment order and discrimination**

32. (1) A person is guilty of an offence if the person—

- (a) fails to comply with an adjustment order issued under this Section;
- (b) discriminates against a person with disability contrary to this Section; or

- (a) additional deductions for labor expenses;
- (b) tax and duty exemptions on imported capital equipment;
- (c) tax credits on domestic capital equipment;
- (d) simplified customs procedures;
- (e) unrestricted use of consigned equipment;
- (f) employment of foreign nationals;
- (g) exemptions from taxes and duties on raw materials; and
- (h) access to bonded manufacturing systems.

Promotion of access to credit

27. The County Executive Committee Member may liaise with the department responsible for matters relating to credit unions, cooperatives and other lending institutions to put in place measures to encourage the extension by such institutions of credit to persons with disabilities.

PART V—FINANCIAL PROVISIONS

Fund

28. (1) There is established a Fund to be known as the Nyamira County Persons with Disabilities Fund.

(2) The County Assembly shall appropriate 3% of the total budget to fund activities of persons with disabilities

Source of the Fund

29. The Fund shall consist of—

- (a) monies appropriated by the County Assembly for that purpose;
- (b) sums received as contributions, donations, gifts or grants;
- (c) refunds and capitations from any institution duly paid into the Fund;
- (d) monies paid into the Fund as fees or charges;
- (e) monies earned or realized from any investment of the Fund; or
- (f) such other monies as may be payable or vested in the Fund.

Application of the Fund

30. The Board may use the monies of the Fund to—

- (a) buy assistive devices to persons with disabilities;

- (i) obtain education and employment, and participate fully in sporting, recreational and cultural activities and are accorded full access to community and social services;
 - (ii) Co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning;
 - (iii) advise the County Executive Committee Member on the provisions of any National Legislation or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the country;
 - (iv) recommend measures to prevent discrimination against persons with disabilities;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centers and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities;
 - (viii) The Board shall establish offices and other centers in Sub-County and/or Ward levels as it may be deemed necessary;
 - (ix) co-ordinate services provided in County for the welfare and rehabilitation of persons with disabilities and to implement programs for vocational guidance and counseling; and
 - (x) raise awareness regarding persons with disabilities to various county government departments and foster respect for the rights of persons with disabilities
- (c) to register—
- (i) persons with disabilities;
 - (ii) institutions, associations and organizations, including those controlled and managed by the County Government and municipalities, that provide services

for the rehabilitation and welfare of persons with disabilities

- (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;
- (d) to provide, to the maximum extent possible—
- (i) assistive and mobility devices, appliances and other equipment to persons with disabilities; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the County Government;
- (e) to consult with the County Government in the formulation of suitable curricula for vocational rehabilitation centers and other training facilities for persons with disabilities;
- (f) to make provision for assistance to students with disabilities in the form of scholarships, loan programs, fee subsidies and other similar forms of assistance in both public and private institutions;
- (g) to assess and report to the County Executive Committee Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
- (h) to consult with the County Government in the provision of suitable and affordable housing for persons with disabilities;
- (i) promote awareness on matters pertaining to the rights of persons with disabilities to groups of persons with disabilities
- (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Board may deem necessary; and
- (k) to perform such other functions as maybe assigned to the Board under this or any other Section.
- (l) Raise awareness on disability through National and International Days

Privileges of Persons with Disabilities

Income tax exemptions

25. (1) All persons with disabilities who are in receipt of an income may apply to the County Executive Committee Member responsible for finance for exemption from income tax and any other levies on such income as per the Tax Exemption Policy of 2010 or the Income Tax Act.

(2) The County Executive Committee Member responsible for finance shall, in consultation with the Board, assess all applications received under subsection (1) and make such order thereon, if any, as he deems fit, exempting the applicant wholly, or to the extent provided by the order, from income tax or other levies specified therein, and any such order shall, notwithstanding the provisions of any other Section, have effect according to its terms.

(3) Materials, articles and equipment, including motor vehicles, that are modified or designed for the use of persons with disabilities shall be exempt from Import duty, value added tax, demurrage charges, port charges and any other County government levy which would in any way increase their cost to the disadvantage of persons with disabilities.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disabilities shall be exempt from import duties, value added tax, demurrage charges, port charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

Donations, bequests, subsidies or financial aid

26. (1) Any donations, bequest, subsidy or financial aid which may be made to county government agencies involved in the rehabilitation of persons with disabilities or to organizations involved in such rehabilitation and registered with the Board for the purposes of this section shall, subject to the provisions of the Income Tax Section, be allowed as deductions from the donor's gross income for the purpose of computing taxable income.

(2) The County Executive Committee Member responsible for finance in the county or other appropriate authority shall endeavor to provide, subject to the provisions of any other relevant law, incentives to local manufacturers of technical aid and appliances used by persons with disabilities including, but not limited to, the following—

(2) Persons with disabilities shall be entitled to participate in all national and international sports events.

(3) For the purpose of subsection (2) the Department responsible for sports shall, in consultation with the Board, provide the necessary suitable environment including—

- (a) architectural infrastructure;
- (b) apparatus and equipment;
- (c) training and medical personnel; and
- (d) transportation of facilities for the participants.

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

Right to vote

22. (1) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and county elections.

(2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter.

(3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.

(4) Polling stations shall be made accessible to persons with disabilities during elections, and such persons shall in addition be provided with the Necessary devices and assistive devices and services to facilitate the exercise of this right under this section.

(5) A person who contravenes subsection (2) is guilty of an offence.

Registration of organizations

23. (1) The County Board shall register all organizations of or for persons with disabilities.

(2) All existing organizations of or for persons with disabilities shall, within twelve months after this section comes into operation, apply in the Prescribed manner to the Board for registration.

Non-derogation

24. The rights set out under this Part are in addition to, and do not derogate in any way with the rights set out under Article 54 of the Constitution.

(2) Without prejudice to the provisions of subsection (1), the Board shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—

- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
- (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the County Executive Committee Member;
- (c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Board as the Board may with the approval of the County Executive Committee Member determine; and
- (d) with the approval of the County Executive Committee Member, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Rights of Persons with Disabilities

Realization of rights of persons with disabilities

9. The County Government shall take necessary steps to ensure that persons with disabilities enjoy their rights as per the Constitution of Kenya 2010 and the UNCRPD

Right not to be discriminated in employment

10. (1) No person shall deny a person with a disability access to opportunities for suitable employment.

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) An employee with a disability shall be entitled to exemption from tax on all income accruing from the employment.

(4) The Board shall endeavor to secure the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities.

(5) Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Discrimination by employers prohibited

11. (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the Section or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Section

Denial of admission into premises

19. (1) No person shall, on the ground of disability alone, deny a person with a disability—

- (a) admission into any premises to which members of the public are ordinarily admitted; or
- (b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

(2) The proprietor of premises referred to in sub section (1) (a) shall not have the right, on the ground of a person's disability alone, to reserve the right of admission to his premises against such a person.

(3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to sub section (1) shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction.

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

Prohibition of adjustment orders against government institutions.

20. (1) The Board shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Section except with the consent of the County Executive Committee Member responsible for health; or
- (b) any school or educational or training institution controlled or managed by the County Government or registered under the Education Section except with the consent of the County Executive Committee Member responsible for the administration of the institution or Section concerned.

(2) Within sixty days after being requested to consent under sub section (1) the County Executive Committee Member shall either give or refuse his consent and if he fails to do so within that period the Board may proceed to Serve the adjustment order as though the County Executive Committee Member has consented.

Right to sports and recreation.

21. (1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the County Government during social, sporting or recreational activities.

disabilities to the premises, services or amenities concerned; and

(iv) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

(3) Before serving an order under subsection (2) the Board shall serve notice upon the person concerned—

(a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order;

(b) stipulating the maximum period that the Board considers reasonable for the implementation of the action it proposes to order; and

(c) calling upon the person concerned, if he wishes to do so, to make representations to the Board within thirty days from the date of the service of the notice

(4) After considering any representations described in subsection (3) (c) the Board may issue, or refrain from or defer the issuing of, an adjustment order.

(5) Within thirty days after an adjustment order is confirmed or issued under subsection (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—

(a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;

(b) the period stipulated for implementing the adjustment order is unreasonable;

(c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or

(d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order.

(6) Upon hearing an appeal under subsection (5) the Court may—

(a) confirm, vary or set aside the adjustment order appealed against; and

(b) make such order as to the costs of the appeal as it thinks fit.

may be presented to the Industrial Court through the appropriate trade union.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void in so far as it purports to deny any person any rights or privileges conferred under this Section or in any other way to limit the operation of this Section.

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities.

(6) The maximum retirement age for persons with a disability shall be sixty five years.

Incentives to employers

12. (1) A private employer who engages a person with a disability with the required skills or qualifications either as a regular employee, apprentice or learner shall be entitled to apply for a deduction from his taxable income equivalent to twenty five percent of the total amount paid as salary and wages to such employee.

Provided that—

(a) such an employer shall present proof certified by the Department responsible for labour in the county that the persons with disabilities in respect of whom he claims the deduction are under his employer; and

(b) the persons with disabilities so employed are accredited with the Board as to their disabilities, skills and qualifications.

(2) A private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities shall be entitled to apply for additional deductions from his net taxable income equivalent to fifty percent of the direct costs of the improvements, modifications or special services.

Records for job placement

13. The Board shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and

training and shall update such records regularly for the purposes of job placement.

Right not to be discriminated in an educational institution

14. (1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and self-reliance.

Special and non- formal education

15. The Board shall work in consultation with the relevant agencies of County Government to make provisions in all sub counties for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual impairments establishment of one Braille centre in the county.

Health of persons with disabilities

16. The Board shall ensure that the implementation of the County health program puts measures in place for—

- (a) Prevention and reduction of disability;
- (b) early identification and intervention of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public and privately owned health institutions;
- (e) availing free essential health services to persons with disabilities;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities; and

(g) prompt attendance by medical personnel to persons with disabilities.

(h) establishment of community based rehabilitation centres.

Right to accessibility and mobility

17. (1) Persons with disabilities are entitled to a barrier-free and disability- friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

(2) A proprietor of a public building or public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Board.

(3) All proprietors of public buildings shall comply with subsection (2) from the date of enactment after this section comes into operation while operators of public service vehicles shall comply with subsection (2) within two years after this section comes into operation

Adjustment orders

18. (1) This section shall apply to—

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and
- (b) any services or amenities ordinarily provided to members of the public.

(2) Without prejudice to the provisions of section 19, if the Board considers that any premises, services or amenities are in accessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Board may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities concerned an adjustment order—

- (a) setting out—
 - (i) a full description of the premises, services or amenities concerned;
 - (ii) the grounds upon which the Board considers that the premises, services or amenities are inaccessible to persons with disabilities;
 - (iii) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with