



**A BRIEFING PAPER ON IMPLEMENTING ARTICLE
12 OF THE CONVENTION ON THE RIGHTS OF
PERSONS WITH DISABILITIES REGARDING
LEGAL CAPACITY IN KENYA**

A STUDY CARRIED OUT IN MANDERA AND TAITA TAVETA COUNTIES

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**THE KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS**

What is in this report?

Who is this report by?

This is a report by the Kenya National Commission on Human Rights.

Our work is to ensure that the government protects and provides for the rights of all people in Kenya including persons with disabilities.

What is this report about?

We did a study in Mandera and Taita Taveta Counties to find out the views of persons with disabilities, their care givers and professionals about the right of persons with disabilities to make decisions.

This report is about legal capacity which is the ability to hold rights and duties and to exercise them.

Legal capacity is normally confused with mental capacity which is decision making skills of a person which naturally differ from person to person.

The quality of a person's decisions depends on many factors including social factors and environmental factors. For example, a decision made in a chaotic moment may be different from one made in a calm moment.

We wanted to know if persons with disabilities are allowed to make decisions in their lives about:

- What to eat
- What to wear
- Who to spend time with

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- Managing their property
 - Banking their money
 - Getting married
 - What work to do
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How did we do the study?

We went to Mandera and Taita Taveta Counties and asked people what they thought about persons with disabilities making decisions about their lives.

We also met with people who work with persons with disabilities to get their views. For example we talked to

- People with disabilities
 - Care givers of persons with disabilities
 - Doctors
 - Judges and Lawyers
 - Bankers
 - Insurance agents
 - Local leaders
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What did we find out?

We found that there are some good things happening.

However, we also found that there are many things that can be done to enable persons with disabilities to make decisions in their lives.

Here is more about what we found.



1. Laws limit decision making

What we found out

Kenya has laws that protect rights of persons with disabilities to make decisions. However, there are other laws that stop persons with disabilities from making decisions on their own.

What needs to happen

The government should change the laws that limit the right of persons with disabilities to make their own decisions. People with disabilities should be supported to make their own decisions.



2. Guardianship

Guardianship describes the situation where a person makes decisions and does things on behalf of another person.

What we found out

In Kenya there is more informal guardianship (family arrangements) than formal guardianship (provided by the law).

What needs to happen

The government should enhance supported decision making as an alternative to guardianship. It should provide ways of supporting persons with disabilities to make their own decisions.



3. Court interpretation

What we found out

Since legal capacity (right to make decisions) is a legal issue, institutions rely on what the Kenyan courts have said about it. The challenge however is that the Kenyan courts are yet

to define what legal capacity means. So institutions still rely on the various existing laws which also need to be changed.

What needs to happen

A case concerning the right of persons with disabilities to make decisions should be filed in court so that the court can interpret the law and guide Kenyans on the meaning of legal capacity.



4. Awareness

What we found out

Many people in Kenya do not understand the right for persons with disabilities to make their own decisions. This includes government officers, persons with disabilities themselves and the general public.

What needs to happen

People in all government offices should be told about this right of persons with disabilities to make decisions. People with disabilities and the general public should also be told about the right to make decisions.



5. Data (Information)

What we found out

There is lack of sufficient information on the number of persons with disabilities in Kenya. This makes it difficult for the government to plan and initiate successful programs for the benefit of persons with disabilities.

What needs to happen

The government should create a central place to put information about persons with disabilities (data base). The data should be classified into different kinds of disabilities.

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