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REPUBLIC OF KENYA



TWELFTH PARLIAMENT - FIFTH SESSION

THE NATIONAL ASSEMBLY

REPORT OF  
THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS  
ON  
THE RATIFICATION OF PROTOCOLS TO THE AFRICAN CHARTER ON HUMAN  
AND PEOPLE'S RIGHTS ON THE RIGHTS OF OLDER PERSONS AND THE RIGHTS  
OF PERSONS WITH DISABILITIES

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| <br><b>THE NATIONAL ASSEMBLY<br/>PAPERS LAID</b> |   |
| <b>DATE:</b> 22 SEP 2021   | <b>DAY:</b> Wednesday   |
| <b>TABLED BY:</b>  | Chair, DC - Defence & Foreign Relations<br>Hon. Katoo Ole Melito, B.A., MGH, MP |
| <b>CLERK-AT THE-TABLE:</b>   | Mamoh Wanjiku   |

September, 2021

Directorate of Departmental Committees,  
Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

# Table of Contents

|  |           |
|--|-----------|
| <b>CHAIRPERSON'S FOREWORD</b>  | <b>IV</b> |
| <b>1.0 PREFACE</b>   | <b>V</b>  |
| 1.1 ESTABLISHMENT OF THE COMMITTEE   | v         |
| 1.2 MANDATE OF THE COMMITTEE   | v         |
| 1.3 COMMITTEE MEMBERSHIP   | vii       |
| 1.4 COMMITTEE SECRETARIAT  | viii      |
| <b>2.0 ANALYSIS OF THE AGREEMENT</b>   | <b>1</b>  |
| 2.1 BACKGROUND   | 1         |
| 2.2 OUTLINE OF THE PROTOCOLS   | 1         |
| 2.3 OBLIGATIONS IMPOSED BY THE CHARTER   | 14        |
| 2.4 CONSTITUTIONAL AND POLICY CONSIDERATIONS   | 15        |
| 2.5 SITUATIONAL ANALYSIS   | 15        |
| 2.6 FINANCIAL IMPLICATIONS   | 16        |
| 2.7 MINISTERIAL RESPONSIBILITY   | 16        |
| <b>3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT</b>                                     | <b>16</b> |
| 3.1 MEMORANDUM FROM THE MINISTRY OF FOREIGN AFFAIRS  | 16        |
| 3.2 SUBMISSIONS  | 17        |
| 3.2.1 <i>Mr. Denis Ngure Thuo</i>  | 17        |
| 3.3 JOINT SITTING WITH DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE, AND OTHER AGENCIES | 17        |
| <b>4.0 COMMITTEE OBSERVATIONS</b>  | <b>23</b> |
| <b>6.0 COMMITTEE RECOMMENDATION</b>  | <b>26</b> |
| <b>ANNEXURES</b>   | <b>27</b> |

## **LIST OF ANNEXURES**

1. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons **Annex 1**
2. The Protocol to the African Charter on Human and Peoples' Rights of Persons with Disabilities **Annex 2**
3. Newspaper advertisement on public participation **Annex 3**
4. Report adoption list **Annex 4**
5. Minutes on proceeding should form annex 1 of the report **Annex 5**

## **CHAIRPERSON'S FOREWORD**

The Cabinet Secretary, Ministry of Foreign Affairs, submitted a memorandum to the National Assembly dated 19<sup>th</sup> May 2021 regarding the protocols on the Rights of Older Persons and Rights of Persons Living with Disabilities. The memorandum and text of the Protocols were committed to the Departmental Committee on Defence and Foreign Relations for processing.

The two protocols on the Rights of Older Persons and the Rights of Persons with Disabilities were adopted on 30<sup>th</sup> January 2016 and 29<sup>th</sup> January 2018 respectively, and the commencement of the accession process of the protocols was approved by Cabinet during its meeting of 25<sup>th</sup> February 2021. While considering the protocols, the Committee held a total of five sittings.

Pursuant to the provisions of Article 118 (1)(b) of the Constitution on public participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies of nationwide circulation, on 5<sup>th</sup> July 2021 requesting for submissions of memoranda on the subject. The Committee received a memorandum in support of the protocol on Rights of Persons Living with Disabilities.

Further, the Committee deliberated on the protocols with that of Labour and Social Welfare and the agencies involved, in recognition of the cross cutting nature of the protocols.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199, it is my pleasant duty to present the Report of the Departmental Committee on its consideration of the Protocols to the African Charter on Human and People's Rights on the Rights of Older Persons and the Rights of Persons with Disabilities

**Hon. Katoo Ole Metito, EGH, MGH, M.P**  
**(CHAIRPERSON)**

## **1.0 PREFACE**

### **1.1 Establishment of the Committee**

The Departmental Committee on Defence and Foreign Relations is established pursuant to Standing Order 216.

### **1.2 Mandate of the Committee**

The Committee is mandated under Standing Order 216 (4) and (5) to inter alia-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation and effectiveness of the implementation;*
- c) study and review all legislation referred to it;*
- d) study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- g) examine treaties, agreements and conventions;*
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- i) consider reports of Commissions and independent offices submitted to the house pursuant to the provisions of Article 254 of the Constitution; and*
- j) examine any questions raised by Members on a matter within its mandate.*

In executing its mandate, the Committee oversees the following Ministries and Departments:

- i. Ministry of Defence;
- ii. Ministry of Foreign Affairs;
- iii. Ministry of East African Community and Regional Development; and
- iv. National Intelligence Service.

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According to Schedule II of the Standing Orders, the Committee is mandated to consider the following subjects:

- i. Defence;
- ii. Intelligence;
- iii. Foreign Relations;
- iv. Diplomatic and Consular Services;
- v. International Boundaries including territorial waters and international Relations; and
- vi. Agreements, Treaties and Conventions.

### 1.3 Committee Membership

The Committee comprises the following nineteen (19) Members;

#### **Chairperson**

Hon. Katoo Ole Metito, EGH, MGH, MP  
Kajiado South Constituency

#### **Jubilee Party**

#### **Vice- Chairperson**

Hon. Richard Tongi, MP  
Nyaribari Chache Constituency

#### **Jubilee Party**

Hon. Yusuf Hassan Abdi, MP  
Kamukunji Constituency

#### **Jubilee Party**

Hon. Martha Wangari Wanjira, MP  
Gilgil Constituency

#### **Jubilee Party**

Hon. Charles Kilonzo, MP  
Yatta Constituency

#### **Independent**

Hon. Maj. (Rtd.) Bashir Abdullah, MP  
Mandera North Constituency

#### **Jubilee Party**

Hon. Richard Maore Maoka, CBS, MP  
Igembe North Constituency

#### **Jubilee Party**

Hon. (Dr.) Lilian Gogo, MP  
Rangwe Constituency

#### **ODM Party**

Hon. Dido Ali Raso, MP  
Saku Constituency

#### **Jubilee Party**

Hon. Irene Kasalu, MP  
Kitui County

#### **WDM-K Party**

Hon. Caleb Amisi, MP  
Saboti Constituency

#### **ODM Party**

Hon. Moses Nguchine Kirima, MP  
Central Imenti Constituency

#### **Jubilee Party**

Hon. Zachary Kwenya, MP  
Kinangop Constituency

#### **Jubilee Party**

Hon. Vincent Kipkurui Tuwei, MP  
Mosop Constituency

#### **Jubilee Party**

Hon. Gideon Konchela, MP  
Kilgoris Constituency

#### **Jubilee Party**

Hon. Ernest Ogesi Kivai, MP  
Vihiga Constituency

#### **ANC Party**

Hon. Memusi Ole Kanchory, MP  
Kajiado Central Constituency

#### **ODM Party**

Hon. Stephen M. Mule, MP  
Matungulu Constituency

#### **WDM-K Party**

Hon. Asha Hussein Mohamed, MP  
Mombasa County

#### **ODM Party**

## 1.4 Committee Secretariat

The Committee secretariat comprises the following technical staff;

|  |   |   |
|--|---|---|
|  | Mr. Victor Weke<br>First Clerk Assistant<br><b>Lead Clerk</b> |   |
| Mr. Abdiaziz Shobay<br>Clerk Assistant III |   | Mr. Edison Odhiambo<br>Fiscal Analyst         |
| Mr. Salem Lorot<br>Legal Counsel           |   | Ms. Deborah Mupusi<br>Media Relations Officer |
| Mr. Eric Kariuki<br>Research Officer       |   | Mr. John Ng'ang'a<br>Audio Recording Officer  |



## **2.0 ANALYSIS OF THE AGREEMENT**

### **2.1 Background**

#### **Protocol on the Rights of Older Persons**

1. The Protocol on the Rights of Older Persons in Africa was adopted on 30<sup>th</sup> January 2016. It seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by Older Persons and to ensure respect for their inherent dignity taking into consideration African traditions, values, customs and practices.
2. It complements the Charter, the African Union Social Policy Framework (2009), AU Policy Framework and Plan of Action on Ageing (2002), the 1991 United Nations Principles for Older Persons, the 1992 United Nations Proclamation on Ageing, the 2002 Madrid International Plan of Action on Ageing and the Resolutions of the United Nations General Assembly related to the rights of older persons.
3. To date, seventeen (17) countries have signed the protocol, while two (2) countries, have ratified.

#### **Protocol on the Rights of Persons with Disabilities**

4. The Protocol on the Rights of Persons with Disabilities in Africa was adopted 29<sup>th</sup> January, 2018. It seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity.
5. The Protocol recognizes the rights and freedoms of persons with disabilities in society, as well as duties of persons with disabilities and seeks to address issues that have the most disproportionate impact such as poverty, systematic discrimination and harmful practices. The rights espoused in the protocol include non-discrimination, right to equality, right to life, right to liberty and security of person.
6. In terms of duties, the Protocol recognizes that persons with disabilities have duties on an equal basis with other persons as elaborated in the African Charter.
7. To date nine (9) countries have signed the Protocol, while no country has ratified.

### **2.2 Outline of the Protocols**

#### **Protocol on the Rights of Older Persons**

8. Article 1 provides for the definition of various terms as used in the Protocol.
9. Article 2 provides for the obligations of State Parties. Sub article (1) provides that States Parties shall recognize the rights and freedoms enshrined in the Protocol and shall undertake to adopt legislative or other measures to give effect to them. Sub article (2) provides that States Parties

shall ensure that the 1991 United Nations Principles of Independence, Dignity, Self-fulfilment, Participation and Care of Older Persons are included in their national laws and are legally binding as the basis for ensuring their rights.

10. Article 3 provides for elimination of discrimination against older persons. It provides that States Parties shall prohibit all forms of discrimination against Older persons and encourage the elimination of social and cultural stereotypes which marginalize Older Persons; take corrective measures in those areas where discrimination and all forms of stigmatization against Older Persons continue to exist in law and in fact; and support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against Older Persons.
11. Article 4 provides for access to justice and equal protection before the law. It provides that States Parties shall develop and review existing legislation to ensure that Older Persons receive equal treatment and protection; ensure the provision of legal assistance to Older Persons in order to protect their rights; and ensure that law enforcement organs at all levels are trained to effectively interpret and enforce policies and legislation to protect the rights of Older Persons.
12. Article 5 provides for the right to make decisions. It provides that States Parties shall ensure that appropriate legislation exists that recognizes the rights of Older Persons to make decisions regarding their own well-being without undue interference from any person or entity, and that Older Persons have the right to appoint a party of their choice to carry out their wishes and instructions; ensure that, in the event incapacity, Older Persons shall be provided with legal and social assistance in order to make decisions that are in their best interests and wellbeing; and enact legislation and take other measures that protect the right of Older Persons to express opinions and participate in social and political life.
13. Article 6 provides for protection against discrimination in employment. It provides that States Parties shall take measures to eliminate work place discrimination against Older Persons with regard to access to employment taking into consideration occupational requirements; and ensure appropriate work opportunities for Older Persons taking into account to their medical and physical abilities, skills and experience.
14. Article 7 provides for social protection. It provides that States Parties shall develop policies and legislation that ensure that Older Persons who retire from their employment are provided with adequate pensions and other forms of social security; ensure that universal social protection mechanisms exist to provide income security for those Older Persons who did not have the opportunity to contribute to any social security provisions; ensure that the processes and procedures of accessing pensions are decentralized, simple and dignified; take legislative and other measures to enable individuals to prepare for income security in old age; and take legislative and other measures that facilitate the rights of Older Persons to access services from state service providers.
15. Article 8 provides for the protection from abuse and harmful traditional practices. It provides that States Parties shall prohibit and criminalize traditional practices targeted at Older Persons; and take all necessary measures to eliminate harmful traditional practices including witchcraft

accusation, which affect the welfare, health, life and dignity of Older Persons, particularly older women.

16. Article 9 provides for the protection of older women. It provides that States Parties shall ensure the protection of the rights of Older Women from violence, sexual abuse and discrimination based on gender; put in place legislation and other measures that guarantees protection of Older Women against abuses related to property and land rights; and adopt appropriate legislation to protect the right of inheritance of Older Women.
17. Article 10 provides for care and support. It provides that States Parties shall adopt policies and legislation that provide incentives to family members who provide home care for Older Persons; identify, promote and strengthen traditional support systems to enhance the ability of families and communities to care for older family members; and ensure the provision of preferential treatment in service delivery for Older Persons.
18. Article 11 provides for residential care. It provides that States Parties shall enact or review existing legislation to ensure that residential care is optional and affordable for Older Persons; ensure that Older Persons in residential care facilities are provided with care that meets the National Minimum Standards provided that such standards comply with regional and international Standards; and ensure that Older Persons in palliative care adequate care and pain management medication;
19. Article 12 provides for support for older persons taking care of vulnerable children. It provides that States Parties adopt measures to ensure that indigent Older Persons who take care of orphans and vulnerable children are provided with financial, material and other support; and ensure that when children are left in the care of Older Persons, any social or other benefits designed for the children, are remitted to the Older Persons.
20. Article 13 provides for the protection of older persons with disabilities. It provides that States Parties shall adopt legislation and other measures to protect the rights of Older Persons with disabilities; ensure that such legislation and measures comply with regional and international standards; and ensure that Older Persons with disabilities have access to assistive devices and specialized care, which respond to their needs within their communities.
21. Article 14 provides for the protection of older persons in conflict and disaster situations. It provides that States Parties shall ensure that, in situations of risk, including natural calamities, conflict situations, during civil strife or wars, Older Persons shall be among those to enjoy access, on a priority basis, to assistance during rescue efforts, settlement, repatriation and other interventions; and ensure that Older Persons receive humane treatment, protection and respect at all times and are not left without needed medical assistance and care.
22. Article 15 provides for access to health services. It provides that States Parties shall guarantee the rights of Older Persons to access health services that meet their specific needs; take reasonable measures to facilitate access to health services and medical insurance cover for Older Persons within available resources; and ensure the inclusion of geriatrics and gerontology in the training of health care personnel.

23. Article 16 provides for the access to education. It provides that States Parties shall provide opportunities to Older Persons to have access to education and to acquire ICT skills.
24. Article 17 provides for the participation in programmes and recreational activities. It provides that States Parties shall develop policies that ensure the rights of Older Persons to enjoy all aspects of life, including active participation in socio-economic development, cultural programmes, leisure and sports.
25. Article 18 provides for accessibility. It provides that States Parties shall take measures to ensure that Older Persons have access to infrastructure, including buildings, public transport and are accorded seating priority.
26. Article 19 provides for awareness on ageing and preparation for old age. States Parties shall adopt measures to encourage the development of awareness raising programmes to educate the younger population groups on ageing and Older Persons to combat negative attitudes against Older Persons; and adopt measures to develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.
27. Article 20 provides for the duties of older persons. It provides that Older Persons have responsibilities towards their families, communities, the wider society, the state and the international community. In this regard, they shall mentor and pass on knowledge and experience to the younger generations; foster and facilitate inter-generational dialogue and solidarity within their families and communities; and play a role in mediation and conflict resolution.
28. Article 21 provides for coordination and data collection. It provides that States Parties shall ensure the systematic collection and analysis of national data on Older Persons; develop a national mechanism on ageing with responsibility to assess, monitor, evaluate and coordinate the integration and implementation of Older Persons' rights in national policies, strategies and legislation; and support the Advisory Council on Ageing, as a continental mechanism of the African Union to facilitate the implementation and follow up of the continental policies and plans on ageing.
29. Article 22 provides for implementation. It provides that States Parties shall ensure the implementation of the Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realization of their rights recognized in the Protocol. Further, in the implementation of the Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter. Also, the African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of the Protocol to the African Court on Human and People's Rights. In addition, where applicable, the African Court on Human and People's Rights shall have the mandate to hear disputes arising from the application or implementation of the Protocol.

30. Article 23 provides for the popularization of the Protocol. It provides that States Parties shall take all appropriate measures to ensure the widest possible dissemination of the Protocol in accordance with the relevant provisions and procedures of their respective constitutions.
31. Article 24 provides for safeguard clause. It provides that no provision in the Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realization of the rights of Older Persons in Africa. Further, it provides that in the event of a contradiction between two or more provisions of the Protocol, the interpretation which favours the rights of Older Persons and protects their legitimate interests shall prevail.
32. Article 25 provides for the signature, ratification and accession. It provides that the Protocol shall be open to Member States of the Union for signature, ratification or accession. It provides that the instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.
33. Article 26 provides for the entry of force of the Protocol. It provides that the Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15th) instrument of ratification by a Member State. It provides that the Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol. It also provides that for any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.
34. Article 27 provides for reservations. It provides that a State Party may, when ratifying or acceding to the Protocol, submit in writing a reservation with respect to any of the provisions of the Protocol. Reservation shall not be incompatible with the object and purpose of the Protocol. Further, unless otherwise provided, a reservation may be withdrawn at any time. In addition, the withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.
35. Article 28 provides for the depository. It provides that the Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.
36. Article 29 provides for the registration of the Protocol. It provides that the Chairperson of the Commission upon the entry into force of the Protocol shall register the Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.
37. Article 30 provides for withdrawal of the Protocol. It provides that at any time after three years from the date of entry into force of the Protocol, State Party may withdraw by giving written notification to the Depository. Further, withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification. Also, withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

38. Article 31 provides for the amendment and revision of the Protocol. It provides that any State Party may submit proposal(s) for the amendment or revision of the Protocol. Such proposal(s) shall be adopted by the Assembly. Further, Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption. In addition, amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority. Also, the amendment or revision shall enter into force in accordance with the procedures outlines in Article 26 of the Protocol.

39. Article 32 provides that the Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

40. The Protocol was adopted by the twenty sixth ordinary session of the Assembly, held in Addis Ababa, Ethiopia on 31st January 2016.

### **Protocol on the Rights of Persons with Disabilities**

41. Article 1 provides for the definition of terms as used in the Protocol.

42. Article 2 provides for the purpose of the Protocol which is to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity.

43. Article 3 provides for the general principles to guide when interpreting and applying the Protocol.

44. Article 4 provides for the general obligations of States Parties. It provides that States Parties shall take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities, without discrimination on the basis of disability, including by:

- a) Adopting appropriate measures for the full and effective implementation of the rights recognized in the present Protocol;
- b) Mainstreaming disability in policies, legislation, development plans, programmes and activities and in all other spheres of life;
- c) Providing in their constitutions and other legislative instruments and taking other measures to modify or abolish existing policies, laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- d) Modifying, outlawing, criminalizing or campaigning against, as appropriate, any harmful practice applied to persons with disabilities;
- e) Promoting positive representations and empowerment of persons with disabilities through training and advocacy;
- f) Taking measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- g) Refraining from engaging in any act or practice that is inconsistent with the present Protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol;

- h) Providing assistance and support as necessary and appropriate to enable the realization of the rights set out in the present Protocol;
- i) Putting in place adequate resources, including through budget allocations, to ensure the full implementation of the Protocol;
- j) Ensuring effective participation of persons with disabilities or their representative organizations including women and children with disabilities, in all decision making processes including in the development and implementation of legislation, policies and administrative processes to the Protocol;
- k) Ensuring, where persons with disabilities are lawfully deprived of any rights or freedoms contained in the Protocol that they are on an equal basis with others, entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.

45. Article 5 provides for non-discrimination. It provides that every person with a disability shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Protocol without distinction of any kind on any ground including race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status. It provides for the obligations of the States Parties against discrimination.

46. Article 6 provides for the right to equality. It provides that every person with a disability is equal before the law and has the right to equal protection and benefit of the law. It also provides that equality includes the full and equal enjoyment of all human and people's rights. Also, States Parties shall take all appropriate legislative, administrative, budgetary and other measures in order to promote equality for persons with disabilities.

47. Article 7 provides for equal recognition before the law. It provides that States Parties shall recognize that persons with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. It further provides for the obligations of States Parties in this regard.

48. Article 8 provides for the right to life. It provides that every person with a disability has the inherent right to life and integrity. It provides that States Parties shall take effective and appropriate measures to ensure protection, respect for life and the dignity of persons with disabilities, on an equal basis with others; that persons with disabilities have access to services, facilities and devices to enable them to live with dignity and to realize fully their right to life.

49. Article 9 provides for the right to liberty and security of person. It provides that every person with a disability has the right to liberty and security of person. It provides, among others, that States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily; are not forcibly confined or otherwise concealed by any person or institution; are protected, both within and outside the home, from all forms of exploitation, violence and abuse.

50. Article 10 provides for the freedom from torture or cruel, inhuman or degrading treatment or punishment. It provides that every person with a disability shall have the right to the respect of

his/her inherent dignity and to be free from torture or cruel, inhuman or degrading treatment, slavery, forced labour or unlawful punishment. It provides for the States Parties obligations.

51. Article 11 provides for harmful practices. It provides that States Parties shall take all appropriate measures and offer appropriate support and assistance to victims of harmful practices, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens. It provides that States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.
52. Article 12 provides for situations of risk. It provides that States Parties shall take specific measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, forced-displacements, humanitarian emergencies and natural disasters; ensure that persons with disabilities are consulted and participate in all aspects of planning, implementation and monitoring of pre- and post-conflict reconstruction and rehabilitation.
53. Article 13 provides for the right to access to justice. It provides that States Parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings. It further provides that States Parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice. It also provides that all law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognized and implemented without discrimination. It further provides that States Parties shall ensure legal assistance including legal aid to persons with disabilities.
54. Article 14 provides for the right to live in the community. It provides that every person with disability has the right to live in the community with choices on an equal basis with others. It provides for the States obligations in this regard.
55. Article 15 provides for accessibility. It provides that every person with a disability has the right to barrier free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public. It further provides that States Parties shall take reasonable and progressive step measures to facilitate full enjoyment by persons with disabilities of this right, and such measures shall, among others, apply to: rural and urban settings and shall take into account of population diversities; buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces; information, communications, sign languages and tactile interpretation services, braille, audio and other services, including electronic services and emergency services; quality and affordable mobility aids, assistive



devices or technologies and forms of live assistance and intermediaries; and the modification of all inaccessible infrastructure and the universal design of all new infrastructure.

56. Article 16 provides for the right to education. It provides that every person with a disability has the right to education. It provides that States Parties shall ensure to persons with disabilities the right to education on an equal basis with others. It further provides for States obligations in regard to this which include ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education; ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including by ensuring the literacy of persons with disabilities above compulsory school age; among others.
57. Article 17 provides for the right to health. It provides that every person with a disability has the right to the highest attainable standard of health. It further provides for States Parties obligations in regard to this which include providing persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons; providing those health services needed by persons with disabilities specifically because of their disabilities or health services designed to minimize or prevent further disability, the provision of medicines, including pain relieving drugs, among others.
58. Article 18 provides for habilitation and rehabilitation. It provides that States Parties shall take effective and appropriate measures, including peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life including by:
- Organizing, strengthening and extending comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services
  - Promoting the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services
  - Promoting the availability, knowledge and use of appropriate, suitable and affordable assistive devices and technologies
  - Supporting the design, development, production, distribution and servicing of assistive devices and equipment for persons with disabilities, adapted to local conditions
  - Developing, adopting and implementing standards, including regulations on accessibility and universal design, suitable to local conditions.
59. Article 19 provides for the right to work. It provides that every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation and to protection from forced or compulsory labour. It further provides for States Parties obligations which include prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement, and safe and healthy working conditions, among others.

60. Article 20 provides for the right to adequate standard of living. It provides that persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, access to safe drinking water, housing, sanitation and clothing, to the continuous improvement of living conditions and to social protection. It provides for the obligations of States Parties which include ensuring that persons with disabilities shall access appropriate and affordable services, devices and other assistance for disability-related needs, including accessible housing and other social amenities, mobility aids and caregivers; ensuring access by persons with disabilities to social protection programmes, among others.
61. Article 21 provides for the right to participate in political and public life. It provides that every person with a disability has the right to participate in political and public life. It provides that States Parties shall take all appropriate policy, legislative and other measures to ensure this right, on the basis of equality, including through:
- Undertaking or facilitating systematic and comprehensive civic education to encourage full participation of persons with disabilities in democracy and development processes, including by ensuring civic and voter education materials are availed in accessible formats
  - Encouraging the effective participation of persons with disabilities in political and public life including as members of political parties, electors and holders of political and public offices in accordance with national laws
  - Putting in place reasonable accommodation and other support measures consistent with the secrecy of the ballot, including as appropriate, by ensuring accessibility to polling stations and facilitating assisted voting, for persons with disabilities to enable their effective participation in political and public life in accordance with national laws
  - Realizing increased and effective representation and participation of persons with disabilities on an equitable basis as members of regional, sub-regional, national and local legislative bodies
  - Repealing or amending laws that on the basis of disability restrict the right of persons with disabilities to vote, stand for or remain in public office.
62. Article 22 provides for self-representation. It provides for the obligations of States Parties to recognize and facilitate the right of persons with disabilities to represent themselves in all spheres of life, including by promoting an environment that enables persons with disabilities to form and participate in the activities of organizations of and for persons with disabilities at national, regional and international levels; to build relationships and networks at national, regional and international levels, among others.
63. Article 23 provides for the right to freedom of expression and opinion. It provides that every person with a disability has the right to freedom of expression and opinion including the freedom to seek, receive and impart information and ideas through all forms of communication of their choice. It further provides that States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on an equal basis with others.
64. Article 24 provides for access to information. It provides that every person with a disability has the right to access information. It further provides that States Parties shall take policy,

legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on the basis of equality, including by:

- Providing information intended for the general public as well as information required for official interactions to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner, and without additional cost to persons with disabilities
- Requiring private entities that provide services to the general public including through print and electronic media, to provide information and services in accessible and usable formats for persons with disabilities;
- Recognizing and promoting the use of sign languages and deaf culture
- Ensuring that persons with visual impairments or with other print disabilities have effective access to published works including by using information and communication technologies.

65. Article 25 provides for the right to participate in sports, recreation and culture. It provides that every person with a disability has the right to participate in sports, recreation and cultural activities. It provides for the States Parties obligations.

66. Article 26 provides for the right to family. It provides that everyone with a disability has a right to marry and form a family with their full, prior and informed consent. It further provides for the obligations of States Parties to take all necessary and appropriate measures to eliminate discrimination against persons with disabilities including negative stereotypes in all matters with regard to family, marriage, parenthood, guardianship, adoption and relationships, on an equal basis with others, in order to ensure that persons with disabilities may decide on the number and spacing of their children, and have access to family planning, and sexual and reproductive health education and services; persons with disabilities have the right to keep their children and not be deprived of their children on account of their disability.

67. Article 27 provides for women and girls with disabilities. It provides that States Parties shall ensure that women and girls with disabilities have full enjoyment of human and people's rights on an equal basis with other persons, including by ensuring that women and girls with disabilities participate in social, economic and political decision-making and activities; barriers that hinder the participation of women with disabilities in society are eliminated; women with disabilities are included in mainstream women's organizations and programmes; amongst others.

68. Article 28 provides for children with disabilities. It provides that States Parties shall ensure that Children with disabilities have full enjoyment of human and people's rights on an equal basis with other children. It further provides that States Parties shall respect and promote the right of children with disabilities, in particular, their right to preserve their identities and to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community, amongst other obligations.

69. Article 29 provides for youth with disabilities. It provides that States Parties shall ensure that Youth with disabilities have full enjoyment of human and people's rights on an equal basis with other youth. The Article also provides for the State Parties' obligations.

70. Article 30 provides for older persons with disabilities. It provides that State Parties shall ensure that older persons with disabilities have full enjoyment of human and peoples' rights on an equal basis with other older persons. It further provides that States Parties shall ensure that all the rights of older persons with disabilities are fully protected by taking policy, legislative and other measures, including for ensuring that older persons with disabilities, on an equal basis with others, access social protection programmes; taking account of age and gender-related aspects of disability in programming and resourcing in accordance with the present Protocol, amongst other obligations.
71. Article 31 provides for the duties of persons with disabilities. It provides that States Parties shall recognize that persons with disabilities have duties on an equal basis with other person as elaborated in the African Charter. It further provides that States Parties shall ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.
72. Article 32 provides for statistics, data and other surveys. It provides that States Parties shall ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. The Articles lists the States Parties obligations to this end.
73. Article 33 provides for cooperation. It provides that States Parties shall cooperate at the international, continental, sub-regional and bilateral levels on capacity-building on issues of persons with disabilities, including by sharing research, technical, human and financial resources, information and good practices to support implementation of the Protocol; ensure that regional and sub-regional cooperation programmes and institutions support the implementation of the Protocol and are accessible to Persons with Disabilities; ensure full and effective participation of persons with disabilities in the implementation and monitoring of the Protocol; support the African Union Commission to set up an Advisory Council on Disability [as an ad hoc] mechanism to facilitate the implementation and follow up of the continental policies and plans on disability.
74. Article 34 provides for implementation of the Protocol. It provides that the States Parties shall ensure the implementation of the Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realization of the rights recognized in the Protocol. It further provides that States Parties shall establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities, among other provisions.
75. Article 35 provides for the popularization of the Protocol. It provides that States Parties shall take all appropriate measures to ensure the widest possible dissemination of the Protocol in accordance with the relevant provisions and procedures of their respective constitutions.
76. Article 36 provides for safeguard clause. It provides that no provision in the Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realization of the rights of Persons with Disabilities in Africa. It further provides that in

the event of a contradiction between two or more provisions of the Protocol, the interpretation which favours the rights of Persons with Disabilities and protects their legitimate interests shall prevail.

77. Article 37 provides for the signature, ratification and accession of the Protocol. It provides that the Protocol shall be open to Member States of the Union for signature, ratification or accession. It further provides that the instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.
78. Article 38 provides for the entry into force of the Protocol. It provides that the Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15th) instrument of ratification by a Member State. It further provides that the Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol. Also, it provides that for any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.
79. Article 39 provides for reservations to the Protocol. It provides that a State Party may, when, ratifying or acceding to the Protocol, submit in writing a reservation with respect to any of the provisions of the Protocol, Reservation shall not be incompatible with the object and purpose of the Protocol. It further provides that unless otherwise provided, a reservation may be withdrawn at any time. Also, it provides that the withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.
80. Article 40 is on the depository. It provides that the Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.
81. Article 41 provides for the registration of the Protocol. It provides that the Chairperson of the Commission upon the entry into force of the Protocol shall register the Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.
82. Article 42 provides for the withdrawal of the Protocol. It provides that at any time after three years from the date of entry into force of the Protocol, a State Party may withdraw by giving written notification to the Depository. It further provides that withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification. Also, it provides that withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.
83. Article 43 provides for the amendment and revision of the Protocol. It provides that any State Party may submit proposal(s) for the amendment or revision of the Protocol. Such proposal(s) shall be adopted by the Assembly. Further, proposals for amendment or revision shall be

submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption. In addition, it provides that amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority. Also, it provides that the amendment or revision shall enter into force in accordance with the procedures outlined in Article 26 of the Protocol.

84. Article 44 provides that the Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic. The Protocol was adopted by the thirtieth ordinary session of the assembly, held in Addis Ababa, Ethiopia on 29th January 2018.

## **2.3 Obligations imposed by the Charter**

### **Protocol on the Rights of Older Persons**

85. Upon ratification, Kenya will be required to:

- Recognize the rights and freedoms of older persons as enshrined in the Protocol;
- Submit periodic reports on the implementation of the Protocol;
- Develop and review existing legislation to ensure that Older Persons receive equal treatment and protection of the law, access to health services, education; accessibility needs, pensions and other forms of social security;
- Develop and review existing legislation to ensure that Older Women and Older Persons with disabilities are guaranteed of special protection;
- Ensure that the 1991 United Nations Principles of Independence, Dignity, Self-fulfillment, Participation and Care of Older Persons are included in national laws and are legally binding as the basis for ensuring their rights; and
- Prohibit all forms of abuse, discrimination, stigmatization and harmful traditional practices while promoting the elimination of social and cultural stereotypes which marginalize Older Persons.

### **Protocol on the Rights of Persons Living with Disabilities**

86. Upon ratification, Kenya will be required to:

- Ensure that people with disabilities are not discriminated against and enjoy equality, equal protection and equal benefit of the law;
- Take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities;
- Develop and review existing legislation to ensure that women and girls with disabilities are guaranteed of special protection;
- Submit periodic reports on the legislative and other measures undertaken for the full realization of the rights recognized in the implementation of the Protocol;
- Adopt appropriate measures to allow persons with disabilities fulfil their duties as recognized in the Protocol;
- Mainstream disability in policies, legislation, development plans, programmes and activities and in all other spheres of life; and

- Prohibit all forms of abuse, discrimination, stigmatization and harmful traditional practices while promoting the elimination of social and cultural stereotypes which marginalize persons with disabilities.

## **2.4 Constitutional and Policy Considerations**

87. The Charter is not in conflict with any provisions of Kenya's Constitution. It is consistent with Kenya's constitutional values and objectives and various statutes enacted to implement the Constitution
88. Kenya has ratified and domesticated various treaties that have a bearing on the obligations enshrined in the Charter such as the promotion and protection of human rights among them being the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).
89. The Protocols compliment various policy and legislative mechanisms put in place by Kenya in order to enhance protection, promotion and fulfilment of the rights of Older Persons and Persons with Disabilities.
90. Under the Voluntary Nations Reviews (VNR) on the integration of the Sustainable Development Goals (SGDs) and the African Peer Review Mechanisms (APRM), Kenya committed to specifically address ageing related issues including protection of older persons and persons with disabilities.
91. Ratification will therefore be clear reaffirmation of Kenya's commitment to strengthen and respect the rights of persons with disabilities and older persons, at the international level.
92. Ratification will also be in furtherance of the AU's Executive Decision EX.CL/Dec (XIV) which requires Member States to commence the process of ratification of continental Treaties within one (1) year of adoption.
93. Kenya enacted the Persons with Disabilities Act in 2003 that provides for their protection and rehabilitation. There is no subsidiary legislation on older persons.
94. However, upon ratification, there will be need for review to the existing legal, policy, and administrative framework for full alignment with the Protocols.

## **2.5 Situational Analysis**

95. Older Persons and persons with disabilities experience considerable vulnerability resulting in the violations of their human rights both individually and systematically.

96. In particular, the increased movement of younger persons from rural to urban areas in search of employment has led to the breakdown of the in-built traditional social protection systems which protected older persons.
97. With regard to Persons with Disabilities (PWDs), the Kenya National Housing and Population Census, 2019 places the overall disability rate in Kenya at 2.2%. This translates to 918,270 Persons with Disabilities (PWDs) and an additionally 9,720 Persons with Albinism.
98. PWDs face a number of obstacles including attitudinal, cultural, environmental and institutional barriers, preventing their full and equal participation in all aspects of life. Often, Older Persons with disabilities are the most affected, facing further age barriers in society.
99. The HIV/AIDS pandemic also meant that older persons and persons with disabilities carry a disproportionate burden of family responsibility. This situation has been exacerbated by the COVID-19 pandemic.
100. While the Government implements existing policies and legislation that provide the specific protection to older persons and persons with disabilities, ratification will enhance Kenya's promotion of AU Agenda 2063.

## **2.6 Financial Implications**

101. The implementing agencies submitted that the protocols will have no further budgetary implications. Implementation will be catered for along the already existent budget lines.

## **2.7 Ministerial Responsibility**

102. The implementation of the Conventions will be under the collective responsibility of the Ministry of Labour and Social Protection. The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on implementation, pursuant to the Treaty Making and Ratification Act No. 45 of 2012;

## **3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT**

### **3.1 Memorandum from the Ministry of Foreign Affairs**

103. The Ministry of Foreign Affairs submitted that the ratification process of the two Protocols was approved by Cabinet during its 1<sup>st</sup> Meeting of 2021, held on 25<sup>th</sup> February, 2021.
104. The African Charter on Human and People's Rights is a continental instrument that promotes and protects human rights and basic freedoms. It makes provisions for protecting the civil and political rights, the economic, social and cultural rights and Peoples' rights and Group rights. In particular, it provides in Article 18(4) that 'the aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.



105. However, the broad nature of the Charter's provisions led to the adoption of the two Protocols under consideration, in order to provide for specific measures of protection of the Older Persons and Persons Living with Disabilities in Africa.
106. The Protocols advocate for a unified, collaborative and coordinated regional approach in eliminating discrimination against older persons and persons with disabilities through a substantive binding, legal, normative and institutional framework.
107. The Protocols will enter into force upon ratification by fifteen (15) Member States.
108. Prior to signing, the Ministry of Labour and Social Protection held various stakeholder engagements with the Office of the Attorney General and Department of Justice, Ministry of Foreign Affairs, the Council of Governors, the National Gender and Equality Commission, the Kenya National Human Rights Commission and several Non-Governmental Organizations and Civil Society organizations.
109. The views received from government bodies, human rights institutions, civil society organizations affirmed that the Protocols address key human and people's rights and recommended ratification to offer additional protection to these vulnerable groups.
110. The Ministry of Foreign Affairs thus requested the National Assembly to;
- i. Consider and approve Kenya's ratification of the following two (2) Protocols to the African Charter on Human and People's Rights (Banjul Charter):
    - Protocol on the Rights of Older Persons in Africa; and
    - Protocol on the Rights of Persons with Disabilities in Africa
  - ii. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of ratification to the relevant depositories.

### **3.2 Submissions**

111. In response to the call for public participation, only one submission from a Mr. Denis Ngure Thuo was received;

#### **3.2.1 Mr. Denis Ngure Thuo**

112. Mr. Thuo supported the ratification of the Protocol on the Rights of Persons living with Disabilities. He is registered person living with disability under the National Council for Persons with Disabilities.

### **3.3 Joint sitting with Departmental Committee on Labour and Social Welfare, and other agencies**

113. In recognition of the importance of the two protocols and their potential to impose certain obligations on the state, the Committee deemed it necessary to hold joint sittings with the line oversight Committee, that of Labour and Social Welfare, together with the following state agencies;
- i) Ministry of Labour and Social Protection

- ii) Ministry of Foreign Affairs
- iii) National Gender and Equality Commission
- iv) National Council for Persons with Disabilities

114. The Committee sought the following information from these agencies;
- i) Information on how rights accorded to the two categories of people and obligations imposed upon member states will be facilitated under ‘normal budgetary lines’ as submitted in the Cabinet Memorandum;
  - ii) Detailed submission on the process of public participation undertaken by the Ministry of Labour & Social Welfare as submitted in the Cabinet Memorandum, including correspondence and feedback from all stakeholders engaged;
  - iii) Detail on existing programmes catering for the two categories of persons, and how the two protocols will impact the same;
  - iv) Preliminary proposals to amend existing legislation or develop legislation to accommodate certain provisions of the two protocols, as submitted in the Cabinet Memorandum.
115. The meeting took place on 16<sup>th</sup> August 2021 and the agencies, led by Mr. Simon Chelugui, Cabinet Secretary Ministry of Labour and Social Protection, submitted as follows.
116. The two protocols bring together norms and standards that promote and protect the rights of Older Persons and Persons with Disabilities by;
- i. promoting a unified, collaborative and coordinated approach in eliminating discrimination against Older Persons and Persons with Disabilities.
  - ii. promoting supportive conversation to enhance and promote legal, policy and programmatic interventions to address the challenges faced by Older Persons and Persons with Disability
117. Eighteen (18) Member States have signed the Older Persons Protocol with 3 Member States (Benin, Lesotho and Malawi) ratifying and depositing the Protocol with the African Union Commission while 10 Member States have signed the Persons with Disability Protocol with 1 Member State (Mali) ratifying and depositing the Protocol with the African Union Commission.

**On how rights accorded to the two categories of people and obligations imposed upon member states will be facilitated under ‘normal budgetary lines’ as submitted in the Cabinet Memorandum.**

118. The Constitution of Kenya obligates the State to take measures to ensure the Rights of Persons with Disabilities and Older Persons are guaranteed under Article 54 (Rights of Persons with Disabilities) and Article 57(Rights of Older Persons).
119. The rights enshrined within the two Protocols reflect the Government’s commitment and priority in investing in the People of Kenya under the Social Pillar of vision 2030 that aims at improving the quality of life for all Kenyans by targeting social welfare projects and programmes for older persons and persons with disability. The Implementation of the commitments by the State will be implemented through the Medium-Term Expenditure Framework (MTEF) budgeting process. One of the key instruments of the MTEF budgeting

process is the Sector Working Groups and as such, the Ministry shall participate through the Social Protection, Culture and Recreation Sector, to cost and prioritize resources for implementation of the two Protocols.

### **On the process of public participation**

120. The ministry did the following in compliance with the provisions under section 7 of the Treaty Making and Ratification Act, the Ministry;

- a) Published an advertisement in the local dailies (Daily Nation) on 27<sup>th</sup> August 2019 requesting the public to send their views on the the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.
- b) Published an advertisement in the local dailies (Daily Nation) on 10<sup>th</sup> December 2019 requesting the public to send their views on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability.
- c) Received feedback from stakeholders with their views on the protocol.
- d) Engaged the Attorney General and the Council of Governors in July 2019, to send in their views on the Protocol.
- e) Involved Stakeholders and sensitized the public on the two protocols during various public forums on the both Protocols as follows;
  - ✓ The Kenya Pre-Summit Disability for the Global Disability Summit held on 24<sup>th</sup> May 2018.
  - ✓ The Celebration of the UN International Day for Persons with Disabilities held on 3<sup>rd</sup> December 2019.
  - ✓ The public participation Forum on the Ratification on the Persons with Disabilities Protocol held at the Intercontinental Hotel on 23<sup>rd</sup> January.
  - ✓ The Gender and Ageing in African Contexts – Policy, Legal and Institutional Development Regional Workshop held in Nairobi from 4 -5<sup>th</sup> June 2019.
  - ✓ The Open Data Seed Event – Data for Older Persons Workshop held on 13<sup>th</sup> February 2020.
  - ✓ The Celebration of the UN World Elder Abuse Awareness Day – Virtual Symposium on Zoom held on 15<sup>th</sup> June 2020.

### **Details on existing programmes catering for the two categories of persons**

121. The Ministry of Labour and Social Protection through the State Department for Social Protection implements a number of programmes that support Persons with Disabilities and Older Persons. These programmes are implemented at the County level through the County and Sub county Social Development Offices and the Regional and County Disability Services Offices and include;

- i. **The Social Protection Program** – which promotes the dignity and inclusion of Older Persons and Persons with Disabilities through the Inua Jamii Programme that provides Cash Transfer to households with Older Persons and Persons with Severe Disabilities. Currently, the program covers 833,000 older persons and 47,000 Persons with Severe Disabilities.
- ii. **The Disability Mainstreaming Program** – which has put in place a National Disability Mainstreaming Strategy (2018-2022) that provides a framework for the

implementation of the disability agenda as provided for in the Constitution, the Disability Act 2003, and the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) to Monitor disability mainstreaming by various Government Ministries, Departments and Agencies both at National and County level.

- iii. **The Vocational Rehabilitation Program** - that offers technical vocational training to Persons with Disabilities. The Ministry has Twelve (12) Vocational Rehabilitation Centers (VRCs) with an average enrolment of 700 Persons with Disabilities every year. The technical vocational skills imparted enable them to become self-reliant in life. After training graduates are provided with business start-up tool kits.
- iv. **The Disability Inclusion and Awareness Program** – where the Ministry has developed the Disability Awareness Creation Booklet as a guide for creating awareness on disability with the aim of demystifying disability to reduce stigma and discrimination and enhance social inclusion of Persons with Disability.
- v. The Ministry has also established an Inter-Agency Coordinating Committee comprising of government agencies and organizations for persons with disability to Monitor the implementation of the Commitments Kenya made during the Global Disability Summit in 2018. The committee submits reports of implementation annually.
- vi. **National Council for Persons with Disabilities** – Through the Council, the Government implements a number of programmes that are aimed at empowering persons with disabilities. These include among others;
  - 1. The Economic Empowerment programme where grants are given to Persons with Disabilities for economic activities to improve their wellbeing.
  - 2. Provision of Assistive Devices.
  - 3. Provision of Education Support through bursaries and scholarships.
  - 4. Provision of Tools of Trade for vocational training graduates.
  - 5. Advocacy and awareness programs where the Council offers financial support to Organizations of Persons with Disability (OPDs) to mark calendar events as well as enlighten the community about PWDS.
  - 6. The Persons with Albinism programmes which supports over 3,500 persons with albinism with sunscreen lotion and treatment of skin cancer
- vii. **Family Strengthening and Social Welfare Program** - that offers psychosocial support to distressed families. The State Department has enlisted over 1800 Lay Volunteer Counsellors (LVCs) across the Country to provide psycho- social support, that is, guidance and counselling services including referral and support services to vulnerable and distressed older persons, persons with disabilities and families.
- viii. **Care and support Program for Older Persons** -where the Ministry has: -
  - a) Established a Rescue Centre for older persons in Mwea, Kirinyaga County to rescue and care for distressed older persons who have been neglected and abused.
  - b) Developed the National Standards and Guidelines for the Management of Institutions of Older Persons (2018) to regulate the registration and management

of Institutions for Older Persons and improve the quality of services offered to older persons.

- c) Established a National Databank for Institutions and Partners dealing with programs on Older Persons & Ageing in the 47 Counties for the effective coordination, planning and implementation of Older Persons Programs in the country.

### **On how the protocols will impact the above programmes**

122. The two Protocols will impact positively on the welfare and rights of older persons and persons with disability in the country since it will compliment the various policies, legislative and programmatic interventions for older persons and persons with disability that the government has put in place.

123. Kenya has also ratified international treaties and conventions such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) that provides for the special protection of elderly women.

124. The Protocol on Older Persons seeks to address the challenges faced by older persons in relation to accessibility, geriatrics and gerontology, abuse and harmful traditional practices, discrimination in employment, inclusion in the decision-making processes, access to justice and equal protection before the law, and inadequate data.

125. The Protocol on Disability elaborates clearly measures on disability mainstreaming on the Situations of Risk, Right to Education, Right to Work, Access to Information, stigmatization and harmful traditional practices and recognizing and supporting the cultural and linguistic identities of PWDs including Deaf- Blind and Deaf Culture and sign languages.

126. If ratified, these two Protocols will bring out the issue of Older Persons and youth with disabilities to the forefront, which is not captured by any other legislation by ensuring implementation by both State and Non-State Actors.

### **Proposals to amend existing legislation or develop legislation to accommodate certain provisions of the two protocols**

127. The Ministry has in place a **National Policy on Older Persons and Ageing (2018)** that provides for a comprehensive framework to facilitate the provision of reasonable care and assistance to older persons to participate in the society and enjoy their rights, freedoms and live-in dignity.

128. In the recent past, the Ministry had prepared a draft Older Persons Bill 2019 to provide for the care and protection of the rights of older persons and the regulation of institutions for older persons. The draft bill has been shared with the Attorney General's Office for comments and inputs and is still in the drafting stages. It also came to the attention of the Ministry that there was also a Senate Bill on The Care and Protection of Older Members of Society that seeks to provide a framework for the care of older members of society and to establish a framework for the empowerment and protection of the elderly.

129. There is therefore need to address the gaps within the Senate Bill and harmonize the Bill with provisions within the Proposed Ministry's Older Persons Bill, incorporate provisions of Article 57 of the 2010 Constitution of Kenya and the provisions on the Rights and Freedoms enshrined within the Older Persons Protocol.
130. The Ministry has reviewed the Persons with Disability Act, 2003 (**The Persons with Disability Bill 2021**) to align it with Constitution of Kenya, Vision 2030, the United Nations Convention on the Right of Persons with Disabilities (UNCRPD), the African Union (AU) Disability Agenda and the East African Community (EAC) Disability Policy.
131. The Persons with Disability Bill 2021: -
- i. Places emphasis on human rights approach towards the realization of rights of persons with disabilities in Kenya and the societal responsibility to protect and promote them.
  - ii. Provides a broader protection of the rights of Persons with Disability in Kenya to ensure they have a say in the formulation of policies, legislations, programmes and strategies that directly affect them at National and County levels of Government.
  - iii. Sets standards to achieve the realization of economic social rights and political rights of Persons with Disabilities in Kenya -that is, the right to accessibility in all aspect of life, the right to education, employment, health care and use of public transportation among others.
132. The Persons with Disability Bill 2021 was presented to the Attorney General Office for drafting and has now come back to the Ministry for review and it will soon be submitted back to the AG for onward submission to the National Assembly.

#### 4.0 COMMITTEE OBSERVATIONS

133. The Committee having considered the Agreement observed the following-

- a) Provisions of the two protocols are already reflected in the laws of Kenya through the Constitution, in particular Article 10(1)(b) that has as among national values and principles of governance, 'human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized'. Article 27 further provides for equality and freedom from discrimination, while Articles 54 and 57 provide for non-discrimination of persons living with disabilities and the elderly, respectively.
- b) The Persons with Disabilities Act No. 14 of 2003 provides for the rights and rehabilitation of persons living with disability. The Protocol on the Rights of Persons living with disability therefore buttresses the country's local legislation;
- c) The two protocols specifically impose upon member states, the duty to submit periodic reports on measures taken for the full realization of rights of the two categories. This will enable concrete action by responsible government agencies;
- d) The Persons with Disability Bill 2021 is in the process of being fine-tuned and will align any lacuna with provisions of the protocols;
- e) The country has previously witnessed traditional cultural prejudices imposed on the elderly and those living with disabilities. The two protocols will amplify the need for their protection and facilitation.
- f) The Committee observed that the Cabinet Secretary to the Ministry of Foreign Affairs submitted the Protocols together with a memorandum to the National Assembly in accordance with the requirements set out under section 8 of the Treaty Making and Ratification Act.
- g) The Committee observed that the Protocol on the Rights of Older Persons in Africa seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by Older Persons and to ensure respect for their inherent dignity taking into consideration African traditions, values, customs and practices.
- h) The Committee observed that the Protocol on the Rights of Persons with Disabilities in Africa seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity.
- i) The Committee observed that there the Protocols do not propose any amendment to the Constitution and are consistent with constitutional provisions which provide explicit rights, protections, entitlements and privileges for Older Persons and Persons with Disabilities.
- j) The Committee observed that ratifying the Protocols would not affect national interests.
- k) The Committee observed that upon ratifying the Protocol on the Rights of Older Persons in Africa, Kenya will be required: to recognize the rights and freedoms of older persons as enshrined in the Protocol; to submit periodic reports on the implementation of the Protocol; to develop and review existing legislation to ensure that Older Persons receive equal treatment and protection of the law, access to health services, education;

to accessibility needs, pensions and other forms of social security; to develop and review existing legislation to ensure that Older Women and Older Persons with disabilities are guaranteed of special protection; to ensure that the 1991 United Nations Principles of Independence, Dignity, Self-fulfilment, Participation and Care of Older Persons are included in national laws and are legally binding as the basis for ensuring their rights; and to prohibit all forms of abuse, discrimination, stigmatization and harmful traditional practices while promoting the elimination of social and cultural stereotypes which marginalize Older Persons.

- l) The Committee observed that upon ratifying the Protocol on the Rights of Persons with Disabilities in Africa, Kenya will be required: to ensure that people with disabilities are not discriminated against and enjoy equality, equal protection and equal benefit of the law; to take appropriate and effective measures including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities; to develop and review existing legislation to ensure that women and girls with disabilities are guaranteed of special protection; to submit periodic reports on the legislative and other measures undertaken for the full realization of the rights recognized in the Protocol. implementation of the Protocol; to adopt appropriate measures to allow persons with disabilities to fulfil their duties as recognized in the Protocol; to mainstream disability in policies, legislation, development plans, programmes and activities and in all other spheres of life; and to prohibit all forms of abuse, discrimination, stigmatization and harmful traditional practices while promoting the elimination of social and cultural stereotypes which marginalize persons with disabilities.
- m) The Committee observed that the memorandum submitted by the Ministry did not contain a statement relating to the requirements for implementation of the Protocols.
- n) The Committee observed that in relation to policy and legislative consideration, there will be need to review the existing legal, policy, and administrative framework to fully align with the Protocols which will include aligning existing policies, ongoing programmes and legislation that provide for the protection of older persons and persons with disabilities once the Protocols are ratified.
- o) The Committee observed that in relation to financial implications the Ministry submitted that financial requirements during implementation of the Protocols will be catered for during the normal budgetary estimates of the relevant institutions once the Protocols are ratified.
- p) The Committee observed that in relation to ministerial responsibility the Ministry submitted that the implementation of the Conventions will be under the collective responsibility of the Ministry of Labour and Social Protection. The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on implementation, pursuant to the Treaty Making and Ratification Act No. 45 of 2012 once the Protocols are ratified.
- q) The Committee observed that in relation to implications on matters relating to counties the Ministry submitted that the obligations imposed under the Protocols are under the purview of the National Government.
- r) The Committee observed that in relation to a summary of the process leading to the adoption of the Protocols, the Ministry submitted that in compliance with the provisions under section 7 of the Treaty Making and Ratification Act, the Ministry: (1) published



an advertisement in the local dailies (Daily Nation) on 27<sup>th</sup> August 2019 requesting the public to send their views on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa; (2) published an advertisement in the local dailies (Daily Nation) on 10<sup>th</sup> December 2019 requesting the public to send their views on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disability; (3) received feedback from stakeholders with their views on the protocol; and (4) engaged the Attorney General and the Council of Governors in July 2019, to send in their views on the Protocol;

- s) Further, the Ministry involved stakeholders and sensitized the public on the two protocols during various public forums on the both Protocols namely: (1) the Kenya Pre-Summit Disability for the Global Disability Summit held on 24<sup>th</sup> May 2018; (2) the Celebration of the UN International Day for Persons with Disabilities held on 3<sup>rd</sup> December 2019; (3) the public participation Forum on the Ratification on the Persons with Disabilities Protocol held at the Intercontinental Hotel on 23<sup>rd</sup> January; (4) the Gender and Ageing in African Contexts – Policy, Legal and Institutional Development Regional Workshop held in Nairobi from 4 -5<sup>th</sup> June 2019; (5) the Open Data Seed Event – Data for Older Persons Workshop held on 13<sup>th</sup> February 2020; and (6) the Celebration of the UN World Elder Abuse Awareness Day – Virtual Symposium on Zoom held on 15<sup>th</sup> June 2020.
- t) The Committee observed that the memorandum submitted by the Ministry of Foreign Affairs dated 19<sup>th</sup> May 2021 indicates that the Protocol on the Rights of Older Persons in Africa, was adopted on 30<sup>th</sup> January 2016; seventeen (17) countries have signed the protocol and two (2) countries have ratified the date of signature.
- u) The Committee observed that the memorandum submitted by the Ministry of Foreign Affairs dated 19<sup>th</sup> May 2021 indicates that the Protocol on the Rights of Persons with Disabilities in Africa was adopted 29<sup>th</sup> January, 2018; nine (9) countries have signed the Protocol and no country has ratified.
- v) The Committee observed that a submission by the Ministry of Labour and Social Welfare dated 16<sup>th</sup> August 2021 indicates that eighteen (18) Member States have signed the Older Persons Protocol with 3 Member States (Benin, Lesotho and Malawi) ratifying and depositing the Protocol with the African Union Commission while 10 Member States have signed the Persons with Disability Protocol with 1 Member State (Mali) ratifying and depositing the Protocol with the African Union Commission.
- w) Pursuant to Article 118 (1)(b) of the Constitution on public participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies of nationwide circulation, on 5<sup>th</sup> July 2021 inviting the public to present submissions and one memorandum in support of the protocol on Rights of Persons Living with Disabilities was received.
- x) The Committee observed that the Protocols permit reservations.
- y) The Committee did not receive any submissions expressing or recommending a reservation or a declaration.
- z) The Committee observed that in relation to incurring expenditure of public funds in implementing the treaty, the Ministry submitted that the rights enshrined within the two Protocols reflect the commitment of the Government and priority in investing in the people of Kenya under the Social Pillar of vision 2030 which aims at improving the

quality of life for all Kenyans by targeting social welfare projects and programmes for older persons and persons with disability. The Implementation of the commitments by the State will be implemented through the Medium-Term Expenditure Framework (MTEF) budgeting process. One of the key instruments of the MTEF budgeting process is the Sector Working Groups and as such the Ministry shall participate through the Social Protection, Culture and Recreation Sector, to cost and prioritize resources for implementation of the two Protocols.

## 5.0 FINDINGS


134. Pursuant to the analysis of the submissions and documents tabled, the Committee finds that the Protocol on the Rights of Older Persons in Africa, and the Protocol on the Rights of Persons with Disabilities in Africa do not propose any amendment to the Constitution and are consistent with constitutional provisions which provide explicit rights, protections, entitlements and privileges for Older Persons and Persons with Disabilities.

## 6.0 COMMITTEE RECOMMENDATION

135. The Committee recommends:

**THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act, the House APPROVES the Ratification of the Protocols to the African Charter on Human and People's Rights on the Rights of Older Persons and the Rights of Persons with Disabilities.**

Signed.....  ..... Date: 22/9/2021.....  
Hon. Katoo Ole Metito, EGH, MGH, M.P  
(CHAIRPERSON)

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|---|--|
| <br><b>THE NATIONAL ASSEMBLY</b><br><b>PAPERS LAID</b> |  |
| <b>DATE: 22 SEP 2021</b>  |  |
| <b>DAY.</b>   |  |
| <b>TABLED BY:</b>   |  |
| <b>CLERK-AT THE-TABLE:</b>  |  |

## ANNEXURES





**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND  
PEOPLES' RIGHTS ON THE RIGHTS OF OLDER PERSONS  
IN AFRICA**

**WE, MEMBER STATES OF THE AFRICAN UNION**

**CONSIDERING** that **Article 66** of the African Charter provides for special protocols or agreements, if necessary, to supplement the provisions of that Charter;

**CONSIDERING** that the African Charter makes specific provisions for the protection of the rights of Older Persons, under **Article 18(4)** which stipulates that, "Older Persons and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs";

**NOTING Article 2** of the African Charter which states that, "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status";

**RECALLING Article 22** of the Protocol to the African Charter on the Rights of Women in Africa which provides for the special protection of elderly women;

**CONSIDERING** recommendation (1) contained in paragraph 4.1 of the African Union Policy Framework and Plan of Action on Ageing (2002) which states that "*Member States recognise the fundamental rights of Older Persons and commit themselves to abolish all forms of discrimination based on age; that they undertake to ensure that the rights of Older Persons are protected by appropriate legislation; including the right to organise themselves in groups and to representation in order to advance their interests*";

**CONSIDERING** recommendation (1) (a) contained in paragraph 4.1 of the same Policy Framework and Plan of Action which calls for the elaboration and adoption of "an additional Protocol to the African Charter on Human and Peoples' Rights relating to the rights of Older Persons";

**CONSIDERING FURTHER** paragraph 20 of the Kigali Declaration on Human Rights (2003), which "*calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities*";

**RECALLING** section 2.2.11 of the African Union Social Policy Framework (2009) which calls for the implementation of all the tenets of the AU Policy Framework and Plan of Action on Ageing (2002), other international instruments that deal with the issues of ageing and Older Persons, the 1991 United Nations Principles for Older Persons, the 1992 United Nations Proclamation on Ageing, and the 2002 Madrid International Plan of Action on Ageing and which promotes the rights of Older Persons;

**CONSIDERING ALSO** the World Population Plan of Action (1974), the Declaration of Principles of the United Nations Conference on Human



Settlements (HABITAT) of 1996 and 1999, the International Labour Organization (ILO) Convention No. 102 of 1952 concerning Minimum Standards of Social Security, Convention No. 128 and Recommendations 131 of 1967 on Invalidity, Old Age and Survivors' Benefits, Recommendation No. 162 of 1980 concerning Older Workers, and Convention No. 157 concerning Maintenance of Social Security Rights of 1982;

**CONSIDERING** the various international declarations, conventions and instruments including but not limited to: Convention on the Elimination of Racial Discrimination (CERD) of 1965; International Covenant on Civil and Political Rights (ICCPR) of 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979; United Nations Plan of Action on Ageing of 1982; The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984; United Nations Declaration on the Right to Development of 1986; United Nations Principles for Older Persons of 1991; United Nations Proclamation on Ageing of 1992; Madrid Plan of Action on Ageing (MIPAA) of 2002;

**TAKING** into consideration the virtues of African traditions, values and practices which should inspire and characterize the provision of mutual social and communal care and support; respect for older members of society and the passing of knowledge to younger population groups;

**NOTING** that the increase in the number and needs of Older Persons in Africa calls for African Governments to institute urgent measures aimed at addressing these needs such as access to regular incomes, equitable distribution of resources, employment opportunities; access to appropriate health services; access to basic social services such as food, water, clothing and shelter; access to good care and support from the family, the state, civil society and private organizations; recognition of their contribution towards the care of persons with AIDS and orphans; respect and recognition of the role and contribution that Older Persons make to society; and a recognition of their special needs in emergency situations.

**HAVE AGREED AS FOLLOWS:**



## Article 1 Definitions

For purposes of this Protocol:

**"African Charter"** means the African Charter on Human and Peoples' Rights;

**"African Commission"** means the African Commission on Human and Peoples' Rights;

**"Ageing"** means the process of getting old from birth to death and in this Protocol, it shall also refer to issues concerned with Older Persons;

**"Assembly"** means the Assembly of Heads of State and Government of the African Union;

**"AU"** means the African Union;

**"Commission"** means the African Union Commission;

**"Constitutive Act"** means the Constitutive Act of the African Union;

**"Harmful traditional practices"** means traditional beliefs, attitudes and practices which violate the fundamental rights of Older persons such as their right to life, dignity and physical integrity;

**"ICT"** means Information Communication and Technology;

**"Member States"** means the Member States of the African Union;

**"Older Persons"** means those persons aged sixty (60) years and above, as defined by the United Nations (1982) and the AU Policy Framework and Plan of Action on Ageing (2002);

**"Residential care"** Residential care means long-term care, including geriatric care, given to Older Persons in a residential setting rather than their home.

**"States Parties"** means Member States of the African Union that have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

**"The Advisory Council on Ageing"** means a Council established in accordance with the AU Policy Framework and Plan of Action on Ageing (2002);

The words "the aged", "Older Persons", "Seniors", "Senior Citizens" and "the elderly" shall be construed to have the same meaning as "Older Persons".





**Article 2**  
**Obligations of States Parties**

1. States Parties shall recognize the rights and freedoms enshrined in this Protocol and shall undertake to adopt legislative or other measures to give effect to them.
2. States Parties shall ensure that the 1991 United Nations Principles of Independence, Dignity, Self-fulfilment, Participation and Care of Older Persons are included in their national laws and are legally binding as the basis for ensuring their rights.

**Article 3**  
**Elimination of Discrimination Against Older Persons**

**States Parties shall:**

1. Prohibit all forms of discrimination against Older persons and encourage the elimination of social and cultural stereotypes which marginalise Older Persons;
2. Take corrective measures in those areas where discrimination and all forms of stigmatisation against Older Persons continue to exist in law and in fact; and
3. Support and enforce local, national, regional, continental and international customs, traditions and initiatives directed at eradicating all forms of discrimination against Older Persons.

**Article 4**  
**Access to Justice and Equal protection before the law**

**States Parties shall:**

1. Develop and review existing legislation to ensure that Older Persons receive equal treatment and protection;
2. Ensure the provision of legal assistance to Older Persons in order to protect their rights; and
3. Ensure that law enforcement organs at all levels are trained to effectively interpret and enforce policies and legislation to protect the rights of Older Persons.



**Article 5  
Right to Make Decisions**

**States Parties shall:**

1. Ensure that appropriate legislation exists that recognises the rights of Older Persons to make decisions regarding their own well-being without undue interference from any person or entity, and that Older Persons have the right to appoint a party of their choice to carry out their wishes and instructions;
2. Ensure that, in the event of incapacity, Older Persons shall be provided with legal and social assistance in order to make decisions that are in their best interests and wellbeing; and
3. Enact legislation and take other measures that protect the right of Older Persons to express opinions and participate in social and political life.

**Article 6  
Protection Against Discrimination in Employment**

**States Parties shall:**

1. Take measures to eliminate work place discrimination against Older Persons with regard to access to employment taking into consideration occupational requirements; and
2. Ensure appropriate work opportunities for Older persons taking into account to their medical and physical abilities, skills and experience.

**Article 7  
Social Protection**

**States Parties shall:**

1. Develop policies and legislation that ensure that Older persons who retire from their employment are provided with adequate pensions and other forms of social security;
2. Ensure that universal social protection mechanisms exist to provide income security for those Older persons who did not have the opportunity to contribute to any social security provisions;
3. Ensure that the processes and procedures of accessing pensions are decentralised, simple and dignified;



4. Take legislative and other measures to enable individuals to prepare for income security in old age; and
5. Take legislative and other measures that facilitate the rights of Older Persons to access services from state service providers.

**Article 8**  
**Protection from Abuse and Harmful Traditional Practices**

States Parties shall:

1. Prohibit and criminalise harmful traditional practices targeted at Older Persons; and
2. Take all necessary measures to eliminate harmful traditional practices including witchcraft accusations, which affect the welfare, health, life and dignity of Older Persons, particularly Older women.

**Article 9**  
**Protection of Older Women**

States Parties shall:

1. Ensure the protection of the rights of Older Women from violence, sexual abuse and discrimination based on gender;
2. Put in place legislation and other measures that guarantee protection of Older Women against abuses related to property and land rights; and
3. Adopt appropriate legislation to protect the right of inheritance of Older Women.

**Article 10**  
**Care and Support**

States Parties shall:

1. Adopt policies and legislation that provide incentives to family members who provide home care for Older Persons;
2. Identify, promote and strengthen traditional support systems to enhance the ability of families and communities to care for Older family members; and
3. Ensure the provision of preferential treatment in service delivery for Older Persons.



**Article 11  
Residential Care**

**States Parties shall:**

1. Enact or review existing legislation to ensure that residential care is optional and affordable for Older Persons;
2. Ensure that Older Persons in residential care facilities are provided with care that meets the National Minimum Standards provided that such standards comply with regional and international Standards; and
3. Ensure that Older Persons in palliative care receive adequate care and pain management medication.

**Article 12  
Support for Older Persons Taking Care of Vulnerable Children**

**States Parties shall:**

1. Adopt measures to ensure that indigent Older Persons who take care of orphans and vulnerable children are provided with financial, material and other support; and
2. Ensure that when children are left in the care of Older Persons, any social or other benefits designed for the children, are remitted to the Older Persons.

**Article 13  
Protection of Older Persons with Disabilities**

**States Parties shall:**

1. Adopt legislation and other measures to protect the rights of Older Persons with disabilities;
2. Ensure that such legislation and measures comply with regional and international standards; and
3. Ensure that Older Persons with disabilities have access to assistive devices and specialised care, which respond to their needs within their communities.



**Article 14**  
**Protection of Older Persons in Conflict and Disaster Situations**

**States Parties shall:**

1. Ensure that, in situations of risk, including natural calamities, conflict situations, during civil strife or wars, Older Persons shall be among those to enjoy access, on a priority basis, to assistance during rescue efforts, settlement, repatriation and other interventions; and
2. Ensure that Older Persons receive humane treatment, protection and respect at all times and are not left without needed medical assistance and care.

**Article 15**  
**Access to Health Services**

**States Parties shall:**

1. Guarantee the rights of Older Persons to access health services that meet their specific needs;
2. Take reasonable measures to facilitate access to health services and medical insurance cover for Older Persons within available resources; and
3. Ensure the inclusion of geriatrics and gerontology in the training of health care personnel.

**Article 16**  
**Access to Education**

States Parties shall provide opportunities for Older Persons to have access to education and to acquire ICT skills.

**Article 17**  
**Participation in Programmes and Recreational Activities**

States Parties shall develop policies that ensure the rights of Older Persons to enjoy all aspects of life, including active participation in socio – economic development, cultural programmes, leisure and sports.



**Article 18**  
**Accessibility**

States Parties shall take measures to ensure that Older Persons have access to infrastructure, including buildings, public transport and are accorded seating priority.

**Article 19**  
**Awareness on Ageing and Preparation for Old Age**

**States Parties shall:**

1. Adopt measures to encourage the development of awareness raising programmes to educate the younger population groups on ageing and Older Persons to combat negative attitudes against Older Persons; and
2. Adopt measures to develop training programmes that prepare Older Persons for the challenges faced in old age, including retirement.

**Article 20**  
**Duties of Older Persons**

Older Persons have responsibilities towards their families, communities, the wider society, the state and the international community. In this regard they shall:

1. Mentor and pass on knowledge and experience to the younger generations;
2. Foster and facilitate inter-generational dialogue and solidarity within their families and communities; and
3. Play a role in mediation and conflict resolution.

**Article 21**  
**Coordination and Data Collection**

**States Parties shall:**

1. Ensure the systematic collection and analysis of national data on Older Persons;
2. Develop a national mechanism on ageing with responsibility to assess, monitor, evaluate and coordinate the integration and implementation of Older Persons' rights in national policies, strategies and legislation; and



3. Support the Advisory Council on Ageing, as a continental mechanism of the African Union to facilitate the implementation and follow up of the continental policies and plans on ageing.

#### **Article 22 Implementation**

1. States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.
2. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
3. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
4. Where applicable, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

#### **Article 23 Popularization of the Protocol**

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

#### **Article 24 Safeguard Clause**

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of Older Persons in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of Older Persons and protects their legitimate interests shall prevail.



**Article 25**  
**Signature, Ratification and Accession**

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.
2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

**Article 26**  
**Entry into force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification by a Member State.
2. The Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol.
3. For any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.

**Article 27**  
**Reservations**

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservation shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

**Article 28**  
**Depositary**

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.





### **Article 29 Registration**

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.

### **Article 30 Withdrawal**

1. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the Depository.
2. Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

### **Article 31 Amendment and Revision**

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance the procedures outlined in Article 26 of this Protocol.

### **Article 32 Authentic Texts**

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.



**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, has signed this Protocol.

**ADOPTED BY THE TWENTY SIXTH ORDINARY SESSION OF THE  
ASSEMBLY, HELD IN ADDIS ABABA, ETHIOPIA**

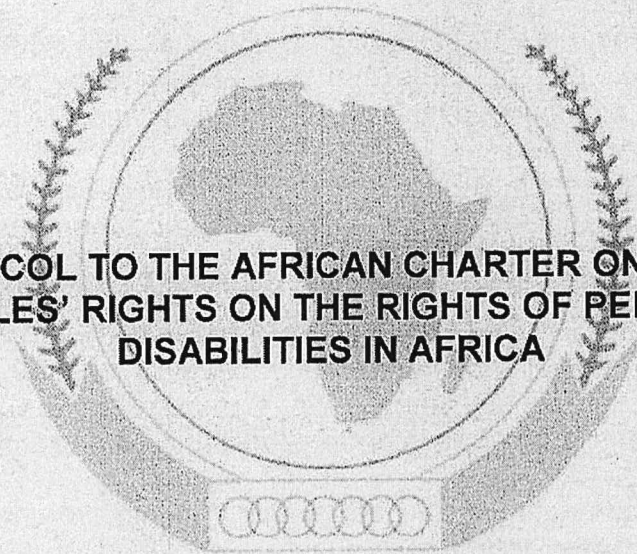
**31 JANUARY 2016**

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**PROTOCOL TO THE AFRICAN CHARTER ON HUMAN  
AND PEOPLES' RIGHTS ON THE RIGHTS OF PERSONS WITH  
DISABILITIES IN AFRICA**



## Preamble

We, the Heads of State and Government of the Member States of the African Union:

**Considering** that Article 66 of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter;

**Further considering** that Article 18 (4) of the African Charter on Human and Peoples' Rights of 27 June 1981 provides that persons with disabilities shall have the right to special measures of protection in keeping with their physical or moral needs;

**Noting** that the Constitutive Act of the African Union of 11 July 2000 identifies respect for democratic principles, human rights, the rule of law and good governance as essential principles for the proper functioning of the African Union;

**Recognising** that the African Union and its agencies as well as States Parties to the African Charter have made various efforts towards ensuring the rights of persons with disabilities;

**Noting** that Articles 60 and 61 of the African Charter on Human and Peoples' Rights of 27 June 1981 recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as important reference points for the application and interpretation of the African Charter;

**Further noting** that human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and that the rights of every individual are recognised in international human rights instruments, including the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights 16 December 1966 and the International Covenant on Civil and Political Rights 16 December 1966;

**Recalling** that the rights of persons with disabilities are affirmed in the Convention on the Rights of Persons with Disabilities 13 December 2006;

**Further recalling** that various African Union human rights instruments, including the African Charter on the Rights and Welfare of the Child of 11 July 1990, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 11 July 2003, the African Youth Charter of 2 July 2006, the African Charter on Democracy, Elections and Governance of 30 January 2007, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa 23 October 2009 make provisions for the rights of persons with disabilities;

**Considering further** paragraph 20 of the Kigali Declaration on Human Rights of 8 May 2003, which "calls upon States Parties to develop a Protocol on the protection of the rights of the elderly and persons with disabilities";

**Recalling** that the Decision 750 (XXII) of the Executive Council at its Twenty-Second Ordinary Session held in Addis Ababa, Ethiopia, from 21 to 25 January 2013, endorsed

the African Union Disability Architecture (AUDA), of which a Protocol on the Rights of Persons with Disabilities to the African Charter is a central legal pillar;

**Acknowledging** that persons with disabilities have inherent dignity and individual autonomy including the freedom to make one's own choices;

**Cognizant of** the importance of full and effective participation and inclusion of persons with disabilities in society;

**Recognising** the diversity of persons with disabilities;

**Appreciating** the value of persons with disabilities, including those with high support needs, as full members of society;

**Noting** that persons with disabilities experience extreme levels of poverty;

**Concerned** that persons with disabilities continue to experience human rights violations, systemic discrimination, social exclusion and prejudice within political, social and economic spheres;

**Gravely concerned** by the harmful practices that persons with disabilities often experience;

**Alarmed** in particular, by the maiming or killing of persons with albinism in many parts of the continent;

**Concerned** at the multiple forms of discrimination, high levels of poverty and the great risk of violence, exploitation, neglect and abuse that women and girls with disabilities face;

**Recognising** that families, guardians, caregivers and community play essential roles in the lives of persons with disabilities;

**Concerned** that adequate effective measures have not been taken to ensure that persons with disabilities may exercise their full rights on an equal basis with others;

**Recalling** the lack of a substantive binding African normative and institutional framework for ensuring, protecting and promoting the rights of persons with disabilities;

**Conscious** of the need to establish a firm legal African Union framework as a basis for **laws**, policies, administrative actions and resources to ensure the rights of persons with disabilities;

**Determined** that the rights and dignity of persons with disabilities should be promoted, protected to enable them enjoy fully and equally all their human rights and fundamental freedoms;

**Have agreed as follows:**

## Article 1 Definitions

For the purpose of the present Protocol:

**"African Charter"** means the African Charter on Human and Peoples' Rights adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Banjul, Gambia, in June, 1981;

**"African Commission"** means the African Commission on Human and Peoples' Rights established by the African Charter on Human and Peoples' Rights adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Banjul, Gambia, in June, 2000;

**"African Court"** means the African Court on Human and Peoples' Rights or any successor court including the African Court of Justice and Human Rights established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998;

**"Assembly"** means the Assembly of Heads of State and Government of the African Union.

**"AU" or "Union"** means the African Union established by the Constitutive Act of the African Union adopted by the Heads of States and Government of the Organization of African Unity (OAU) in Lomé, Togo, in July, 2000;

**"Commission"** means the Commission of the African Union;

**"Deaf culture"** means the way deaf people interact, it includes a set of social beliefs, behaviours, art, literary traditions, history, values, and shared institutions of communities that are influenced by deafness and which use sign languages as the main means of communication.

**"Discrimination on the basis of disability"** means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human and people's rights in the political, economic, social, cultural, civil or any other field. Discrimination on the basis of disability shall include denial of reasonable accommodation;

**"Habilitation"** means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology, audiology that address the competencies and abilities needed for optimal functioning to in interaction with their environments: enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social, and vocational ability, full inclusion and participation in all aspects of life;

**“Harmful practices”** include behaviour, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disabilities or perpetuate discrimination;

**“Legal capacity”** means the ability to hold rights and duties and to exercise those rights and duties;

**“Persons with disabilities”** include those who have physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairments which in interaction with environmental, attitudinal or other barriers hinder their full and effective participation in society on an equal basis with others;

**“Protocol”** means the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;

**“Reasonable accommodation”** means necessary and appropriate modifications and adjustments where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human and people's rights;

**“Rehabilitation”** means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology and psychiatric rehabilitation services that help a person keep, restore or improve skills and functioning for daily living and skills related to communication that have been lost or impaired because a person was sick, injured or disabled.

**“Ritual killings”** means the killing of persons motivated by cultural, religious or superstitious beliefs that the use of a body or a body part has medicinal value, possesses supernatural powers and brings good luck, prosperity and protection to the killer.

**“Situations of risks”** means any situation that poses grave risk to the general population, including disasters and all forms of armed conflict

**“States Parties”** mean any Member States of the African Union which have ratified or acceded to this Protocol and deposited the instruments of ratification or accession with the Chairperson of the African Union Commission;

**“Universal design”** means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design, and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed;

**“Youth”** means every person between the ages of 15 and 35 years.

## **Article 2 Purpose**

The purpose of this Protocol is to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity.

## **Article 3 General Principles**

This Protocol shall be interpreted and applied in accordance with the following general principles:

- a) Ensuring respect for and protection of the inherent dignity, privacy, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;
- g) Reasonable accommodation
- h) Equality between men and women;
- i) The best interests of the child
- j) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

## **Article 4 General Obligations**

States Parties shall take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities, without discrimination on the basis of disability, including by:

- a) Adopting appropriate measures for the full and effective implementation of the rights recognised in the present Protocol;
- b) Mainstreaming disability in policies, legislation, development plans, programmes and activities and in all other spheres of life;



- c) Providing in their constitutions and other legislative instruments and taking other measures to modify or abolish existing policies, laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- d) Modifying, outlawing, criminalising or campaigning against, as appropriate, any harmful practice applied to persons with disabilities;
- e) Promoting positive representations and empowerment of persons with disabilities through training and advocacy;
- f) Taking measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- g) Refraining from engaging in any act or practice that is inconsistent with the present Protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol;
- h) Providing assistance and support as necessary and appropriate to enable the realisation of the rights set out in the present Protocol;
- i) Putting in place adequate resources, including through budget allocations, to ensure the full implementation of this Protocol;
- j) Ensuring effective participation of persons with disabilities or their representative organisations including women and children with disabilities, in all decision-making processes including in the development and implementation of legislation, policies and administrative processes to this Protocol.
- k) Ensuring, where persons with disabilities are lawfully deprived of any rights or freedoms contained in this protocol that they are on an equal basis with others, entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.

#### **Article 5 Non-discrimination**

1. Every person with a disability shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Protocol without distinction of any kind on any ground including, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.
2. States Parties shall:
  - a) Prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
  - b) Take steps to ensure that specific measures, as appropriate, are provided to persons with disabilities in order to eliminate discrimination and such measures shall not be considered discrimination.

- c) Take effective and appropriate measures to protect the parents, children, spouses, other family members closely related to the persons with disabilities, caregivers or intermediaries from discrimination on the basis of their association with persons with disabilities.

**Article 6**  
**Right to Equality**

1. Every person with a disability is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all human and people's rights.
3. State Parties shall take all appropriate legislative, administrative, budgetary and other measures in order to promote equality for persons with disabilities.

**Article 7**  
**Equal Recognition before the Law**

1. States Parties shall recognise that persons with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall take all appropriate and effective measures to ensure that:
  - a) Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;
  - b) Non-State actors and other individuals do not violate the right to exercise legal capacity by persons with disabilities;
  - c) Persons with disabilities are provided with effective legal protection and support they may require in enjoying their legal capacity consistent with their rights, will and specific needs;
  - d) Appropriate and effective safeguards are put in place to protect persons with disabilities from abuses that may result from measures that relate to the enjoyment of their legal capacity;
  - e) Policies and laws which have the purpose or effect of limiting or restricting the enjoyment of legal capacity by persons with disabilities are reviewed or repealed;
  - f) Persons with disabilities have the equal right to hold documents of identity and other documents that may enable them to exercise their right to legal capacity;
  - g) Persons with disabilities have the equal right to own or inherit property and are not arbitrarily dispossessed of their property;

- h) Persons with disabilities have equal rights to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

**Article 8  
Right to Life**

1. Every person with a disability has the inherent right to life and integrity.
2. States Parties shall take effective and appropriate measures to ensure:
  - a) Protection, respect for life and the dignity of persons with disabilities, on an equal basis with others;
  - b) That persons with disabilities have access to services, facilities and devices to enable them to live with dignity and to realise fully their right to life.

**Article 9  
Right to Liberty and Security of Person**

1. Every person with a disability has the right to liberty and security of person.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
  - a) Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
  - b) Are not forcibly confined or otherwise concealed by any person or institution;
  - c) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide effective remedies for the victims.
4. Where persons with disabilities are lawfully deprived of their liberty, States Parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.
5. The existence of a disability or perceived disability shall in no case justify deprivation of liberty.

### Article 10

#### Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

1. Every person with a disability shall have the right to the respect of his/her inherent dignity and to be free from torture or cruel, Inhuman or degrading treatment, slavery, forced labour or unlawful punishment.
2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:
  - a) Are not subjected to torture or cruel, inhuman or degrading treatment or punishment;
  - b) Are not subjected without their free, prior and informed consent to medical or scientific experimentation or intervention;
  - c) Are not subjected to sterilisation or any other invasive procedure without their free, prior and informed consent;
  - d) Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
3. States Parties shall take appropriate measures to prosecute perpetrators of such abuse and to provide remedies for the victims.

### Article 11

#### Harmful Practices

1. States Parties shall take all appropriate measures and offer appropriate support and assistance to victims of harmful practices, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.
2. States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.

### Article 12

#### Situations of Risk

States Parties shall:

- a) Take specific measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, forced-displacements, humanitarian emergencies and natural disasters;
- b) Ensure that persons with disabilities are consulted and participate in all aspects of planning, implementation and monitoring of pre and post-conflict reconstruction and rehabilitation.

**Article 13  
Right to Access Justice**

1. States Parties shall take measures to ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of procedural, age and gender-appropriate accommodations, in order to facilitate their effective roles as participants in all legal proceedings.
2. States Parties shall take reasonable steps to ensure that customary law processes are inclusive and should not be used to deny persons with disabilities their right to access appropriate and effective justice.
3. All law enforcement and justice personnel shall be trained at all levels to effectively engage with and ensure the rights of persons with disabilities are recognised and implemented without discrimination.
4. States Parties shall ensure legal assistance including legal aid to persons with disabilities.

**Article 14  
Right to Live in the Community**

1. Every person with a disability has the right to live in the community with choices on an equal basis with others.
2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, on an equal basis with others, including by ensuring that:
  - a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live;
  - b) Persons with disabilities who require intensive support and their families have adequate and appropriate facilities and services, including caregivers and respite services;
  - c) Persons with disabilities have access to a range of in-home, residential and other community support services necessary to support living and inclusion in the community;
  - d) Persons with disabilities have personal mobility with the greatest possible independence;
  - e) Community-based rehabilitation services are provided in ways that enhance the participation and inclusion of persons with disabilities in the community;
  - f) Community living centres organised or established by persons with disabilities are supported to provide training, peer support, personal assistance services and other services to persons with disabilities; and

- g) Community services and facilities for the general population, including health, transportation, housing, water, social and educational services, are available on an equal basis to persons with disabilities and are responsive to their needs.

### **Article 15 Accessibility**

1. Every person with a disability has the right to barrier free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public.
2. States Parties shall take reasonable and progressive step measures to facilitate full enjoyment by persons with disabilities of this right, and such measures shall, among others, apply to:
  - a) Rural and urban settings and shall take account of population diversities;
  - b) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
  - c) Information, communications, sign languages and tactile interpretation services, braille, audio and other services, including electronic services and emergency services;
  - d) Quality and affordable mobility aids, assistive devices or technologies and forms of live assistance and intermediaries; and
  - e) The modification of all inaccessible infrastructure and the universal design of all new infrastructure.

### **Article 16 Right to Education**

1. Every person with a disability has the right to education.
2. States Parties shall ensure to persons with disabilities the right to education on an equal basis with others.
3. States Parties shall take, reasonable, appropriate and effective measures to ensure that inclusive quality education and skills training for persons with disabilities is realised fully, including by:
  - a) Ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education;
  - b) Ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including by ensuring the literacy of persons with disabilities above compulsory school age;

- c) Ensuring reasonable accommodation of the individual's requirements is provided, and that persons with disabilities receive the support required to facilitate their effective education;
  - d) Providing reasonable, progressive and effective individualised support measures in environments that maximise academic and social development, consistent with the goal of full inclusion;
  - e) Ensuring appropriate schooling choices are available to persons with disabilities who may prefer to learn in particular environments;
  - f) Ensuring that persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and as members of the community;
  - g) Ensuring that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities, early intervention, regular assessments and certification for learners are undertaken regardless of their disabilities;
  - h) Ensuring educational institutions are equipped with the teaching aids, materials and equipment to support the education of students with disabilities and their specific needs;
  - i) Training education professionals, including persons with disabilities, on how to educate and interact with children with specific learning needs; and
  - j) Facilitating respect, recognition, promotion, preservation and development of sign languages.
4. The education of persons with disabilities shall be directed to:
- a) The full development of human potential, sense of dignity and self-worth;
  - b) The development by persons with disabilities of their personality, talents, skills, professionalism and creativity, as well as their mental and physical abilities, to their fullest potential;
  - c) Educating persons with disabilities in a manner that promotes their participation and inclusion in society; and
  - d) The preservation and strengthening of positive African values.

**Article 17**  
**Right to Health**

1. Every person with a disability has the right to the highest attainable standard of health.
2. States Parties shall take appropriate and effective measures to ensure persons with disabilities have, on an equal basis with others, access to health services, including sexual and reproductive health, such as by:

- a) Providing persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons;
- b) Providing those health services needed by persons with disabilities specifically because of their disabilities or health services designed to minimise or prevent further disability, the provision of medicines including pain relieving drugs;
- c) Prohibiting discrimination against persons with disabilities by providers of health services or providers of insurance;
- d) Ensuring that all health services are provided on the basis of free, prior and informed consent;
- e) Providing persons with disabilities with health-care in the community;
- f) Ensuring that health-care services are provided using accessible formats and that communication between service providers and persons with disabilities is effective;
- g) Ensuring that persons with disabilities are provided with support in making health decisions, when needed;
- h) Ensuring that health campaigns include disability specific needs, but in a manner which does not stigmatise persons with disabilities, and designing services to minimise and prevent further disability; and
- i) Ensuring that the training of health-care providers takes account of the disability specific needs and rights of persons with disabilities, and ensuring that formal and informal health services do not violate the rights of persons with disabilities.

### **Article 18 Habilitation and Rehabilitation**

States Parties shall take effective and appropriate measures, including peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life, including by:

- a) Organising, strengthening and extending comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services;
- b) Promoting the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services;
- c) Promoting the availability, knowledge and use of appropriate, suitable and affordable assistive devices and technologies;



- d) Supporting the design, development, production, distribution and servicing of assistive devices and equipment for persons with disabilities, adapted to local conditions;
- e) Developing, adopting and implementing standards, including regulations on accessibility and universal design, suitable to local conditions.

**Article 19**  
**Right to Work**

1. Every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation and to protection from forced or compulsory labour.
2. States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right on an equal basis with others, including by:
  - a) Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement, and safe and healthy working conditions;
  - b) Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work and the right by persons with disabilities to exercise their labour and trade union rights;
  - c) Promoting opportunities for persons with disabilities to initiate self-employment, entrepreneurship and to access financial services;
  - d) Employing persons with disabilities in the public sector, including by reserving and enforcing minimum job-quotas for employees with disabilities;
  - e) Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives;
  - f) Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
  - g) Ensuring that employees with disabilities or those who become disabled are not unfairly dismissed from employment on the basis of their disability.
3. States Parties shall take legislative, administrative and budgetary measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities.
4. States Parties shall take appropriate measures to recognise the social and cultural value of the work of persons with disabilities.

**Article 20**  
**Right to Adequate Standard of Living**

1. Persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, access to safe drinking water, housing, sanitation and clothing, to the continuous improvement of living conditions and to social protection.
2. States Parties shall take appropriate and effective measures to facilitate full enjoyment by persons with disabilities of this right, on the basis of equality, including by:
  - a) Ensuring that persons with disabilities shall access appropriate and affordable services, devices and other assistance for disability-related needs, including accessible housing and other social amenities, mobility aids and caregivers;
  - b) Ensuring access by persons with disabilities to social protection programmes;
  - c) Putting financial measures in place to cover disability-related expenses, including through the use of tax exemptions or concessions, cash-transfers, duty waivers and other subsidies; and
  - d) Facilitating provision of assistance, including interpreters, guides, auxiliary and augmentative supporters and caregivers, while respecting the rights, will and preferences of persons with disabilities.

**Article 21**  
**Right to Participate in Political and Public Life**

1. Every person with a disability has the right to participate in political and public life.
2. States Parties shall take all appropriate policy, legislative and other measures to ensure this right, on the basis of equality, including through:
  - a) Undertaking or facilitating systematic and comprehensive civic education to encourage full participation of persons with disabilities in democracy and development processes, including by ensuring civic and voter education materials are availed in accessible formats;
  - b) Encouraging the effective participation of persons with disabilities in political and public life including as members of political parties, electors and holders of political and public offices in accordance with national laws;
  - c) Putting in place reasonable accommodation and other support measures consistent with the secrecy of the ballot, including as appropriate, by ensuring accessibility to polling stations and facilitating assisted voting, for persons with disabilities to enable their effective participation in political and public life in accordance with national laws;

- d) Realising increased and effective representation and participation of persons with disabilities on an equitable basis as members of regional, sub-regional, national and local legislative bodies;
- e) Repealing or amending laws that on the basis of disability restrict the right of persons with disabilities to vote, stand for or remain in public office.

### **Article 22 Self-representation**

States Parties shall recognise and facilitate the right of persons with disabilities to represent themselves in all spheres of life, including by promoting an environment that enables persons with disabilities to:

- a) Form and participate in the activities of organisations of and for persons with disabilities at national, regional and international levels;
- b) To build relationships and networks at national, regional and international levels;
- c) Form and participate in the activities of nongovernmental organisations and other associations;
- d) Effectively advocate for their rights and inclusion in their societies;
- e) Gain and enhance capacities, knowledge and skills for effectively articulating and engaging in issues of disability, including through direct collaboration with organisations for persons with disabilities and academic institutions and other organisations;
- f) Be actively consulted and involved in the development and implementation of all legislation, policies, programmes and budgets that impact persons with disabilities.

### **Article 23 Right to Freedom of Expression and opinion**

1. Every person with a disability has the right to freedom of expression and opinion including the freedom to seek, receive and impart information and ideas through all forms of communication of their choice.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on an equal basis with others.

### **Article 24 Access to Information**

1. Every person with a disability has the right to access information.

2. States Parties shall take policy, legislative, administrative and other measures to ensure that persons with disabilities can exercise these rights, on the basis of equality, including by:
  - a) Providing information intended for the general public as well as information required for official interactions to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner, and without additional cost to persons with disabilities;
  - b) Requiring private entities that provide services to the general public, including through print and electronic media, to provide information and services in accessible and usable formats for persons with disabilities;
  - c) Recognising and promoting the use of sign languages and deaf culture; and
  - d) Ensuring that persons with visual impairments or with other print disabilities have effective access to published works including by using information and communication technologies.

**Article 25**  
**Right to Participate in Sports, Recreation and Culture**

1. Every person with a disability has the right to participate in sports, recreation and cultural activities
2. States Parties shall take effective and appropriate policy, legislative, budgetary, administrative and other measures to ensure this right, on the basis of equality, including through:
  - a) Ensuring that persons with disabilities have access to sports, recreational and cultural services and facilities, including access to stadia and other sporting facilities, theatres, monuments, entertainment establishments, museums, libraries and other historical sites;
  - b) Encouraging and promoting the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
  - c) Promoting disability-specific sporting and recreational activities and ensuring provision of appropriate infrastructure;
  - d) Facilitating funding, research and other measures aimed at promoting the participation of persons with disabilities both in disability-specific and mainstream sporting and recreational activities;
  - e) Enabling children with disabilities to participate in play within the learning environment;
  - f) Facilitating access to audio, video, print and media technologies and services including theatre, television, film and other cultural performances and activities;

- g) Discouraging negative representations and stereotyping of persons with disabilities in both traditional and modern cultural activities and through the media;
- h) Encouraging and supporting creativity and talent among persons with disabilities for their own and the society's benefit;
- i) Putting in place measures to mitigate barriers that hinder access to cultural materials in accessible formats; and
- j) Recognising and supporting the cultural and linguistic identities of persons with disabilities, including deaf-blind and deaf culture, and sign languages.

**Article 26**  
**Right to Family**

1. Everyone with a disability has a right to marry and form a family with their full, prior and informed consent.
2. States Parties shall take all necessary and appropriate measures to eliminate discrimination against persons with disabilities including negative stereotypes in all matters with regard to family, marriage, parenthood, guardianship, adoption and relationships, on an equal basis with others, in order to ensure that:
  - a) Persons with disabilities may decide on the number and spacing of their children, and have access to family planning, and sexual and reproductive health education and services;
  - b) Persons with disabilities have the right to keep their children and not be deprived of their children on account of their disability.

**Article 27**  
**Women and Girls with Disabilities**

States Parties shall ensure that women and girls with disabilities have full enjoyment of human and people's rights on an equal basis with other persons, including by ensuring that:

- a) Women and girls with disabilities participate in social, economic and political decision-making and activities;
- b) Barriers that hinder the participation of women with disabilities in society are eliminated;
- c) Women with disabilities are included in mainstream women's organisations and programmes;
- d) Women and girls with disabilities are protected from discrimination based on disability and enjoy the right to be treated with dignity;
- e) Women with disabilities access information, communication and technology;

- f) Women with disabilities have access to employment and to professional and vocational training;
- g) Programmes to overcome social and economic isolation and removing systemic barriers in the labour market for women with disabilities are developed;
- h) Women with disabilities have access to income generating opportunities and credit facilities;
- i) Specific measures are developed and implemented to facilitate full and equal participation for women and girls with disabilities in sports, culture and technology;
- j) Women with disabilities are protected from sexual and gender based violence and are provided with rehabilitation and psychosocial support against sexual and gender based violence;
- k) The sexual and reproductive health rights of women with disabilities are guaranteed, and women with disabilities have the right to retain and control their fertility, and are not sterilised without their consent;
- l) Disability inclusive Gender perspectives are integrated in policies, legislation, plans, programmes, budgets and activities in all spheres that affect women with disabilities.

**Article 28**  
**Children with Disabilities**

1. States Parties shall ensure that Children with disabilities have full enjoyment of human and people's rights on an equal basis with other children.
2. States Parties shall respect and promote the right of children with disabilities, in particular, their right to preserve their identities and to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
3. States Parties shall ensure that the best interests of the child are the primary consideration in all actions undertaken by any person or authority concerning children with disabilities.
4. States Parties shall ensure the rights and welfare of children with disabilities by taking policy, legislative and other measures aimed at:
  - a) Ensuring children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children;
  - b) Providing children with disabilities, disability, age and gender-appropriate assistance to realise their rights;

- c) Ensuring the life, survival, protection and development of children with disabilities;
- d) Ensuring children with disabilities have a name, a nationality and that they are registered immediately after birth;
- e) Ensuring children with disabilities are not abducted, sold or trafficked for any purpose or in any form for, sexual exploitation, child labour harvesting organs;
- f) Ensuring that children with disabilities are protected from all forms of sexual exploitation, abuse and forced labour;
- g) Protecting children from being separated from their parents, caregivers and guardians merely on the basis that either the children or their parents have a disability;
- h) Taking specific measures to protect children with disabilities who require more intensive support;
- i) Ensuring children with disabilities have effective access to education, training and recreational opportunities in settings most conducive for them to achieve the fullest possible social inclusion, individual development and cultural and moral development;
- j) Fostering in all children from an early age an attitude of respect for the rights of persons with disabilities;
- k) Protecting children with disabilities from exploitation, violence and abuse within family, institutional and other settings;
- l) Ensuring that under no circumstances may children on account of their disabilities be sterilised.

**Article 29**  
**Youth with Disabilities**

1. States Parties shall ensure that Youth with disabilities have full enjoyment of human and peoples' rights on an equal basis with other youth.
2. States Parties shall take policy, legislative, administrative and other measures to ensure that all the rights of youth with disabilities are fully respected, including by:
  - a) Promoting full, inclusive and accessible education for youth with disabilities;
  - b) Promoting the inclusion of youth with disabilities in mainstream youth organisations, programmes, including training for leadership and governance skills for their participation at national, regional and international levels;
  - c) Removing barriers that hinder or discriminate against the participation of youth with disabilities in society;

- d) Promoting training and access to information, communication and technology for youth with disabilities;
- e) Developing programmes to overcome social and economic isolation, and removing systemic barriers in the labour market for youth with disabilities;
- f) Ensuring access to credit facilities for youth with disabilities;
- g) Developing and implementing specific measures to facilitate full and equal participation of youth with disabilities in sports, culture, science and technology;
- h) Promoting sexual and reproductive health education for youth with disabilities;
- i) Promoting the participation of youth with disabilities in political decision-making and activities.

**Article 30**  
**Older Persons with Disabilities**

1. State Parties shall ensure that older persons with disabilities have full enjoyment of human and peoples' rights on an equal basis with other older persons.
2. States Parties shall ensure that all the rights of older persons with disabilities are fully protected by taking policy, legislative and other measures, including for:
  - a) Ensuring that older persons with disabilities, on an equal basis with others, access social protection programmes;
  - b) Taking account of age and gender-related aspects of disability in programming and resourcing in accordance with the present Protocol;
  - c) Ensuring that older persons with disabilities exercise their legal capacity on an equal basis with others, and that appropriate measures and safeguards are put in place to provide older persons with all the support they may require to exercise their legal capacity;
  - d) Ensuring that older persons with disabilities have access to appropriate services that respond to their needs within the community;
  - e) Ensuring that older persons with disabilities are protected from neglect, violence, including violence on the basis of accusations or perceptions of witchcraft;
  - f) Ensuring that older persons with disabilities have access to appropriate sexual and reproductive health information and services.

**Article 31**  
**Duties of Persons with Disabilities**

1. States Parties shall recognise that persons with disabilities have duties on an equal basis with other person as elaborated in the African Charter.



2. States Parties shall ensure that persons with disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in performance of such duties.

**Article 32**  
**Statistics, Data and Other Surveys**

States Parties shall ensure the systematic collection, analysis, storage and dissemination of national statistics and data covering disability to facilitate the protection and promotion of the rights of persons with disabilities. Towards this end, States Parties shall:

- a) Disaggregate statistics and data, as appropriate, on the basis of disability, gender, age and other relevant variables, including by ensuring that national population census and other survey captures data on disability;
- b) Disseminate statistics and data in forms accessible to all persons including persons with disabilities;
- c) Ensure that the collection, analysis, storage and dissemination of statistics and data on persons with disabilities comply with acceptable ethical, confidentiality and privacy standards.
- d) Ensure effective involvement and participation of Persons with Disabilities in the design, collection and dissemination of data.

**Article 33**  
**Cooperation**

States Parties shall:

- a) Cooperate at the international, Continental, sub-regional and bilateral levels on capacity-building on issues of persons with disabilities, including by sharing research, technical, human and financial resources, information and good practices to support implementation of this Protocol;
- b) Ensure that regional and sub-regional cooperation programmes and institutions support the implementation of this Protocol and are accessible to Persons with Disabilities;
- c) Ensure full and effective participation of persons with disabilities in the implementation and monitoring of this Protocol.
- d) Support the African Union Commission to set up an Advisory Council on Disability [as an *ad hoc*] mechanism to facilitate the implementation and follow up of the continental policies and plans on disability.

**Article 34  
Implementation**

1. States Parties shall ensure the implementation of this Protocol, and shall indicate in their periodic reports submitted to the African Commission in accordance with Article 62 of the African Charter, the legislative and other measures undertaken for the full realisation of the rights recognized in this Protocol.
2. States Parties shall establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities.
3. In the implementation of this Protocol, the African Commission shall have the mandate to interpret the provisions of the Protocol in accordance with the African Charter.
4. The African Commission may refer matters of interpretation and enforcement or any dispute arising from the application or implementation of this Protocol to the African Court on Human and Peoples' Rights.
5. In accordance with Articles 5 and 34(6) of the Protocol Establishing the Africa Court, the African Court on Human and Peoples' Rights shall have the mandate to hear disputes arising from the application or implementation of this Protocol.

**Article 35  
Popularization of the Protocol**

States Parties shall take all appropriate measures to ensure the widest possible dissemination of this Protocol in accordance with the relevant provisions and procedures of their respective constitutions.

**Article 36  
Safeguard Clause**

1. No provision in this Protocol shall be interpreted as derogating from the principles and values contained in other relevant instruments for the realisation of the rights of Persons with Disabilities in Africa.
2. In the event of a contradiction between two or more provisions of this Protocol, the interpretation which favours the rights of Persons with Disabilities and protects their legitimate interests shall prevail.

**Article 37  
Signature, Ratification and Accession**

1. This Protocol shall be open to Member States of the Union for signature, ratification or accession.

2. The instrument of ratification or accession to the present Protocol shall be deposited with the Chairperson of the Commission who shall notify all Member States of the dates of the deposit of the instruments of ratification or accession.

**Article 38**  
**Entry into force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification by a Member State.
2. The Chairperson of the Commission shall notify all Members States of the African Union of the entry into force of the present Protocol.
3. For any Member State of the African Union acceding to the present Protocol, the Protocol shall come into force in respect of that State on the date of the deposit of its instrument of accession.

**Article 39**  
**Reservations**

1. A State Party may, when, ratifying or acceding to this Protocol, submit in writing a reservation with respect to any of the provisions of this Protocol. Reservation shall not be incompatible with the object and purpose of this Protocol.
2. Unless otherwise provided, a reservation may be withdrawn at any time.
3. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission who shall notify other States Parties of the withdrawal accordingly.

**Article 40**  
**Depository**

This Protocol shall be deposited with the Chairperson of the African Union Commission, who shall transmit a certified true copy of the Protocol to the Government of each signatory State.

**Article 41**  
**Registration**

The Chairperson of the Commission upon the entry into force of this Protocol shall register this Protocol with the United Nations Secretary General in conformity with Article 102 of the Protocol of the United Nations.

**Article 42**  
**Withdrawal**

1. At any time after three years from the date of entry into force of this Protocol, a State Party may withdraw by giving written notification to the Depository.

2. Withdrawal shall be effective one year after receipt of notification by the Depository, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any obligation of the withdrawing State Party prior to the withdrawal.

**Article 43**  
**Amendment and Revision**

1. Any State Party may submit proposal(s) for the amendment or revision of this Protocol. Such proposal(s) shall be adopted by the Assembly.
2. Proposals for amendment or revision shall be submitted to the Chairperson of the Commission who shall transmit such proposals to the Assembly at least six months before the meeting at which it shall be considered for adoption.
3. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two-thirds majority.
4. The amendment or revision shall enter into force in accordance the procedures outlined in Article 26 of this Protocol.

**Article 44**  
**Authentic Texts**

This Protocol is drawn up in four (4) original texts, in Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, has signed this Protocol.

**ADOPTED BY THE THIRTIETH ORDINARY SESSION OF THE ASSEMBLY,  
HELD IN ADDIS ABABA, ETHIOPIA ON 29 JANUARY 2018**



**MINISTRY OF FOREIGN AFFAIRS**

**MEMORANDUM**

**ON**

**RATIFICATION OF PROTOCOLS TO THE AFRICAN CHARTER  
ON HUMAN AND PEOPLES' RIGHTS**

**ON**

**I. THE RIGHTS OF OLDER PERSONS;**

**AND**

**II. THE RIGHTS OF PERSONS WITH DISABILITIES.**

**TREATY MEMO NO: 2/2021**

**MEMORANDUM ON KENYA'S RATIFICATION OF THE PROTOCOLS TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF OLDER PERSONS AND RIGHTS OF PERSONS WITH DISABILITIES**

---

**1.0 OBJECTIVE OF THE MEMORANDUM**

1.1 The objective of this Memorandum is to seek approval for Kenya's ratification of two (2) Protocols to the African Charter on Human and Peoples' Rights (the Banjul Charter) *hereinafter referred to as the Charter, on the:*

(i) Rights of Older Persons and African Charter on Human; and

(ii) Rights on the Rights of Persons with Disabilities in Africa.

1.2 The ratification process was approved by Cabinet during its 1st Meeting of 2021, held on 25<sup>th</sup> February, 2021.

**2.0 BACKGROUND**

2.1 The African Charter on Human and Peoples' Rights is a continental instrument that promotes and protects human rights and basic freedoms.

2.2 It makes provisions for protecting the civil and political rights, the economic, social and cultural rights and Peoples' rights and Group rights. In particular, it provides in Article 18(4) that *'The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs'*.

2.3 However, the broad nature of the Charter's provisions led to the adoption of the two Protocols under consideration, in order to provide for specific measures of protection of the Older Persons and Persons Living with Disabilities in Africa.

2.4 The Protocols advocate for a unified, collaborative and coordinated regional approach in eliminating discrimination against older persons and persons with disabilities through a substantive binding, legal, normative and institutional framework.

2.5 The Protocols will enter into force upon ratification by fifteen **(15) Member States**.

### **3.0 THE PROTOCOL ON THE RIGHTS OF OLDER PERSONS IN AFRICA**

3.1 The Protocol on the Rights of Older Persons in Africa, was adopted on **30<sup>th</sup> January 2016**. It seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by Older Persons and to ensure respect for their inherent dignity taking into consideration African traditions, values, customs and practices.

3.2 It complements the Charter, the African Union Social Policy Framework (2009), AU Policy Framework and Plan of Action on Ageing (2002), the 1991 United Nations Principles for Older Persons, the 1992 United Nations Proclamation on Ageing, the 2002 Madrid International Plan of Action on Ageing and the Resolutions of the United Nations General Assembly related to the rights of older persons.

3.3 To date, seventeen (17) countries have signed the protocol, while two (2) countries, have ratified.

#### **3. A. OBLIGATIONS IMPOSED BY THE PROTOCOL**

3.4 Upon ratification, Kenya will be required to:

- a) recognize the rights and freedoms of older persons as enshrined in the Protocol;
- b) submit periodic reports on the implementation of the Protocol;
- c) develop and review existing legislation to ensure that Older Persons receive equal treatment and protection of the law, access to health services, education; accessibility needs, pensions and other forms of social security;

- d) develop and review existing legislation to ensure that Older Women and Older Persons with disabilities are guaranteed of special protection;
- e) ensure that the 1991 United Nations Principles of Independence, Dignity, Self-fulfilment, Participation and Care of Older Persons are included in national laws and are legally binding as the basis for ensuring their rights; and
- f) Prohibit all forms of abuse, discrimination, stigmatization and harmful traditional practices while promoting the elimination of social and cultural stereotypes which marginalize Older Persons.

#### **4. THE PROTOCOL ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA**

- 4.1 The Protocol on the Rights of Persons with Disabilities in Africa was adopted **29<sup>th</sup> January, 2018**. It seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity.
- 4.2 The Protocol recognizes the rights and freedoms of persons with disabilities in society, as well as duties of persons with disabilities and seeks to addresses issues that have the most disproportionate impact such as poverty, systemic discrimination and harmful practices. The rights espoused in the protocol include non-discrimination, right to equality, right to life, right to liberty and security of person.
- 4.3 In terms of duties, the Protocol recognizes that persons with disabilities have duties on an equal basis with other persons as elaborated in the African Charter.
- 4.4 To date nine (9) countries have signed the Protocol, while, no country has ratified.



#### **4. A. OBLIGATIONS IMPOSED BY THE PROTOCOL**

4.4 Upon Ratification, Kenya will be required to:

- a) ensure that people with disabilities are not discriminated against and enjoy equality, equal protection and equal benefit of the law;
- b) take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfil the rights and dignity of persons with disabilities,
- c) develop and review existing legislation to ensure that women and girls with disabilities are guaranteed of special protection;
- d) Submit periodic reports on the legislative and other measures undertaken for the full realisation of the rights recognized in the Protocol. implementation of the Protocol;
- e) Adopt appropriate measures to allow persons with disabilities fulfil their duties as recognized in the Protocol;
- f) Mainstream disability in policies, legislation, development plans, programmes and activities and in all other spheres of life; and
- g) Prohibit all forms of abuse, discrimination, stigmatisation and harmful traditional practices while promoting the elimination of social and cultural stereotypes which marginalize persons with disabilities.

#### **5.0 PROBLEM ANALYSIS**

5.1 Older Persons and persons with disabilities experience considerable vulnerability resulting in the violations of their human rights both individually and systemically.

5.2 With regard to Older Persons, the population of older persons in Kenya has increased from a modest number of **270,000** during the first National Census of **1949** rising to **1,926,651**(**5% of the total population**) in **2009** to **2,740,515** against a population of **47 million** in **2019** translating to **6%** of the total population.

- 5.3 This demographic shift towards increased older persons in society has been accompanied by rapid urbanization, shifting attitudes within communities and population movements.
- 5.4 In particular, the increased movement of younger persons from rural to urban areas in search of employment has led the breakdown of the in-built traditional social protection systems which protected older persons.
- 5.5 With regard to Persons with Disabilities (PWDs), the Kenya National Housing and Population Census, 2019 places the overall disability rate in Kenya at 2.2%. This translates to 918,270 Persons with Disabilities (PWDs) and an additionally 9,720 Persons with Albinism.
- 5.6 PWDs face a number of obstacles including attitudinal, cultural, environmental and institutional barriers, preventing their full and equal participation in all aspects of life. Often, Older Persons with disabilities are the most affected, facing further age barriers in society.
- 5.7 The HIV/AIDS pandemic also meant that older persons and persons with disabilities carry a disproportionate burden of family responsibility. This situation has been exacerbated by the COVID-19 pandemic.
- 5.8 While the Government implements existing policies and legislation that provide the specific protection to older persons and persons with disabilities, ratification will enhance Kenya's promotion of AU Agenda 2063.

## **6.0 JUSTIFICATION FOR RATIFICATION**

- 6.1 The Protocols compliment various policy and legislative mechanisms put in place by Kenya in order to enhance protection, promotion and fulfilment of the rights of Older Persons and persons with Disabilities.
- 6.2 Kenya however, needs to address policy and legal gaps, for example, there is no domestic legislation that specifically address the rights and protections of Older Persons. In addition, the various categories of

disabilities have not been adequately catered for in existing instruments.

6.3 Under the Voluntary Nations Reviews (VNR) on the integration of the Sustainable Development Goals (SGDs) and the African Peer Review Mechanisms (APRM), Kenya committed to specifically address ageing related issues including protection of older persons and persons with disabilities.

6.5 Ratification will therefore, be clear reaffirmation of Kenya's commitment to strengthen and respect the rights of persons with disabilities and older persons, at the international Level.

6.6 Ratification will also be in furtherance of the AU's Executive Decision **EX.CL/Dec (XIV)** which requires Member States to commence the process of ratification of continental Treaties within one (1) year of adoption.

## **7.0 CONSTITUTIONAL IMPLICATIONS**

7.1 The Conventions do not propose any amendment to the Constitution and are consistent with constitutional provisions which provide explicit rights, protections, entitlements and privileges for Older Persons and Persons with Disabilities.

## **8.0 POLICY AND LEGISLATION CONSIDERATIONS**

8.1 Kenya has policies, ongoing programmes and legislation that provide for the protection of older persons and persons with disabilities. However, upon ratification, there will be need for review to the existing legal, policy, and administrative framework for full alignment with the Protocols.

## **9.0 IMPLICATIONS RELATING TO COUNTIES**

9.1 The obligations imposed under the Protocols are under the purview of the National Government.

## **10.0 FINANCIAL IMPLICATIONS**

10.1 The financial requirements during implementation of the Protocols will be catered for during the normal budgetary estimates of the relevant institutions.

## **11. MINISTERIAL RESPONSIBILITY**

11.1 The implementation of the Conventions will be under the collective responsibility the Ministry of Labour and Social Protection. The Office of the Attorney General and Department & Justice and the Ministry of Foreign Affairs will coordinate the reporting process on implementation, pursuant to the Treaty Making and Ratification Act No 45 of 2012.

## **12. RESERVATIONS**

12.1 The Protocols permit state reservations. However, the Reservations shall not be incompatible with the object and purpose of this Protocols. No reservations are proposed.

## **13. PUBLIC PARTICIPATION**

13.1 Public participation has been undertaken through various fora including virtual meetings following advertisements published in the local newspapers.

13.2 The Ministry of Labour and Social Protection held various stakeholder engagements with the Office of the Attorney General & Department of Justice, Ministry of Foreign Affairs, the Council of Governors, the National Gender and Equality Commission, the Kenya National Human Rights Commissions and several Non-Governmental Organisations and Civil society organization.

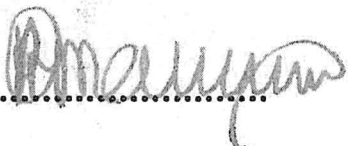
13.3 The views received from government bodies, human rights institutions, civil society organizations affirmed that the Protocols address key human and people's rights and recommended ratification to offer additional protection to these vulnerable groups.

**14. RECOMMENDATION TO PARLIAMENT**

14.1 In consideration of the aforementioned facts, Parliament is invited to:

1. Note the contents of the Memorandum;
2. Consider and approve Kenya's ratification of the following two (2) Protocols to the African Charter on Human and Peoples' Rights (Banjul Charter): -
  - i) Protocol on the Rights of Older Persons in Africa; and
  - ii) Protocol on the Rights of Persons with Disabilities in Africa.
3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the instruments of ratification to the relevant depositories.

SIGNED.....



DATED.....

19<sup>th</sup>

MAY, 2021

**AMB. RAYCHELLE OMAMO, SC, EGH**  
**CABINET SECRETARY**  
**MINISTRY OF FOREIGN AFFAIRS**





**REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - FIFTH SESSION  
DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS**

In the Matter of Articles 2(5) & (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

And

In the Matter of Consideration by the National Assembly of the Ratification of Protocols to the African Charter on Human and People's Rights on The Rights of Older Persons; and

The Rights of Persons with Disabilities

**INVITATION FOR PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)**

Pursuant to Articles 2(5) & (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the Protocol to the African Charter on Human and Peoples' Rights makes provisions for protecting the civil and political rights, the economic, social and cultural rights and People's rights and Group rights. The two protocols on the Rights of Older Persons; and the Rights of Persons with Disabilities now provide for specific measures of protection of the two groups, advocating for a unified, collaborative and coordinated regional approach in eliminating discrimination against older persons and persons with disabilities through a substantive binding, legal, normative and institutional framework.

The Protocols were submitted to the Speaker of the National Assembly on 26<sup>th</sup> May 2021 and are now committed to the **Departmental Committee on Defence & Foreign Relations** in accordance with Section 8 of the Treaty Making and Ratification Act, 2012.

The Departmental Committee on Defence & Foreign Relations hereby invites members of the public and relevant stakeholders to submit memoranda they may have on the two Protocols. The full text of the Protocols and the accompanying Memorandum to Parliament may be accessed at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The memoranda may be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before **Friday 16<sup>th</sup> July 2021**.

**MICHAEL R. SIALAI, CBS  
CLERK OF THE NATIONAL ASSEMBLY**

5<sup>th</sup> July 2021





**REPUBLIC OF KENYA**



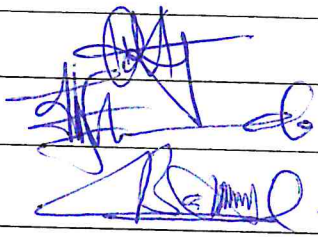




**KENYA NATIONAL ASSEMBLY**

**DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS**  
**Adoption Schedule**

**REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS ON THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF OLDER PERSONS IN AFRICA & THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA**

We, the undersigned Members of the Departmental Committee on Defence & Foreign Relations, today 1<sup>st</sup> September, 2021 do hereby affix our signatures to this REPORT ON THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHTS OF OLDER PERSONS IN AFRICA & THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF PERSONS WITH DISABILITIES IN AFRICA to affirm our approval and confirm its accuracy, validity and authenticity:-

| NO. | NAME   | SIGNATURE |
|-----|--|-----------|
| 1.  | The Hon. Katoo Ole Metito, EGH, MGH, M.P - <b>Chairperson</b>      |           |
| 2.  | The Hon. Richard Tong'i, M.P - <b>Vice Chairperson</b>             |           |
| 3.  | The Hon. Col. (Rtd.) Gideon S. Konchela, EGH, OGW, 'psc' (UK), M.P |           |
| 4.  | The Hon. Yusuf Hassan Abdi, M.P                                    |           |
| 5.  | The Hon. Charles Mutavi Kilonzo, M.P                               |           |
| 6.  | The Hon. Col. (Rtd.) Dido Ali Raso, MBS, M.P                       |           |
| 7.  | The Hon. Richard Maore Maoka, CBS,                                 |           |

|     |  |  |
|-----|--|--|
|     | M.P  |  |
| 8.  | The Hon. Martha Wangari Wanjira, M.P               |  |
| 9.  | The Hon. Elijah Memusi Kanchory, M.P               |  |
| 10. | The Hon. Stephen Mutinda Mule, M.P                 |    |
| 11. | The Hon. Major (Rtd.) Bashir Sheikh Abdullahi, M.P |    |
| 12. | The Hon. (Dr.) Lilian Gogo, M.P                    |  |
| 13. | The Hon. (Dr.) Irene Muthoni Kasalu, M.P           |  |
| 14. | The Hon. Moses Nguchire Kirima, M.P                |  |
| 15. | The Hon. Vincent Kipkurui Tuwei, M.P               |  |
| 16. | The Hon. Ernest Ogesi Kivai, M.P                   |   |
| 17. | The Hon. Caleb Amisi, MP                           |   |
| 18. | The Hon. Asha Hussein Mohamed                      |  |
| 19. | The Hon. Zachary Kwenya Thuku, M.P                 |  |

**MINUTES OF THE ONE HUNDRED AND THIRTY FIRST (131<sup>ST</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS HELD IN COMMITTEE ROOM, 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE ON WEDNESDAY, 7<sup>TH</sup> JULY, 2021 AT 10.00 AM.**

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**PRESENT**

1. The Hon. Katoo Ole Metito, EGH, MGH, MP (Chairperson)
2. The Hon. Richard Tong’i, MP (Vice Chairperson)
3. The Hon. Ernest Ogesi Kivai, MP
4. The Hon. Martha Wangari Wanjira, MP
5. The Hon. Col. (Rtd) Dido Ali Raso, MBS, MP
6. The Hon. Charles Kilonzo, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. (Dr.) Lilian Gogo, MP
9. The Hon. Gideon Sitelu Konchela, MPEGH, OGW, ‘psc’ (UK), MP (*Virtually*)
10. The Hon. Yusuf Hassan Abdi, MP (*Virtually*)
11. The Hon. Caleb Amisi, MP (*Virtually*)
1. The Hon. (Dr.) Irene Muthoni Kasalu, MP (*Virtually*)
12. The Hon. Stephen Mutinda Mule, MP (*Virtually*)

**APOLOGIES**

2. The Hon. Memusi Ole Kanchory, MP
3. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
4. The Hon. Asha Hussein Mohamed, MP
5. The Hon. Zachary Kwenya Thuku, MP
6. The Hon. Richard Maore Maoka, CBS, MP
7. The Hon. Vincent Kipkurui Tuwei, MP

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                        |   |                        |
|------------------------|---|------------------------|
| 1. Mr. Victor Weke     | - | First Clerk Assistant  |
| 2. Mr. Abdiaziz Shobay | - | Second Clerk Assistant |
| 3. Mr. Salem Lorot     | - | Legal Counsel          |
| 4. Mr. John Ngang’a    | - | Audio Officer          |

**MIN. NO.NA/DC.DFR/2021/084:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.12 am and said a prayer. The agenda of the meeting was adopted as hereunder after being proposed by The Hon. Charles Kilonzo, MP and seconded by The Hon. Martha Wangari, MP

**AGENDA**

1. Prayers
2. Adoption of the agenda
3. Confirmation of minutes of previous sittings
4. Matters arising
5. Substantive agenda: **Briefing on Protocols on Older Persons & Persons with Disabilities**
6. Any Other Business

**MIN. NO.NA/DC.DFR/2021/085:**

**CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**129<sup>th</sup> Sitting**

Minutes of the 129<sup>th</sup> sitting held on 16<sup>th</sup> June 2021 were confirmed as a true record of proceedings as proposed by Hon. Ernest Kivai, MP and seconded by Hon. Charles Kilonzo, MP.

**130<sup>th</sup> Sitting**

Minutes of the 130<sup>th</sup> sitting held on 30<sup>th</sup> June 2021 were confirmed as a true record of proceedings as proposed by Hon. Richard Tongi, MP and seconded by Hon. Ernest Kivai, MP.

**MIN. NO.NA/DC.DFR/2021/086:**

**MATTERS ARISING**

**129<sup>th</sup> Sitting**

**Min. No. NA/DC.DFR/2021/075: Committee Resolution No. 2**

The Committee noted that its re-allocations in the Estimates of FY 2021/22 were accepted by the House, save for Kshs. 500 million from O&M in the Ministry of Defence; civil aid now had an approved allocation of Kshs. 700 million. Regional Development Authorities had received an additional Kshs. 100 million to LBDA.

The Committee also noted that Treasury had allocated ENNDA Kshs. 450 million in the Supplementary Estimates II without its involvement. The Committee resolved to meet with the Cabinet Secretaries Treasury and EAC & Regional Development Authorities on the concerns of inequitable distribution of the resources, on Wednesday 14<sup>th</sup> July 2021.

**130<sup>th</sup> Sitting**

**Min. No. NA/DC.DFR/2021/080: Foreign Service Bill, 2021**

The Chairperson confirmed that the report had been tabled in the House, and had been scheduled for Second Reading in the evening session of 7<sup>th</sup> July 2021. The Chairperson urged Members to attend debate.

**MIN. NO.NA/DC.DFR/2021/087:**

**BRIEFING ON PROTOCOLS OF RIGHTS OF OLDER PERSONS AND PERSONS WITH DISABILITIES**

The legal counsel gave a brief overview of the two protocols, and confirmed that they were supported by the Ministry of Foreign Affairs, as well as being in harmony with domestic laws.

The Committee noted that the two protocols were bulky and required adequate time for their perusal, article by article. It was resolved that the secretariat arranges for a retreat in Mombasa for that purpose, during the last week of recess.

**MIN. NO.NA/DC.DFR/2021/088:**

**AOB**

Hon. Stephen Mule, MP urged that the Committee observes upcoming elections in the African continent, for purposes of learning from various jurisdictions. The Committee urged the secretariat to pursue means of actualizing the same.



