SPECIAL ISSUE

Kenya Gazette Supplement No 3 (Tana River County Bills No 3)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TANA RIVER COUNTY BILLS, 2018

NAIROBI, 6th April, 2018

CONTENT

Bill for Introduction into the County Assembly of Tana River—

Page

The Tana River County Persons with Disabilities Bill, 2018 1

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER NAIROBI
THE TANA RIVER COUNTY PERSONS WITH DISABILITIES BILL, 2018

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY

Clause
1— Short title and commencement
2— Interpretation
3— Guiding values and principles
4— Object and purpose of the Act

PART II—ADMINISTRATION

5— Establishment of the Board
6— Membership of the Board
7— Oath of Office
8— Tenure of Office
9— Functions of the Board
10— Removal of members of the Board
11— Vacation of office
12— Conduct of Business by the Board
13— Remuneration of Members of the Board
14— Staff of the Board
15— Secondment
16— Delegation by the Board
17— Funds of the Board
18— Accounts and Audit
19— Annual Report
20— Protection from personal liability

PART III—RIGHTS OF PERSONS WITH DISABILITIES

21— Realisation of Rights of persons with Disabilities
22— Right to marry and form a family
23— Women with disabilities
24— Children with disabilities
25— Youth with disabilities
26— Older Persons with disabilities
27— Right to physical and mental integrity
28— Protection from abuse, exploitation and violence
29— Right not to be discriminated in employment
30— Discrimination by employers prohibited
31— Records for job placement
32— Right not to be discriminated in an educational institution
33— Right to health
34— Board to participate in health programmes
35— Right to accessibility and mobility
36— Adjustment Orders
37— Denial of admission into premises
38— Prohibition of adjustment orders against Government institutions
39— Right to sports and recreation
40— Registration of organizations
41— Non-derogation

PART IV— THE PERSONS WITH DISABILITIES EMPOWERMENT FUND

42— Establishment of the fund
43— Functions of the Board as regards the Fund
44— Sources of funds and payments from the fund

PART V— MISCELLANEOUS

45— Failure to obey an adjustment order
46— Concealment of Persons with Disabilities
47— Denial of food and fluids
48— Degrading treatment of a person with disability
49— Negligence by medical practitioner
50— Giving false information
51— Failure to furnish information
52— General penalty
53— Enforcement
54— Regulations

SCHEDULES

FIRST SCHEDULE— PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

SECOND SCHEDULE— OATH/AFFIRMATION OF CHAIRPERSON/MEMBERS/SECRETARY OF THE BOARD

THIRD SCHEDULE— ACCESS TO PUBLIC BUILDINGS, AUXILIARY AID, SPORTING VENUES AND PUBLIC FACILITIES
THE TANA RIVER COUNTY PERSONS WITH DISABILITIES BILL, 2018

A Bill for

AN ACT of the County Assembly of Tana River to give effect to Article 54 of the Constitution, to provide for the rights and rehabilitation of persons with disabilities, to achieve equalisation of opportunities for persons with disabilities, to establish the Board for Persons with Disabilities, and for connected purposes

ENACTED by the County Assembly of Tana River, as follows—

PART 1—PRELIMINARY

1 This Act may be cited as the Tana River County Persons with Disabilities Act, 2018 and shall come into force on the fourteenth day after its publication in the Gazette.

2 In this Act unless the context otherwise requires—

“Adjustment Order” means an order made by the Board under section 36 of this Act,

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

“Chief officer” means the Chief officer for the time being responsible for matters relating to persons with disabilities,

“County Government” means the County Government of Tana River as established by Article 6 and First Schedule to the Constitution of Kenya, 2010 and the County Governments Act, 2012,

“Board” means the Tana River County Board for Persons with Disabilities established under section 5,

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to persons with disabilities,

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

“discrimination” 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 rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes denial of amenities and the use of derogatory words, gestures or caricatures,

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

“Fund” means the Persons with Disabilities Empowerment Fund established under Section 43,

“medical practitioner” means a person duly registered under the Medical Practitioners and Dentists Act as a medical practitioner,

“older person” includes a person with a disability who has been forced into retirement from employment due to disability,

“organizations for persons with disabilities” means associations, groups, non governmental organizations or societies formed for the purposes of rendering services to persons with disabilities,

“organizations of persons with disabilities” means associations or societies formed by persons with disabilities for their welfare and protection,

“Persons with Disabilities” includes persons with permanent physical, mental, intellectual, developmental or sensory impairments, visual, hearing or Albinism, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others

3 The guiding values and principles of this Act are—

(a) the national values and principles of governance as set out in Article 10 of the Constitution,

(b) the rights and fundamental freedoms provide for under chapter four of the Constitution, and
The Tana River County Persons with Disabilities Bill 2018

4 The object and purpose of this Act is to provide a legal and institutional framework to ensure the realization of the rights of persons with disabilities in the county through—

(a) setting out of the rights and privileges of persons with disabilities,
(b) the establishment of the Board for Persons with Disabilities,
(c) the establishment of the Persons with Disabilities Fund, and
(d) generally protecting persons with disabilities from any form of discrimination and promoting their welfare.

PART II—ADMINISTRATION

5 (1) There is established the Tana River County Board for Persons with Disabilities.

   (2) The Board shall be a body corporate with perpetual succession and a common seal and shall be capable, in its corporate name of—

   (a) suing and being sued,
   (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property,
   (c) borrowing,
   (d) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may be lawfully done or performed by a body corporate.

6 (1) The Board shall consist of the following members appointed by the County Executive Committee Member and approved by the County Assembly—

   (a) three persons nominated in a manner approved by the County Executive Committee Member, by organizations representing persons with various categories of disabilities within the County,
(b) the chief officer responsible for matters relating to health,
(c) the chief officer responsible for matters relating to finance, and
(d) the chief officer for matters relating to social services who shall—
   (i) be an *ex-officio* member of the Board,
   (ii) be the secretary to the Board,
   (iii) be the Accounting Officer of the Board,
   (iv) be responsible to the Board for the day-to-day management of the affairs of the Board,
   (v) perform such other functions as may be conferred on the Chief Officer by this Act or by any other written law, and
(e) such other members as may be co-opted by the Board with the approval of the County Executive Committee Member

Provided that such co-opted members will not exceed four and shall not be entitled to vote

(2) The members shall at the first meeting of the Board elect a chairperson and a vice-chairperson

(3) The chairperson and the vice-chairperson shall not be of the same gender

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

   (a) the composition of the members of the board shall reflect the ethnic and regional diversity of the people of Tana River County, and
   (b) not more than two-thirds of the members of the Board are of the same gender

(5) A person is qualified for appointment as member of the Board under subsection (1) (a) if that person—

   (a) is a citizen of Kenya,
   (b) has knowledge and relevant experience in community service or social work, and
(c) meets the requirements of leadership and integrity set out in chapter six of the Constitution

7 The Chairperson, Members and the Secretary shall, before assuming office, make and subscribe, before the Governor, to the oath of office or affirmation set out in the Second Schedule

8 A member of the Board appointed under section 6(1) (a) shall hold office for a period of three years and shall be eligible for reappointment for one further term of three years

9 (1) The functions of the Board shall be—

(a) to issue adjustment orders under section 34 of this Act,

(b) to formulate and develop measures and policies designed to—

(i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services,

(ii) co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the county, for purposes of planning,

(iii) advise the County Executive Committee Member on the provisions of any National Legislation relating to the welfare or rehabilitation of persons with disabilities and its benefits to the county,

(iv) recommend measures to prevent discrimination against persons with disabilities,

(v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities,
(vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment,

(vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities, and

(viii) co-ordinate services provided in the County for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counseling,

(c) to register—

(i) persons with disabilities,

(ii) institutions, associations and organizations, including those controlled and managed by the County Government, that provide services for the rehabilitation and welfare of persons with disabilities,

(iii) places at which services for the rehabilitation of persons with disabilities are provided, and

(iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services,

(d) to provide, to the maximum extent possible—

(i) assistive devices, appliances and other equipment to persons with disabilities, and

(ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the County Government,

(e) to consult with the County Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities,
(f) to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions,

(g) to assess and report to the County Executive Committee Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures,

(h) to consult with the County Government in the provision of suitable and affordable housing for persons with disabilities,

(i) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act,

(j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Board may deem necessary, and

(k) to perform such other functions as may be assigned to the Board under this or any other Act.

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

(a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities,

(b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the County Executive Committee Member,

(c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Board as the Board may with the approval of the County Executive Committee Member determine, and

(d) with the approval of the County executive Committee Member, to engage or make other arrangements with another person to carry out
research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities

10 A member of the Board may be removed from office on any one or more of the following grounds—

(a) serious violation of the Constitution or any other law,

(b) gross misconduct, whether in the performance of their functions or otherwise,

(c) physical or mental incapacity that will render the person incapable of performing his or her duties,

(d) absence from three consecutive meetings of the Board without a reasonable explanation,

(e) incompetence or negligence of duty, or

(f) bankruptcy

11 A person shall cease to be a member of the Board if that person—

(a) resigns in writing to the County Executive Committee Member,

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months,

(c) is incapacitated by prolonged physical or mental illness from performing the duties of the office of a member of the Board,

(d) is removed from office in accordance to the provisions of section 10, or

(e) dies

12 The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

13 There shall be paid to the appointed members of the Board such remuneration, fees, allowances and disbursements for expenses as may be approved by the County Public Service Board upon the advice of the Salaries and Remuneration Commission.

14 The Board may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms as the Board in consultation
The Tana River County Persons with Disabilities Bill 2018

with the Salaries and Remuneration Commission may determine

15 (1) The National and County Government may, upon request by the Board second to the Board such number of public officers as may be necessary for the proper performance of the functions of the Board

(2) A public officer seconded to the Board shall, during the period of secondment, be deemed to be an officer of the Board and shall be subject only to the direction and control of the Board

16 (1) The Board may delegate to any of its committees, members, agencies either generally or otherwise as provided by the instrument of delegation, any of its powers other than—

(a) duties to make decision under this Act,
(b) power of delegation itself, and
(c) the powers to revoke or vary delegation

(2) A delegated power shall be exercised in accordance with the instrument of delegation

(3) A delegation may, at any time, be revoked or varied by the Board

17 The funds of the Board shall consist of the following—

(a) such monies as may be appropriated by the County Assembly for purposes of the Board,
(b) such monies, as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions, and
(c) any grants, testamentary gifts, donations or other endowments given to the Board

18 (1) The Board shall cause to be kept proper books and records of its accounts of the income, expenditure, assets and liabilities

(2) The Board shall within a period of not less than three months before the commencement of each financial year, cause to be prepared estimates of the revenue and expenditure, differentiating the recurrent, development and the Fund expenditure of the Board for that financial year
(3) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor General the Accounts of the Board in respect to that year together with—

(a) a statement of the income and expenditure of the Board during that financial year,
(b) a balance sheet of the Board on the last day of that financial year,
(c) a statement of the assets and liabilities of the Board on the last day of that financial year,
(d) any other records of account required under the Public Audit Act, and
(e) the financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

(4) The audited accounts of the Board shall be in accordance with the Public Audit Act and the Public Finance Management Act.

19 (1) The Board shall prepare an annual report in respect of the year up to the immediately preceding thirtieth June and submit it to the County Executive Committee Member before the thirtieth November in that year.

(2) The annual report shall provide information regarding the activities and plans of the Board during the year and such additional information or other material as the County Executive Committee Member may request in writing.

(3) Publish an annual report in respect of the year up to and immediately preceding thirtieth June outlining measures taken by it towards the realization of the values and principles of the public service in accordance with Articles 10 and 232 of the Constitution.

(4) Submit its financial statement to the County Executive Committee Member.

(5) The County Executive Committee Member shall, within one month after receiving the annual report, transmit it to the County Assembly.

(6) The annual report shall be published and publicized in such other manner as the Board may determine.
20 No matter or thing done by a member or any officer, employee or agent of the Board or other office established under this Act shall, if the matter or thing is done in good faith while executing the functions, powers or duties conferred by this Act, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever

PART III—RIGHTS OF PERSONS WITH DISABILITIES

21 The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities

22 (1) Every adult person with disability has the right to marry and form a family on the basis of free and full consent

(2) Every Person with Disability has the right to control their sexuality and reproductive health

(3) No person with disability shall be separated from his or her child on the ground of disability

23 Every woman with disability has the right to enjoyment of her human rights and fundamental freedoms without discrimination on an equal basis with others, including the right to—

(a) participate in social, economic and political decision-making and other related activities,

(b) protection from sexual and gender-based violence,

(c) be provided with habilitation, rehabilitation and psychosocial support against sexual and gender-based violence,

(d) sexual and reproductive health services,

(f) keep her child and not be deprived of her child on grounds of disability; and

(g) full development, advancement and empowerment

24 Every child with disability has the right and freedom on an equal basis with other children in respect to—
(a) to a name and registration from birth,
(b) to basic nutrition, shelter and healthcare,
(c) evolving capacities, identities and to enjoy a full and decent life, in conditions which promote and ensure dignity, self-reliance, and independence,
(d) freedom to express his or her views on all matters affecting him or her, and
(e) age-appropriate assistance to realise his or her rights

25 (1) Every youth with disabilities is entitled to enjoyment of human rights and fundamental freedoms on an equal basis with other youth

(2) The Board in consultation with the County Governments shall take policy, legislative, administrative and other measures to ensure that the rights of youth with disabilities are fully respected, including by—

(a) promoting full, inclusive and accessible education, training and employment and programmes for youth with disabilities,
(b) promoting the inclusion of youth with disabilities in mainstream youth organisations and programmes,
(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, and
(e) developing and implementing special measures to facilitate full and equal participation of youth with disabilities in training, sports, culture, science and technology

26 Every older person with disability has the right to enjoyment of human rights and fundamental freedoms on an equal basis with others, including the right to—

(a) access social protection programmes,
(b) live in dignity and respect and be free from abuse, and
(c) receive reasonable care and assistance from their family
27. Every Person with disability has a right to respect for his or her physical and mental integrity and the right to security of the person including his or her survival, liberty, protection and development.

28. (2) Every Person with disability has the right to be protected against all forms of abuse, neglect, exploitation and physical, mental, sexual, or emotional violence on the person of such person with disability in all settings at all places including, home, care-houses, educational institutions, hospitals and other institutions, workplaces, and any other place which resides, cohabits, employs or in other manner inhabits any person with disability whether temporarily or permanently.

(2) Any person or organization working with a person with disability, or any person, who has reason to believe that an act of exploitation, neglect, violence or abuse has been, or is being, or is likely to be committed against any person with disability, shall give information about it to law enforcement agencies in whose jurisdiction such incident occurs or is likely to occur, and such agencies shall take immediate steps on the receipt of such information to stop it and have the persons responsible for it arrested, or, if it has not occurred, to prevent its occurrence.

(3) Any person who fails to comply with the provisions on subsection (2) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment to a term not exceeding one year or both.

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

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

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

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

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

(a) the advertisement of employment,

(b) the recruitment for employment,

(c) the creation, classification or abolition of posts,

(d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits,

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

(f) the provision of facilities related to or connected with employment, or

(g) any other matter related to employment

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

(a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person,

(b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned, or

(c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court through the appropriate trade union
(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void in so far as it purports to deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act

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

(6) The minimum retirement age for persons with a disability shall be sixty years

31 The Board shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and training and shall update such records regularly for the purposes of job placement

32 A person or learning institution shall not deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course

33 (1) Every Person with disability has the right to health, including health-related habilitation and rehabilitation services without discrimination on the basis of disabilities

(2) Every Person with disability has the right to the enjoyment of sexual and reproductive health rights on an equal basis with others

(3) Every Person with disability has the right to information that will enable him or her to make responsible and informed choices about their sexual and reproductive health

(4) Every Person with disability has a right to be treated with respect, privacy and dignity while seeking health related services

(5) Every Person with disability shall be entitled to free medical care and treatment on condition of his or her disabilities in public owned health institutions

(6) Medical assessment reports for persons with disabilities, including for purposes of registration, employment or compensation shall be done free of charge in public owned health institutions
(7) Every health institution owned by the county shall employ at least two Kenya Sign Language Interpreters with gender consideration in hospital organizational structure.

(8) It is an offence for a health worker to discourage a person with a disability from conceiving or having children.

(9) A person who contravenes subsection (8) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or both.

(10) No person with disability shall be subject to any medical procedure which leads to or could lead to infertility without their express consent.

Provided that in cases of medical necessity confirmed by a medical practitioner such medical procedure may be performed on a minor with disability with the parent or guardian’s consent.

(11) The County Government shall facilitate a broad range of modifications and adjustments to ensure access to health care for persons with disabilities services, including operation tables, examination and delivery beds.

(12) The County Government shall implement special health services required by persons with disabilities including—

(a) user-friendly hospital materials, for use by persons with disabilities visiting hospitals.

(b) community based public health programmes relevant to persons with disabilities, and

(c) barrier-free access in all parts of the hospitals and other healthcare institutions and centers run or aided by them.

34 (1) The Board shall be represented in the implementation of the County Health Programs under the County Executive Committee Member for the purpose of—

(a) prevention of occurrence and early identification of disability,

(b) early rehabilitation of persons with disabilities,

(c) enabling persons with disabilities to receive free habilitation and rehabilitation and medical services in public owned health institutions,
(d) availing health services and field medical personnel to persons with disabilities at an affordable cost, and

(e) prompt attendance by medical personnel to persons with disabilities as may be reasonable in the circumstances

(2) Every person with disabilities is entitled to reasonable access to information

(3) Every person with disabilities is entitled to communications technologies and systems which includes talking software, Braille materials, hearing aids and other communication devices

(4) The Board shall work with relevant government agencies and the private sector in the development and promulgation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public

(5) The standards and guidelines promulgated under subsection (3) shall ensure that they are age and gender appropriate and are applicable to—

(a) all buildings and facilities used by the public,

(b) permanent, temporary or emergency conditions,

(c) road and rail based transport,

(d) pedestrian infrastructure including zebra crossings and sidewalks,

(e) public transport system,

(f) any other mode of transport, and

(g) so that any Person with Disability is able to travel with safety and comfort

(6) Proprietors of public and private healthcare facilities shall provide physical access to buildings and clinics as well as other indoor and outdoor facilities crucial to persons with disabilities

35 (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility
(2) A proprietor of a public building or public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Board.

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

(4) All new construction, modification or alterations on built environment immediately after the effective date of this Act shall fully comply with the standards set out in the Third Schedule on accessibility of the built environment for persons with disabilities.

36 (1) This section shall apply to—

(a) all premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise,

(b) public transport operators and providers of communication and information services, and

(c) all services or amenities ordinarily provided to members of the public.

(2) If the board considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the board shall, subject to this section, serve upon the proprietor of the premises or the provider of the services or amenities concerned, an Adjustment Order—

(a) setting out—

(i) a full description of the premises, services or amenities concerned, and

(ii) the grounds upon which the board consider that the premises, services or amenities are inaccessible to persons with disabilities,

(b) requiring the owner or provider concerned to undertake at his or her own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned, and
The Tana River County Persons with Disabilities Bill 2018

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

Provided that such period shall not exceed five years

(3) Before serving the Adjustment Order under subsection (2), the board shall serve notice upon the person concerned—

(a) specifying the grounds upon which the Adjustment Order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order,

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

(c) calling upon the person concerned, to make representations to the Board within a specified period from the date of the service of the notice

(4) After considering the representations if any, referred to in subsection (3) (c), the Board may issue, refrain from or defer the issuing of an Adjustment Order

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

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

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

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

(d) Adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order
(6) Upon hearing an appeal under subsection (5), the Court may—

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

(b) make such order as to the costs of the appeal as it finds necessary

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

(a) admission into any premises to which members of the public are ordinarily admitted, or

(b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person

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

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

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

38 (1) The Board shall not serve an adjustment order Upon—

(a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Act except with the consent of the County Executive Committee Member, or

(b) any school or educational or training institution controlled or managed by the County Government or registered under the Education Act except with the consent of the County Executive Committee Member responsible for the administration of the institution or Act concerned
(2) Within sixty days after being requested to consent under subsection (1) the County Executive Committee Member shall either give or refuse his or her consent and if the County Executive Committee Member fails to do so within that period the Board may proceed to serve the adjustment order as though the County Executive Committee Member had consented.

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

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

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

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

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

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

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

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

PART IV—THE PERSONS WITH DISABILITIES FUND

42 (1) There is established a Fund to be known as the Persons with Disabilities Empowerment Fund.

(2) The Fund is established as a permanent Fund.
(3) The Fund shall vest and be administered by the Board

(4) The Fund and income thereof shall be used for the benefit of persons with disabilities in the County

43 (1) The functions of the Board as regards the fund shall be to—

(a) generally administer the Fund in accordance with provisions of this Act,

(b) act as the Trustee to the Fund,

(c) receive all payments required by this Act to be made to the Fund,

(d) make payments out of the Fund to the identified persons with disabilities in accordance with the provisions of this Act,

(e) manage and invest the funds of the Fund, and

(f) perform such other functions as are conferred on it by this Act

(2) The Board shall prepare and submit to the County Executive Committee Member quarterly and annual reports on the discharge of its functions in each year

44 (1) The fund shall consist of—

(a) such moneys as may be appropriated by County Assembly for the purposes of the Fund,

(b) income generated by investments made by the Board,

(c) any grants, donations, bequests or other contributions made to the Fund, and

(d) all other payments due to the Board in respect of any matter incidental to its functions

(2) The Board may out of the Fund—

(a) provide or contribute to the cost of supportive and assistive devices and services for persons with disabilities,

(b) establish or contribute to any established social protection programs for the benefit of persons with disabilities,
(c) provide grants to duly registered groups of and for persons with disabilities, parents of children with disabilities and entrepreneurs with disabilities,

(d) pay for social assistance to persons with disabilities falling in the following categories and who have no other source of income—

(i) persons with severe disabilities and who are therefore not trainable in any skills, and

(ii) older persons with disabilities,

(e) contribute towards extensive media coverage for persons who have suffered violence, abuse, neglect, discrimination or any other injustices due to their disabilities, or

(f) make any other payments or contributions to persons with disabilities or respective organizations as may be approved by the trustees,

(3) The Board may invest any of its funds in securities which are allowed by law, or in any other securities which the County Treasury may, from time to time, approve

(4) The Board may pay out of the Fund such sums of money required to defray the expenses incurred in the administration of the Fund, provided such sums of money shall not exceed fifteen per cent of the Fund allocation

PART V—MISCELLANEOUS

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

(a) fails to comply with an adjustment order issued under this Act, or

(b) discriminates against a person with disability contrary to the provisions of the Constitution or this Act

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

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person injured by the offence such sums of money in compensation as the court may deem appropriate
46 (1) A parent, guardian or next of kin shall not knowingly conceal any person with disability in such a manner as to deny any such person the opportunities and services available under this Act or any other law.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

47 Any person who knowingly denies food or fluids to a person with disability who is under that person’s care or responsibility or aids or abets in such denial commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

48 Any person who voluntarily or knowingly commits or abets the degrading treatment of a person with disability by words, either spoken or written, or by signs or by visible representations or otherwise, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

49 (1) A health professional shall not discriminate against persons with disabilities in the observance of ethical guidelines on informed consent and confidentiality while providing healthcare and other services to persons with disabilities.

(2) Without prejudice to subsection (1), every health care professional shall when making impairment-specific interventions, take special care to provide complete information to persons with disabilities through accessible modes, methods and formats.

(3) Any health professional who contravenes the provisions of subsection 1, 2 and 3 commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings two million or to imprisonment for a term not exceeding one year, or both.

(4) A person who, being a doctor or other medical practitioner negligently causes a disability to a patient commits an offence and is liable on conviction to a fine not exceeding Kenya Shillings five million or to imprisonment for a term not exceeding ten years, or both.
(5) A person not being a doctor or medical practitioner, who causes a disability to another person or who through negligence or deliberately increases the disability of another person, commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term of five years or both.

(6) Any persons who performs, conducts or directs any medical procedure to be performed on a Person with disability which leads to or is likely to lead to infertility is guilty of an offence and is liable upon conviction to a fine of three million Shillings or to imprisonment for a period not exceeding four years or both.

(7) Any person acting as a care-giver of the person with disability, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to facilitate, or negligently fails to prevent such medical procedure from being performed, commit an offence and shall be liable on conviction to a fine not exceeding five hundred thousand or with imprisonment of one year or both.

(8) The medical practice guidelines shall be revised to harmonise them with the provisions of this Act.

50 (1) A person commits an offence if the person knowingly gives false information to the Board for the purpose of being registered or for the purpose of acquiring any right or privilege due to persons so registered.

(2) Whoever fraudulently avails or attempts to avail or confer or attempt to confer any benefit meant for persons with disabilities on a person not entitled to such benefit commits an offence.

(3) Any person who commits an offence under subsection (1) or (2) above shall be liable on conviction to imprisonment for a term of six months or a fine of fifty thousand shillings or both.

(d) Any monetary benefits wrongly obtained under this section shall be returned with interest at commercial rates.

51 Any person who fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given there under, he or she is duty bound to produce or furnish, or to answer any
question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term of three months or both

52 Any person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years, or both

53 The Board may cause to be taken appropriate legal action if the Board believes that—

(a) a person or group of persons is engaged in a practice which is discriminatory under this Act, and

(b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest

54 (1) The County Executive Committee Member may in consultation with the Board, by notice in the Gazette make regulations generally for the better carrying into effect of the provisions of this Act

(2) Without limiting the generality of subsection (1), Regulations may be made in respect of the following—

(a) forms prescribed under this Act,

(b) fees to be charged under this Act, and

(c) adjustment orders

SCHEDULES

FIRST SCHEDULE (Section 12)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1 (1) The Board shall hold such number of meetings at such places and at such times as it shall consider necessary for the proper discharge of its functions, or in the absence of such decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson

(2) Notwithstanding subparagraph (1), the Board shall meet at least once in every three months to conduct the business of the Board
(3) At least fourteen days notice shall be given prior to any meeting of the Board

2 The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Board at any time, where the chairperson considers it expedient for the transaction of the business of the Board by giving not less than seven days notice to the members by the chairperson or where appropriate by the secretary

3 (1) The chairperson shall preside at all meetings of the Board

(2) In the absence of the chairperson at a meeting, the vice-chairperson shall preside at that meeting of the Board

(3) In the absence of the chairperson and the vice-chairperson at a meeting, the members present shall elect a member to preside at that meeting of the Board

4 The quorum at a meeting of the Board shall be at least two thirds of the members of the Board

5 (1) The matters of the Board shall be decided by a majority of the members present and voting

(2) In the event of equality of votes, the person presiding shall have a casting vote

6 The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member

7 (1) Minutes of the proceedings at meetings of the Board shall be kept in such a manner, as the County Executive Committee Member shall direct

(2) The minutes of the meetings of the Board shall be available to the County Executive Committee Member or to a person nominated by the County Executive Committee Member, on the request of the County Executive Committee Member

8 The Board may establish such committees as may be necessary for the performance of its functions

9 Subject to the provisions of this Schedule, the Board shall regulate its own procedure

10 Within six months of the commencement of this Act, the Board shall establish a code of conduct, applicable to all members of staff of the Board and justifiable for purposes of disciplinary proceedings, to ensure—
(a) compliance with applicable law,
(b) the effective, efficient and economical use of the Board’s resources,
(c) the effective, efficient and economical use of funds designated for payment to beneficiaries of social protection,
(d) the promotion and assistance of the human dignity of beneficiaries of social protection,
(e) the promotion and maintenance of a high standard of professional ethics,
(f) the prevention of conflicts of interest, and
(g) the assistance of confidential information held by the Board

11 (1) A member or employee of the Board shall be considered to have a conflict of interest for the purposes of this Act if the member or employee acquires any pecuniary or other interest that could conflict with the proper performance of the members or employees duties as a member or employee of the Board

(2) If at any time a member or employee of the Board has a conflict of interest in relation to any matter before the Board for consideration or determination or any matter the Board could reasonably expect might come before it for consideration or determination the member or employee shall immediately disclose the conflict of interest to the other members of the Board and refrain from taking part, or any further part, in the consideration or determination of the matter

(3) Where the Board becomes aware that a member or employee has a conflict of interest in relation to any matter before the Board, the Board shall direct the member or employee to refrain from taking part, or taking any further part in the consideration or determination the matter

(4) If a chairperson has a conflict of interest the member shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the County Executive Committee Member in writing

(5) Upon the Board becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and
duties of the member or employee or the Board and the
member with the conflict of interest shall not vote on this
determination

(6) Where the Board determines that the conflict is
likely to interfere significantly with the member's proper
and effective performance as provided for in paragraph (5),
the member shall vacate office as a member of the Board
unless the member has eliminate the conflict to the
satisfaction of the Board within thirty days of the
declaration of the conflict of interest

(7) The Board shall report to the County Executive
Committee Member any determination by the Board that a
conflict is likely to interfere significantly with performance
as above and whether or not the conflict has been
eliminated to the satisfaction of the Board

(8) The annual report of the Board shall disclose
details of all conflicts of interest and determinations arising
during the period covered by the report

(9) The Board shall cause minutes of all resolution
and proceedings of meetings of the Board to be entered in
books kept for that purpose

SECOND SCHEDULE (Section 7)

OATH/AFFIRMATION OF THE OFFICE OF
CHAIRPERSON/MEMBERS/SECRETARY OF THE
BOARD

I, having been appointed
(the chairperson to / member of / secretary to) the Persons
with disabilities Board under the Tana River County
Persons with Disabilities Act, 2016, do solemnly
(swear/ declare and affirm) that I will at all times obey,
respect and uphold the Constitution of Kenya and all other
laws of the Republic, as well as the laws of the County, as
legislated by the County Assembly, that I will faithfully
and fully, impartially and to the best of my knowledge and
ability, discharge the trust and perform the functions and
exercise the powers devolving upon me by virtue of this
appointment without fear, favour, bias, affection, or
prejudice (SO HELP ME GOD)

Sworn/ declared by the said

Before me this day of

Governor
THIRD SCHEDULE (Section 35(4))

ACCESS TO PUBLIC BUILDINGS, AUXILIARY AID, SPORTING VENUES AND PUBLIC FACILITIES

1 The design standards issued under this Act by the Board are used to ensure access to the built environment for persons with disabilities. The Standards apply in the whole County.

2 It shall be the responsibility of all organs in a public or private institution to provide—
   (a) suitable entry and exits for persons with disabilities, and
   (b) universal standards or designs of public buildings and places.

3 A proprietor of a public building shall adapt the public building to suit persons with disabilities in such manner as shall be specified by the Board.

4 Where no modifications are possible wherever practicable, assistive services shall be made available to persons with disabilities or reservation of goods and services for use by persons with disabilities.

5 Any person, who constructs, a building to which the public is invited, shall ensure that persons with disabilities have access through provision of—
   (a) accessible and easy-to-find building entrances, connected by accessible pathways to accessible indoor or outdoor parking areas, local public transit stops and accessible elevators,
   (b) safe and accessible urinal, bathrooms for the diverse disabilities,
   (c) safe and well-dimensioned staircases for the comfort of persons with mobility problems,
   (d) ramps wherever stairs obstruct the free passage of pedestrians, mainly wheel chair users and people with mobility problems,
   (e) adequate railing around hazardous areas, stairs, ramps, accessible roofs, mezzanines, galleries, balconies and raised platforms,
   (f) well-dimensioned elevators, (in the case of multi-storied buildings) that persons with disabilities can use conveniently.
6 An accessible elevator shall—
(a) serve all floors normally reached by the public,
(b) have embossed numerals and tactile markings on the floor selector buttons to be easily identifiable by touch, and
(c) signal arrival at each floor to alert visually impaired and the Deaf passengers simultaneously

7 Where it is difficult or unfeasible to install a ramp or an elevator to an existing building, the owner of the building shall provide platform lifts to provide accessibility
MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide for the rights and rehabilitation of persons with disabilities, to achieve equalization of opportunities for persons with disabilities and to establish the Tana River County Board for Persons with Disabilities

The structure of the Bill is as follows—

Part I provides for preliminary matters It provides for short title and commencement date, interpretation and objects of the Act

Part II of the Bill establishes the Tana River County Board for Persons with Disabilities provides for its administrative framework and prescribes its functions and the powers of the Board The Board shall comprise of key County officials and other appointees to ensure gender issues are mainstreamed Among the functions of the Board include the formulation of policies, registration of persons with disabilities, issuance of adjustment orders, provision of assistive devices and other appliances and equipment

Part III provides for the rights of persons with disabilities and requires the county government to take progressive measures to the maximum of its ability to avail resources for the full realization of the rights Among the rights set out in this Part include the right not to be discriminated in any employment opportunity, right not to be discriminated in an educational institution, right to special health treatment, right to accessibility and mobility, right to sports and recreation and the right to voting This Part also makes provision for certain privileges to be enjoyed by persons with disabilities These include incentives to employers who employ persons with disabilities, income tax exemptions for persons with disabilities and promotion of access to credit

Part IV of the Bill establishes the persons with disabilities empowerment fund The part provides that the fund shall be administered by the board The part further provides for sources of the Persons with Disabilities Empowerment Fund and functions of the fund

Part V contains miscellaneous provisions These include offences, penalties, enforcement measures and the power by the County Executive Committee Member to make Regulations

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the county government of Tana River estimates

Dated the 18th January, 2018

IBRAHIM SALAH ADAMOW, 
Member of County Assembly