RIGHTS AND THE PRIVILEGES OF PERSONS WITH DISABILITIES:

NATIONAL LEVEL

1. Realization of rights of persons with disabilities.

- The Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities set out in this Part.

2. Employment.

- (a) No person shall deny a person with a disability access to opportunities for suitable employment.
- (b) 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.
- (c) An employee with a disability shall be entitled to exemption from tax on all income accruing from his employment.

3. Reservation of employment

- The Council 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.

4. Apprenticeship

- 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.

5. Discrimination of employers prohibited

(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

(e) other such benefits;

(f) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;

(g) the provision of facilities related to or connected with employment;or

(h) any other matter related to employment

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- Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if –
- the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
- the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or
- 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.

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- (3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act 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 insofar as it purports to deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act

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- (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 minimum retirement age for persons with a disability shall be sixty years.

6. Incentives to employers.

- (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 –
- i. such an employer shall present proof certified by the Ministry responsible for labor that the persons with disabilities in respect of whom he claims the deduction are under his employ; and
- ii. the persons with disabilities so employed are accredited with the Council as to their disabilities, skills and qualifications

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- (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.

7. Records for job placement

- The Council 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.

8. Education.

- (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.

9. Special and non-formal education.

- The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts 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 disabilities.

10. Health.

- The Council shall be represented in the implementation of the national health program under the Ministry responsible for health for the purpose of –

(a) prevention of disability;

(b) early identification 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 essential health services to persons with disabilities at an affordable cost;

(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.

11. Accessibility and mobility.

- 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.

12. Public buildings.

- A proprietor of a public building shall adapt it to suit persons with disabilities in such manner as may be specified by the Council. (2) All proprietors of public buildings shall comply with subsection (1) within five years after this section comes into operation.

13. Public service vehicles.

- (1) An operator of a public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Council
- (2) All operators of public service vehicles shall comply with subsection (1) within two years after this section comes into operation.

14. Adjustment orders

- (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.

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- (2) Without prejudice to the provisions of section 22, if the Council considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Council may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities concerned an adjustment order –

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- (a) setting out –
- i. a full description of the premises, services or amenities concerned; and
- ii. the grounds upon which the Council considers that the premises, services or amenities are inaccessible to persons with disabilities;
- (b) 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 disabilities to the premises, services or amenities concerned; and
- (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

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(3) Before serving an order under subsection (2) the Council 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 Council considers necessary to rectify the situation which has given rise to the proposed order; and

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

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

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- (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.

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- (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

15. Denial of admission to premises etc.

- (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 subsection (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.

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- (3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to subsection (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.

16. Offence Adjustment Orders and discrimination.

- (1) A person is guilty of an offence if he –

(a) fails to comply with an adjustment order served under section 24

(b) contravenes section 12(1) or discriminates against a person contrary to section 12;

(c) discriminates against a person contrary to section 15 (1);

(d) contravenes section 25 (1) or discriminates against a person contrary to section 25; or

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

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- (2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty 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.

17. Adjustment orders against Government institutions. Cap 242. Cap. 211.

- (1) The Council shall not serve an adjustment order upon –
- (a) any hospital, nursing home or clinic controlled or managed by the Government or registered under the Public Health Act except with the consent of the Minister responsible for health; or
- (b) any school or educational or training institution controlled or managed by the Government registered under the Education Act except with the consent of the Minister responsible for the administration of the institution or Act concerned.

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- (2) Within sixty days after being requested to consent under subsection (1) the Minister shall either give or refuse his consent and if he fails to do so within that period the Council may proceed to serve the adjustment order as though the Minister had consented

18. Sports and recreation.

- (1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the Government during social, sporting or recreational activities.
- (2) Persons with disabilities shall be entitled to participate in all national and international sports events.

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- (3) For the purpose of subsection (2) the Ministry responsible for sports shall, in consultation with the Council, provide the necessary suitable environment including –
  - (a) architectural infrastructure;
  - (b) apparatus and equipment;
  - (c) training and medical personnel; and
  - (d) transportation facilities for the participants.
- (4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

19. Voting

- (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 civic elections.
- (2) A person who undertakes to render assistance under subsection 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) A person who contravenes subsection (2) is guilty of an offence

20. Polling stations.

- 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

21. Registration of organizations. No. 19/1991. Cap. 108.

- (1) The Council 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 Council for registration
- (3) Notwithstanding the provisions of any other law, organizations of or for persons with disabilities that are registered under this Act shall be exempt from registration under the Non-Governmental Organizations Co-ordination Act and the Societies Act.

22. Establishment of the Fund

- (1) There shall be established a Fund to be known as the National Development Fund for Persons with Disabilities.
- (2) The Fund shall be established as a permanent fund and the income therefrom shall be used for the benefit of persons with disabilities in Kenya.
- (3) The Fund shall be administered by the Council through a board of trustees as hereunder provided under section 34

23. Sources of and payments from Fund.

- (1) The sources of the Fund shall be –
- (a) such moneys as may be appropriated thereto by Parliament;
- (b) income generated by investments made by the trustees; and
- (c) any other donations which the Council may receive for purposes of the Fund

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- (2) Without limiting the generality of section 32 (2), the Board of Trustees may, out of the Fund –
- (a) contribute to the expenses, including capital expenses, of organizations of or for persons with disabilities;
- (b) contribute to the expenses, including capital expenses, of institutions that train persons in the care of persons with disabilities;
- (c) contribute to the capital expenses of projects undertaken by the Government for the benefit of persons with disabilities;
- (d) provide or contribute to the cost of assistive devices and services;

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- (e) pay allowances to persons with disabilities falling in the following categories and who have no other source of income –

i. persons with severe disabilities and who are therefore not trainable in any skills;

ii. aged persons with disabilities; and

iii. single parents with children with disabilities and who cannot therefore seek employment; and

(f) make payments or contributions for such purposes as may be prescribed by the Council.

24. Trustee to manage fund

- (1) The fund shall be managed by the board of trustees which shall consist of;
- (a) the chairman of the council
- (b) the Director of the Council who shall be the secretary to the Board;
- (c) a representative of the Minister appointed by the Minister;
- (d) a representative of the Ministry responsible for finance appointed by the Minister responsible for finance;

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four representatives appointed by the Council consisting of –

- i. one representative nominated by organizations of persons with visual disabilities;
- ii. one representative nominated by organizations of persons with hearing disabilities;
- iii. one representative nominated by organizations for persons with mental disabilities; and
- iv. one representative nominated by organizations for persons with physical disabilities; and

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- (f) not more than three persons co-opted by the Council to represent the donors that in its opinion have substantially supported the welfare of persons with disabilities.
- (2) The Minister shall appoint one of the persons appointed under subsection (1) (e) to be the treasurer to the Fund.
- (3) The Board shall conduct its affairs in accordance with regulations prescribed by the Council subject to any law relating to trustees.

25. Exemptions

- (1) All persons with disabilities who are in receipt of an income may apply to the Minister responsible for finance for exemption from income tax and any other levies on such income.
- (2) The Minister responsible for finance shall, in consultation with the Council, 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 Act, have effect according to its terms.

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- (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 government levy which would in any way increase their cost to the disadvantage of persons with disabilities.

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- (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.

26. Incentives.

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

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- (2) The Minister responsible for finance or other appropriate authority shall endeavor to provide, subject to the provisions of any other relevant law, incentives to local manufacturers of technical aids and appliances used by persons with disabilities including, but not limited to, the following –

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- (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.

27. Credit

- It shall be the duty of the Minister responsible for matters relating to credit unions, co-operatives and other lending institutions to encourage the extension by such institutions of credit to persons with disabilities.